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JUL 17 2008

DEPARTMENT OF REAL ESTATE

By H. Mer

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
ALVIN ITSUO TOGO,)	No. H-1686 FR
)	
Respondent.)	
)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 4, 2005, an Order was rendered herein revoking the real estate broker license of Respondent but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on February 17, 2005.

On February 28, 2007, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to

1 my satisfaction that Respondent meets the requirements of law
2 for the issuance to Respondent of an unrestricted real estate
3 broker license and that it would not be against the public
4 interest to issue said license to Respondent.

5 NOW, THEREFORE, IT IS ORDERED that Respondent's
6 petition for reinstatement is granted and that a real estate
7 broker license be issued to Respondent if Respondent satisfies
8 the following conditions within nine months from the date of
9 this Order:

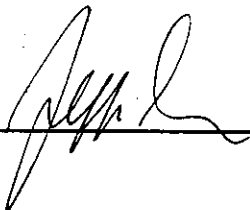
10 1. Submittal of a completed application and payment
11 of the fee for a real estate broker license.

12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 This Order shall be effective immediately.

18 DATED: 7-8, 2008

19
20 JEFF DAVI
21 Real Estate Commissioner

22
23 
24
25
26
27

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
JAN 27 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-1686 FRESNO
12)
13 ALVIN ITSUO TOGO,)
14 Respondent.) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between Respondent ALVIN
16 ITSUO TOGO, individually and by and through David R. McNamara,
17 Esq., of McCormick, Barstow, Sheppard, Wayte & Carruth LLP,
18 attorneys of record herein for Respondent, and the Complainant,
19 acting by and through James L. Beaver, Counsel for the Department
20 of Real Estate (herein "the Department"), as follows for the
21 purpose of settling and disposing of the Accusation filed on May
22 12, 2004 in this matter (herein "the Accusation"):

23
24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondents
26 at a formal hearing on the Accusation, which hearing was to be

27 DRE No. H-1686 FR

ALVIN ITSUO TOGO

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement.

5 2. Respondent has received, read and understands the
6 Statement to Respondent, the Discovery Provisions of the APA and
7 the Accusation filed by the Department in this proceeding.

8 3. On May 24, 2004, Respondent filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that Respondent
13 understands that by withdrawing said Notice of Defense Respondent
14 will thereby waive Respondent's right to require the Real Estate
15 Commissioner (herein "the Commissioner") to prove the allegations
16 in the Accusation at a contested hearing held in accordance with
17 the provisions of the APA and that Respondent will waive other
18 rights afforded to Respondent in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

22 4. This stipulation is based on the factual
23 allegations contained in the Accusation. In the interest of
24 expediency and economy, Respondent chooses not to contest these
25 factual allegations, but to remain silent and understands that,
26 as a result thereof, these factual statements will serve as a

27 DRE No. H-1686 FR

ALVIN ITSUO TOGO

1 prima facie basis for the "Determination of Issues" and "Order"
2 set forth below. The Real Estate Commissioner shall not be
3 required to provide further evidence to prove such allegations.

4 5. This Stipulation and Respondent's decision not to
5 contest the Accusation are made for the purpose of reaching an
6 agreed disposition of this proceeding and are expressly limited
7 to this proceeding and any other proceeding or case in which the
8 Department of Real Estate (herein "the Department"), the state or
9 federal government, an agency of this state, or an agency of
10 another state is involved.

11 6. It is understood by the parties that the Real
12 Estate Commissioner may adopt the Stipulation and Agreement as
13 her decision in this matter, thereby imposing the penalty and
14 sanctions on Respondent's real estate license and license
15 rights as set forth in the "Order" set forth below. In the
16 event that the Commissioner in her discretion does not adopt
17 the Stipulation and Agreement in Settlement, it shall be void
18 and of no effect, and Respondent shall retain the right to a
19 hearing and proceeding on the Accusation under all the
20 provisions of the APA and shall not be bound by any admission
21 or waiver made herein.

23 7. The Order or any subsequent Order of the Real
24 Estate Commissioner made pursuant to this Stipulation and
25 Agreement in Settlement shall not constitute an estoppel,
26 merger or bar to any further administrative or civil

1 proceedings by the Department of Real Estate with respect to
2 any matters which were not specifically alleged to be causes
3 for accusation in this proceeding.

4 8. Respondent understands that by agreeing to this
5 Stipulation and Agreement in Settlement, the findings set forth
6 below in the Determination Of Issues become final, and that the
7 Commissioner may charge said Respondent for:

8 (a) costs in the amount of \$2,821.24 of the audit
9 conducted pursuant to Section 10148 of the Business and
10 Professions Code, that resulted in the determination that
11 Respondent committed the violations described in Paragraph I of
12 the Determination of Issues, below; and

13 (b) the costs, not to exceed \$2,821.24, of any audit
14 conducted pursuant to Section 10148 of the Business and
15 Professions Code to determine if Respondent has corrected the
16 violations described in Paragraph I of the Determination of
17 Issues, below.

18
19 DETERMINATION OF ISSUES

20 By reason of the foregoing stipulations, admissions and
21 waivers and solely for the purpose of settlement of the pending
22 Accusation without hearing, it is stipulated and agreed that the
23 following Determination of Issues shall be made:

24 I

25 The acts and omissions of Respondent ALVIN ITSUO TOGO
26 as described in the Accusation are grounds for the suspension or

27 DRE No. H-1686 FR

ALVIN ITSUO TOGO

1 revocation of the licenses and license rights of Respondent under
2 the following provisions of the California Business and
3 Professions Code (herein "the Code") and/or the provisions of
4 Chapter 6, Title 10, California Code of Regulations (herein "the
5 Regulations"):

6 (a) As to Paragraph IX(a) under Section 10145 of the
7 Code and Section 2831 of the Regulations in conjunction with
8 Section 10177(d) of the Code;

9 (b) As to Paragraph IX(b) under Section 10145 of the
10 Code and Section 2831.1 of the Regulations in conjunction with
11 Section 10177(d) of the Code;

12 (c) As to Paragraph IX(c) under Section 10145 of the
13 Code and Section 2831.2 of the Regulations in conjunction with
14 Section 10177(d) of the Code;

15 (d) As to Paragraph IX(d) under Section 10145 of the
16 Code and Section 2832(a) of the Regulations in conjunction with
17 Section 10177(d) of the Code; and

18 (e) As to Paragraphs IX(e) and IX(f) under Section
19 10145 of the Code and Section 2832.1 of the Regulations in
20 conjunction with Section 10177(d) of the Code.
21

22 ORDER

23 I

24 All licenses and licensing rights of Respondent ALVIN
25 ITSUO TOGO under the Real Estate Law are revoked; provided,
26 however, a restricted real estate broker license shall be

27 DRE No. H-1686 FR

ALVIN ITSUO TOGO

1 issued to said Respondent pursuant to Section 10156.5 of the
2 Business and Professions Code if, within 90 days from the
3 effective date of the Decision entered pursuant to this Order,
4 the Respondent, prior to and as a condition of the issuance of
5 said restricted license:

6 (a) makes application for the restricted license and
7 pays to the Department of Real Estate the appropriate fee
8 therefor;

9 (b) provides proof satisfactory to the Commissioner
10 that the trust fund deficiencies described in Paragraphs IX(e)
11 and IX(f) of the Accusation have been corrected; and

12 (c) submits proof satisfactory to the Commissioner
13 of having taken and completed at an accredited institution the
14 continuing education course on trust fund accounting and
15 handling specified in paragraph (3) of subdivision (a) of
16 Section 10170.5 of the Business and Professions Code. Said
17 course must have been completed within 120 days prior to the
18 issuance of the restricted license.

19 The restricted license issued to Respondent shall be
20 subject to all of the provisions of Section 10156.7 of the Code
21 and to the following limitations, conditions and restrictions
22 imposed under authority of Section 10156.6 of the Code:

23 1. Any restricted license issued to Respondent
24 pursuant to this Decision shall be suspended for one hundred
25 (100) days from the date of issuance of said restricted license;
26

1 provided, however, if Respondent petitions, one hundred (100)
2 days of said one hundred (100) day suspension (or a portion
3 thereof) shall be stayed upon condition that:

4 (a) Respondent pays a monetary penalty pursuant to
5 Section 10175.2 of the Business and Professions Code at the rate
6 of \$100.00 for each day of the suspension for a total monetary
7 penalty of \$10,000.00.

8 (b) Said payment shall be in the form of a cashier's
9 check or certified check made payable to the Recovery Account of
10 the Real Estate Fund. Said check must be received by the
11 Department prior to the effective date of the Decision in this
12 matter.

13 (c) If Respondent fails to pay the monetary penalty in
14 accordance with the terms and conditions of the Decision, the
15 Commissioner may, without a hearing, vacate and set aside the
16 stay order, and order the immediate execution of all or any part
17 of the stayed suspension.

18 (d) No final subsequent determination be made, after
19 hearing or upon stipulation, that cause for disciplinary action
20 against Respondent occurred within two (2) years of the effective
21 date of this Decision. Should such a determination be made, the
22 Commissioner may, in his or her discretion, vacate and set aside
23 the stay order, and order the execution of all or any part of the
24 stayed suspension, in which event the Respondent shall not be
25 entitled to any repayment nor credit, prorated or otherwise, for
26

1 money paid to the Department under the terms of this Decision.

2 (e) If Respondent pays the monetary penalty and if
3 no further cause for disciplinary action against the real
4 estate license of Respondent occurs within two (2) years from
5 the effective date of the Decision, then the stay hereby
6 granted shall become permanent.

7 2. The restricted license issued to such Respondent
8 may be suspended prior to hearing by Order of the Real Estate
9 Commissioner in the event of the Respondent's conviction or
10 plea of nolo contendere to a crime which is substantially
11 related to Respondent's fitness or capacity as a real estate
12 licensee.

13 3. The restricted license issued to such Respondent
14 may be suspended prior to hearing by Order of the Real Estate
15 Commissioner on evidence satisfactory to the Commissioner that
16 the Respondent has violated provisions of the California Real
17 Estate Law, the Subdivided Lands Law, Regulations of the Real
18 Estate Commissioner or conditions attaching to the restricted
19 license.
20

21 4. Respondent shall not be eligible to apply for the
22 issuance of an unrestricted real estate license or for the
23 removal of any of the conditions, limitations or restrictions
24 of a restricted license until two (2) years have elapsed from
25 the effective date of this Decision.

26 5. Pursuant to Section 10148 of the Business and

1 Professions Code, Respondent shall pay the sum of \$2,821.24 as
2 and for the Commissioner's cost of the audit which led to this
3 disciplinary action. Respondent shall pay such cost within 45
4 days of receiving an invoice therefor from the Commissioner.

5 The Commissioner may suspend the restricted license issued to
6 respondent pending a hearing held in accordance with Section
7 11500, et seq., of the Government Code, if payment is not
8 timely made as provided for herein, or as provided for in a
9 subsequent agreement between the Respondent and the
10 Commissioner. The suspension shall remain in effect until
11 payment is made in full or until Respondent enters into an
12 agreement satisfactory to the Commissioner to provide for
13 payment, or until a decision providing otherwise is adopted
14 following a hearing held pursuant to this condition.

15 6. Pursuant to Section 10148 of the Business and
16 Professions Code, Respondent shall pay the Commissioner's
17 reasonable cost, not to exceed \$2,821.24, for an audit to
18 determine if Respondent has corrected the trust fund
19 violation(s) found in paragraph I of the Determination of
20 Issues. In calculating the amount of the Commissioner's
21 reasonable cost, the Commissioner may use the estimated average
22 hourly salary for all persons performing audits of real estate
23 brokers, and shall include an allocation for travel time to and
24 from the auditor's place of work. Respondent shall pay such
25 cost within 45 days of receiving an invoice therefor from the
26 Commissioner.

1 Commissioner detailing the activities performed during the
2 audit and the amount of time spent performing those activities.
3 The Commissioner may suspend the restricted license issued to
4 respondent pending a hearing held in accordance with Section
5 11500, et seq., of the Government Code, if payment is not
6 timely made as provided for herein, or as provided for in a
7 subsequent agreement between the Respondent and the
8 Commissioner. The suspension shall remain in effect until
9 payment is made in full or until Respondent enters into an
10 agreement satisfactory to the Commissioner to provide for
11 payment, or until a decision providing otherwise is adopted
12 following a hearing held pursuant to this condition.

13 7. Respondent shall, within nine months from the
14 effective date of the Decision, present evidence satisfactory
15 to the Commissioner that Respondent has, since the most recent
16 issuance of an original or renewal real estate license, taken
17 and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license. If Respondent fails to
20 satisfy this condition, the Commissioner may order the
21 suspension of the restricted license until the Respondent
22 presents such evidence. The Commissioner shall afford
23 Respondent the opportunity for a hearing pursuant to the
24 Administrative Procedure Act to present such evidence.

25 8. Respondent shall, within six (6) months from the
26
27

1 issuance of the restricted license, take and pass the
2 Professional Responsibility Examination administered by the
3 Department, including the payment of the appropriate
4 examination fee. If Respondent fails to satisfy this
5 condition, the Commissioner may order the suspension of the
6 restricted license until Respondent passes the examination.

7 9. During the term of any restricted license issued
8 to Respondent pursuant to this Decision, Respondent shall not
9 conduct any property management business with the public
10 described in Section 10131(b) of the Code, except directly
11 incident to other real estate brokerage services described in
12 Sections 10131(a), 10131(b) or 10131(e) of the Code.

13 December 14, 2004
14 DATED  JAMES L. BEAVER, Counsel
15 Department of Real Estate

16 * * *

17 I have read the Stipulation and Agreement and have
18 discussed its terms with my attorney and its terms are understood
19 by me and are agreeable and acceptable to me. I understand that I
20 am waiving rights given to me by the California Administrative
21 Procedure Act (including but not limited to Sections 11506,
22 11508, 11509, and 11513 of the Government Code), and I willingly,
23 intelligently, and voluntarily waive those rights, including the
24 right of requiring the Commissioner to prove the allegations in
25 the Accusation at a hearing at which I would have the right to
26 cross-examine witnesses against me and to present evidence in

27 DRE No. H-1686 FR

ALVIN ITSUO TOGO

1 defense and mitigation of the charges.

2 12-3-04
3 DATED

Alvin Itsuo Togo
4 ALVIN ITSUO TOGO
5 Respondent

6 * * *

7 I have reviewed the Stipulation and Agreement as to
8 form and content and have advised my clients accordingly.

9 12-3-04
10 DATED

David R. McNamara
11 DAVID R. McNAMARA
12 Attorney for Respondent

13 * * *

14 The foregoing Stipulation and Agreement is hereby
15 adopted by me as my Decision in this matter and shall become
16 effective at 12 o'clock noon on FEBRUARY 17 , 2005.

17 IT IS SO ORDERED 1-4-05, 2005.

18 JEFF DAVI
19 Real Estate Commissioner

Jeff Davi

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

OCT - 6 2004

DEPARTMENT OF REAL ESTATE

By Lucie A. Z...

In the Matter of the Accusation of

ALVIN ITSUO TOGO,

Case No. H-1686 FRESNO

OAH No. N-2004060242

Respondent

**FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE STATE BUILDING, 2550 MARIPOSA MALL, ROOM 1027, FRESNO, CA 93721** on **THURSDAY, DECEMBER 9, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 6, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

JUL 15 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ALVIN ITSUO TOGO,

Respondent

By *Laurid. Zin*
Case No. H-1686 FRESNO

}
} OAH No.

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE STATE BUILDING, 2550 MARIPOSA MALL, ROOM 1038, FRESNO, CA 93721** on **WEDNESDAY, SEPTEMBER 29, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: JULY 15, 2004

DEPARTMENT OF REAL ESTATE

By *James L. Beaver*
JAMES L. BEAVER, Counsel (L2)

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
MAY 12 2004

DEPARTMENT OF REAL ESTATE

By Laurie L. Zini

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-1686 FRESNO
12	ALVIN ITSUO TOGO,)	<u>ACCUSATION</u>
13	Respondent.)	
14	_____)		

15 The Complainant, John Sweeney, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against ALVIN ITSUO TOGO (herein "Respondent"), is informed and
18 alleges as follows:

19 I

20 The Complainant, John Sweeney, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 in his official capacity.

23 II

24 At all times herein mentioned, Respondent was and now
25 is licensed and/or has license rights under the Real Estate Law
26 (Part 1 of Division 4 of the Business and Professions Code)
27 (herein "the Code").

1 III

2 At all times herein mentioned, Respondent was and now
3 is licensed by the Department of Real Estate of the State of
4 California (herein "the Department") as a real estate broker.

5 IV

6 At all times herein mentioned, Respondent engaged in
7 the business of, acted in the capacity of, advertised, or
8 assumed to act as a real estate broker within the State of
9 California within the meaning of:

10 (a) Section 10131(a) of the Code, including the
11 operation and conduct of a real estate resale brokerage with the
12 public wherein, on behalf of others, for compensation or in
13 expectation of compensation, Respondents sold and offered to
14 sell, bought and offered to buy, solicited prospective sellers
15 and purchasers of, solicited and obtained listings of, and
16 negotiated the purchase and sale of real property; and

17 (b) Section 10131(b) of the Code, including the
18 operation and conduct of a property management business with the
19 public wherein, on behalf of others, for compensation or in
20 expectation of compensation, Respondent, jointly with Dee Ann
21 Jackson (herein "Jackson"), leased or rented and offered to
22 lease or rent, and placed for rent, and solicited listings of
23 places for rent, and solicited for prospective tenants of real
24 property or improvements thereon, and collected rents from real
25 property or improvements thereon.

26 ///

27 ///

1 V

2 At no time mentioned herein were Jackson or Diana
3 Manzo (herein "Manzo") licensed by the Department either as a
4 real estate broker or as a real estate salesperson, but at all
5 times mentioned herein between on or about September 11, 2001
6 and on or about September 30, 2003, Respondent employed and
7 compensated Jackson and Manzo, in violation of Section 10137 of
8 the Code, to perform the acts and conduct the property
9 management activities described in Paragraph IV(b), above,
10 including but not necessarily limited employing and compensating
11 Jackson and Manzo to manage approximately 25 properties
12 consisting of approximately 76 residential units owned by
13 approximately 13 other owners, provide repair and maintenance
14 services, pay expenses, screen tenants, and collect rents of
15 approximately \$45,000 per month in course of the management of
16 the properties.

17 VI

18 In acting as described above, Respondent violated
19 Section 10137 of the Code and willfully caused, suffered and
20 permitted Jackson and Manzo to violate Section 10130 of the
21 Code.

22 VII

23 In so acting as a real estate broker, as described in
24 Paragraph IV, above, Respondent accepted or received funds in
25 trust (herein "trust funds") from or on behalf of sellers,
26 buyers, owners and tenants in connection with the resale of real
27 property and in connection with the leasing, renting, and

1 collection of rents on real property or improvements thereon, as
2 alleged herein, and thereafter from time to time made
3 disbursements of said funds.

4 VIII

5 The aforesaid trust funds accepted or received by
6 Respondent were deposited or caused to be deposited by
7 Respondents into one or more bank accounts (herein "trust fund
8 accounts") maintained by Respondent for the handling of trust
9 funds, including but not necessarily limited to the following
10 accounts maintained by Respondent at the Los Angeles,
11 California, branch of Union Bank of California:

12 (a) the "Alvin I Togo DBA Diamond Realtors/GMAC
13 Property Management" account, account number 1120021954 (herein
14 "Bank 1"); and

15 (b) the "Diamond Realtors" account, account number
16 12914568 (herein "Trust 2").

17 IX

18 Between on or about January 1, 2001 and on or about
19 September 30, 2003, in connection with the collection and
20 disbursement of said trust funds, Respondent:

21 (a) Failed to keep a columnar record in chronological
22 sequence of all trust funds received and disbursed from Bank 1
23 and Trust 2 containing all the information required by Section
24 2831 of Title 10, California Code of Regulations (herein "the
25 Regulations");

26 ///

27 ///

1 (b) Failed to keep a separate record for each
2 beneficiary or transaction, accounting therein for all funds
3 which have been deposited into Bank 1 and Trust 2, containing
4 all information required by Section 2831.1 of the Regulations;

5 (c) Failed to reconcile, at least once a month, the
6 balance of all separate beneficiary or transaction records with
7 the record of all trust funds received into and disbursed from
8 Bank 1 and Trust 2;

9 (d) Failed to place trust funds entrusted to
10 Respondent into the hands of a principal on whose behalf the
11 funds were received, into a neutral escrow depository, or into a
12 trust fund account in the name of Respondent as trustee at a
13 bank or other financial institution, in conformance with the
14 requirements of Section 10145 of the Code and Section 2832(a) of
15 the Regulations, in that Respondents placed such funds in
16 Bank 1, an account that was not in the name of Respondent as
17 trustee;

18 (e) Caused, suffered or permitted the balance of
19 funds in Bank 1 to be reduced to an amount which, as of
20 August 31, 2003, was approximately \$3,370.20 less than the
21 aggregate liability of Respondent to all owners of such funds,
22 without the prior written consent of the owners of such funds;

23 (f) Caused, suffered or permitted the balance of
24 funds in Trust 2 to be reduced to an amount which, as of
25 August 31, 2003, was approximately \$1,000.00 less than the
26 aggregate liability of Respondent to all owners of such funds,
27 without the prior written consent of the owners of such funds;

1 (g) Authorized Bonnie M. Togo, an unlicensed employee
2 without fidelity bond coverage, to make disbursements from
3 Trust 2; and

4 (e) Failed to retain for three years copies of all
5 canceled checks executed by Respondents in connection with
6 transactions for which a real estate broker license is required.

7 X

8 Between on or about January 1, 2001 and on or about
9 September 30, 2003, in course of Respondent's resale and
10 property management activities described above, Respondent:

11 (a) Used the fictitious business name "Diamond
12 Realtors/GMAC Property Management" without first obtaining a
13 license from the Department bearing such fictitious business
14 name in compliance with Section 10159.5 of the Code and Section
15 2731 of the Regulations; and

16 (b) Employed Donna Maria Rodriguez as a real estate
17 salesperson without having a written agreement in compliance
18 with Section 2726 of the Regulations signed by Respondent and
19 Donna Maria Rodriguez and covering supervision of licensed
20 activities, duties and compensation.

21 XI

22 The facts alleged above are grounds for the suspension
23 or revocation of the licenses and license rights of Respondent
24 under the following provisions of the Code and/or the
25 Regulations:

26 ///

27 ///

1 (a) As to Paragraph VI, under Sections 10130 and
2 10137 of the Code in conjunction with Section 10177(d) of the
3 Code;

4 (b) As to Paragraph IX(a), under Section 10145 of the
5 Code and Section 2831 of the Regulations in conjunction with
6 Section 10177(d) of the Code;

7 (c) As to Paragraph IX(b), under Section 10145 of the
8 Code and Section 2831.1 of the Regulations in conjunction with
9 Section 10177(d) of the Code;

10 (d) As to Paragraph IX(c), under Section 10145 of the
11 Code and Section 2831.2 of the Regulations in conjunction with
12 Section 10177(d) of the Code;

13 (e) As to Paragraph IX(d), under Section 10145 of the
14 Code and Section 2832(a) of the Regulations in conjunction with
15 Section 10177(d) of the Code;

16 (f) As to Paragraphs IX(e) and IX(f), under Section
17 10145 of the Code and Section 2832.1 of the Regulations in
18 conjunction with Section 10177(d) of the Code;

19 (g) As to Paragraph IX(g), under Section 10145 of the
20 Code and Section 2834 of the Regulations in conjunction with
21 Section 10177(d) of the Code;

22 (h) As to Paragraph X(a), under Section 10159.5 of
23 the Code and Section 2731 of the Regulations in conjunction with
24 Section 10177(d) of the Code; and

25 (i) As to Paragraph X(b), under Section 2726 of the
26 Regulations in conjunction with Section 10177(d) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 under the Real Estate Law (Part 1 of Division 4 of the Business
6 and Professions Code) and for such other and further relief as
7 may be proper under other applicable provisions of law.

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9 
10 JOHN SWEENEY
 Deputy Real Estate Commissioner

11 Dated at Fresno, California,
12 this 22nd day of April, 2004.