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FILED

SEP 24 2009

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE.

STATE OF CALIFORNIA

In the Matter of the Accusation of
JOANNE LOUISE BOSTON,
Respondent.

No. H-1707 FR

ORDER DENYING REINSTATEMENT OF LICENSE

On March 24, 2005, a Decision was rendered in Case No. H-1707 FR revoking Respondent's real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on April 28, 2005 and Respondent has operated as a restricted licensee since that time.

On March 4, 2008, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

///

1 I have considered Respondent's petition and the evidence and arguments in
2 support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has
3 undergone sufficient rehabilitation to warrant the removal of the restrictions on Respondent's real
4 estate salesperson license at this time.

5 The Department has developed criteria in Section 2911 of Title 10, California
6 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
7 reinstatement of a license. Among the criteria relevant in this proceeding are:

8 Regulation 2911(b) Restitution to any person who has suffered monetary losses
9 through "substantially related" acts or omissions of the applicant.

10 Respondent represents that \$1,000.00 restitution was paid to Robert Gerhard, but
11 Respondent has failed to document that representation.

12 Regulation 2911(k) Correction of business practices resulting in injury to others or
13 with the potential to cause such injury.

14 Respondent's license was disciplined under Section 10177(g) of the Code on the
15 ground of demonstrated negligence or incompetence in the course of activities requiring a
16 license. On several occasions in the course of Respondent's work as a resale agent, Respondent
17 falsely represented in deposit receipt forms that she had received earnest money deposits when
18 she in fact had not received the deposits. Respondent incorrectly states in her petition that her
19 discipline did not arise from her business activities.

20 Regulation 2911(n) Change in attitude from that which existed at the time of the
21 conduct in question as evidenced by any or all of the following:

22 (1) Testimony of applicant.

23 Respondent incorrectly states in her petition that her discipline did not arise from
24 her business activities.

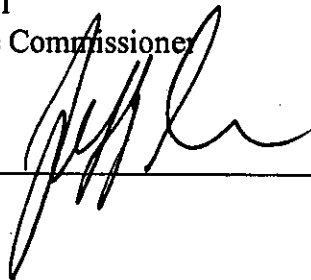
25 In view of Respondent's failure to demonstrate compliance with Regulations 2911
26 (b), 2911(k), or 2911(n)(1) of the Criteria of Rehabilitation, I am not satisfied that Respondent's
27 rehabilitation adequately supports issuance of an unrestricted license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement of Respondent's real estate salesperson license is denied.

3 This Order shall become effective at 12 o'clock noon on OCT 15 2009

4 DATED: 9-9-09

5 JEFF DAVI
6 Real Estate Commissioner

7 
8 _____
9

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

FILED
 APR -7 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
 STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-1707 FR
JOANNE LOUISE BOSTON,)	OAH No. N-200410003
Respondent.)	<u>STIPULATION AND AGREEMENT</u>

It is hereby stipulated by and between Respondent JOANNE LOUISE BOSTON (hereinafter "BOSTON" or "Respondent"), represented by Calvin Moorad, Esq., and the Complainant, acting by and through James L. Beaver, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on August 9, 2004 in this matter ("the Accusation"):

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place

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1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement.

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

7 3. On August 24, 2004, Respondent filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that
12 Respondent understands that by withdrawing said Notice of
13 Defense Respondent will thereby waive Respondent's right to
14 require the Commissioner to prove the allegations in the
15 Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that Respondent will waive other
17 rights afforded to Respondent in connection with the hearing
18 such as the right to present evidence in defense of the
19 allegations in the Accusation and the right to cross-examine
20 witnesses.
21

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

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JOANNE LOUISE BOSTON

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 Respondents' decision not
5 to contest the Accusation are made for the purpose of reaching
6 an agreed disposition of this proceeding and are expressly
7 limited to this proceeding and any other proceeding or case in
8 which the Department of Real Estate (herein "the Department"),
9 the state or federal government, an agency of this state, or an
10 agency of 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" below. In the event that
16 the Commissioner in her discretion does not adopt the
17 Stipulation and Agreement, it shall be void and of no effect,
18 and Respondent shall retain the right to a hearing and
19 proceeding on the Accusation under all the provisions of the
20 APA and shall not be bound by any admission or waiver made
21 herein.
22

23 7. This Stipulation and Agreement shall not
24 constitute an estoppel, merger or bar to any further
25 administrative or civil proceedings by the Department of Real
26 Estate with respect to any matters which were not specifically
27

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1 alleged to be causes for accusation in this proceeding.

2 DETERMINATION OF ISSUES

3 By reason of the foregoing stipulations, admissions
4 and waivers and solely for the purpose of settlement of the
5 pending Accusation without hearing, it is stipulated and agreed
6 that the following Determination of Issues shall be made:

7 I

8 The acts and omissions of Respondent JOANNE LOUISE
9 BOSTON described in the Accusation are grounds for the
10 suspension or revocation of the licenses and license rights of
11 Respondent under the provisions of Section 10177(g) of the
12 California Business and Professions Code.

13 ORDER

14 I

15 All licenses and licensing rights of Respondent
16 JOANNE LOUISE BOSTON under the Real Estate Law are revoked;
17 provided, however, a restricted real estate salesperson license
18 shall be issued to said Respondent pursuant to Section 10156.5
19 of the Business and Professions Code if, within 90 days from
20 the effective date of the Decision entered pursuant to this
21 Order, Respondent makes application for the restricted license
22 and pays to the Department of Real Estate the appropriate fee
23 therefor.

24
25 The restricted license issued to Respondent shall be
26 subject to all of the provisions of Section 10156.7 of the

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1 Business and Professions Code and to the following limitations,
2 conditions and restrictions imposed under authority of Section
3 10156.6 of that Code:

4 A. Any restricted license issued to Respondent
5 pursuant to this Decision shall be suspended for sixty (60) days
6 from the date of issuance of said restricted license; provided,
7 however:

8 (1) If Respondent petitions, thirty (30) days of said
9 sixty (60) day suspension (or a portion thereof) shall be stayed
10 upon condition that:

11 (a) Respondent pays a monetary penalty pursuant to
12 Section 10130.2 of the Code at the rate of \$100.00 for each day
13 of the suspension for a total monetary penalty of \$3,000.00.

14 (b) Said payment shall be in the form of a cashier's
15 check or certified check made payable to the Recovery Account of
16 the Real Estate Fund. Said check must be received by the
17 Department prior to the effective date of the Decision in this
18 matter.

19 (c) If Respondent fails to pay the monetary penalty in
20 accordance with the terms and conditions of the Decision, the
21 Commissioner may, without a hearing, vacate and set aside the
22 stay order, and order the immediate execution of all or any part
23 of the stayed suspension.

24 (d) No final subsequent determination be made, after
25 hearing or upon stipulation, that cause for disciplinary action
26

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JOANNE LOUISE BOSTON

1 against Respondent occurred within two (2) years of the effective
2 date of the Decision herein. Should such a determination be made,
3 the Commissioner may, in his or her discretion, vacate and set
4 aside the stay order, and order the execution of all or any part
5 of the stayed suspension, in which event the Respondent shall not
6 be entitled to any repayment nor credit, prorated or otherwise,
7 for money paid to the Department under the terms of this
8 Decision.

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

14 2. Thirty (30) days of said sixty (60) day
15 suspension shall be stayed upon condition that:

16 (a) No final subsequent determination be made, after
17 hearing or upon stipulation, that cause for disciplinary action
18 against Respondent occurred within two (2) years of the
19 effective date of the Decision herein.

20 (b) Should such a determination be made, the
21 Commissioner may, in his or her discretion, vacate and set
22 aside the stay order, and order the execution of all or any
23 part of the stayed suspension, in which event the Respondent
24 shall not be entitled to any repayment nor credit, prorated or
25 otherwise, for money paid to the Department under the terms of
26

1 this Decision.

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

7 B. Any restricted license issued to Respondent
8 pursuant to this Decision may be suspended prior to hearing by
9 Order of the Commissioner in the event of Respondent's conviction
10 or 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 C. Any restricted license issued to Respondent
14 pursuant to this Decision may be suspended prior to hearing by
15 Order of the Commissioner on evidence satisfactory to the
16 Commissioner that Respondent has violated provisions of the
17 California Real Estate Law, the Subdivided Lands Law, Regulations
18 of the Commissioner or conditions attaching to the restricted
19 license.
20

21 D. Respondent shall not be eligible to apply for the
22 issuance of an unrestricted real estate license nor for the
23 removal of any of the conditions, limitations or restrictions of
24 a restricted license until two (2) years has elapsed from the
25 effective date of this Decision.

26 E. Respondent shall, within nine months from the

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1 effective date of the Decision, present evidence satisfactory to
2 the Commissioner that Respondent has, since the most recent
3 issuance of an original or renewal real estate license, taken and
4 successfully completed the continuing education requirements of
5 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
6 real estate license. If Respondent fails to satisfy this
7 condition, the Commissioner may order the suspension of the
8 restricted license until the Respondent presents such evidence.
9 The Commissioner shall afford Respondent the opportunity for a
10 hearing pursuant to the Administrative Procedure Act to present
11 such evidence.

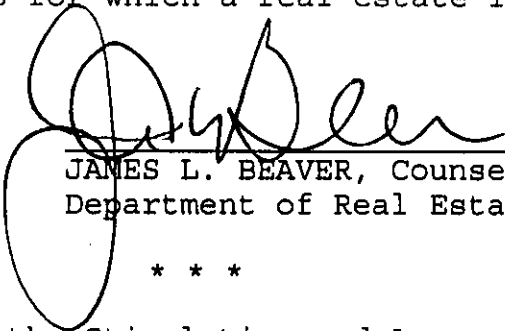
12 F. Respondent shall, within six (6) months from the
13 issuance of the restricted license, take and pass the
14 Professional Responsibility Examination administered by the
15 Department, including the payment of the appropriate examination
16 fee. If Respondent fails to satisfy this condition, the
17 Commissioner may order the suspension of the restricted license
18 until Respondent passes the examination.

19 G. Respondent shall submit with any application for
20 license under an employing broker, or any application for
21 transfer to a new employing broker, a statement signed by the
22 prospective employing real estate broker on a form approved by
23 the Department of Real Estate which shall certify:
24
25
26
27

1 a. That the employing broker has read the Decision of
2 the Commissioner which granted the right to a restricted license;
3 and

4 b. That the employing broker will exercise close
5 supervision over the performance by the restricted licensee
6 relating to activities for which a real estate license is
7 required.

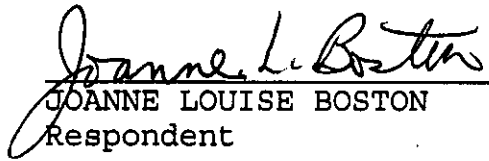
8 3/4/05
9 DATED


JAMES L. BEAVER, Counsel
Department of Real Estate

10 * * *

11 I have read the Stipulation and Agreement and
12 discussed it with my attorney and its terms are understood by
13 me and are agreeable and acceptable to me. I understand that I
14 am waiving rights given to me by the California Administrative
15 Procedure Act (including but not limited to Sections 11506,
16 11508, 11509, and 11513 of the Government Code), and I
17 willingly, intelligently, and voluntarily waive those rights,
18 including the right of requiring the Commissioner to prove the
19 allegations in the Accusation at a hearing at which I would
20 have the right to cross-examine witnesses against me and to
21 present evidence in defense and mitigation of the charges.

22 2/22/05
23 DATED


JOANNE LOUISE BOSTON
Respondent

24 ///

25 ///

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27 JOANNE LOUISE BOSTON

1 * * *

2 I have reviewed the Stipulation and Agreement as to
3 form and content and have advised my client accordingly.

4 3-1-05

5 DATED

6 CALVIN MOORAD

7 Attorney for Respondents

8 * * *

9 The foregoing Stipulation and Agreement is hereby
10 adopted by as my Decision in this matter as to Respondent
11 JOANNE LOUISE BOSTON and shall become effective at 12 o'clock
12 noon on APRIL 28, 2005.

13 IT IS SO ORDERED 3-24, 2005.

14 JEFF DAVI
15 Real Estate Commissioner

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26
27 DRE No. H-1707 FR

JOANNE LOUISE BOSTON

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

FILED
MAR 11 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-1707 FR
BRAGER & ASSOC., INC.,)	OAH No. N-2004100037
a California Corporation, and)	
ROBERT JOSEPH BRAGER,)	<u>STIPULATION AND AGREEMENT</u>
Respondents.)	

It is hereby stipulated by and between Respondents
BRAGER & ASSOC., INC. (herein "BAI") and ROBERT JOSEPH BRAGER
(herein "BRAGER"), individually and by and through Lawrence C.
Beaver, Esq., attorney of record herein for Respondents BAI and
BRAGER (herein "Respondents"), and the Complainant, acting by
and through James L. Beaver, Counsel for the Department of Real
Estate (herein "the Department"), as follows for the purpose of
settling and disposing of the Accusation filed on August 9, 2004
in this matter (herein "the Accusation"):

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BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act (APA), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement.

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department in this proceeding.

11 3. On August 19, 2004, Respondents filed Notices of
12 Defense pursuant to Section 1605 of the Government Code for the
13 purpose of requesting a hearing on the allegations in the
14 Accusation. Respondents each hereby freely and voluntarily
15 withdraw said Notice of Defense. Respondents acknowledge that
16 Respondents understand that by withdrawing said Notice of Defense
17 Respondents will thereby waive Respondents' right to require the
18 Real Estate Commissioner (herein "the Commissioner") to prove the
19 allegations in the Accusation at a contested hearing held in
20 accordance with the provisions of the APA and that Respondents
21 will waive other rights afforded to Respondents in connection
22 with the hearing such as the right to present evidence in defense
23 of the allegations in the Accusation and the right to cross-
24 examine witnesses.
25

26
27 DRE No. H-1707 FR

BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 4. This stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expediency and economy, Respondents choose not to contest these
4 factual allegations, but to remain silent and understand that, as
5 a result thereof, these factual statements will serve as a prima
6 facie basis for the "Determination of Issues" and "Order" set
7 forth below. The Real Estate Commissioner shall not be required
8 to provide further evidence to prove such allegations.

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

16 6. It is understood by the parties that the
17 Commissioner may adopt the Stipulation and Agreement as his
18 decision in this matter, thereby imposing the penalty and
19 sanctions on Respondents' real estate license and license rights
20 as set forth in the "Order" below. In the event that the
21 Commissioner in his discretion does not adopt the Stipulation and
22 Agreement, it shall be void and of no effect, and Respondents
23 shall retain the right to a hearing and proceeding on the
24 Accusation under all the provisions of the APA and shall not be
25

26
27 DRE No. H-1707 FR

BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

bound by any admission or waiver made herein.

7. This Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding. This Stipulation and Agreement shall constitute an estoppel, merger and bar to any further administrative or civil proceedings by the Department with respect to any events which were specifically alleged to be causes for accusation in this proceeding.

8. Respondents understand that by agreeing to this Stipulation and Agreement, Respondents jointly and severally agree to pay, pursuant to Section 10148 of the California Business and Professions Code (herein "Code"), the cost of the audit which resulted in the determination that Respondents committed the trust fund violation(s) found in paragraph I, below, of the Determination of Issues. The amount of said costs is \$7,581.30.

9. Respondents further understand that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the Determination Of Issues become final, and that the Commissioner may charge said Respondents, jointly and severally, for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund

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BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 violation(s) found in paragraph I, below, of the Determination of
2 Issues have been corrected. The maximum costs of said audit shall
3 not exceed \$7,581.30.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions and
6 waivers and solely for the purpose of settlement of the pending
7 Accusation without hearing, it is stipulated and agreed that the
8 following Determination of Issues shall be made:

9 I

10 The acts and omissions of Respondents BAI and BRAGER as
11 described in the Accusation are grounds for the suspension or
12 revocation of the licenses and license rights of Respondents BAI
13 and BRAGER under the following provisions of the California
14 Business and Professions Code (herein "the Code") and/or Chapter
15 6, Title 10, California Code of Regulations (herein "the
16 Regulations"):

17 (a) as to Paragraphs VIII(a) and XIII and Respondent
18 BAI under Section 10145 of the Code and Section 2831 of the
19 Regulations in conjunction with Section 10177(d) of the Code;

20 (b) as to Paragraph VIII(b) and Respondent BAI under
21 Section 10145 of the Code and Section 2831.1 of the Regulations
22 in conjunction with Section 10177(d) of the Code;

23 (c) as to Paragraph VIII(c) and Respondent BAI under
24 Section 10145 of the Code and Section 2831.2 of the Regulations
25

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ROBERT JOSEPH BRAGER

in conjunction with Section 10177(d) of the Code;

(d) as to Paragraphs VIII(d) and VIII(e) and Respondent BAI under Section 10145 of the Code and Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code; and

(e) As to Paragraph XIV and Respondent BRAGER under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

ORDER

I

A. All licenses and licensing rights of Respondent BRAGER & ASSOCIATES, INC. under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of the Decision herein; provided, however:

1. If Respondent BAI petitions, thirty (30) days of said sixty (60) day suspension (or a portion thereof) shall be stayed upon condition that:

(a) Respondent BAI pays a monetary penalty pursuant to Section 10130.2 of the Code at the rate of \$100.00 for each day of the suspension for a total monetary penalty of \$3,000.00.

(b) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the

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BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 Department prior to the effective date of the Decision in this
2 matter.

3 (c) If Respondent BAI fails to pay the monetary
4 penalty in accordance with the terms and conditions of the
5 Decision, the Commissioner may, without a hearing, vacate and set
6 aside the stay order, and order the immediate execution of all or
7 any part of the stayed suspension.

8 (d) No final subsequent determination be made, after
9 hearing or upon stipulation, that cause for disciplinary action
10 against Respondent BAI occurred within two (2) years of the
11 effective date of the Decision herein. Should such a
12 determination be made, the Commissioner may, in his or her
13 discretion, vacate and set aside the stay order, and order the
14 execution of all or any part of the stayed suspension, in which
15 event the Respondent BAI shall not be entitled to any repayment
16 nor credit, prorated or otherwise, for money paid to the
17 Department under the terms of this Decision.
18

19 (e) If Respondent BAI pays the monetary penalty and if
20 no further cause for disciplinary action against the real estate
21 license of Respondent occurs within two (2) years from the
22 effective date of the Decision herein, then the stay hereby
23 granted shall become permanent.

24 2. Thirty (30) days of said sixty (60) day
25 suspension shall be stayed upon condition that:
26

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BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 (a) No final subsequent determination be made, after
2 hearing or upon stipulation, that cause for disciplinary action
3 against Respondent occurred within two (2) years of the
4 effective date of the Decision herein.

5 (b) Should such a determination be made, the
6 Commissioner may, in his or her discretion, vacate and set
7 aside the stay order, and order the execution of all or any
8 part of the stayed suspension, in which event the Respondent
9 shall not be entitled to any repayment nor credit, prorated or
10 otherwise, for money paid to the Department under the terms of
11 this Decision.

12 (c) If no order vacating the stay is issued, and if
13 no further cause for disciplinary action against the real
14 estate license of Respondent occurs within two (2) years from
15 the effective date of the Decision, then the stay hereby
16 granted shall become permanent.

17
18 B. Respondent BAI shall, within 45 days of receiving
19 an invoice therefor from the Commissioner, pay (jointly and
20 severally with Respondent BRAGER) the Commissioner's costs in the
21 amount of \$7,581.30 of the audit conducted pursuant to Section
22 10148 of the Business and Professions Code that resulted in the
23 determination that Respondent BAI committed the violations
24 described in Paragraph I of the Determination of Issues, above.
25 If Respondent BAI fails to pay such cost within the 45 days, the
26

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BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 Commissioner may in his or her discretion indefinitely suspend
2 all license and licensing rights of Respondent under the Real
3 Estate Law until payment is made in full or until Respondent
4 enters into an agreement satisfactory to the Commissioner to
5 provide for payment. Upon payment in full, any indefinite
6 suspension provided in this paragraph shall be stayed.

7 C. Respondent BAI shall pay (jointly and severally
8 with Respondent BRAGER) the Commissioner's costs, not to exceed
9 \$7,581.30, of any audit conducted pursuant to Section 10148 of
10 the Business and Professions Code to determine if Respondent has
11 corrected the violations described in Paragraph I of the
12 Determination of Issues, above. In calculating the amount of the
13 Commissioner's reasonable cost, the Commissioner may use the
14 estimated average hourly salary for all persons performing audits
15 of real estate brokers, and shall include an allocation for
16 travel time to and from the auditor's place of work. Respondent
17 BAI shall pay such cost within 45 days of receiving an invoice
18 therefor from the Commissioner detailing the activities performed
19 during the audit and the amount of time spent performing those
20 activities. If Respondent fails to pay such cost within the 45
21 days, the Commissioner may in his or her discretion indefinitely
22 suspend all license and licensing rights of Respondent BAI under
23 the Real Estate Law until payment is made in full or until
24 Respondent BAI enters into an agreement satisfactory to the
25

26
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BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 Commissioner to provide for payment. Upon payment in full, the
2 indefinite suspension provided in this paragraph shall be stayed.

3 II

4 A. All licenses and licensing rights of Respondent
5 BRAGER under the Real Estate Law are indefinitely suspended until
6 such time as Respondent BRAGER provides proof satisfactory to the
7 Commissioner that Respondent BRAGER has, within one hundred
8 twenty (120) days prior to the effective date of the Decision
9 herein or any date after said effective date, taken and
10 successfully completed the trust fund accounting and handling
11 course specified in paragraph (3), subdivision (a) of Section
12 10170.5 of the Business and Professions Code. Upon satisfaction
13 of this condition, the indefinite suspension provided in this
14 paragraph shall be stayed.

15 B. All licenses and licensing rights of Respondent
16 BRAGER under the Real Estate Law are suspended for a period of
17 sixty (60) days from the effective date of the Decision herein;
18 provided, however:

19 1. If Respondent BRAGER petitions, thirty (30) days
20 of said sixty (60) day suspension (or a portion thereof) shall be
21 stayed upon condition that:

22 (a) Respondent BRAGER pays a monetary penalty pursuant
23 to Section 10130.2 of the Code at the rate of \$100.00 for each
24 day of the suspension for a total monetary penalty of \$3,000.00.

25
26
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BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 (b) Said payment shall be in the form of a cashier's
2 check or certified check made payable to the Recovery Account of
3 the Real Estate Fund. Said check must be received by the
4 Department prior to the effective date of the Decision in this
5 matter.

6 (c) If Respondent BRAGER fails to pay the monetary
7 penalty in accordance with the terms and conditions of the
8 Decision, the Commissioner may, without a hearing, vacate and set
9 aside the stay order, and order the immediate execution of all or
10 any part of the stayed suspension.

11 (d) No final subsequent determination be made, after
12 hearing or upon stipulation, that cause for disciplinary action
13 against Respondent BRAGER occurred within two (2) years of the
14 effective date of the Decision herein. Should such a
15 determination be made, the Commissioner may, in his or her
16 discretion, vacate and set aside the stay order, and order the
17 execution of all or any part of the stayed suspension, in which
18 event the Respondent shall not be entitled to any repayment nor
19 credit, prorated or otherwise, for money paid to the Department
20 under the terms of this Decision.

21 (e) If Respondent BRAGER pays the monetary penalty and
22 if no further cause for disciplinary action against the real
23 estate license of Respondent BRAGER occurs within two (2) years
24 from the effective date of the Decision herein, then the stay
25 order shall be terminated.

26
27 DRE No. H-1707 FR

BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

hereby granted shall become permanent.

2. Thirty (30) days of said sixty (60) day
suspension shall be stayed upon condition that:

(a) No final subsequent determination be made, after
hearing or upon stipulation, that cause for disciplinary action
against Respondent occurred within two (2) years of the
effective date of the Decision herein.

(b) Should such a determination be made, the
Commissioner may, in his or her discretion, vacate and set
aside the stay order, and order the execution of all or any
part of the stayed suspension, in which event the Respondent
shall not be entitled to any repayment nor credit, prorated or
otherwise, for money paid to the Department under the terms of
this Decision.

(c) If no order vacating the stay is issued, and if
no further cause for disciplinary action against the real
estate license of Respondent occurs within two (2) years from
the effective date of the Decision, then the stay hereby
granted shall become permanent.

C. Respondent BRAGER shall, within 45 days of
receiving an invoice therefor from the Commissioner, pay (jointly
and severally with Respondent BAI) the Commissioner's costs in
the amount of \$7,581.30 of the audit conducted pursuant to
Section 10148 of the Business and Professions Code that resulted

DRE No. H-1707 FR

BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 in the determination that Respondent BAI committed the violations
2 described in Paragraph I of the Determination of Issues, above.
3 If Respondent BRAGER fails to pay such cost within the 45 days,
4 the Commissioner may in his or her discretion indefinitely
5 suspend all license and licensing rights of Respondent under the
6 Real Estate Law until payment is made in full or until Respondent
7 BRAGER enters into an agreement satisfactory to the Commissioner
8 to provide for payment. Upon payment in full, any indefinite
9 suspension provided in this paragraph shall be stayed.

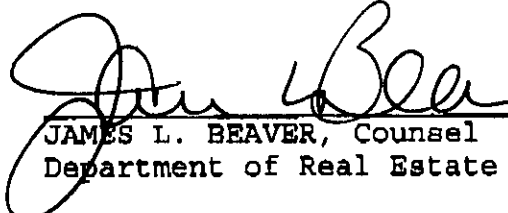
10 D. Respondent BRAGER shall pay (jointly and
11 severally with Respondent BAI) the Commissioner's costs, not to
12 exceed \$7,581.30, of any audit conducted pursuant to Section
13 10148 of the Business and Professions Code to determine if
14 Respondent BAI has corrected the violations described in
15 Paragraph I of the Determination of Issues, above. In
16 calculating the amount of the Commissioner's reasonable cost,
17 the Commissioner may use the estimated average hourly salary
18 for all persons performing audits of real estate brokers, and
19 shall include an allocation for travel time to and from the
20 auditor's place of work. Respondent shall pay such cost within
21 45 days of receiving an invoice therefor from the Commissioner,
22 detailing the activities performed during the audit and the
23 amount of time spent performing those activities. If
24 Respondent BRAGER fails to pay such cost within the 45 days,
25

26
27 DRE No. H-1707 FR

BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

1 the Commissioner may in his or her discretion indefinitely
2 suspend all license and licensing rights of Respondent under
3 the Real Estate Law until payment is made in full or until
4 Respondent enters into an agreement satisfactory to the
5 Commissioner to provide for payment. Upon payment in full, the
6 indefinite suspension provided in this paragraph shall be
7 stayed.

8 February 18, 2005
9 DATED

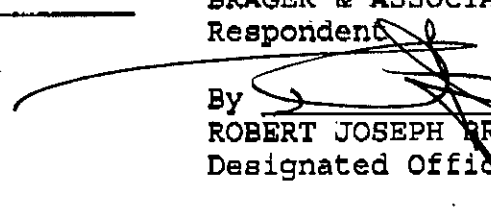

JAMES L. BEAVER, Counsel
Department of Real Estate

10 * * *

11 I have read the Stipulation and Agreement and discussed
12 it with my attorney and its terms are understood by me and are
13 agreeable and acceptable to me. I understand that I am waiving
14 rights given to me by the California Administrative Procedure Act
15 (including but not limited to Sections 1606, 1608, 1609, and
16 11513 of the Government Code), and I willingly, intelligently,
17 and voluntarily waive those rights, including the right of
18 requiring the Commissioner to prove the allegations in the
19 Accusation at a hearing at which I would have the right to cross-
20 examine witnesses against me and to present evidence in defense
21 and mitigation of the charges.

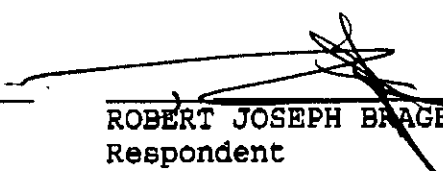
22 2-9-05
23 DATED

BRAGER & ASSOCIATES, INC.
Respondent

24 By 
25 ROBERT JOSEPH BRAGER
26 Designated Officer - Broker

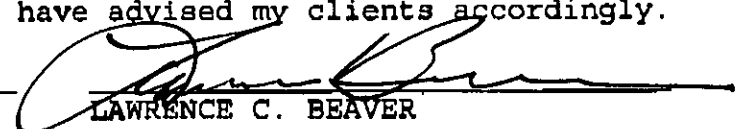
27 DRE No. H-1707 FR

BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

2-9-05
DATED
ROBERT JOSEPH BRAGER
Respondent

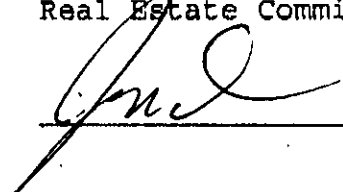
* * *

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

2-9-05
DATED
LAWRENCE C. BEAVER
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter and shall become
effective at 12 o'clock noon on APRIL 1 , 2005.

IT IS SO ORDERED 3-9-05, 2005.JEFF DAVI
Real Estate Commissioner

DRE No. H-1707 FR

BRAGER & ASSOC., INC. and
ROBERT JOSEPH BRAGER

FILED
NOV 23 2004

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

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BRAGER & ASSOC., INC.,
a California Corporation,
ROBERT JOSEPH BRAGER, and
JOANNE LOUISE BOSTON,

} Case No. H-1707 FRESNO

} OAH No. N-2004100037

Respondents

**FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

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 **FEBRUARY 15 & 16, 2005**, 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: NOVEMBER 23, 2004

DEPARTMENT OF REAL ESTATE

By

James L. Beaver
JAMES L. BEAVER, Counsel (12)

FILED
OCT 22 2004

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

DEPARTMENT OF REAL ESTATE

By Laurie G. Z...

In the Matter of the Accusation of

BRAGER & ASSOC., INC.,
a California Corporation,
ROBERT JOSEPH BRAGER, and
JOANNE LOUISE BOSTON,

} Case No. H-1707 FRESNO

} OAH No. N-2004100037

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

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 **JANUARY 4 & 5, 2005**, 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 22, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel (12)

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
AUG - 9 2004

DEPARTMENT OF REAL ESTATE

By Laurie G. Z...

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	No. H-1707 FRESNO
12 BRAGER & ASSOC., INC.,	)	
13 a California Corporation,	)	<u>ACCUSATION</u>
14 ROBERT JOSEPH BRAGER, and	)	
15 JOANNE LOUISE BOSTON,	)	
	)	
Respondents.	)	

16 The Complainant, John Sweeney, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against BRAGER & ASSOC., INC., (herein "BAI"), ROBERT JOSEPH
19 BRAGER (herein "BRAGER") and JOANNE LOUISE BOSTON (herein
20 "BOSTON"), is informed and alleges as follows:

21 I

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

25 ///

26 ///

27 ///

1 II

2 At all times herein mentioned herein Respondent were
3 and now are licensed or have license rights under the Real Estate
4 Law (Part 1 of Division 4 of the Business and Professions Code)
5 (herein "the Code").

6 III

7 At all times herein mentioned:

8 (a) BAI was licensed by the Department of Real Estate
9 of the State of California (herein "the Department") as a
10 corporate real estate broker by and through BRAGER as designated
11 officer-broker of BAI to qualify said corporation and to act for
12 said corporation as a real estate broker; and

13 (b) BRAGER was and now is licensed by the Department
14 as a real estate broker, individually and as designated officer-
15 broker of BAI.

16 IV

17 Whenever reference is made in an allegation in this
18 Accusation to an act or omission of BAI, such allegation shall be
19 deemed to mean that the officers, directors, employees, agents
20 and/or real estate licensees employed by or associated with BAI
21 committed such act or omission while engaged in the furtherance
22 of the business or operations of such corporate Respondent and
23 while acting within the course and scope of their authority and
24 employment.

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27 ///

V

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

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

(b) Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent BAI leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon; and

(c) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent BAI solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondent BAI arranged, negotiated, processed, and consummated such loans.

1 VI

2 In so acting as a real estate broker, as described in
3 Paragraph V, above, Respondent BAI accepted or received funds in
4 trust (herein "trust funds") from buyers, sellers, owners,
5 tenants, borrowers, lenders and others in connection with the
6 purchase and sale of real property, the leasing and renting of
7 real property, and the negotiation of loans secured by real
8 property, as alleged herein, and thereafter from time to time
9 made, or caused to be made, disbursements of said funds.

10 VII

11 Some but not all of the aforesaid trust funds accepted
12 or received by Respondent BAI were deposited or caused to be
13 deposited by Respondents into one or more bank accounts (herein
14 "trust fund accounts") maintained by Respondent BAI for the
15 handling of trust funds, including but not necessarily limited to
16 the "Brager & Assoc., Inc. DBA Real Property Management Broker's
17 Trust Account", Account No. 9894057976, maintained by Respondent
18 BAI at the San Francisco, California, branch of Citibank (herein
19 "Trust 1").

20 VIII

21 Between on or about January 1, 2002 and on or about
22 December 1, 2003, in course of the property management activities
23 described in Paragraph V(b), VI and VII, above, Respondent BAI:

24 ///

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26 ///

27 ///

1 (a) Failed to keep a columnar record in chronological
2 sequence of all trust funds received and disbursed from Trust 1
3 containing all the information required by Section 2831 of
4 Chapter 6, Title 10, California Code of Regulations (herein "the
5 Regulations");

6 (b) Failed to keep a separate record for each
7 beneficiary or transaction for Trust 1 containing all the
8 information required by Section 2831.1 of the Regulations; and

9 (c) Failed to reconcile, at least once a month, the
10 balance of all separate beneficiary or transaction records with
11 the record of all trust funds received into and disbursed from
12 Trust 1;

13 (d) Caused, suffered or permitted the balance of funds
14 in Trust 1 to be reduced to an amount which, as of September 30,
15 2003, was approximately \$6,397.43 less than the aggregate
16 liability of Respondent to all owners of such funds, without the
17 prior written consent of the owners of such funds; and

18 (e) Caused, suffered or permitted the balance of funds
19 in Trust 1 to be reduced to an amount which, as of October 31,
20 2003, was approximately \$6,879.66 less than the aggregate
21 liability of Respondent to all owners of such funds, without the
22 prior written consent of the owners of such funds.

23 IX

24 At all times herein mentioned to and until May 3, 2000,
25 Respondent BOSTON was and now is licensed by the Department as a
26 real estate salesperson in the employ of Respondent BAI.

27 ///

1 X

2 At all times mentioned herein, Respondent BAI employed
3 Respondent BOSTON to perform the acts and conduct the real estate
4 resale brokerage activities described in Paragraph V(a), above,
5 including selling and offering to sell, buying and offering to
6 buy, soliciting and obtaining listings of, and negotiating the
7 purchase and sale of real property.

8 XI

9 Between on or about February 18, 2003, and on or about
10 July 31, 2003, in course of the agency and employment described
11 above:

12 (a) Between on or about February 18, 2003 and on or
13 about February 23, 2003, Respondent BOSTON, acting as the agent
14 of Respondent BAI, solicited and obtained an agreement by Ken
15 Weikle and Jan Weikle as Sellers to sell to James Bernadelli and
16 Charlie Hartline as Buyers real property at 4100 Green Knoll
17 Road, Salida, California, by falsely representing to the Sellers
18 that Respondent BAI had received a \$1,000 earnest money deposit
19 from Buyers on February 18, 2003, when in fact Respondent Boston
20 failed to deliver any earnest money deposit to Respondent BAI
21 prior to February 24, 2003;

22 (b) Between on or about May 2, 2003 and on or about
23 May 8, 2003, Respondent BOSTON, acting as the agent of Respondent
24 BAI, solicited and obtained an agreement by John R. Kabage as
25 Seller to sell to Susan C. Kabage as Buyer real property at 4310
26 Los Olivos Way, Modesto, California, by falsely representing to
27 the Sellers that Respondent BAI had received a \$2,000 earnest

1 money deposit from Buyers on May 2, 2003, when in fact Respondent
2 Boston failed obtain or to deliver any earnest money deposit to
3 Respondent BAI prior to May 8, 2003; and

4 (c) Between on or about July 24, 2003 and on or about
5 July 31, 2003, Respondent BOSTON, acting as the agent of
6 Respondent BAI, solicited and obtained an agreement by Bob
7 Gerhard and Randi Gerhard as Sellers to sell to James Boston and
8 Respondent BOSTON (in her individual capacity) as Buyers real
9 property at 10540 Codogan, Truckee, California, by falsely
10 representing to the Sellers that Respondent BAI had received a
11 \$1,000 earnest money deposit from Buyers on July, 2003, when in
12 fact Respondent Boston entirely failed to obtain or deliver any
13 earnest money deposit to Respondent BAI.

14 XII

15 The acts and omissions of Respondent BOSTON described
16 in Paragraph XI, above, constitute the substantial
17 misrepresentation of a material fact and fraud and dishonest
18 dealing.

19 XIII

20 Between on or about February 18, 2003, and on or about
21 July 31, 2003, in course of the transactions described in
22 Paragraphs XI(a) and XI(b), above, Respondent BAI failed to keep
23 a columnar record in chronological sequence of all trust funds
24 received and not placed in a trust account, as required by
25 Section 2831 of the Regulations.

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1 XIV

2 Respondent BRAGER failed to exercise reasonable
3 supervision over the acts of Respondent BAI in such a manner as
4 to allow the acts and events described above to occur.

5 XV

6 The facts alleged above are grounds for the suspension
7 or revocation of the licenses and license rights of Respondents
8 BAI and BOSTON under the following provisions of the Code and/or
9 the Regulations:

10 (a) As to Paragraphs VIII(a) and XIII and Respondent
11 BAI, under Section 10145 of the Code and Section 2831 of the
12 Regulations in conjunction with Section 10177(d) of the Code;

13 (b) As to Paragraph VIII(b) and Respondent BAI, under
14 Section 10145 of the Code and Section 2831.1 of the Regulations
15 in conjunction with Section 10177(d) of the Code;

16 (c) As to Paragraph VIII(c) and Respondent BAI, under
17 Section 10145 of the Code and Section 2831.2 of the Regulations
18 in conjunction with Section 10177(d) of the Code;

19 (d) As to Paragraphs VIII(d) and VIII(e) and
20 Respondent BAI, under Section 10145 of the Code and Section
21 2832.1 of the Regulations in conjunction with Section 10177(d) of
22 the Code; and

23 (e) As to Paragraphs IX through XII, inclusive and
24 Respondent BOSTON, under Sections 10176(a) and/or 10176(i) of the
25 Code.

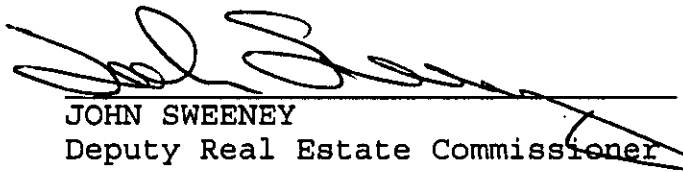
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1 XVI

2 The facts alleged in Paragraph XIV, above, are grounds
3 for the suspension or revocation of the licenses and license
4 rights of Respondent BRAGER under the provisions of Section
5 10177(g) and/or Section 10177(h) of the Code and Section 10159.2
6 of the Code in conjunction with Section 10177(d) of the Code.

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

14
15 
16 JOHN SWEENEY
Deputy Real Estate Commissioner

17 Dated at Fresno, California,
18 this 16th day of July, 2004.
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