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FILED
SEP 20 2000

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID ALLEN SACKETT,)
Respondent.)

No. H-1793 SA

ORDER DENYING REINSTATEMENT OF LICENSE

On July 5, 1995, 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 August 1, 1995; and Respondent has operated as a restricted licensee since that time.

On March 19, 1999, 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.

///

///

1 I have considered Respondent's petition and the
2 evidence and arguments in support thereof. Respondent has failed
3 to demonstrate to my satisfaction that he has undergone
4 sufficient rehabilitation to warrant the reinstatement of his
5 real estate broker license in that an audit of Respondent
6 conducted in June 2000 indicated the following violations:

7 a. An unexplained trust account overage of \$437.50.

8 b. A failure to reconcile, on a monthly basis, the
9 balances of all separate records with the control record of all
10 trust funds received and disbursed.

11 The disciplinary action originally taken in this matter
12 was based upon Respondent's improper handling of trust funds. On
13 March 4, 1998, Respondent's petition for reinstatement filed
14 October 11, 1996 was denied. The grounds for that denial
15 included a finding that an audit examination for the period from
16 August 1, 1995, to February 29, 1996 revealed that Respondent was
17 not operating in compliance with Sections 2830, 2831, 2831.2 and
18 2833 of Chapter 6, Title 10, California Code of Regulations

19 The June 2000 audit described above demonstrates that
20 Respondent has not corrected his business practices nor learned
21 from the disciplinary action taken against his real estate broker
22 license and the denial of his petition for reinstatement in 1998.
23 Additional time and evidence of correction is necessary to
24 establish that Respondent will conduct his real estate brokerage
25 business in accordance with the requirements of law.

26 ///

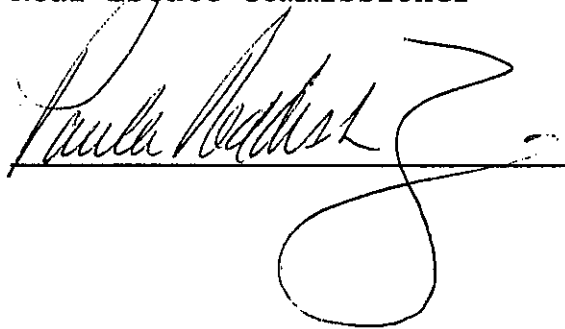
27 ///

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

4 This Order shall become effective at 12 o'clock
5 noon on October 10 , 2000.

6 DATED: August 18, 2000

8 PAULA REDDISH ZINNEMANN
9 Real Estate Commissioner

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By Laur B. Crow

* * * * *

1
2 I have considered the petition of Respondent and the
3 evidence submitted in support thereof. Respondent has failed to
4 demonstrate to my satisfaction that he has undergone sufficient
5 rehabilitation to warrant the reinstatement of his real estate
6 broker license at this time. This determination has been made
7 in light of Respondent's history of acts and conduct which are
8 substantially related to the qualifications, functions and
9 duties of a real estate licensee. That history includes:

10 I

11 On or about March 21, 1996, the Department completed
12 an audit of Respondent's books and records pertaining to his
13 activities doing business under the fictitious business name of
14 Irvine Newport Property Management requiring a real estate
15 license for the period from August 1, 1995, to February 29,
16 1996. That examination revealed that Respondent was not
17 operating in compliance with Sections 2830, 2831, 2831.2 and
18 2833 of Chapter 6, Title 10, California Code of Regulations.

19 II

20 The violations set forth above are cause for the
21 suspension or revocation of Respondent's license and license
22 rights and are cause to deny his petition pursuant to Section
23 10177(d) of the California Business and Professions Code.

24 III

25 After his petition was filed Respondent failed to
26 appear at the interviews scheduled with a representative of the
27 Department of Real Estate and failed to answer any of the
inquiries mailed to him, thus failing to establish that he had



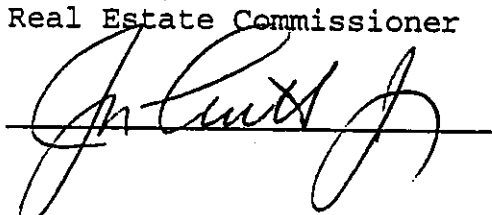
1 met any of the Criteria of Rehabilitation set forth in Section
2 2911 of Chapter 6, Title 10, California Code of Regulations
3 (Regulations). This is cause for the denial of his petition for
4 reinstatement of license.
5

6
7 NOW, THEREFORE, IT IS ORDERED that Respondent's
8 petition for reinstatement of license is denied.

9 This Order shall become effective at 12 o'clock
10 noon on March 26, 1998.

11 DATED: 3/4/98
12

13
14 JIM ANTT, JR.
15 Real Estate Commissioner
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27 DAVID ALLEN SACKETT
23, Thunder Trail
Irvine, California 92714

1 Department of Real Estate
2 107 South Broadway, Room 8107
3 Los Angeles, California 90012
4 Telephone: (213) 897-3937

FILED
JUL 12 1995
DEPARTMENT OF REAL ESTATE

By K. Niederholt

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

11 In the Matter of the Accusation of)
12 DAVID ALLEN SACKETT)
13 dba Irvine Newport)
14 Property Management,)
Respondent.)

No. H-1793 SA

STIPULATION AND AGREEMENT

IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between DAVID ALLEN
17 SACKETT dba Irvine Newport Property Management (sometimes referred
18 to as "Respondent"), and the Complainant, acting by and through
19 George W. Wright, Counsel for the Department of Real Estate, as
20 follows for the purpose of settling and disposing of the
21 Accusation filed on June 24, 1994, in this matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act ("APA"), shall instead and in place thereof be
27

1 submitted solely on the basis of the provisions of this
2 Stipulation.

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

7 3. On July 6, 1994, Respondent filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 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 he
12 understands that by withdrawing said Notice of Defense, he will
13 thereby waive his right to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that he will waive
16 other rights afforded to him in connection with the hearing such
17 as the right to present evidence in defense of the allegations in
18 the Accusation and the right to cross-examine witnesses.

19 4. This Stipulation and Agreement in Settlement and
20 Order is based on the factual allegations contained in the
21 Accusation filed in this proceeding. In the interest of
22 expedience and economy, Respondents choose not to contest these
23 factual allegations, but to remain silent and understand that, as
24 a result thereof, these factual statements, without being admitted
25 or denied, will serve as a prima facie basis for the disciplinary
26 action stipulated to herein. This Stipulation and Agreement in
27 Settlement and Order and the findings based on Respondents'

1 decision not to contest the Accusation are hereby expressly
2 limited to this proceeding and made for the sole purpose of
3 reaching an agreed disposition of this proceeding. Respondents'
4 decision not to contest the factual allegations is made solely for
5 the purpose of effectuating this Stipulation and is intended by
6 Respondents to be non-binding upon them in any actions against
7 Respondents by third parties. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove such
9 allegations.

10 5. It is understood by the Respondent that the Real
11 Estate Commissioner may adopt the Stipulation And Agreement In
12 Settlement and Order as his Decision in this matter thereby
13 imposing the penalty and sanctions on Respondent's real estate
14 licenses and license rights as set forth in the below "Order". In
15 the event that the Commissioner in his discretion does not adopt
16 the Stipulation And Agreement In Settlement and Order, the
17 Stipulation And Agreement In Settlement and Order 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 provisions
20 of the APA and shall not be bound by any admission or waiver made
21 herein.

22 6. The Order or any subsequent Order of the Real
23 Estate Commissioner made pursuant to this Stipulation 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 alleged to be causes for accusation in this proceeding. This

1 Stipulation and any order made pursuant to this Stipulation shall
2 have no collateral estoppel or res judicata effect in any
3 proceedings in which the Respondent and the Department (or the
4 Department's representative) are not parties. However, no ruling
5 in any action brought by a party other than the Respondent or the
6 Department shall effect the finality of the Decision entered in
7 these proceedings pursuant to this Stipulation And Agreement In
8 Settlement And Order.

9 7. The below Determination of Issues contains a
10 determination that Respondent DAVID ALLEN SACKETT has violated
11 Business and Professions Code (hereafter Code) Section 10145 or a
12 regulation of the Real Estate Commissioner interpreting Code
13 Section 10145, or both. Respondent DAVID ALLEN SACKETT is aware
14 that by agreeing to this Stipulation And Agreement In Settlement,
15 if the findings set forth below in the Determination of Issues
16 become final, the Commissioner may charge Respondent DAVID ALLEN
17 SACKETT for the costs of an audit conducted pursuant to Section
18 10148 of the Code to determine if Respondent DAVID ALLEN SACKETT
19 is in compliance with the Real Estate Law. The maximum costs of
20 said audit will not exceed \$4,500.00.

21 /
22 DETERMINATION OF ISSUES

23 By reason of the foregoing stipulations, admissions and
24 waivers and solely for the purpose of settlement of the pending
25 Accusation without a hearing, it is stipulated and agreed that the
26 following Determination of Issues shall be made:
27

1 The conduct or omissions of Respondent DAVID ALLEN
2 SACKETT, as set forth in paragraphs six (VI) through eight (VIII)
3 of the Accusation constitute cause to suspend or revoke his real
4 estate licenses and license rights under the provisions of
5 Business and Professions Code Sections 10176(e) and 10177(d).

6 ORDER

7 WHEREFORE, THE FOLLOWING ORDER is hereby made:

8 A. The licenses and license rights of DAVID ALLEN
9 SACKETT, under Part 1 of Division 4 of the Business and
10 Professions Code are revoked.

11 B. However, Respondent shall be entitled to apply for
12 and be issued a restricted real estate broker license pursuant to
13 Section 10156.5 of the Code if Respondent makes application
14 therefor and pays to the Department of Real Estate the appropriate
15 fee for said license within one hundred twenty (120) days from the
16 effective date of the Decision.

17 C. The restricted real estate broker license issued
18 pursuant to this Order shall be suspended for thirty (30) days
19 from the effective date of the restricted license.

20 D. However, if respondent petitions, the thirty (30)-
21 day suspension of Respondent's restricted broker license shall be
22 permanently stayed upon condition that Respondent pay to the
23 Department's Recovery Account one thousand five hundred dollars
24 (\$1,500) prior to the effective date of this Decision, pursuant to
25 the provisions of Section 10175.2.

26 (1) Payment of the aforementioned monetary penalty
27 shall be in the form of cashiers checks or certified checks, made

1 payable to the Recovery Account of the Real Estate Fund. Payment
2 must be made prior to the effective date of this Decision.

3 (2) The Commissioner, in exercising his discretion
4 under Code Section 10175.2, agrees by adopting this Order that it
5 would not be against the public interest to permit such
6 petitioning Respondent to pay the aforesaid monetary penalty.

7 E. The restricted license issued to Respondent shall be
8 subject to all of the provisions of Section 10156.7 of the
9 Business and Professions Code and to the following limitations,
10 conditions and restrictions imposed under authority of Section
11 10156.6 of said Code:

12 (1) Said restricted license may be suspended prior
13 to hearing by order of the Real Estate Commissioner in the event
14 of Respondent's conviction or plea of nolo contendere to a crime
15 which bears a significant relation to Respondent's qualifications,
16 duties or functions as a real estate licensee.

17 (2) Said restricted license may be suspended prior
18 to hearing by Order of the Real Estate Commissioner on evidence
19 satisfactory to the Commissioner that Respondent has violated
20 provisions of the California Real Estate Law, the Subdivided Lands
21 Law, Regulations of the Real Estate Commissioner, or the
22 conditions attaching to this restricted license.

23 (3) Respondent shall, within nine (9) months from
24 the effective date of the restricted license, present evidence
25 satisfactory to the Real Estate Commissioner that he has, since
26 the most recent issuance of an original or renewal real estate
27 license, taken and successfully completed the continuing education

1 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
2 for renewal of a real estate license. If Respondent fails to
3 satisfy this condition, the Real Estate Commissioner may order the
4 suspension of the restricted license until Respondent presents
5 such evidence. The Real Estate Commissioner shall afford
6 Respondent the opportunity for a hearing pursuant to the APA to
7 present such evidence.

8 (4) Pursuant to Code Section 10148, Respondent DAVID
9 ALLEN SACKETT shall pay the Commissioner's reasonable cost for an
10 audit as a result of the trust fund violations found in paragraph
11 1 of the Determination of Issues. In calculating the amount of the
12 Commissioner's reasonable cost, the Commissioner may use the
13 estimated average hourly salary for all persons performing audits
14 of real estate brokers, and shall include an allocation for travel
15 costs, including mileage, to and from the auditor's place of work,
16 and per diem. The cost of said chargeable audit shall not exceed
17 \$3,100.00. Respondent DAVID ALLEN SACKETT shall pay such cost
18 within 45 days of receiving an invoice from the Commissioner
19 detailing the activities performed during the audit and the amount
20 of time spend performing those activities. Notwithstanding the
21 provisions of Paragraphs "C" and "D" of this ORDER herein, if
22 Respondent DAVID ALLEN SACKETT fails to pay the reasonable costs
23 for an audit to determine if Respondent has corrected the
24 violations found in the Determination of Issues, the Commissioner
25 may order the indefinite suspension of Respondent's real estate
26 license and licensing rights. The suspension shall remain in
27 effect until payment is made in full, or until Respondent enters

1 into an agreement satisfactory to the Commissioner to provide for
2 payment. The Commissioner may impose further reasonable
3 disciplinary terms and conditions upon Respondent's real estate
4 and licensing rights as part of any such agreement.

5 (5) Respondent shall, within six (6) months from the
6 effective date of the restricted license, take and pass the
7 Professional Responsibility Examination administered by the
8 Department, including the payment of the appropriate fee. If
9 Respondent fails to satisfy this condition, the Commissioner may
10 order suspension of the restricted license until Respondent passes
11 the examination.

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

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

24 I have read the Stipulation And Agreement In
25 Settlement, and its terms are understood by me and are agreeable
26 and acceptable to me. I understand that I am waiving rights given
27 to me by the California Administrative Procedure Act (including

1 but not limited to Sections 11506, 11508, 11509 and 11513 of the
2 Government Code), and I willingly, intelligently and voluntarily
3 waive those rights, including the right of requiring the
4 Commissioner to prove the allegations in the Accusation at a
5 hearing at which I would have the right to cross-examine witnesses
6 against me and to present evidence in defense and mitigation of
7 the charges.

8
9 DATED: 2/25/95

David Allen Sackett
DAVID ALLEN SACKETT, Respondent

10
11 DATED: 2/28/95

George W. Wright
George W. Wright, Counsel for the
Complainant

12
13 The foregoing Stipulation and Agreement In Settlement in Case
14 No. H-1793 SA is hereby adopted as my Decision and Order and shall
15 become effective at 12 o'clock noon on August 1, 1995.

16
17 IT IS SO ORDERED 7/5, 1995

18
19
20 JIM ANTT, JR.
Real Estate Commissioner

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22 Jr Antt Jr
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*Sacto
gus*

FILED
OCT - 3 1994
DEPARTMENT OF REAL ESTATE

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

By *K. Kiedahl*

In the Matter of the Accusation of

DAVID ALLEN SACKETT,

}

Case No. H-1793 SA

OAH No. L-07085

Respondent

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 _____
Office of Administrative Hearings, 314 West First Street, Los Angeles

on March 1, 1995, 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.

DEPARTMENT OF REAL ESTATE

Dated: October 3, 1994

By *George W. Wright*
Counsel

cc: David Allen Sackett
Sacto
OAH
BSV

RE 501 (1/92)
kw

fact file

George W. Wright, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
JUN 24 1994
DEPARTMENT OF REAL ESTATE

By *K. Knebel*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-1793 SA
DAVID ALLEN SACKETT)	<u>ACCUSATION</u>
dba Irvine Newport)	
Property Management)	
Respondent.)	

The Complainant, Thomas McCrady, A Deputy Real Estate Commissioner of the State of California. for cause of accusation against DAVID ALLEN SACKETT, alleges as follows:

I

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

II

At all times mentioned herein, DAVID ALLEN SACKETT, dba Irvine Newport Property Management (SACKETT or Respondent) was and still is licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker.

III

1 All references to the "Code" are to the California
2 Business and Professions Code and all references to the
3 "Regulations" are to Chapter 6, Title 10, California Code of
4 Regulations.
5

IV

6 At all times mentioned herein, for or in expectation of
7 compensation, Respondent engaged in the business of, acted in the
8 capacity of, advertised or assumed to act as a real estate broker
9 in the State of California, within the meaning of Section 10131(b)
10 of the Code, including the operation of a property management
11 business wherein he, on behalf of various owners of real
12 property, solicited for and negotiated the leasing of real
13 property and collected rentals from tenants residing on said
14 properties.
15

V

16 On August 17, 1993, Department personnel completed an
17 investigative audit of the books and records of Respondent
18 pertaining to his activities as a broker requiring a real estate
19 broker license, for a period commencing on July 1, 1992, and
20 terminating on June 30, 1993, which revealed violations of the
21 Real Estate Law now described.
22

VI

23 In connection with the aforesaid broker activities,
24 Respondent accepted or received funds in trust ("trust funds") in
25 the form of rental proceeds from or on behalf of renters and
26 thereafter made disbursements of such funds. Respondent deposited
27 these funds into an account held in the name of Irvine Newport

1 Property Management, as trustee, and was not designated as a trust
2 account. Terry Martinet, an unlicensed, unbonded person, was
3 authorized to sign on this account. This was in violation of
4 Sections 2830 and 2834 of Chapter 6, Title 10, California Code of
5 Regulations (Regulations).

6 VII

7 In connection with the trust funds referred to in
8 Paragraph VI, above, Respondent failed to maintain columnar
9 records of trust funds received and disbursed in chronological
10 order and daily balances were not maintained as required by
11 Section 2831 of the Regulations. In addition, in handling trust
12 funds, Respondent also acted in violation of Sections 2831.1,
13 2831.2 and 2832 of the Regulations in that he (1) failed to
14 maintain separate records for each beneficiary and/or transaction,
15 (2) failed to reconcile the balance of the columnar record to the
16 total balances of the separate trust fund records for his property
17 management trust account on a monthly basis and (3) failed to
18 place trust funds accepted on behalf of property owners into the
19 property management trust account within one business day.

20 VIII

21 The audit examination also revealed that the Respondent
22 utilized the trust account as the depository of rental funds
23 coming to him from his own tenants and paid expenses incurred on
24 his own properties out of the same account used by him to deposit
25 funds belonging to others. This constitutes commingling and is
26 cause to suspend or revoke the license and license rights of
27 SACKETT under Section 10176(e) of the Code.

1 As of May 30, 1993, and June 30, 1993, SACKETT violated
2 Section 10145 of the Code and Section 2832.1 of the Regulations by
3 disbursing or allowing the disbursement of funds from the property
4 management trust account without the prior written consent of
5 every principal who was then an owner of said funds in the
6 account, in an amount which was \$36,073.47 and \$29,342.21 as of
7 May 30, 1993 and June 30, 1993, respectively, less than the
8 existing aggregate trust fund liability to all owners of said
9 trust funds.

X

11 The conduct of Respondent, as alleged hereinabove,
12 constitutes cause for the suspension or revocation of all licenses
13 and/or license rights of the Respondent under Sections 10177(d)
14 and 10176(e) of the Code.

15 WHEREFORE, Complainant prays that a hearing be conducted
16 on the allegations of this Accusation and that upon proof thereof,
17 a decision be rendered imposing disciplinary action against all
18 licenses and/or license rights of the Respondent under the Real
19 Estate Law and for such other and further relief as may be proper
20 under applicable provisions of law.

21 Dated at Santa Ana, California
22 this 24th day of June , 1994.

THOMAS MC CRADY

Deputy Real Estate Commissioner

26 cc: David Allen Sackett
27 Sacto
BSV