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FILED

JUN 21 2000

DEPARTMENT OF REAL ESTATE

By Jean Arnold

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
JERRY PETER SCHAROSCH,)	No. H-2139 SAC
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 28, 1986, a Decision 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 28, 1986, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On May 2, 2000, 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 the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

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

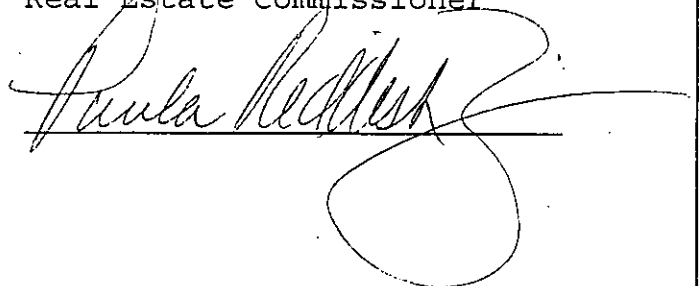
13 1. Submittal of a completed application and payment of
14 the fee for a real estate broker license.

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

20 This Order shall be effective immediately.

21 DATED: June 7, 2000

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

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26
27

FILED

MAR 30 1999

DEPARTMENT OF REAL ESTATE

By Jean Dumet

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
JERRY PETER SCHAROSCH,)	No. H-2139 SAC
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 28, 1986, a Decision 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 28, 1986, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On July 23, 1998, 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 the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

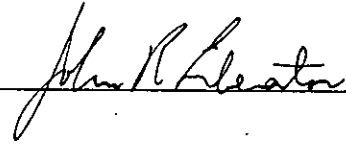
8 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
9 for reinstatement is granted and that a real estate broker license
10 be issued to Respondent if Respondent satisfies the following
11 condition within nine months from the date of this Order:

- 12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

14 This Order shall be effective immediately.

15 DATED: March 17, 1999.

16 JOHN R. LIBERATOR
17 Acting Real Estate Commissioner

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FILED
OCT 30 1988

DEPARTMENT OF REAL ESTATE

Spurlock

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
JERRY PETER SCHAROSCH,)	NO. H-2139 SAC
Respondent.)	

ORDER DENYING REINSTATEMENT OF LICENSE

On July 28, 1986, a Decision was rendered herein revoking the real estate broker license of respondent, but granting respondent the right to a restricted real estate broker license on terms and conditions.

On October 10, 1987, respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.

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1 I have considered respondent's petition and the evidence
2 and arguments in support thereof. Respondent has failed to
3 demonstrate to my satisfaction that he has undergone sufficient
4 rehabilitation to warrant the reinstatement of his real estate
5 broker license, in that the disciplinary action taken in this
6 matter was based upon respondent's violation of the trust fund
7 handling provisions of Section 10145 of the Business and
8 Professions Code. On December 21 and 22, 1987, the Department of
9 Real Estate conducted an audit of respondent's trust account and
10 trust fund handling procedures. That audit established that
11 respondent's trust account had a shortage of \$2,442.76 as of
12 November 30, 1987. The audit also established that respondent
13 failed to maintain a cash record showing receipts, disbursements
14 and bank account balance. While respondent has partially cured
15 the trust account shortage described above, I am not satisfied
16 that respondent has corrected his business practices which
17 resulted in the underlying disciplinary action in this matter. An
18 additional period of time as a restricted licensee will allow
19 respondent to prove that he is able to handle funds received in
20 trust in a manner which does not violate the Real Estate Law.

21 NOW, THEREFORE, IT IS ORDERED that respondent's petition
22 for reinstatement of his real estate broker license is denied.

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This Order shall be effective at 12 o'clock noon on

November 10, 1988

DATED: October 19, 1988.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: *John R. Liberator*
JOHN R. LIBERATOR
Chief Deputy Commissioner

FILED
AUG 0 8 1986

DEPARTMENT OF REAL ESTATE

By Laura A. Beck

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
SCHAROSCH, MORTON AND THOMAS,)
INC.; dba KIERNAN REALTORS;)
JERRY PETER SCHAROSCH;)
Respondents.)

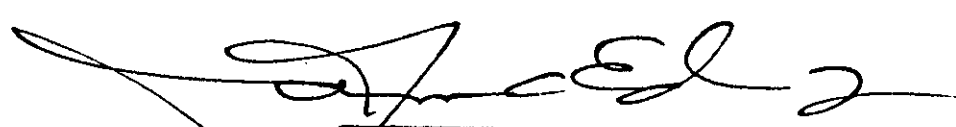
NO. H- 2139 SAC

DECISION

The Proposed Decision dated July 17, 1986
of Betty R. Ludeman, Regional Manager, Department of Real Estate,
State of California, is hereby adopted as the Decision of the Real
Estate Commissioner in the above-entitled matter.

The Decision shall become effective at 12 o'clock
noon on August 28, 19 86.

IT IS SO ORDERED 7-28, 19 86.


JAMES A. EDMONDS, JR.
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
))
SCHAROSCH, MORTON AND THOMAS,) NO. H-2139 SAC
INC.; dba KIERNAN REALTORS;))
JERRY PETER SCHAROSCH;))
))
Respondents.))
_____)

PROPOSED DECISION

This matter was presided over as an uncontested case by Betty R. Ludeman, Regional Manager, Department of Real Estate, as the designee of the Real Estate Commissioner, in Sacramento, California, on July 14, 1986.

David A. Peters, Counsel, represented the complainant.

No appearance was made by or on behalf of respondents.

The matter was submitted upon written Stipulation of the parties. Pursuant to the Stipulation, the following Decision is proposed, certified, and recommended for application:

FINDINGS OF FACT

I

SCHAROSCH, MORTON AND THOMAS, INC., dba KIERNAN REALTORS (respondent Kiernan) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code). At all times respondent Kiernan was licensed as a real estate corporation by and through its designated broker officer JERRY PETER SCHAROSCH (respondent Scharosch).

II

Respondent Scharosch is presently licensed and/or has license rights under the Code. At all times respondent Scharosch was a licensed real estate broker and served as a designated officer of respondent Kiernan.

III

The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this accusation in his official capacity.

IV

Beginning on or about February 8, 1983, and continuing through the present, respondents Kiernan and Scharosch acting on behalf of another or others and in expectation of compensation managed certain real properties located in or near Sacramento, California.

V

During the course of the property management activities described in Paragraph IV, respondents Kiernan and Scharosch deposited trust funds into an interest bearing trust account without having complied with Section 10145 of the Code.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against respondents exists pursuant to Business and Professions Code Sections 10145 and 10177(d).

II

The standard of proof applied at the hearing was clear and convincing proof to a reasonable certainty.

ORDER

A. All licenses and license rights of respondents SCHAROSCH, MORTON AND THOMAS, INC., dba KIERNAN REALTORS and JERRY PETER SCHAROSCH are hereby revoked.

B. Restricted real estate broker licenses shall be issued to respondents pursuant to Section 10156.5 of the Business and Professions Code if respondents make application therefor and pay to the Department of Real Estate the appropriate fee for said licenses within 90 days from the effective date of the Decision herein.

C. The restricted licenses issued to respondents 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:

1. The licenses shall not confer any property right in the privileges to be exercised, and the real estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under these restricted licenses in the event of:

(a) The conviction of respondents (including a plea of nolo contendere) to a crime which bears a significant relation to respondents' fitness or capacity as real estate licensees; or

(b) The receipt of evidence that respondents have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to these restricted licenses.

2. Respondents shall not be eligible to apply for the issuance of unrestricted real estate licenses nor the removal of any of the conditions, limitations or restrictions attaching to the restricted licenses until one year has elapsed from the date of issuance of the restricted licenses to respondents.

3. The restricted licenses may be suspended by order of the Real Estate Commissioner pending a final determination after a hearing if respondents fail to present evidence satisfactory to the Real Estate Commissioner that they have, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license within nine months from the effective date of the Decision of the Real Estate Commissioner.

D. If, within 60 days of the execution of the Stipulation in this matter, respondents have not presented evidence satisfactory to the Real Estate Commissioner that they have made restitution in the amount of \$31,835 in the manner set forth in a letter dated June 12, 1986, and attached hereto as Attachment "A", the restricted licenses issued to respondents shall be suspended. Satisfactory evidence shall be verification of the payment made by copy of check, established in a separate trust account for purposes of disbursing the funds herein. Said suspensions shall remain in effect until respondents present satisfactory evidence of restitution.

DATED: _____

July 17, 1986

Betty R. Ludeman
BETTY R. LUDEMAN
Regional Manager
Department of Real Estate

FILED
JUN 02 1986

DEPARTMENT OF REAL ESTATE

By Laura A. Beck

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
3 P. O. Box 160009
4 Sacramento, CA 95816
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(916) 739-3607

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 SCHAROSCH, MORTON AND THOMAS, INC.)
13 dba KIERNAN REALTORS,)
14 JERRY PETER SCHAROSCH,)
Respondents.)

NO. H-2139 SAC

SECOND AMENDED
ACCUSATION

15 , The complainant, Charles W. Koenig, a Deputy Real Estate
16 Commissioner, for cause of accusation against SCHAROSCH, MORTON
17 AND THOMAS, INC., dba KIERNAN REALTORS ("respondent Kiernan") and
18 JERRY PETER SCHAROSCH ("respondent Scharosch") is informed and
19 alleges as follows:

FIRST CAUSE OF ACCUSTION

I

22 Respondent Kiernan is presently licensed and/or has
23 license rights under the Real Estate Law (Part 1 of Division 4 of
24 the Business and Professions Code) ("Code"). At all times
25 respondent Kiernan was licensed as a real estate corporation by
26 and through its designated broker officer respondent Scharosch.

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II

Respondent Scharosch is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code ("Code")). At all times respondent Scharosch was a licensed real estate broker and served as the designated officer of respondent Kiernan.

III

The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this accusation in his official capacity.

IV

On or before July 31, 1985, respondent Kiernan and respondent Scharosch acting on behalf of another or others and in expectation of compensation managed certain rental real properties located in or near Sacramento, California.

V

During the course of the property management activities described in Paragraph IV, respondents Kiernan and Scharosch received and disbursed funds held in trust on behalf of another or others.

VI

In connection with the collection and disbursement of said trust funds, respondents Kiernan and Scharosch failed to deposit and maintain said funds in said bank account in such manner that as of July 31, 1985, there was a shortage of \$22,529.27 of trust funds in said bank account.

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VII

Respondents Kiernan and Scharosch failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in said bank account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

VIII

The facts alleged are grounds for the suspension or revocation of respondents' licenses under Sections 2830 and 2832.1 of Title 10, California Administrative Code ("Regulations") and Section 10145 of the Code in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

There is hereby incorporated in this second, separate and distinct cause of accusation all of the allegations contained in Paragraphs I, II, and III of the First Cause of Accusation with the same force and effect as if herein fully set forth.

IX

On, before or after February 4, 1984, respondents Kiernan and Scharosch acting on behalf of another or others and in expectation of compensation managed certain real properties located in or near Sacramento, California.

X

During the course of the property management activities described in Paragraph IX, respondents Kiernan and Scharosch received and disbursed funds held in trust on behalf of another or others. Said trust funds were received by respondents Kiernan and

1 Scharosch from tenants as security for residential real property
2 rental agreements.

3 XI

4 In connection with the collection and disbursement of
5 trust funds held on behalf of another or others respondents
6 Kiernan and Scharosch failed to deposit and maintain said trust
7 funds in such a manner that on or about February 8, 1983, there
8 was a shortage of \$2,445.14 of said trust funds.

9 XII

10 Beginning on or about February 8, 1983, and continuing
11 through the present, respondents Kiernan and Scharosch converted
12 trust funds in the amount of \$2,445.14 to their own use and for
13 uses or purposes not authorized by the rightful owners of said
14 trust funds.

15 XIII

16 On or about February 4, 1983, respondents Kiernan and
17 Scharosch opened or caused to be opened an interest bearing money
18 market trust account (hereinafter "interest bearing account")
19 using said tenants' funds. Said interest bearing account was
20 opened by the respondents using the fictitious name of "Kiernan
21 Management". The trust funds in said interest bearing account
22 were not fully insured by an agency of the Federal Government.

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XIV

In connection with the collection and disbursement of the trust funds in the interest bearing account respondents Kiernan and Scharosch failed to deposit and maintain said trust funds in such a manner that on or about August 15, 1985, there was a shortage of \$29,389.60 of trust funds in the interest bearing account in addition to the trust fund shortage alleged in Paragraphs XI and XII above.

XV

Beginning, on or about October 18, 1983, and continuing through the present, respondents Kiernan and Scharosch converted trust funds in the interest bearing account to their own use and for uses or purposes not authorized by the rightful owners of said trust funds. The exact amount of said converted trust funds is unknown to complainant but well known to respondents and is not less than \$29,000.00 in addition to the shortage alleged in Paragraphs XI and XII above.

XVI

Respondents Kiernan and Scharosch failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in said interest bearing account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

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XVII

The facts alleged above are grounds for the suspension or revocation of respondents' licenses under Section 2830, 2830.1 and 2832.1 of the Regulations and Sections 10145 in conjunction with Sections 10176(e) and 10177(d) of the Code.

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



CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 2nd day of June, 1986.

FILED
FEB 27 1986

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Laura A. Beck

In the Matter of the Accusation of
SCHAROSCH, MORTON and
THOMAS, INC., ET AL.,

Case No. H-2139 SAC

Respondent(s)

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, 501 J Street,
Room 230, Second Floor Hearing Room, Sacramento

on the 12th & 13th day of June, 1986, at the hour of 9:00 a.m.

or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person, nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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.

DATED: February 27, 1986

DEPARTMENT OF REAL ESTATE

By David G. Peters
DAVID A. PETERS Counsel

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DAVID A. PETERS, Counsel
Department of Real Estate
P. O. Box 160009
Sacramento, CA 95816

(916) 739-3607

FILED
FEB 07 1986

DEPARTMENT OF REAL ESTATE

Vanessa Bayotto
By

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-2139 SAC
SCHAROSCH, MORTON AND THOMAS, INC.)	
dba KIERNAN REALTORS,)	<u>FIRST AMENDED</u>
JERRY PETER SCHAROSCH,)	<u>ACCUSATION</u>
Respondents.)	
)	

The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner, for cause of accusation against SCHAROSCH, MORTON AND THOMAS, INC., dba KIERNAN REALTORS ("respondent Kiernan") and JERRY PETER SCHAROSCH ("respondent Scharosch") is informed and alleges as follows:

FIRST CAUSE OF ACCUSTION

I

Respondent Kiernan is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) ("Code"). At all times respondent Kiernan was licensed as a real estate corporation by and through its designated broker officer respondent Scharosch.

///

1 II

2 Respondent Scharosch is presently licensed and/or has
3 license rights under the Real Estate Law (Part 1 of Division 4 of
4 the Business and Professions Code ("Code"). At all times
5 respondent Scharosch was a licensed real estate broker and served
6 as the designated officer of respondent Kiernan.

7 III

8 The complainant, Charles W. Koenig, a Deputy Real Estate
9 Commissioner of the State of California, makes this accusation in
10 his official capacity.

11 IV

12 On or before July 31, 1985, respondent Kiernan and
13 respondent Scharosch acting on behalf of another or others and in
14 expectation of compensation managed certain rental real properties
15 located in or near Sacramento, California.

16 V

17 During the course of the property management activities
18 described in Paragraph IV, respondents Kiernan and Scharosch
19 received and disbursed funds held in trust on behalf of another or
20 others.

21 VI

22 In connection with the collection and disbursement of
23 said trust funds, respondents Kiernan and Scharosch failed to
24 deposit and maintain said funds in said bank account in such
25 manner that as of July 31, 1985, there was a shortage of
26 \$22,529.27 of trust funds in said bank account.

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VII

Respondents Kiernan and Scharosch failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in said bank account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

VIII

The facts alleged are grounds for the suspension or revocation of respondents' licenses under Sections 2830 and 2832.1 of Title 10, California Administrative Code ("Regulations"), and Section 10145 of the Code in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

There is hereby incorporated in this second, separate and distinct cause of accusation all of the allegations contained in Paragraphs I, II, and III of the First Cause of Accusation with the same force and effect as if herein fully set forth.

IX

On, before or after February 4, 1984, respondents Kiernan and Scharosch acting on behalf of another or others and in expectation of compensation managed certain real properties located in or near Sacramento, California.

X

During the course of the property management activities described in Paragraph IX, respondents Kiernan and Scharosch received and disbursed funds held in trust on behalf of another or others. Said trust funds were received by respondents Kiernan and

1 Scharosch from tenants as security for residential real property
2 rental agreements.

3 XI

4 In connection with the collection and disbursement of
5 trust funds held on behalf of another or others respondents
6 Kiernan and Scharosch failed to deposit and maintain said trust
7 funds in such a manner that on or about February 8, 1983, there
8 was a shortage of \$2,445.14 of said trust funds.

9 XII

10 Beginning on or about February 8, 1983, and continuing
11 through the present, respondents Kiernan and Scharosch converted
12 trust funds in the amount of \$2,445.14 to their own use and for
13 uses or purposes not authorized by the rightful owners of said
14 trust funds.

15 XIII

16 On or about February 4, 1983, respondents Kiernan and
17 Scharosch opened or caused to be opened an interest bearing money
18 market trust account (hereinafter "interest bearing account")
19 using said tenants' funds. Said interest bearing account was
20 opened by the respondents using the fictitious name of "Kiernan
21 Management". The trust funds in said interest bearing account
22 were not fully insured by an agency of the Federal Government.

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XIV

In connection with the collection and disbursement of the trust funds in the interest bearing account respondents Kiernan and Scharosch failed to deposit and maintain said trust funds in such a manner that on or about August 15, 1985, there was a shortage of \$29,389.60 of trust funds in the interest bearing account in addition to the trust fund shortage alleged in Paragraphs XI and XII above.

XV

Beginning, on or about October 18, 1983, and continuing through the present, respondents Kiernan and Scharosch converted trust funds in the interest bearing account to their own use and for uses or purposes not authorized by the rightful owners of said trust funds. The exact amount of said converted trust funds is unknown to complainant but well known to respondents and is not less than \$29,000.00 in addition to the shortage alleged in Paragraphs XI and XII above.

XVI

Respondents Kiernan and Scharosch failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in said interest bearing account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

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XVII

1
2 The facts alleged above are grounds for the suspension
3 or revocation of respondents' licenses under Section 2830, 2830.1
4 and 2832.1 of the Regulations and Sections 10145 in conjunction
5 with Sections 10176(e) and 10177(i) of the Code.

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

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15 
16 CHARLES W. KOENIG
Deputy Real Estate Commissioner

17 Dated at Sacramento, California
18 this 7th day of February, 1986.

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
3 P. O. Box 160009
4 Sacramento, CA 95816
5
6
7 (916) 739-3607

FILED
JAN 10 1986

DEPARTMENT OF REAL ESTATE

By Howard A. Beck

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
12 SCHAROSCH, MORTON AND THOMAS, INC.) NO. H-2139 SAC
13 dba KIERNAN REALTORS,)
13 JERRY PETER SCHAROSCH,) ACCUSATION
14 Respondents.)

15 The complainant, Charles W. Koenig, a Deputy Real Estate
16 Commissioner, for cause of accusation against SCHAROSCH, MORTON
17 AND THOMAS, INC., dba KIERNAN REALTORS ("respondent Kiernan") and
18 JERRY PETER SCHAROSCH ("respondent Scharosch") is informed and
19 alleges as follows:

20 FIRST CAUSE OF ACCUSTION

21 I

22 Respondent Kiernan is presently licensed and/or has
23 license rights under the Real Estate Law (Part 1 of Division 4 of
24 the Business and Professions Code) ("Code"). At all times
25 respondent Kiernan was licensed as a real estate corporation by
26 and through its designated broker officer respondent Scharosch.

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II

Respondent Scharosch is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code ("Code")). At all times respondent Scharosch was a licensed real estate broker and served as the designated officer of respondent Kiernan.

III

The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this accusation in his official capacity.

IV

On or before July 31, 1985, respondent Kiernan and respondent Scharosch acting on behalf of another or others and in expectation of compensation managed certain rental real properties located in or near Sacramento, California.

V

During the course of the property management activities described in Paragraph IV, respondents Kiernan and Scharosch received and disbursed funds held in trust on behalf of another or others.

VI

In connection with the collection and disbursement of said trust funds, respondents Kiernan and Scharosch failed to deposit and maintain said funds in said bank account in such manner that as of July 31, 1985, there was a shortage of \$22,529.27 of trust funds in said bank account.

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VII

Respondents Kiernan and Scharosch failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in said bank account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

VIII

The facts alleged are grounds for the suspension or revocation of respondents' licenses under Sections 2830 and 2832.1 of Title 10, California Administrative Code ("Regulations") and Section 10145 of the Code in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

There is hereby incorporated in this second, separate and distinct cause of accusation all of the allegations contained in Paragraphs I, II, and III of the First Cause of Accusation with the same force and effect as if herein fully set forth.

IX

On, before or after February 4, 1984, respondents Kiernan and Scharosch acting on behalf of another or others and in expectation of compensation managed certain real properties located in or near Sacramento, California.

X

During the course of the property management activities described in Paragraph IX, respondents Kiernan and Scharosch received and disbursed funds held in trust on behalf of another or others. Said trust funds were received by respondents Kiernan and

1 Scharosch from tenants as security for residential real property
2 rental agreements.

3 XI

4 On or about February 4, 1983, respondents Kiernan and
5 Scharosch opened or caused to be opened an interest bearing money
6 market trust account (hereinafter "interest bearing account")
7 using said tenants' funds. Said interest bearing account was
8 opened by the respondents using the fictitious name of "Kiernan
9 Management". The trust funds in said interest bearing account
10 were not fully insured by an agency of the Federal Government.

11 XII

12 In connection with the collection and disbursement of
13 the trust funds in the interest bearing account respondents
14 Kiernan and Scharosch failed to deposit and maintain said trust
15 funds in such a manner that on or about August 15, 1985, there was
16 a shortage of \$29,389.60 of trust funds in the interest bearing
17 account.

18 XIII

19 Beginning, on or about October 18, 1983, and continuing
20 through the present, respondents Kiernan and Scharosch converted
21 trust funds in the interest bearing account to their own use and
22 for uses or purposes not authorized by the rightful owners of said
23 trust funds. The exact amount of said converted trust funds is
24 unknown to complainant but well known to respondents and is not
25 less than \$29,000.00.

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XIV

Respondents Kiernan and Scharosch failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in said interest bearing account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

XV

The facts alleged above are grounds for the suspension or revocation of respondents' licenses under Section 2830, 2830.1 and 2832.1 of the Regulations and Sections 10145 in conjunction with Sections 10176(e) and 10177(i) of the Code.

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


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 8th day of January, 1986.