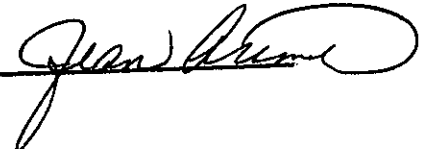


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FILED

JAN 18 2008

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-2296 SD
JOHN DAVID FREEMAN,)	
)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 9, 1998, a Decision After Rejection was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on February 3, 1998.

On January 4, 2006, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's

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

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

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

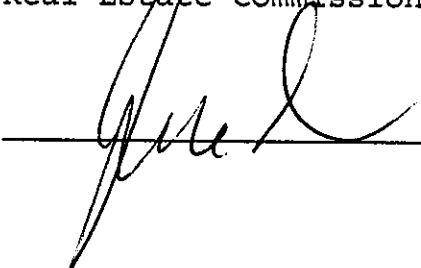
13 2. Submittal of evidence of having, since the most
14 recent issuance of an original or renewal real estate license,
15 taken and successfully completed the continuing education
16 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
17 for renewal of a real estate license.

18 This Order shall become effective immediately.

19 DATED: 1. 8, 2008.

20 JEFF DAVI
21 Real Estate Commissioner

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FILED
MAY 12 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
JOHN DAVID FREEMAN,	)	NO. H-2296 SD
)	
Respondent.)	
)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 9, 1998, a Decision After Rejection was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on February 3, 1998.

On February 6, 2002, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's

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

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

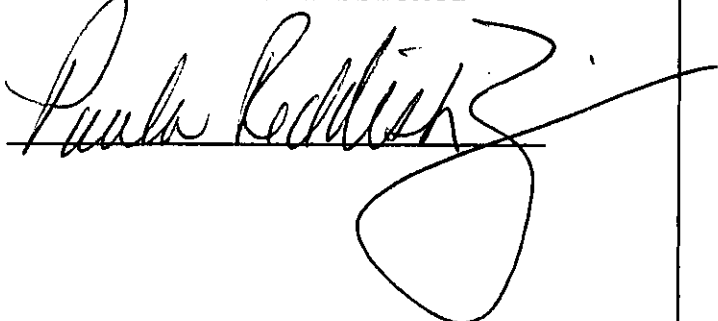
11 1. Submittal of a completed application and payment
12 of the fee for a real estate broker license.

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

18 This Order shall be effective immediately.

19 DATED: April 14, 2003.
20

21 PAULA REDDISH ZINNEMANN
22 Real Estate Commissioner

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FILED
JAN 9 1998
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of	)	H-2296 SD
WILLIAM DONOVAN & COMPANY,)	
a California corporate broker:	)	OAH No. L-9702120
JOHN DAVID FREEMAN, individually)	
and as the designated officer of)	
William DONOVAN & Company and)	
WILLIAM ANTHONY DONOVAN,)	
Respondents.)	

DECISION AFTER REJECTION

The matter came on for hearing before Joyce A. Wharton, Administrative Law Judge of the Office of Administrative hearings, in San Diego, California, on July 21, 1997.

Sean Crahan, Counsel, represented the complainant. Kenneth E. Lange, Attorney at Law, of Nostrand & Lange, represented respondents WILLIAM DONOVAN & COMPANY, WILLIAM ANTHONY DONOVAN, and JOHN DAVID FREEMAN who were present.

Evidence was received, the hearing was closed, and the matter was submitted.

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2.

On February 26, 1997, complainant filed an Amended Accusation adding WILLIAM ANTHONY DONOVAN (hereinafter DONOVAN) as a respondent.

3.

Respondents timely filed Notices of Defense.

4.

ALLEGATIONS

The amended accusation alleges that, between March 1994 and November 1996, DONOVAN, as president of WDC, negotiated numerous real estate leases and rental agreements and received compensation for doing so even though he was not licensed by the Department.

5.

The Amended Accusation charges respondent DONOVAN with violation of Business and Professions Code Sections 10177(f) and 10177(d) for willful violation of Business and Professions Code Section 10130¹.

6.

The Amended Accusation charges WDC with violation of Section 10137², the unlawful employment of or payment to an

¹ All statutory references are to the Business and Professions Code unless otherwise specified.

Section 10177 specifies the following conduct of a licensee as grounds for discipline:

"(d) Willfully disregarded or violated the Real Estate Law ... or the rules and regulations of the commissioner....

(f) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a real

1 unlicensed person to perform acts for which a real estate license
2 is required.

3 7.

4 The Amended Accusation charges respondent FREEMAN with
5 violation of Code Section 10177(d) for willfully disregarding or
6 violating the Real Estate Law, specifically, Section 10159.2,
7 failure to supervise the licensed activities of WDC's employee
8 DONOVAN, and Section 10130, allowing DONOVAN, as an unlicensed
9 person, to perform acts which require a license.

10 FINDINGS

11 8.

12 In 1980, FREEMAN was licensed by the Department under
13 License ID #00771390 as an individual real estate broker. His main
14 office address at all relevant times was 1117 Wall Street in La
15 Jolla. FREEMAN regularly renewed his broker license and it is
16 valid through July 2, 2000. FREEMAN was licensed as a broker
17 since approximately 1980. There is no history of prior discipline
18 on FREEMAN's license.

19 /
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21 estate license...."

22 Section 10130 provides:

23 "It is unlawful for any person to engage in the business, act in
24 the capacity of, advertise or assume to act as a real estate broker or
real estate salesman without first obtaining a real estate license from
the department."

25 2 Section 10137 provides in pertinent part:

26 "It is unlawful for any licensed real estate broker to employ or
27 compensate, directly or indirectly, any person for performing any of the
acts within the scope of this chapter who is not a licensed real estate
broker, or a real estate salesman licensed under the broker employing or
compensating him;...."



9.

1
2 In 1980, FREEMAN and DONOVAN formed WDC, a California
3 corporation, for the purpose of conducting a commercial real
4 estate leasing and sales business. WDC's address is 1117 Wall
5 Street in La Jolla, California. WDC has been licensed by the
6 Department under License ID #00786263 as a corporate real estate
7 broker, and FREEMAN has been licensed as the designated officer of
8 WDC, since June 25, 1980. FREEMAN regularly renewed WDC's
9 corporate broker license and his license as its designated
10 officer, and these licenses of WDC are valid through July 1, 2000.
11 There is no history of prior discipline on either license.

12 10.

13 Pursuant to Code Section 10159.2, FREEMAN, as the
14 designated officer of WDC, was responsible for the supervision and
15 control of the activities conducted on behalf of the corporation
16 by its officers and employees as necessary to secure full
17 compliance with the Real Estate Law [Business and Professions Code
18 Section 10000 et. seq.], including the supervision of salespersons
19 licensed to the corporation in the performance of acts for which a
20 real estate license is required.

21 11.

22 DONOVAN was first licensed by the Department in 1966 as
23 a real estate salesperson. This license expired July 14, 1982.
24 There is no evidence the license was not timely renewed on a
25 regular basis up to its expiration. There is no history of prior
26 discipline on this expired license.

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12.

DONOVAN received his license renewal notice in 1982. He claims he completed the renewal form, wrote a check for the renewal fee, and assumed his secretary followed his instructions to mail the documents. His business was busy and he never checked to see if he had received the renewed license. While rearranging his office in 1986 he noticed the expired license was still in its frame. He searched for the renewed license but found only a file with the renewal application and check. DONOVAN realized it was unlawful to engage in real estate business without the proper license but "did not know what to do". His business was in decline, he was going through a divorce, was "not focusing" and was procrastinating. Although he knew he should do something about the license, he contends he just blocked it out of his mind. DONOVAN did not tell FREEMAN or anyone else about the expired license. In fact, DONOVAN placed the expired license on the inside side of a door to a supply cabinet in his office.

13.

In about August, 1996, DONOVAN decided to take the classes necessary for him to reapply for a license. He presented no evidence to substantiate enrollment in any classes at that time.

14.

In September, 1996, the Department informed DONOVAN and FREEMAN of its investigation of DONOVAN's unlicensed activities. Sometime thereafter DONOVAN reapplied for a salesperson license. On January 15, 1997, the Department issued to DONOVAN a real



1 estate sales license, numbered #00316382, conditioned pursuant to
2 Code Section 10153.4. DONOVAN must complete the educational
3 conditions imposed pursuant to Code Section 10153.4 by July 15,
4 1998. DONOVAN's salesperson license expires January 14, 2001.
5 WDC was designated to be DONOVAN's employing broker.

6 15.

7 From July 14, 1982 to January 14, 1997, DONOVAN was not
8 licensed by the Department as a real estate salesperson or broker.
9 During the period from March, 1994 through September, 1996,
10 DONOVAN performed acts for which a real estate license was
11 required, such as negotiating leases and rental agreements for WDC
12 clients, for or in expectation of compensation.

13 16.

14 Between March 13, 1996 and April 9, 1996, DONOVAN,
15 while unlicensed, acted on behalf of WDC in negotiating a
16 commercial lease for a WDC client, Mission Valley Business Center,
17 LLC, as prospective tenant, for a lease of business suites in the
18 Hyundai America Building located at 8880 Rio San Diego Drive, San
19 Diego, California, owned by Mission Valley Business Center, LLC.
20 WDC was paid \$23,676.48 as a commission for negotiating the lease
21 and part of this was used by WDC to pay DONOVAN's salary³.

22 17.

23 Between November, 1994 and September 6, 1996, WDC, by
24 and through DONOVAN, acted as agent for the Shepard Unitrust in
25 entering into commercial leases as set forth in the Amended

26 ³ Code Section 10131 makes clear that the element of compensation may include
27 salary. "A real estate broker...is a person who, for a



1 Accusation at paragraph 6, subparagraphs (a), (d), (e), (f), (g),
2 (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q). The
3 evidence established the lease transactions as alleged at
4 paragraph 6, subparagraphs (b) and (c) but of different dates than
5 as alleged. The evidence established the amendment to a lease
6 transactions as alleged at paragraph 6, subparagraph (f). DONOVAN
7 also negotiated those leases set forth in paragraph 7(a) through
8 7(d) inclusive. Commissions resulting from these leases were paid
9 to WDC. WDC paid a monthly salary to DONOVAN of at least \$2,500.

10 18.

11 DONOVAN is the sole stockholder of WDC. DONOVAN and
12 FREEMAN are the corporate directors and the only officers, DONOVAN
13 as president and FREEMAN as vice-president. At all times
14 mentioned in Findings 15 through 17 inclusive, DONOVAN was the
15 president of WDC and acting in that capacity in the real estate
16 lease transactions. DONOVAN was the only employee of WDC
17 responsible for transacting real estate business.

18 19.

19 DONOVAN's knowledge that he was conducting licensed
20 real estate activities unlawfully is imputable to WDC. As set
21 forth in Findings 15 through 17 inclusive, DONOVAN, as sole owner,
22 president and a director of WDC, allowed himself to act as an
23 employee to solicit and negotiate real estate transactions while
24 he was unlicensed. WDC received commissions for these
25 transactions and paid DONOVAN a salary for this work.

26
27 compensation...regardless of the form or time of payment, does or negotiates
to do...for another...(b) Leases or rents..."



1
2 When an employee salesperson has violated the Real
3 Estate Law, the employing broker's license can be disciplined only
4 if the broker had "guilty knowledge" of the violation. (Section
5 10179.). WDC, through DONOVAN's activities with knowledge they
6 were being performed unlawfully, had such guilty knowledge.

7
8 DONOVAN and FREEMAN are cousins. From 1966 to 1980,
9 DONOVAN enjoyed a successful career as a real estate agent for
10 Willis M. Allen Company where he negotiated large commercial sales
11 and leases and served for several years as vice-president.
12 FREEMAN obtained a business degree from San Diego State University
13 in 1979, and then obtained his real estate broker license. When
14 they formed WDC, FREEMAN respected DONOVAN's experience and
15 competence in real estate matters and considered him a mentor. In
16 his 17 years of working with DONOVAN, FREEMAN was aware of no
17 complaints or problems with the quality of DONOVAN's work.

18
19 FREEMAN checked DONOVAN's license when they formed WDC.
20 At that time, DONOVAN had been properly licensed to conduct real
21 estate transactions for 14 years, the license was current and up
22 for renewal in two years. Thereafter, FREEMAN was aware the
23 license hung in DONOVAN's office but he did not check the renewal
24 date. FREEMAN was aware that real estate licenses expired every
25 four years. FREEMAN, as designated officer of WDC, failed for 14
26 years to examine that license for its status or to insure that he
27 had in his possession a currently valid license for DONOVAN.



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23.

At no time prior to the Department's investigation did FREEMAN in fact know DONOVAN had let his real estate license expire. FREEMAN asserted he relied on DONOVAN's experience and competence, and asserted DONOVAN had no reason not to make a timely renewal. FREEMAN assumed that DONOVAN had timely renewed his license because he knew that DONOVAN was conservative and spent too much time on the details of transactions to overlook something as important as the renewal of his license. FREEMAN's assumption was without legal or factual basis. FREEMAN testified to no facts that would have reasonably led him to believe DONOVAN's license was renewed at any time during the 14 year hiatus. FREEMAN, as designated officer of the broker, had the duty to see to compliance with licensing requirements.

24.

Code Section 10162⁴ and Regulation 2753⁵ require that the broker maintain possession of a real estate salesperson's license from the time a salesperson is employed by the broker until termination of that employment. While FREEMAN knew that DONOVAN's

⁴ Code Section 10162 provides "The real estate salesman's license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesman available for inspection by the commissioner or his designated representative."

⁵ Regulation 2753 provides "The license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. Upon termination of employment of the salesperson, the broker shall immediately return the license certificate to the salesperson."

1 license hung in DONOVAN's office, FREEMAN, as designated officer
2 of WDC, failed to maintain actual possession of DONOVAN's sales
3 license. Had he done so, FREEMAN would have known of the expired
4 status of DONOVAN's license. DONOVAN's expired license was never
5 actually in the possession of WDC or FREEMAN, particularly after
6 1986 when DONOVAN at that time concealed it behind a door to a
7 supply cabinet in his office, from the view of FREEMAN whose duty
8 it was to supervise the licensed status of salespersons employed
9 by WDC. These failures by FREEMAN are imputable to WDC.

10

25.

11 Section 10159.2 made FREEMAN responsible for insuring
12 that DONOVAN, as WDC's salesperson, was in compliance with the
13 Real Estate Law, including maintaining a current license.
14 Contrary to the proposed findings of the Administrative Law Judge,
15 in order to be disciplined under Section 10177(d) for failure to
16 meet this responsibility, it need not be shown that FREEMAN's
17 conduct was "willful". See Handeland v. Department of Real
18 Estate 58 Cal. App. 3d 513 (1976).

19

26.

20 By letter dated September 20, 1996, the Department
21 notified respondents it was investigating alleged non-licensed
22 activities of DONOVAN. This was the first information received by
23 FREEMAN that anything was amiss with DONOVAN's license.

24

27.

25 Respondents made a timely response to the Department's
26 inquiry and DONOVAN readily admitted that, although his license
27 had expired, he engaged in various leasing transactions which



1 approximate 14 years of DONOVAN's unlicensed status while he
2 continued leasing activities, failed to take the appropriate steps
3 that he should have. FREEMAN did not at any time possess the
4 salesperson license previously issued to DONOVAN. Nor did he
5 possess a real estate sales license for DONOVAN valid at any time
6 after July 14, 1982.

7 Respondent FREEMAN's failure to supervise the licensed
8 status of Respondent DONOVAN for 14 years was willful as a matter
9 of law within the meaning of Handeland v. Department of Real
10 Estate 58 Cal.App.3d 513 (1976).

11 2.

12 Cause was not established to discipline the real estate
13 broker license of FREEMAN pursuant to Code Section 10177(d) for
14 violation of Code Section 10130. Code Section 10130 does not
15 specify that it is unlawful to "allow" the unlicensed activity of
16 another in the absence of actual knowledge by FREEMAN of the
17 unlawful conduct.

18 3.

19 Cause was established to discipline the real estate
20 salesperson's license of respondent WILLIAM ANTHONY DONOVAN
21 pursuant to Business and Professions Code Section 10177(d), for
22 willfully disregarding and violating Section 10130, engaging in
23 the business of a real estate salesman without a license, by
24 reason of Findings 9, 11, 12, 15, 16, 17, 18, 19, 27 and 28.

25 4.

26 Cause was established to discipline the real estate
27 salesperson's license of respondent WILLIAM ANTHONY DONOVAN



1 pursuant to Business and Professions Code Section 10177(f), for
2 acting in a manner which would have warranted denial of his
3 application for a license, by reason of Findings 9, 11, 12, 15,
4 16, 17, 18, 19, 27 and 28.

5 5.

6 Cause was established to discipline the corporate real
7 estate broker license of respondent WILLIAM DONOVAN & COMPANY
8 pursuant to Business and Professions Code Section 10137 for
9 employing and compensating respondent DONOVAN for transacting real
10 estate business without a proper license, by reason of Findings 9,
11 12, 15, 16, 17, 18, 19, 20, 23, 24, 25, and 27.

12 6.

13 The standard of proof applied was clear and convincing
14 proof to a reasonable certainty.

15 ORDER

16 WHEREFORE, THE FOLLOWING ORDER is hereby made:

17 1.

18 All licenses and license rights of Respondent WILLIAM
19 DONOVAN & COMPANY, under Part 1 of Division 4 of the Business and
20 Professions Code, are revoked; provided, however, a restricted
21 real estate broker corporate license shall be issued to Respondent
22 WILLIAM DONOVAN & COMPANY pursuant to Section 10156.5 of the Code
23 if Respondent WILLIAM DONOVAN & COMPANY makes application therefor
24 and pays to the Department of Real Estate the appropriate fee for
25 said licenses within ninety (90) days from the effective date of
26 this Order. The restricted licenses issued to Respondent WILLIAM
27 DONOVAN & COMPANY (WDC) shall be subject to all of the provisions



1 of Section 10156.7 of the Business and Professions Code and to the
2 following limitations, conditions and restrictions imposed under
3 authority of Section 10156.6 of said Code:

4 A. The restricted corporate broker license to be issued
5 to Respondent WDC shall be suspended for ninety (90) days from the
6 issuance of said restricted license; provided, however:

7 1. If Respondent WDC petitions, the last sixty
8 (60) days of said suspension shall be permanently stayed upon the
9 terms and conditions of this paragraph:

10 (a) Respondent WDC pays a monetary penalty
11 pursuant to Section 10175.2 of the Business and Professions Code
12 of \$5,000.00;

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

18 (c) If Respondent WDC fails to pay the
19 monetary penalty in accordance with the terms of this paragraph or
20 this Order, the Commissioner may, without a hearing, order the
21 immediate execution of all or any part of the ninety (90) days
22 stayed suspension, in which event the Respondent shall not be
23 entitled to any repayment nor credit, prorated or otherwise, for
24 money paid to the Department under the terms of this Order.

25 2. Respondent WDC will serve an actual 30 day
26 suspension from the date the restricted license is issued.

27

/

1 licenses shall be issued to Respondent JOHN DAVID FREEMAN pursuant
2 to Section 10156.5 of the Code if Respondent JOHN DAVID FREEMAN
3 (FREEMAN) makes application therefor and pays to the Department of
4 Real Estate the appropriate fee for said licenses within ninety
5 (90) days from the effective date of this Order. The restricted
6 licenses issued to Respondent FREEMAN shall be subject to all of
7 the provisions of Section 10156.7 of the Business and Professions
8 Code and to the following limitations, conditions and restrictions
9 imposed under authority of Section 10156.6 of said Code:

10 A. The restricted broker license to be issued to
11 Respondent FREEMAN shall be suspended for ninety (90) days from
12 the issuance of said restricted license; provided, however:

13 1. If Respondent FREEMAN petitions, the last sixty
14 (60) days of said suspension shall be permanently stayed upon the
15 terms and conditions of this paragraph:

16 (a) Respondent FREEMAN pays a monetary
17 penalty pursuant to Section 10175.2 of the Business and
18 Professions Code of \$5,000.00;

19 (b) Said payment shall be in the form of a
20 cashier's check or certified check made payable to the Recovery
21 Account of the Real Estate Fund. Said check must be delivered to
22 the Department prior to the effective date of this Order in this
23 matter;

24 (c) If Respondent FREEMAN fails to pay the
25 monetary penalty in accordance with the terms of this paragraph or
26 this Order, the Commissioner may, without a hearing, order the
27 immediate execution of all or any part of the ninety (90) days



1 stayed suspension, in which event the Respondent shall not be
2 entitled to any repayment nor credit, prorated or otherwise, for
3 money paid to the Department under the terms of this Order.

4 2. Respondent FREEMAN will serve an actual 30 day
5 suspension from the date the restricted license is issued.

6 B. The restricted license may be suspended prior to
7 hearing by order of the Real Estate Commissioner in the event of
8 Respondent FREEMAN's conviction or plea of nolo contendere to a
9 crime which bears a significant relation to Respondent's fitness
10 or capacity as a real estate licensee.

11 C. The restricted license may be suspended prior to
12 hearing by Order of the Real Estate Commissioner on evidence
13 satisfactory to the Commissioner that Respondent FREEMAN has
14 violated provisions of the California Real Estate Law, the
15 Subdivided Lands Law, Regulations of the Real Estate Commissioner,
16 or the conditions attaching to these restricted licenses.

17 D. Respondent FREEMAN shall report in writing to the
18 Department of Real Estate as the Real Estate Commissioner shall
19 direct by his Order herein or by separate written order issued
20 while Respondent holds a restricted license, such information
21 concerning Respondent's activities for which a real estate license
22 is required as the Commissioner shall deem to be appropriate to
23 protect the public interest.

24 E. Respondent FREEMAN shall not be eligible to apply
25 for the issuance of an unrestricted real estate license nor the
26 removal of any of the conditions, limitations or restrictions of a
27 restricted license until two (2) years have elapsed from the date



1 of issuance of the restricted license to Respondent.

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

14 G. Respondent FREEMAN shall, within six months from the
15 effective date of this Order, take and pass the Professional
16 Responsibility Examination administered by the Department
17 including payment of the appropriate examination fee. If
18 Respondent fails to satisfy this condition, the Commissioner may
19 order suspension of Respondent FREEMAN's license until he passes
20 the examination.

21 3.

22 The conditional real estate salesperson license and
23 license rights of Respondent WILLIAM ANTHONY DONOVAN, under the
24 provisions of Part 1 of Division 4 of the Business and Professions
25 Code are hereby revoked. A restricted conditional real estate
26 salesperson license shall be issued to Respondent WILLIAM ANTHONY
27 DONOVAN (DONOVAN) pursuant to Section 10156.5 of the Business and



1 Professions Code if, within 90 days after the effective date of
2 the Order entered herein, said Respondent makes application for
3 said license and pays to the Department of Real Estate the
4 appropriate fee for said license. The restricted licenses issued
5 to Respondent DONOVAN shall be subject to all of the provisions of
6 Section 10156.7 of the Business and Professions Code and to the
7 following limitations, conditions and restrictions imposed under
8 authority of Section 10156.6 of said Code:

9 A. The restricted salesperson license to be issued to
10 Respondent DONOVAN shall be suspended for ninety (90) days from
11 the issuance of said restricted license; provided, however;

12 1. If Respondent DONOVAN petitions, the last sixty
13 (60) days of said suspension shall be permanently stayed upon the
14 terms and conditions of this paragraph:

15 (a) Respondent DONOVAN pays a monetary
16 penalty pursuant to Section 10175.2 of the Business and
17 Professions Code of \$5,000;

18 (b) Said payment shall be in the form of a
19 cashier's check or certified check made payable to the Recovery
20 Account of the Real Estate Fund. Said check must be delivered to
21 the Department prior to the effective date of the Order in this
22 matter;

23 (c) If Respondent DONOVAN fails to pay the
24 monetary penalty in accordance with the terms of this paragraph or
25 this Order, the Commissioner may, without a hearing, order the
26 immediate execution of all or any part of the ninety (90) days
27 stayed suspension; in which event the Respondent shall not be



1 entitled to any repayment nor credit, prorated or otherwise, for
2 money paid to the Department under the terms of this Order.

3 2. Respondent DONOVAN will serve an actual 30 day
4 suspension from the date the restricted license is issued.

5 B. The restricted real estate salesperson license to be
6 issued to Respondent DONOVAN will be issued subject to the
7 requirements of Code Section 10153.4, to wit: Respondent DONOVAN
8 shall, within eighteen (18) months of the issuance of the license
9 revoked herein, [on or prior to July 15, 1998], submit evidence
10 satisfactory to the Commissioner of successful completion, at an
11 accredited institution, of two of the courses listed in Code
12 Section 10153.2, other than real estate principles, advanced legal
13 aspects of real estate, advanced real estate finance or advanced
14 real estate appraisal. If Respondent DONOVAN fails to present to
15 the Department satisfactory evidence of successful completion of
16 the two required courses, the restricted license shall be
17 automatically suspended effective eighteen (18) months after the
18 date of the issuance of the license revoked herein. Said
19 suspension shall not be lifted unless prior to the expiration of
20 the restricted license Respondent DONOVAN has submitted the
21 required evidence of course completion and the Commissioner has
22 given written notice to Respondent of lifting of the suspension.

23 C. Pursuant to Code Section 10154, if Respondent
24 DONOVAN has not satisfied the requirements for an unqualified
25 license under Code Section 10153.4, Respondent DONOVAN shall not
26 be entitled to renew the restricted license, and shall not be
27 entitled to the issuance of another license which is subject to

1 Code Section 10153.4 until four years after the date of the
2 issuance of the preceding restricted license.

3 D. The restricted license may be suspended prior to
4 hearing by order of the Real Estate Commissioner in the event of
5 Respondent DONOVAN's conviction or plea of nolo contendere to a
6 crime which bears a significant relation to Respondent's fitness
7 or capacity as a real estate licensee.

8 E. The restricted license may be suspended prior to
9 hearing by Order of the Real Estate Commissioner on evidence
10 satisfactory to the Commissioner that Respondent DONOVAN has
11 violated provisions of the California Real Estate Law, the
12 Subdivided Lands Law, Regulations of the Real Estate Commissioner,
13 or the conditions attaching to these restricted licenses.

14 F. Respondent DONOVAN shall, within six months from
15 the effective date of this Order, take and pass the Professional
16 Responsibility Examination administered by the Department
17 including the payment of the appropriate examination fee. If
18 Respondent fails to satisfy this condition, the Commissioner may
19 order suspension of Respondent's license until Respondent passes
20 the examination.

21 G. Respondent DONOVAN shall not be eligible to apply
22 for the issuance of an unrestricted real estate license nor the
23 removal of any of the restrictions, conditions or limitations set
24 forth herein, attaching to the restricted license, until two (2)
25 years have elapsed from the effective date of any Order in this
26 matter.

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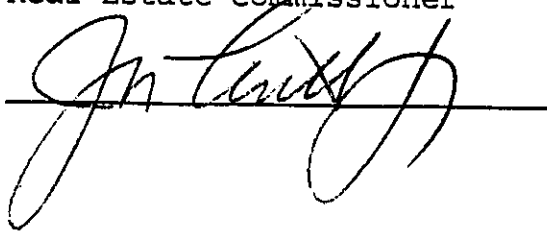
H. Respondent DONOVAN shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker on a form approved by the Department of Real Estate which shall certify:

- (1) That he or she has read the Amended Accusation, filed herein and the Order of the Commissioner which granted the right to a restricted license; and
- (2) That he or she will exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.

This Decision shall become effective at 12 o'clock noon on February 3 1998.

IT IS SO ORDERED 1/9 1998

JIM ANTT, JR.
Real Estate Commissioner



*Sacto
Jury*

FILED
SEP 18 1997
DEPARTMENT OF REAL ESTATE

By *Laura B. Crona*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
WILLIAM DONOVAN & COMPANY,)	NO. H-2296 SD
a California corporate broker;)	
JON DAVID FREEMAN, individually)	OAH NO. L-9702120
and as the designated officer of)	
William Donovan & Company and)	
WILLIAM ANTHONY DONOVAN,)	
Respondents.)	

NOTICE

TO: Respondent WILLIAM DONOVAN & COMPANY, Respondent JOHN DAVID FREEMAN, Respondent WILLIAM ANTHONY DONOVAN, and KENNETH E. LANG, Attorney at Law, representing Respondents

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 20, 1997, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 20, 1997, is attached for your information.

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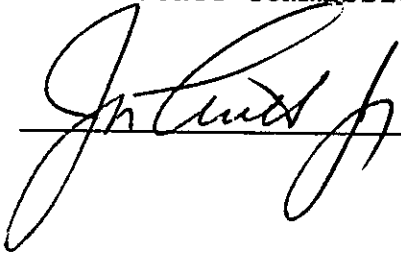
1 In accordance with Section 11517(c) of the Government
2 Code of the State of California, the disposition of this case will
3 be determined by me after consideration of the record herein
4 including the transcript of the proceedings held on July 21, 1997,
5 and any written argument hereafter submitted on behalf of
6 Respondents and Complainant.

7 Written argument of Respondents to be considered by me
8 must be submitted within 15 days after receipt of the transcript
9 of the proceedings of July 21, 1997, at the Los Angeles office of
10 the Department of Real Estate unless an extension of the time is
11 granted for good cause shown.

12 Written argument of Complainant to be considered by me
13 must be submitted within 15 days after receipt of the argument of
14 Respondents at the Los Angeles office of the Department of Real
15 Estate unless an extension of the time is granted for good cause
16 shown.

17 DATED: 9/15/97

18 JIM ANTT, JR.
19 Real Estate Commissioner

20 
21 _____
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	Case No. H-2296 SD
of:	)	OAH No. L-9702120
)	
WILLIAM DONOVAN & COMPANY,)	
a California corporate broker:)	
JOHN DAVID FREEMAN, individually)	
and as the designated officer of)	
William Donovan & Company and)	
WILLIAM ANTHONY DONOVAN,)	
)	
Respondents.)	
<hr/>		

PROPOSED DECISION

On July 21, 1997, in San Diego, California, Joyce A. Wharton, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Sean Crahan, Staff Counsel, represented the complainant.

Kenneth E. Lange, Attorney at Law, represented respondents William Donovan & Company, William Anthony Donovan, and John David Freeman who were present.

Evidence was received, the record was closed and the matter was submitted on July 21, 1997.

FINDINGS OF FACT

I

On January 23, 1997, J. Chris Graves, acting in his official capacity as Deputy Real Estate Commissioner of the State of California (complainant), filed Accusation number H-2296 SD against William Donovan & Company (hereinafter "WDC"), a California corporate broker, and John David Freeman (hereinafter "Freeman"), individually and as the designated officer of the Company.

On February 26, 1997, complainant filed an Amended Accusation adding William Anthony Donovan (hereinafter "Donovan") as a respondent.

Complainant alleges that, between March 1994 and November 1996, Donovan, as president of WDC, negotiated numerous real estate leases and rental agreements and received compensation for doing so even though he was not properly licensed by the Department.

The Amended Accusation charges respondent Donovan with violation of Business and Professions Code section 10177, subdivisions (d) and (f), and section 10130¹.

The Amended Accusation charges WDC with violation of section 10137.², the unlawful employment or payment of an unlicensed person to perform acts for which a real estate license is required.

The Amended Accusation charges respondent Freeman with violation of section 10177, subdivision (d), willfully disregarding or violating the Real Estate Law, specifically, section 10159.2, failure to supervise the licensed activities of WDC's employee Donovan, and section 10130, allowing Donovan as an unlicensed person to perform acts which require a license.

Respondents timely filed Notices of Defense.

II

In 1980, Freeman was licensed by the Department under License ID #00771390 as an individual real estate broker. His

¹ All statutory references are to the Business and Professions Code unless otherwise specified.

Section 10177 specifies the following conduct of a licensee as grounds for discipline:

"(d) Willfully disregarded or violated the Real Estate Law ...or the rules and regulations of the commissioner....

(f) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a real estate license...."

Section 10130 provides:

"It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or real estate salesman without first obtaining a real estate license from the department."

² Section 10137 provides in pertinent part:

"It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesman licensed under the broker employing or compensating him;...."

main office address at all relevant times was 1117 Wall Street in La Jolla. Freeman regularly renewed his broker license and it is valid through July 2, 2000. There is no history of prior discipline on this license.

In 1980, Freeman and Donovan formed WDC, a California corporation, for the purpose of conducting a commercial real estate leasing and sales business. WDC's address is 1117 Wall Street in La Jolla, California. WDC has been licensed by the Department under License ID #00786263 as a corporate real estate broker, and Freeman has been licensed as the designated officer of WDC, since June 25, 1980. Freeman regularly renewed WDC's corporate broker license and his license as its designated officer, and these licenses are valid through July 1, 2000. There is no history of prior discipline on either license.

Pursuant to Code section 10159.2(a), Freeman, as the designated officer of WDC, was "responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the [Real Estate Law], including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required."

III

Donovan was first licensed by the Department in 1966 as a real estate salesperson. This license expired July 14, 1982. There is no evidence the license was not timely renewed on a regular basis up to its expiration. There is no history of prior discipline on this expired license.

Donovan received his license renewal notice in 1982. He claims he completed the renewal form, wrote a check for the renewal fee, and assumed his secretary followed his instructions to mail the documents. His business was busy and he never checked to see the renewed license. While rearranging his office in 1986 he noticed the expired license was still in its frame. He searched for the renewed license but found only a file with the renewal application and check. Donovan realized it was unlawful to engage in real estate business without the proper license but "did not know what to do". His business was in decline, he was going through a divorce, was "not focusing" and was procrastinating. Although he knew he should do something about the license, he contends he just blocked it out of his mind. Donovan did not tell Freeman or anyone else about the expired license.

IV

In about August, 1996, Donovan decided take the classes necessary for him to reapply for the license. He presented no evidence to substantiate enrollment in any classes at that time.

In September, 1996, the Department informed Donovan and Freeman of its investigation of Donovan's unlicensed activities. Sometime thereafter Donovan reapplied for a salesperson license. On January 15, 1997, the Department issued to Donovan License ID #00316382, a conditional salesperson license pursuant to Code section 10153.4. WDC continues to be Donovan's employing broker. The conditional salesperson license expires July 15, 1998; the salesperson license expires January 14, 2001.

V

From July 14, 1982 to January 14, 1997, Donovan was not licensed by the Department as a real estate salesperson or broker. During the period from March, 1994 through September, 1996, Donovan performed acts for which a real estate license was required, such as negotiating leases and rental agreements for WDC clients.

Between March 13, 1996 and April 9, 1996, Donovan, while unlicensed, acted on behalf of WDC in negotiating a commercial lease for a WDC client. WDC was paid \$23,676.48 as a commission for negotiating the lease and part of this was used by WDC to pay Donovan's salary.

Between November, 1994 and September 6, 1996, WDC, by and through Donovan, acted as agent for the Shepard Unitrusts in entering commercial leases as set forth in the Amended Accusation at paragraph 6, subparagraphs (a), (b), (d), (e), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q). Commissions resulting from these leases were paid to WDC. WDC paid a monthly salary to Donovan of at least \$2500.

The evidence did not establish the lease transactions as alleged at paragraph 6, subparagraphs (c) and (f).

VI

The evidence did not establish the lease transactions by WDC as alleged in paragraph 7 of the Amended Accusation.

VII

Donovan is the sole stockholder of WDC. Donovan and Freeman are the corporate directors and the only officers, Donovan as president and Freeman as vice-president. At all times mentioned in Finding V, Donovan was the president of WDC and

acting in that capacity in the real estate lease transactions. Donovan was the only employee of WDC responsible for transacting real estate business.

Donovan's knowledge that he was conducting licensed real estate activities unlawfully is imputable to WDC. As set forth in Finding V, Donovan, as sole owner, president and a director of WDC, allowed himself to act as an employee to solicit and negotiate real estate transactions while he was unlicensed. WDC received commissions for these transactions and paid Donovan a salary for this work.

When an employee salesperson has violated the Real Estate Law, the employing broker's license can be disciplined only if the broker had "guilty knowledge" of the violation. (Section 10179.) WDC, by and through Donovan, had such guilty knowledge.

VIII

Donovan and Freeman are cousins. From 1966 to 1980, Donovan enjoyed a successful career as a real estate agent for Willis M. Allen Company where he negotiated large commercial sales and leases and served for several years as vice-president. Freeman obtained a business degree from San Diego State University in 1979, and then obtained his real estate broker license. When they formed WDC, Freeman respected Donovan's experience and competence in real estate matters and considered him a mentor. In his 17 years of working with Donovan, Freeman has been aware of no complaints or problems with the quality of his work.

Freeman checked Donovan's license when they formed WDC. At that time, Donovan had been properly licensed to conduct real estate transactions for 14 years, the license was current and up for renewal in two years. Thereafter, Freeman was aware the license hung in Donovan's office but he did not check the renewal date. Donovan was experienced and competent, had no reason not to make a timely renewal, and it was reasonable for Freeman to expect he would perform this essential and mundane chore. There was no evidence Freeman had any reason to think Donovan would carelessly let his license expire or resort to subterfuge thereafter. Freeman assumed Donovan had timely renewed his license because he knew that Donovan was conservative and spent too much time on the details of transactions to overlook something as important as his license.

At no time prior to the Department's investigation did Freeman know Donovan had let his real estate license expire. Freeman had no reason to suspect Donovan was not properly licensed at the time he was negotiating and entering the leases described in Finding V. The evidence did not establish that

Freeman's conduct in failing to become aware of Donovan's unlicensed status was in any way conscious or willful.

IX

Complainant charges Freeman with violation of section 10130 by "allowing an unlicensed person to perform acts for which is [sic] real estate license is required."

In order to discipline Freeman's license pursuant to section 10177(d), the evidence must show a violation or disregard of section 10130 which was willful. Contrary to the allegation, section 10130 does not specify that it is unlawful to "allow" the unlicensed activity of another. The evidence did not establish Freeman consciously or willfully allowed Donovan to engage in the business of real estate without a license or that Freeman had guilty knowledge of the Donovan's violation.

X

Complainant charges Freeman with willful violation or disregard of section 10159.2 "for failure to supervise" the activities of Donovan as employee of WDC. The evidence did not establish that Freeman, as the designated officer in charge, did not exercise reasonable supervise and control of the activities undertaken by Donovan which were conducted on behalf of WDC. Freeman communicated with Donovan on a regular basis, either in person or by phone. They discussed the pending transactions and Freeman reviewed the trust account books. Other than Donovan's lapsed license, there is no evidence that anything in WDC's real estate business was out of order.

Section 10159.2 made Freeman responsible for insuring that Donovan, as WDC's salesperson, was in compliance with the Real Estate Law, including maintaining a current license. However, in order to be disciplined under section 10177(d) for failure to meet this responsibility, it must be shown that Freeman's conduct was "willful". As set forth in Findings VIII and IX, the evidence does not support such a finding.

XI

By letter dated September 20, 1996, the Department notified respondents it was investigating alleged non-licensed activities of Donovan. This was the first information received by Freeman that anything was amiss with Donovan's license.

Respondents made a timely response to the Department's inquiry and Donovan readily admitted that, although his license had expired, he engaged in various leasing transactions which required a real estate license. Respondents timely gathered and

provided the documents requested by the Department for its investigation.

XII

Donovan's unlicensed practice was willful, deliberate and extended for a significant period of time. There is no reasonable justification for his extended failure to renew or reapply for his license. However, in determining the appropriate discipline, consideration is given to evidence that his professional activities were conducted in accordance with the highest standards in the real estate industry. Donovan dealt with very complex, sophisticated and valuable leases, all without complaint from any client. The testimony of complainant's witness, Mr. Rohan, indicates that Donovan handled himself in a proper and professional manner when dealing with other real estate agents and he enjoyed a very good reputation as an agent in the real estate community.

XIII

Except as set forth in the Findings above, the charges and allegations of the Amended Accusation were not established by the evidence.

DETERMINATION OF ISSUES

I

By reason of Findings I, II, III, VIII, IX, X and XI, cause was not established to revoke or suspend the licenses and license rights of respondent John David Freeman pursuant to Business and Professions Code section 10177(d), for a willful violation or disregard of either section 10159.2 or 10130.

II

Cause was established to discipline the real estate salesperson's license of respondent William Anthony Donovan pursuant to Business and Professions Code section 10177(d), for willfully disregarding and violating section 10130, engaging in the business of a real estate salesman without a license, by reason of Findings I, II, III, IV, V, VII, XI and XII.

III

Cause was established to discipline the real estate salesperson's license of respondent William Anthony Donovan pursuant to Business and Professions Code section 10177(f), for acting in a manner which would have warranted denial of his application for a license, by reason of Findings I, II, III, IV, V, VII, XI and XII.

IV

Cause was established to discipline the corporate real estate broker license of respondent William Donovan & Company pursuant to Business and Professions Code section 10137, for employing and compensating respondent Donovan for transacting real estate business without a proper license, by reason of Findings I, II, III, IV, V, VII, XI and XII.

ORDER

I

The charges of the Amended Accusation against respondent John David Freeman are dismissed.

II

All licenses and licensing rights of respondent William Donovan & Company under the Real Estate Law are suspended for a period of 180 days from the effective date of this Decision; provided, however, that the suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

III

All licenses and licensing rights of respondent William Anthony Donovan under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to 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 the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one (1) year has elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

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

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, 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. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

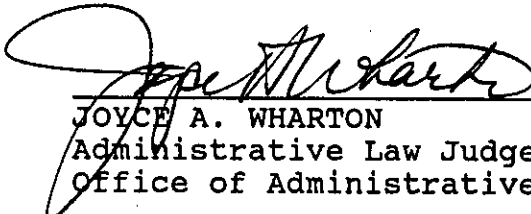
6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may

*Not
Adopted*

order suspension of respondent's license until respondent passes the examination.

7. Respondent's original real estate salesperson license was issued subject to the provisions of Section 10153.4 of the Business and Professions Code, and the restricted real estate salesperson license issued to respondent shall be similarly limited, to wit: Respondent shall, within eighteen (18) months of the issuance of respondent's original real estate salesperson license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of respondent's original real estate salesperson license. Said suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of lifting of the suspension.

Dated: 8/20/97


JOYCE A. WHARTON
Administrative Law Judge
Office of Administrative Hearings

*Sacto
John*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN - 4 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
WILLIAM DONOVAN & COMPANY,)
et al.,)
)
Respondent(s).)

Case No. H-2296 SD
OAH No. L-9702120

By *Laura B. Crane*

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, 1350 Front Street, Room 6022, San Diego, California on JULY 21, 1997 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: JUN - 4 1997

DEPARTMENT OF REAL ESTATE

By: *Sean Crahan*
SEAN CRAHAN, Counsel

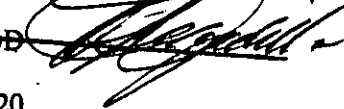
cc: William Donovan & Company
John David Freeman
William Anthony Donovan
Sacto.
OAH LA & SD
SDDO
BJK

SACTO

398-0916-001
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * * *

FILED
MAR 18 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
WILLIAM DONOVAN & COMPANY, a California corporate)
broker and JOHN DAVID FREEMAN, individually)
and as the designated officer of William Donovan)
& Company, and WILIAM ANTHONY DONOVAN.)
)
)
Respondents.)

By: 
H-2296 SD
L-9702120

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 the Office of Administrative Hearings, 1350 Front Street, Room 6022, San Diego, CA 92101 on April 21, and 22, 1997 at 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: March 18, 1997

DEPARTMENT OF REAL ESTATE

cc: William Donovan & Co .
John David Freeman , D.O
Kenneth E. Lange, Esq
William Anthony Donovan
BK, OAH & SACTO

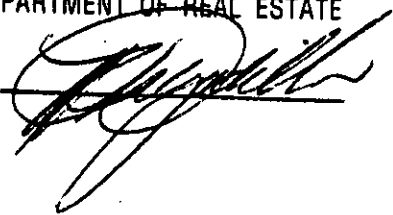
By: 
SEAN CRAHAN, DRE, Counsel

Sacto

1 Sean Crahan
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, CA 90012

5 (213) 897-3937

FILED
FEB 26 1997
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11	In the Matter of the Accusation of	)	H-2296 SD
12	WILLIAM DONOVAN & COMPANY,	)	<u>A M E N D E D</u>
13	a California corporate broker:	)	<u>A C C U S A T I O N</u>
14	JOHN DAVID FREEMAN, individually)	
15	and as the designated officer of)	
16	William Donovan & Company and)	
17	WILLIAM ANTHONY DONOVAN,)	
18	Respondents.)	

18 The Complainant, J. Chris Graves, a Deputy Real Estate
19 Commissioner of the State of California, for cause of accusation
20 against WILLIAM DONOVAN & COMPANY, a California corporate broker
21 and JOHN DAVID FREEMAN, individually and as the designated officer
22 of William Donovan & Company, amends the accusation herein filed
23 on January 23, 1997, by adding WILLIAM ANTHONY DONOVAN as a
24 Respondent, and alleges as follows:

25 1.

26 The Complainant, J. Chris Graves, a Deputy Real Estate
27 Commissioner of the State of California, makes this Accusation in

1 his official capacity.

2 2.

3 WILLIAM DONOVAN & COMPANY, a California corporation
4 (hereafter Respondent WDC), is presently licensed and/or has
5 license rights under the Real Estate Law (Part 1 of Division 4 of
6 the California Business and Professions Code, hereinafter referred
7 to as the "Code"). At all times herein mentioned, Respondent WDC
8 was and still is licensed by the Department of Real Estate.
9 (hereafter the Department) as a corporate real estate broker.

10 3.

11 JOHN DAVID FREEMAN (hereafter Respondent FREEMAN) is
12 presently licensed and/or has license rights under the Real Estate
13 Law (Part 1 of Division 4 of the California Business and
14 Professions Code, hereinafter referred to as the "Code").

15 (a) At all times mentioned herein, Respondent FREEMAN
16 was and still is licensed by the Department as a real estate
17 broker both individually and as the designated officer of
18 Respondent WDC.

19 (b) Respondent FREEMAN had been licensed by the
20 Department as the designated officer of Respondent WDC since June
21 25, 1980.

22 (c) Pursuant to Code Section 10159.2, Respondent
23 FREEMAN was responsible for the supervision of the officers,
24 agents and employees of Respondent WDC for which a real estate
25 license was required.

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4.

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

(a) On January 15, 1997, Respondent DONOVAN became licensed by the Department as a real estate salesperson.

(b) At no time between July 14, 1982 up to January 15, 1997, was Respondent DONOVAN licensed by the Department as a Real Estate Salesperson or Broker.

(c) At all times herein mentioned Respondent DONOVAN was the President of WDC and was performing the acts hereinbelow in that capacity.

5.

Between on or about March 13, 1996 and April 9, 1996, for or in expectation of compensation, Respondents WDC and DONOVAN, while not licensed and while employed by WDC, negotiated on behalf of Mission Valley Business Center, LLC, as prospective tenant, for a lease of business suites in the Hyundai America Building located at 8880 Rio San Diego Drive, San Diego, California, owned by Mission Valley Business Center, LLC. \$213,676f.48 was paid to William Donovan & Company as compensation for negotiating the lease.

6.

In addition, Respondent DONOVAN, while not licensed, and on behalf of Respondent WDC, negotiated the following leases or rental agreements between the Thomas L. Shepherd Unitrust and the

1 following tenants, as set forth below:

	Tenant:	Date:
2		
3	(a) Alfonso Monreal	7-25-96
4	(b) Sarah Ann Nee	7-25-96
5	(c) Susan Joehnk	9-16-96
6	(d) Robert L. Harrris	11-10-94
7	(e) Michael Fineman	5-16-95
8	(f) Laurence McGilvery	3-28-94
9	(g) Joel Richey	9-6-96
10	(h) Betsy F. Mitchell	1-30-95
11	(i) Clarence Boukas	8-23-96
12	(j) Charles Fuchsman	6-16-95
13	(k) Hui Hua Wu	8-12-96
14	(l) Howard Software Services	3-23-95
15	(m) Steven Stewart	10-30-95
16	(n) David C. Jackson	2-2-96
17	(o) Dion M. Isselhardt	3-1-96
18	(p) Jess Z. Lapid	7-23-96
19	(q) Laurence McGilvery	3-28-96

20 7.

21 In addition, Respondent DONOVAN, while not licensed,
22 acting on behalf of Respondent WDC, negotiated the following
23 leases or rental agreements between the following parties:

	Landlord:	Tenant:	Date:
24			
25	(a) Laurence McGilvery	Arthur J. Sweet	7-10-96
26	(b) Brown & McKittrick	Walter R. Gundelfinger	2-23-96

27

1 (c) Brown & McKittrick Robert S Semple 2-23-96
2 (d) Brown & McKittrick Ron B. Fields 1-31-96

3 8.

4 Respondent FREEMAN knew or should have known that the
5 above violations occurred or were occurring. Respondent FREEMAN
6 failed to exercise reasonable supervision over the activities of
7 officers and employees of Respondent WDC for which a real estate
8 license was required so as to prevent the violations.

9 9.

10 The acts and omissions of Respondent WDC, as set forth
11 above, are cause for the suspension or revocation of the licenses
12 and license rights of Respondent WDC pursuant to Code Section
13 10137 for employing or compensating William Anthony Donovan, while
14 unlicensed, to solicit or negotiate with landlords and tenants,
15 as set forth in paragraph 5 above.

16 10.

17 The acts and omissions of Respondent FREEMAN, as set
18 forth above, is cause to suspend or revoke his licenses and
19 license rights pursuant to Code Section 10177(d) for violation of:

20 (a) Code Section 10159.2 for failure to supervise the
21 employees of Respondent WDC for activities which require a
22 license.

23 (b) Code Section 10130 for allowing an unlicensed
24 person to perform acts for which is real estate license is
25 required.

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11.

The acts and omissions of Respondent DONOVAN, as set forth above, is cause to suspend or revoke his licenses and license rights pursuant to the following Code Sections:

(a) Code Section 10177(d) for violation of Code Section 10130.

(b) Code Section 10177(f) for conduct which would have warranted the denial of a real estate license.

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/or license rights of WILLIAM DONOVAN & COMPANY, a California corporate broker and JOHN DAVID FREEMAN, individually and as the designated officer of William Donovan & Company, under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at San Diego, California
this 26th day of February, 1997

J. CHRIS GRAVES
J. Chris Graves
Deputy Real Estate Commissioner

cc: William Donovan & Company
John David Freeman
BJK
Sacto.

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Sean Crahan
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012

(213) 897-3937

FILED
JAN 23 1997
DEPARTMENT OF REAL ESTATE
BY *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	H-2296 SD
WILLIAM DONOVAN & COMPANY,)	
a California corporate broker and	)	<u>A C C U S A T I O N</u>
JOHN DAVID FREEMAN, individually)	
and as the designated officer of)	
William Donovan & Company,)	
)	
Respondents.)	

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California. for cause of accusation against WILLIAM DONOVAN & COMPANY, a California corporate broker and JOHN DAVID FREEMAN, individually and as the designated officer of William Donovan & Company, alleges as follows:

1,

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

2.

At all times mentioned herein, WILLIAM DONOVAN & COMPANY, a California corporation (hereafter Respondent WDC), is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code, hereinafter referred to as the "Code"). At all times herein mentioned, Respondent WDC was and still is licensed by the Department of Real Estate (hereafter the Department) as a corporate real estate broker.

3.

JOHN DAVID FREEMAN (hereafter Respondent FREEMAN) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code, hereinafter referred to as the "Code").

(a) At all times mentioned herein, Respondent FREEMAN was and still is licensed by the Department as a real estate broker both individually and as the designated officer of Respondent WDC.

(b) Respondent FREEMAN had been licensed by the Department as the designated officer of Respondent WDC since June 25, 1980.

(c) Pursuant to Code Section 10159.2, respondent FREEMAN was responsible for the supervision of the officers, agents and employees of Respondent WDC for which a real estate license was required.

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4.

At no time herein mentioned, after July 14, 1982, was William Anthony Donovan (hereafter Donovan) licensed by the Department as a Real Estate Salesperson or Broker.

(a) At all times herein mentioned Donovan was the President of WDC and was performing the acts hereinbelow in that capacity.

(b) Donovan was licensed by the Department as a real estate salesperson until his license expired on or about July 14, 1982

5.

Between on or about March 13, 1996 and April 9, 1996, for or in expectation of compensation, respondent WDC and Donovan, while employed by WDC, negotiated on behalf of Mission Valley Business Center, LLC, as prospective tenant, for a lease of business suites in the Hyundai America Building located at 8880 Rio San Diego Drive, San Diego, California, owned by Mission Valley Business Center, LLC. \$213,676f.48 was paid to William Donovan & Company as compensation for negotiating the lease.

6.

In addition, Donovan negotiated the following leases or rental agreements between the Thomas L. Shepherd Unitrust and the following tenants, as set forth below:

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Tenant:	Date:
(a) Alfonso Monreal	7-25-96
(b) Sarah Ann Nee	7-25-96
(c) Susan Joehnk	9-16-96
(d) Robert L. Harrris	11-10-94
(e) Michael Fineman	5-16-95
(f) Laurence McGilvery	3-28-94
(g) Joel Richey	9-6-96
(h) Betsy F. Mitchell	1-30-95
(i) Clarence Boukas	8-23-96
(j) Charles Fuchsman	6-16-95
(k) Hui Hua Wu	8-12-96
(l) Howard Software Services	3-23-95
(m) Steven Stewart	10-30-95
(n) David C. Jackson	2-2-96
(o) Dion M. Isselhardt	3-1-96
(p) Jess Z. Lapid	7-23-96
(q) Laurence McGilvery	3-28-96
	8.

In addition, Donovan negotiated the following leases or rental agreements between the following parties:

Landlord:	Tenant:	Date:
(a) Laurence McGilvery	Arthur J. Sweet	7-10-96
(b) Brown & McKittrick	Walter R. Gundelfinger	2-23-96
(c) Brown & McKittrick	Robert S Semple	2-23-96
(d) Brown & McKittrick	Ron B. Fields	1-31-96

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9.

Respondent FREEMAN knew or should have known that the above violations occurred or were occurring. Respondent FREEMAN failed to exercise reasonable supervision over the activities of officers and employees of respondent WDC for which a real estate license was required so as to prevent the violations.

10.

The acts and omissions of Respondent WDC, as set forth above, are cause for the suspension or revocation of the licenses and license rights of Respondent WDC pursuant to Code Section 10137 for employing or compensating William Anthony Donovan, while unlicensed, to solicit or negotiate with landlords and tenants, as set forth in paragraph 5 above.

11.

The acts and omissions of Respondent FREEMAN, as set forth above, is cause to suspend or revoke his licenses and license rights pursuant to Code Section 10177(d) for violation of:

(a) Code Section 10159.2 for failure to supervise the employees of Respondent WDC for activities which require a license.

(b) Code Section 10130 for allowing an unlicensed person to perform acts for which is real estate license is required.

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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/or license rights of WILLIAM DONOVAN & COMPANY, a California corporate broker and JOHN DAVID FREEMAN, individually and as the designated officer of William Donovan & Company, under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law..

Dated at San Diego, California
this 23rd. day of January, 1997.

J. CHRIS GRAVES
J. Chris Graves
Deputy Real Estate Commissioner

cc: William Donovan & Company
John David Freeman
BJK
Sacto.

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