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FILED
OCT 18 1994
DEPARTMENT OF REAL ESTATE

By Laura B. Orma

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of) NO. H-1774 SA
KENNETH WILLIAM JACOBSEN,)
Respondent.)

ORDER STAYING EFFECTIVE DATE

On October 7, 1994, a Decision was rendered in the
above-entitled matter to become effective November 3, 1994.

IT IS HEREBY ORDERED that the effective date of the
Decision of October 7, 1994 is stayed for a period of 30 days.

The Decision of October 7, 1994 shall become effective
at 12 o' clock noon on December 2, 1994.

DATED: October 18, 1994

JOHN R. LIBERATOR
Interim Commissioner

By: Randolph Brenda
RANDOLPH BRENDA
Regional Manager

lbo

FILED
OCT 14 1994
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laura B. Orone

* * * * *

In the Matter of the Accusation of)

No. H-1774 SA

L-63788

KENNETH WILLIAM JACOBSEN,

Respondent(s).

DECISION

The Proposed Decision dated September 27, 1994,
of the Administrative Law Judge of the Office of
Administrative Hearings, is hereby adopted as the Decision
of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock
noon on November 3, 1994.

IT IS SO ORDERED October 7, 1994.

JOHN R. LIBERATOR
Interim Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
of:)	No. H-1774 SA
	)
KENNETH WILLIAM JACOBSEN,)	L-63788
	)
Respondent.)	

PROPOSED DECISION

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings on September 20, 1994 at Los Angeles, California.

Complainant was represented by James R. Peel, Staff Counsel.

Respondent was present and represented himself.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Findings of Fact:

* * * * *

1. Thomas Mc Crady made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. At all times pertinent hereto, Respondent was and now is licensed by the Department as a real estate broker conducting a mortgage loan business. In connection therewith, Respondent received funds from borrowers and lenders and made disbursements therefrom through two trust accounts located at Bank of America, Trust Account No. [REDACTED] (T/A 1), out of which the below described trust fund violations arose, and T/A 2.

3. On July 19, 1993, the Department conducted an audit of Respondent's licensed activities for the period January 1, 1992 through June 30, 1993 (the "audit period"). The audit revealed the following:

a. T/A 1 had, as of June 18, 1993 (the bank statement cutoff date), an unexplained overage of \$1824.25, for which no separate liability record was kept.

b. Respondent failed to maintain the separate records of each transaction, as required by law.

c. Respondent failed to perform any reconciliation of records on T/A 1.

d. Respondent failed to maintain a record of trust funds received and not placed into a trust account, particularly checks received by Respondent but made payable to credit reporting agencies.

e. Respondent failed to provide at least three borrowers, out of five files reviewed, with the Mortgage Loan Disclosure Statement required by the Department.

f. Respondent failed to maintain a written salesperson relationship agreement with his four salespersons.

g. Respondent failed to maintain canceled checks and deposit records for T/A 1.

4. Prior to the audit being conducted, Respondent realized he had problems with T/A 1. He had no day to day knowledge of the workings of that account, having relied to his detriment on another individual who did have the requisite experience, but became ill. Ultimately the overage was tracked down and found to belong to Respondent. To mitigate the problems with T/A 1, Respondent left that account dormant and opened T/A 2, which the audit revealed had no accounting defects and for which appropriate reconciliations had been done.

Respondent has learned from the audit. He now uses Department provided forms to maintain all necessary records. Even though he has closed T/A 1, he paid for and received copies of canceled checks to keep his records complete. Although Respondent claims to have written employment agreements with his salespeople, his failure to produce same at the hearing without appropriate explanation precludes a finding that he does in fact maintain them as required.

Respondent has seized control of his business, especially with the aid of computerization. His books and records are kept current. While some form of license discipline is appropriate for the Department's continued assurance that the public will be adequately protected, Respondent should be permitted to continue with his business, albeit on a restricted basis.

* * * * *

DETERMINATION OF ISSUES

1. Respondent violated the provisions of Title 10, California Code of Regulations ("Regulation") Section 2833, by reason of Finding 3a.

2. Respondent violated the provisions of Regulation 2831.1, by reason Finding 3b.

3. Respondent violated the provisions of Regulation 2831.2, by reason of Finding 3c.

4. Respondent violated the provisions of Regulation 2831, by reason of Finding 3d.

5. Respondent violated the provisions of Business and Professions Code Section 10240, by reason of Finding 3e.

6. Respondent violated the provisions of Regulation 2726, by reason of Finding 3f.

7. Respondent violated the provisions of Business and Professions Code Section 10148 by reason of Finding 3g.

8. Respondent' license is subject to discipline under the provisions of Business and Professions Code Sections 10177(d) and (g) based of the foregoing Determinations.

* * * * *

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate broker license and license rights of Respondent Kenneth William Jacobsen are hereby revoked; however a restricted real estate broker license shall be issued to said Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for said license within six (6) months from the effective date of the Decision herein. The restricted license issued to Respondent Jacobsen shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

(a) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of Respondent's conviction, including conviction by plea of nolo contendere, to a crime which bears a significant relation to Respondent's fitness or capacity as a real estate licensee.

(b) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

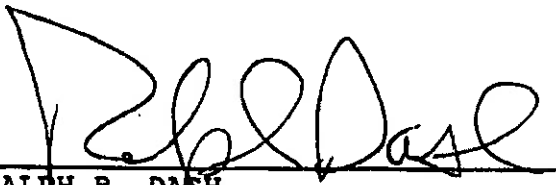
(c) Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect, such information concerning Respondent's activities for which a real estate license is required as the commissioner shall deem to be appropriate to protect the public interest.

(d) Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until respondent passes the examination.

(e) Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for an audit as a result of the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

(f) ~~Respondent shall not be~~ eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the date of issuance of the restricted license to Respondent.

Date: 9-27-94


RALPH B. DASH
Administrative Law Judge

Sacto. Jan

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
JUL 14 1994
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. H-1774 SA
) OAH No. L-63788

KENNETH WILLIAM JACOBSEN,)

By Lana B. Crona

Respondents.)

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 314 West First Street, Los Angeles, California, on SEPTEMBER 20, 1994 at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: July 14, 1994

DEPARTMENT OF REAL ESTATE

By:

James R. Peel
JAMES R. PEEL, Counsel

cc: Kenneth William Jacobsen
Sacto.
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JAMES R. PEEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
MAY 16 1994
DEPARTMENT OF REAL ESTATE

By *Laura B. Olson*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-1774 SA
KENNETH WILLIAM JACOBSEN,) A C C U S A T I O N
Respondent.)

The Complainant, Thomas Mc Crady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against KENNETH WILLIAM JACOBSEN alleges as follows:

I

The Complainant, Thomas Mc Crady, a Deputy Real Estate Commissioner of the State of California makes this Accusation in his official capacity.

II

KENNETH WILLIAM JACOBSEN (hereinafter referred to as respondent) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter referred to as the "Code").

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III

At all times herein mentioned, respondent was licensed by the Department of Real Estate of the State of California (hereinafter Department) as a real estate broker.

IV

At all times herein mentioned, respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code, including soliciting borrowers and lenders and negotiating loans on real properties on behalf of others for or in expectation of compensation.

V

During 1992 and 1993, in connection with the aforesaid real estate-brokerage activities, respondent accepted or received funds from borrowers and lenders and thereafter made disbursements of such funds. These funds were deposited by respondent in Trust Account Nos. [REDACTED] (T/A 1), and T/A 2, Bank of America, 18691 Main St., Huntington Beach.

VI

In connection with respondent's activities as a real estate broker as described above, respondent acted in violation of the Real Estate Law, Business and Professions Code (hereinafter Code), and California Code of Regulations (hereinafter Regulations), Title 10, Chapter 6, as follows:

1. Respondent violated Section 2833 by failing to keep a separate record of unexplained trust account overage in the amount of \$1,824.25 as of June 18, 1993, for T/A 1, including a

1 separate subsidiary ledger to record the potential trust fund
2 liability.

3 2. Respondent violated Regulation 2831.1 by not
4 maintaining separate records for each beneficiary or transaction
5 for T/A 1 and T/A 2.

6 3. Respondent violated Regulation 2831.2 for T/A 1 by
7 failing to perform a reconciliation of records maintained pursuant
8 to Regulation 2831 with records maintained pursuant to Regulation
9 2831.1.

10 4. Respondent violated Regulation 2831 by not
11 maintaining a record of trust funds received and not placed in a
12 trust account.

13 5. Respondent violated Section 10240 of the Code by
14 failing to provide borrowers Hu, Charney and Lee with the
15 Department of Real Estate required Mortgage Loan Disclosure
16 Statement.

17 6. Respondent violated Regulation 2726 by not
18 maintaining a written salesperson relationship agreement with each
19 of his employed salespersons.

20 7. Respondent violated Section 10148 of the Code by not
21 keeping and maintaining the deposit records and canceled checks
22 for T/A 1.

23 VII

24 The conduct of respondent, as alleged above, subjects
25 his real estate license and license rights to suspension or
26 ~~revocation pursuant to Section 10177(d) and 10177(g) of the Code.~~

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

9 Dated at Santa Ana, California
10 this 16th day of May, 1994.

11 THOMAS McCRADY
12 Deputy Real Estate Commissioner
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24 cc: Kenneth William Jacobsen
25 Sacto.
26 MCL
27 lbo