

MAY - 8 2003

by Kathleen Contreras

STATE OF CALIFORNIA

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In the Matter of the Accusation of)
)
GLENN STEVEN BENNETT,) NO. H-2390 SD
)
Respondent.)

On February 5, 1999, 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 salesperson license. A restricted real estate salesperson license was issued to Respondent on March 1, 1999.

On August 7, 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
3 for the issuance to Respondent of an unrestricted real estate
4 broker license and that it would not be against the public
5 interest to 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 prior to and as a condition of issuance
10 of the license within nine months from the date of this Order:

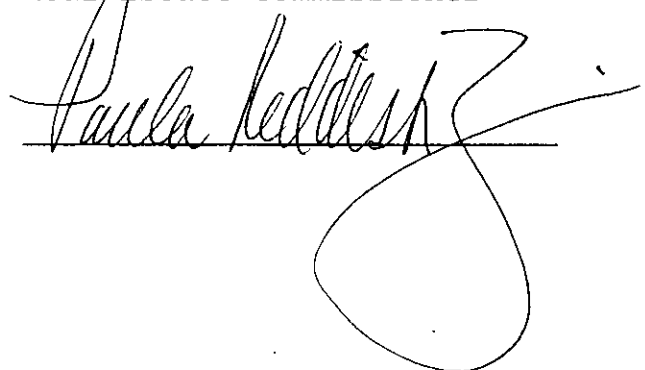
11 1. Submittal of a completed application and payment of
12 the fee for a real estate broker license.

13 2. Submittal of proof satisfactory to the Commissioner
14 of having taken and completed the trust fund accounting and
15 handling course specified in paragraph (3), subdivision (a) of
16 Section 10170.5 of the Business and Professions Code.

17 This Order shall be effective immediately.

18 DATED: April 17, 2003, 2003.
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20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner

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FEB - 9 1999

By Kathleen Contreras

* * *

DECISION AFTER REJECTION
AS TO GLENN STEVEN BENNETT ONLY.

Respondent GLENN STEVEN BENNETT was present and represented by Robert E. Muir of Potter & Taylor, Attorneys at Law.

1 On August 31, 1998, the Administrative Law Judge
2 submitted a Proposed Decision which the Commissioner declined to
3 adopt as his Decision herein. Pursuant to Section 11517(c) of the
4 Government Code of the State of California, Respondent GLENN
5 STEVEN BENNETT was served with notice of the determination not to
6 adopt the Proposed Decision of the Administrative Law Judge
7 along with a copy of said Proposed Decision. Respondent was
8 notified that the case would be decided upon the record, the
9 transcript of proceedings held on the above dates, and upon any
10 written arguments offered by Respondent and Complainant.

11 Careful consideration has been given to the record in
12 this case including the transcript of proceedings held on July 22,
13 1998, and the arguments submitted by Complainant and Respondent.

14 The following shall constitute the Decision of the Real
15 Estate Commissioner in this proceeding:

16 The Findings of Fact and Determination of Issues in the
17 Proposed Decision dated August 31, 1998, are hereby adopted as a
18 part of this Decision with the following additions, deletions, and
19 modifications:

20 Paragraph No. 8 in the Determination of Issues is
21 renumbered Paragraph No. 8(a).

22 Paragraph No. 8(b) is added as follows:

23 8(b). By way of further aggravation, the findings of
24 fact as to Respondent BENNETT establish a significant lack of
25 knowledge of the responsibilities of a real estate broker to
26 actively oversee the conduct of his business, including a lack of
27 knowledge of both the substantive requirements of the Real Estate

1 Law, and of administrative policies, rules, procedures and systems
2 necessary to reasonably and objectively oversee and manage others
3 that may be in his employ. His conduct need not have been
4 intentional in order to support disciplinary action. In Handeland
5 v. Department of Real Estate (1976) 58 Cal.App.3d 513, 129
6 Cal.Rptr. 810, the court explained that the laws within the
7 Department's jurisdiction are designed to protect the public
8 "... not only from conniving real estate salesmen but also from the
9 uninformed, negligent or unknowledgeable salesman [or broker]."
10 Ibid at pg. 518. It is determined that it would be in the best
11 interests of the public to provide Respondent the right to a
12 restricted salesperson license, where he would have the
13 opportunity to be under the close supervision of an employing
14 broker for a period of time.

15 * * *

16 ORDER

17 A. The real estate broker license(s) and licensing
18 rights of Respondent GLENN STEVEN BENNETT under the Real Estate
19 Law are hereby revoked.

20 B. A restricted real estate salesperson license shall
21 be issued to Respondent pursuant to Section 10156.6 of the Code if
22 he makes application therefor and pays to the Department of Real
23 Estate the appropriate fee for said license within ninety (90)
24 days from the effective date of the decision.

25 C. The restricted license issued to Respondent shall be
26 subject to all of the provisions of Section 10156.7 of the
27 Business and Professions Code and to the following limitations,

1 conditions and restrictions imposed under authority of Section
2 10156.6 of that Code:

3 (1) The restricted license issued to Respondent
4 may be suspended prior to hearing by Order of
5 the Real Estate Commissioner in the event of
6 Respondent's conviction or plea of nolo
7 contendere to a crime which is substantial
8 related to Respondent's fitness or capacity
9 as a real estate licensee.

10 (2) The restricted license issued to Respondent
11 may be suspended prior to hearing by Order of
12 the Real estate Commissioner on evidence
13 satisfactory to the Commissioner that
14 Respondent has violated provisions of the
15 California Real Estate Law, the Subdivided
16 Lands Law, Regulations of the Real Estate
17 Commissioner or conditions attaching to the
18 restricted license.

19 (3) Respondent shall not be eligible to apply for
20 the issuance of an unrestricted real estate
21 license, nor the removal of any of the
22 conditions of the restricted license, until
23 one (1) year has elapsed from the effective
24 date of this Decision.

25 (4) Respondent shall submit with any application
26 for license under an employing broker, or any
27 application for transfer to an new employing

1 broker, a statement signed by the prospective
2 employing real estate broker on a form
3 approved by the Department of Real Estate
4 which shall certify:

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

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

14 (5) Respondent shall, within nine (9) months from
15 the effective date of this Decision, present
16 evidence satisfactory to the Real Estate
17 Commissioner that Respondent has, since the
18 most recent issuance of an original or
19 renewal real estate license, taken and
20 successfully completed the continuing
21 education requirements of Article 2.5 of
22 Chapter 3 of the Real Estate Law for renewal
23 of a real estate license. If Respondent
24 fails to satisfy this condition, the
25 Commissioner may order the suspension of the
26 restricted license until the Respondent
27 presents such evidence. The Commissioner

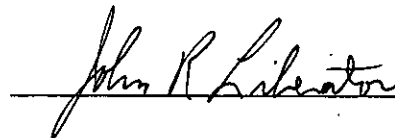
1 shall afford Respondent the opportunity for
2 hearing pursuant to the Administrative
3 Procedure Act to present such evidence.

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

13 This Decision shall become effective at 12 o'clock noon
14 on March 1, 1999.

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16 IT IS SO ORDERED February 5, 1999.

17 JOHN R. LIBERATOR
18 Acting Commissioner

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FEB - 9 1999

By Kathleen Contreras

* * *

AS TO ELIZABETH ZOE DEDERIAN ONLY.

On August 31, 1998, the Administrative Law Judge submitted a Proposed Decision which the Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent ELIZABETH

1 ZOE DEDERIAN was served with notice of my determination not to
2 adopt the Proposed Decision of the Administrative Law Judge
3 along with a copy of said Proposed Decision. Respondent was
4 notified that the case would be decided upon the record, the
5 transcript of proceedings held on the above dates, and upon any
6 written arguments offered by Respondent and Complainant.

7 Respondent ELIZABETH ZOE DEDERIAN has not submitted
8 written argument.

9 Careful consideration has been given to the record in
10 this case including the transcript of proceedings held on July 22,
11 1998. The following shall constitute the Decision of the Real
12 Estate Commissioner in this proceeding as to ELIZABETH ZOE
13 DEDERIAN only:

14 The Proposed Decision dated August 31, 1998, as to
15 ELIZABETH ZOE DEDERIAN is hereby adopted in full as the Decision
16 herein without any modifications or deletions thereto.

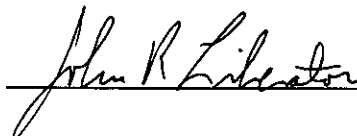
17 ORDER

18 The real estate salesperson license and licensing rights
19 of Respondent ELIZABETH ZOE DEDERIAN under the Real Estate Law are
20 hereby revoked.

21 This Decision shall become effective at 12 o'clock noon
22 on March 1, 1999.

23 IT IS SO ORDERED February 5, 1999.

24 JOHN R. LIBERATOR
25 Acting Commissioner

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FILED
OCT - 2 1998
DEPARTMENT OF REAL ESTATE

By *Laurie A. Zain*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
GLENN STEVEN BENNETT, and)
ELIZABETH ZOE DEDERIAN,)
Respondents.)

NO. H-2390 SD

OAH NO. L-1998050312

NOTICE

TO: Respondent GLENN STEVEN BENNETT, and his attorney
of Record, Robert E. Muir, and Respondent ELIZABETH ZOE DEDERIAN,
and her attorney of Record, Ralph S. Costantino.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated August 31, 1998, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated August 31, 1998, is attached
for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case will
be determined by me after consideration of the record herein



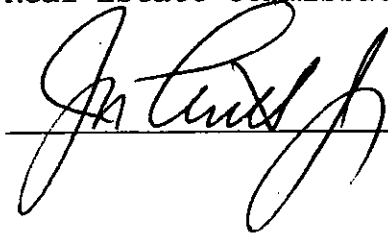
1 including the transcript of the proceedings held on July 22, 1998,
2 and any written argument hereafter submitted on behalf of
3 Respondents and Complainant.

4 Written argument of Respondents to be considered by me
5 must be submitted within 15 days after receipt of the transcript
6 of the proceedings of July 22, 1998, at the Sacramento office of
7 the Department of Real Estate unless an extension of the time is
8 granted for good cause shown.

9 Written argument of Complainant to be considered by me
10 must be submitted within 15 days after receipt of the argument of
11 Respondent at the Sacramento office of the Department of Real
12 Estate unless an extension of the time is granted for good cause
13 shown.

14 DATED: 9/28/98

15 JIM ANTT, JR.
16 Real Estate Commissioner

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

In the Matter of the Accusation of	)	No. H-2390 SD
	)	
GLENN STEVEN BENNETT and	)	OAH No. L-1998050312
ELIZABETH ZOE DEDERIAN,	)	
	)	
Respondents.	)	
_____	)	

PROPOSED DECISION

On July 22, 1998, Joyce A. Wharton, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California.

Diedre L. Johnson, Staff Counsel, represented the complainant.

Robert E. Muir, Attorney at Law, represented respondent Glenn Steven Bennett, who was present.

Ralph S. Costantino, Attorney at Law, represented respondent Elizabeth Zoe Dederian, who was present.

Evidence was received and the record remained open for submission of additional exhibits. On July 24, 1998, respondent Bennett filed the Declaration of Barbara Ammons which was marked Exhibit H; on July 27, 1998, complainant filed a Declaration of Auditor which was marked Exhibit 8; on July 30, 1998, Complainant filed a Memorandum of case authority which was marked as Exhibit 9 for the record. Exhibits H and 8 were received into evidence.

The record was closed and the matter was submitted on July 30, 1998.

FINDINGS OF FACT

1. On March 11, 1998, J. Chris Graves, acting in his official capacity as Deputy Real Estate Commissioner (hereinafter "complainant") of the State of California Department of Real Estate (hereinafter "Department"), filed Accusation No. H-2390 SD against respondents Glenn Steven Bennett (hereinafter "Bennett") and Elizabeth Zoe Dederian (hereinafter "Dederian"). Each respondent filed a timely Notice of Defense.

2. In 1985 the Department issued a real estate broker's license, No. 00775681, to Bennett. The license will expire April 19, 2000. There is no history of discipline.

Bennett's broker's license authorized him to do business individually and under two fictitious business names: Cowles Mountain Realty (hereinafter "CMR") and BGD Property Management Company (hereinafter BGD). The current charges relate to Bennett's conduct as the broker for BGD.

3. In 1983 the Department issued a real estate salesperson's license, No.00854598, to Dederian. The license will expire April 8, 2000. There is no history of discipline.

4. In 1987 Dederian created BGD as a property management company and operated it as a sole proprietor with a broker affiliate. BGD engaged in activities for which a real estate broker's license is required: it leased or rented, offered to lease or rent, solicited prospective tenants, collected rents on, and managed certain real properties in California on behalf of others for compensation.

5. In 1988 Bennett hired Dederian as a salesperson for CMR. In 1989, Dederian asked Bennett to become the broker for BGD. Bennett had no property management experience. He knew that Dederian had operated BGD for several years without any problems and he trusted her. Bennett agreed to become the broker for BGD for a compensation of \$100 per month.

In October 1989, respondents filed a Fictitious Business Name Statement for BGD, listing Dederian and Bennett as owners conducting the business as a "limited partnership". At the same time, Bennett registered BGD with the Department as a fictitious name for business conducted under his broker's license. BGD conducted its business at 3443 Camino Del Rio South, Suite 101, in San Diego, which Bennett registered as a branch office. He continued to conduct his real estate business at 8312 Lake Murray Boulevard, Suite J, in San Diego, which was a ten-minute drive from BGD's office.

BGD was in fact solely owned and operated by Dederian. Bennett was the broker of record, but his involvement in the operation of the business was limited. Bennett undertook to act as broker for BGD knowing the business belonged to Dederian and she wanted to remain in charge of its operation.

6. On November 10, 1989, Bennett signed a "BGD Property Management, Broker Authorization", stating Dederian had the right to sign checks and deposit funds for the BGD Property Management Trust Account. A trust account, number 550103175 (hereinafter "Trust Account"), was opened January 3, 1991, at North County Bank in the name "BGD Property Management Company", with Dederian as the sole signatory. As of June 30, 1997, this remained the only account maintained by respondents to handle the BGD trust funds. Dederian conducted and recorded all trust account transactions.

7. When he assumed the position of Broker for BGD, Bennett met with Dederian to look over the property files and the trust account records. He sought advice from his father, also a broker, about his trust fund responsibility and learned he had to authorize Dederian to use the trust fund account. He did not know he had to be signatory on the trust account. He understood certain records had to be maintained for three years.

Bennett prepared an "Agreement" on CMR letterhead that set out the respective responsibilities of CMR and BGD in the operation of BGD's property management business. The document purported to be "made and entered into this 9th day of April, 1996". Bennett testified that the document summarized the parties' prior verbal agreements. Bennett and Dederian signed the document and Bennett dated it "4-9-96". The parties agreed to "adhere to the rules of the Business and Professions Code". The agreement stated that BGD was "solely responsible for business related decisions and duties such as: ...Monthly reports for property owners (to be reviewed by CMR)...Handling of Trust Account (to be reviewed by CMR)...Management and rental contracts (to be reviewed by CMR)...Systematic record keeping per DRE rules." In fact, Bennett drafted the agreement after he was informed of the Department's audit. He and Dederian signed it on July 17, 1998.

Over the years, Bennett's supervision of Dederian and BGD's property management business was regular but minimal. He consulted with Dederian either by phone or at the branch office approximately once each month to review property files and answer any questions. There was no set schedule; it was on an as needed basis. He was available by phone to provide real estate information and he had access to group legal services to answer any legal questions relating to BGD. Bennett did not review the trust account or any other financial records of BGD because he felt he lacked sufficient knowledge of bookkeeping or accounting to be able to recognize any irregularities. He trusted Dederian to maintain good records. Dederian hired and supervised the employees of BGD. She prepared and maintained all the books and records pertaining to the business. She executed all agreements and contracts entered by BGD. The branch office lease was in Dederian's name. She paid BGD's rent and office expenses. Bennett believed his supervisory duties were fulfilled by virtue of his physical proximity to the BGD office and his ability to be there if needed. Bennett, either expressly or impliedly, delegated most of his broker's duties and authority to Dederian.

8. By 1996 BGD was managing 58 single family residences and 7 apartment complexes with 65 units for approximately 53 owners. BGD collected an average of \$65,300 per month in rent receipts and charged a management fee of 5.5% to 10% of collected rents.

9. On July 7, 1997, the Department commenced an audit of BGD's property management activities for the period January 1, 1996 to June 30, 1997. An Audit Report was issued August 6, 1997.

10. Title 10, California Code of Regulations (hereinafter "CCR") section 2831 requires "every broker" to maintain a record of all trust funds received and disbursed. This control record must contain specific information, including the daily balance of the account, set forth in chronological sequence and in columnar form. Respondents maintained no control record for the Trust Account. The only records available for examination by the auditor were the check register, cancelled checks, deposit slips and bank statements. Neither Dederian nor Bennett kept a control record of any daily balance of the account.

11. CCR section 2831.1 requires "the broker" to keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account. This separate record must contain specific information, including the balance after

posting each transaction, set forth in chronological sequence and in columnar form. Dederian did maintain separate beneficiary and transaction records in the form of cash flow statements and transaction registers for each property. But the separate records were incomplete because they did not show the balance after posting a transaction on any given date. Bennett did not keep any separate record for each trust account beneficiary.

12. CCR section 2831.2 requires a monthly reconciliation of the balance of all separate records maintained under section 2831.1 with the record of all trust funds maintained under section 2831. A record of the reconciliation must be maintained and must include certain information, including the trust fund liabilities of the broker to each principal, beneficiary or transaction. Neither Dederian nor Bennett performed or maintained the required monthly reconciliation nor did they keep a monthly record of the trust fund liabilities.

13. Bennett offered no explanation for the record deficiencies. Dederian explained that the business became very busy and demanding, she worked alone with only some part-time help, and fell behind in her bank reconciliation. She asserts she did not intentionally avoid the task, she "just got overloaded". Bennett never asked to look at the Trust Account records. Dederian never told Bennett of her problem or asked him for assistance because she "never thought he was part of the loop".

14. Business and Professions Code¹ section 10145, subdivision (a)(1) provides that a real estate broker who accepts funds belonging to others in connection with a transaction shall deposit all funds that are not immediately transferred to the principal into a trust fund account maintained by the broker. The trust funds must be maintained there until disbursed by the broker in accordance with the instructions from the person entitled to the funds. Subdivision (c) provides that a salesperson who accepts trust funds from others on behalf of her licensing broker shall, if directed by the broker, deposit the funds into the broker's trust fund account.

CCR section 2832, subdivision (a), as that section was in effect in 1996, specified that compliance with section 10145 requires that the broker place trust funds into a trust fund account maintained pursuant to CCR section 2830. Section 2830, as in effect in 1996, required that the broker deposit the trust funds "into a trust fund account in the name of the broker as trustee".

Bennett never maintained a trust account in his name as trustee for the trust funds received in the operation of BGD.

15. Section 10176, subdivision (e), specifies that "[c]ommingling with his own money or property the money or other property of others which is received and held by him" is a cause for discipline of a real estate license. CCR section 2835, states that "commingling" as used in section 10176(e) is prohibited except as specified in section 2835.

Dederian managed the BGD Trust Account. She used the account for receipts and disbursements related to the Tex Street property, a rental property owned by her and managed through BGD. Dederian provided no evidence to show that her use of the Trust Account and its funds fell within any exception specified in CCR section 2835.

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

16. CCR section 2832.1, as that section was in effect in 1996, provides:

"Compliance with Section 10145 of the Code requires that a real estate broker not disburse, nor cause or permit the disbursement of, trust funds from a trust fund account without the prior written consent of every principal who is an owner of the funds in the account if the disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of said funds. The written consent shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds."

As of June 30, 1997, the BGD Trust Account balance was less than the existing aggregate trust fund liability of BGD to all owners of the funds. The Trust Account shortage was \$22,734.77.² Bennett delegated the Trust Account management and responsibility to Dederian and for eight years chose not to review any account records. In so doing, he permitted the disbursement of trust fund in violation of CCR section 2832.1. Bennett did not obtain any written consents before disbursements that reduced the Trust Account balance to an amount less than the broker's aggregate trust fund liability.

17. Dederian caused the Trust Account shortage. In 1993 Dederian began to use the Trust Account funds to cover not only BGD expenses and employee compensation, but also the expenses on her own Tex Street property which regularly ran a negative balance. She explained that she used the trust funds because she was "just short". She would reimburse the Trust Account by the first of the next month, so there was "just a brief cash flow shortage". As the years went by, she used more and more of the trust funds to cover her own expenses. She did not feel she could ask anyone for a loan.

Prior to the audit, Bennett had no knowledge that Dederian commingled and misused Trust Account funds or that she carried a Trust Account balance less than the trust fund liability. Bennett did not use any Trust Account funds for his own benefit.

18. CCR section 2834 provides that withdrawals from the broker's trust fund account require either the signature of the broker or, if authorized in writing by the broker, the signature of the salesperson licensed to the broker. As set forth in Finding 6, Bennett did give Dederian written authorization to make withdrawals from the Trust Account.

19. CCR section 2726 requires that a broker have a written agreement with each licensed broker in his employ under a broker/salesperson contract. This agreement must be dated, signed and cover the material aspects of the relationship, including the supervision of licensed activities, duties and compensation.

² Dederian denied the shortage of \$22,734.77, but admitted a shortage of \$19,030.64. Neither Dederian nor Bennett offered any evidence to establish the lesser amount.

From January 1995 through June 1997, Michael Petersen, a licensed real estate broker, was employed by BGD as an independent contractor pursuant to a hand written agreement dated January 9, 1995, and signed by Dederian and Petersen. Dederian hired Petersen without consulting or informing Bennett. Petersen's duties included talking with prospective renters, setting appointments, showing properties, collecting the applications and credit check fees, rental move-ins, field inspections and lease renewals. CCR section 2726 required a written agreement between Petersen and Bennett.

Petersen was paid, at least monthly, by checks issued on the BGD Trust Account. During the audit period, Petersen was paid approximately \$9400 from the Trust Account. The last check was issued June 25, 1997. Petersen worked for and was paid by BGD for two and one-half years, yet Bennett, the supervising broker, learned of this only after Petersen left BGD.

20. Complainant charges Bennett with violation of CCR section 2725. As that section was in effect in 1996, it pertains to "review of instruments" and provides that when a salesperson prepares or signs certain documents, the broker must review, initial and date the document. The broker may delegate this responsibility and authority to a salesperson licensed to him under certain conditions. Complainant presented insufficient evidence to establish either the particular documents at issue or the failure of respondent to properly delegate this responsibility.

21. Complainant alleges that Bennett's failure to comply with the statutes and regulations as set forth in Findings 10, 11, 12, 16, and 19 constitutes a willful disregard or violation of the Real Estate Law within the meaning of section 10177, subdivision (d). Bennett contends his non-compliance was not willful.

As a licensed broker Bennett was required to either know the rules and regulations of his trade or make a reasonable effort to become aware of them. He assumed the role of designated broker for BGD and purportedly remained ignorant of his duties for eight years despite his access to legal advice and Department publications. He offered no explanation for this self-imposed ignorance.

The term "willful" as used in license disciplinary statutes does not require wrongful intent; it refers to intentional rather than accidental or involuntary behavior, and "implies that the person knows what he is doing, intends to do what he is doing and is a free agent". See In re Trombley (1948) 31 Cal.2d 801,807; Murrill v. State Board of Accountancy (1950) 97 Cal.App.2d 709, 713; Mickelson v. Contractors' State License Board (1979) 95 Cal.App.3d 631, 635.

In 1989 Bennett, as a licensee, knew a designated broker had certain responsibilities for the proper operation of a property management business. He intentionally assumed the position of designated broker for an ongoing business and held himself out as such to the public and the Department. Bennett was a "free agent"; none of his decisions, actions or omissions was accidental or involuntary. He made a conscious decision, as reflected in the "April 6, 1996" written agreement, to allow Dederian to conduct the business on her own with minimal oversight. He purposely decided not to review or have any responsibility for the Trust Account. He chose not to review the books and records of BGD that were available to him and would have alerted the most unsophisticated licensee that Petersen was employed by BGD and was being paid from the Trust

Account. He never used the group legal services available to him to update himself on the Real Estate Law.

Bennett's commitment to ignorance was willful, therefore, his omissions in the above referenced findings constitute a willful disregard of the Real Estate Law. To hold otherwise would render the entire regulatory scheme meaningless and ineffective in the face of any licensee who claims an inexcusable ignorance of the laws and regulations.

22. Section 10177, subdivision (h) authorizes discipline of a broker licensee who fails to exercise reasonable supervision over the activities of his salespersons. For eight years, Bennett's supervision was minimal and passive. He was available "as needed" to advise Dederian, but left full management and control of the business in her hands. He made no effort to see that BGD, Dederian or any BGD employees were in compliance with the Real Estate Law and regulations. He never reviewed the important business and financial records. His lack of bookkeeping and accounting knowledge is no excuse. Qualified bookkeepers and accountants are readily available for hire to perform periodic reviews. Bennett failed to exercise reasonable supervision over the activities of his salesperson, Dederian, in the operation of BGD.

23. Section 10130 makes it unlawful for any person to engage in the business, act in the capacity of, or assume to act as a real estate broker without first obtaining a real estate license. Complainant contends Dederian willfully violated this section by acting as a broker in the conduct of BGD's property management business. Dederian admitted that in operating BGD she did function as a broker as that term is defined by section 10131, subdivision (b). However, the evidence does not establish her conduct to be a willful violation of section 10130.

The license certification issued by complainant reveals that, as of January 1, 1993,³ Bennett was Dederian's employing broker. Dederian's license expired on February 12, 1996, and was issued again on April 9, 1996, however, no employing broker was listed as of that date. No evidence was presented about Dederian's specific activities for BGD between February 13 and April 8, 1996. The certification states that on July 17, 1997, Dederian was "activated in the employ of [Bennett] as of 04-09-96". Bennett explained that, through oversight, he neglected to timely file the paperwork to re-register Dederian as a salesperson licensed to him. None of the parties presented any clear or meaningful evidence about the purported gaps in Dederian's license status, nor did they address the effect of the delayed, but apparently retroactive, registration on the current charges. At all relevant times Bennett remained licensed as a broker doing business as BGD with a branch license in effect for BGD's business address. Both Bennett and Dederian believed she was functioning as a salesperson licensed to Bennett, and he continued his limited role in supervising her activities.

24. Dederian's conduct in using Trust Account funds to cover expenses of her business, BGD, and her own Tex Street property constitutes dishonest dealing within the meaning of sections 10176, subdivision (i) and 10177, subdivision (j).

³ Dederian was originally licensed as a salesperson in 1983. The license certification contained no information about her license prior to January 1, 1993.

By managing the Trust Account, Dederian assumed duties as a fiduciary to all clients whose funds were placed in the account. She intentionally used the clients' funds for her own benefit, and knowingly caused a significant shortage that placed the clients' interests at risk. Dederian's misuse of trust funds evidences "bad faith, lack of integrity and faithlessness which constitutes dishonesty and dishonest dealing". Chodur v. Edmonds (1985) 174 Cal.App.3d 565, 572 - 573.

25. Bennett and Dederian were generally forthright and cooperative with the Department's auditor. When Bennett learned of the Trust Account shortage, he insisted Dederian sell BGD and deposit proceeds to reimburse the account. Dederian sold BGD in July 1997, and deposited \$21,049 from the proceeds into the Trust Fund Account. Respondents contend that all principals of BGD have received a full return of the funds held in trust for them and no one suffered any loss. There is no evidence to the contrary.

Bennett currently conducts real estate resale activities under the fictitious business name Cowles Mountain Realty at his main office which is also his residence. He has one licensed employee who works as a part time agent. He conducts no property management business.

Dederian is currently employed by Ranch and Sea Real Estate where she works in sales and as a property manager. Her duties involve visiting properties for maintenance calls. She does not handle any trust account activity.

DETERMINATION OF ISSUES

For the First Cause of Action against Respondent Bennett:

Bennett asserts Business and Professions Code section 10179 as a defense to the discipline of his license. That section provides:

"No violation of any provisions of [the Real Estate Law] by any real estate salesman or employee of any licensed real estate broker shall cause the revocation or suspension of the license of the employer of the salesman or employee unless it appears upon a hearing by the commissioner that the employer had guilty knowledge of such violation."

Bennett contends Dederian caused all of the violations and, absent his actual knowledge of her misconduct, his license cannot be disciplined. The Trust Account shortage, the commingling and the misuse of trust funds was caused by the affirmative conduct of Dederian, of which Bennett had no knowledge and for which his license will not be disciplined.

The evidence is sufficiently clear and convincing that Bennett failed to meet several obligations that the Real Estate Law specifically placed on him as the broker. The fact that he left the full management and control of BGD to Dederian did not abrogate his ultimate responsibility. A broker may delegate some duties and authority to his salesperson, but he still remains charged with responsibility for the company's compliance with the Real Estate Law, "for otherwise with no such fixed responsibility, the statutory purpose would be frustrated". Norman v. Department of

Real Estate (1979) 93 Cal.App.3d 768, 776-777. The duties imposed by Business and Professions Code section 10145, subdivision (a)(1), and CCR sections 2831, 2831.1, 2831.2, 2832, 2832.1 and 2726 rested squarely on Bennett. For eight years he made no reasonable effort to see that he, or Dederian acting on his behalf, was in compliance.

1. Cause was established to discipline respondent Bennett's broker's license pursuant to Business and Professions Code section 10177(d) for willfully disregarding rules and regulations, to wit, Title 10, CCR section 2831, by reason of Findings 2, 4, 5, 6, 7, 8, 9, 10, 13 and 21.

2. Cause was established to discipline respondent Bennett's broker's license pursuant to Business and Professions Code section 10177(d) for willfully disregarding rules and regulations, to wit, Title 10, CCR section 2831.1, by reason of Findings 2, 4, 5, 6, 7, 8, 9, 11, 13 and 21.

3. Cause was established to discipline respondent Bennett's broker's license pursuant to Business and Professions Code section 10177(d) for willfully disregarding rules and regulations, to wit, Title 10, CCR section 2831.2, by reason of Findings 2, 4, 5, 6, 7, 8, 9, 12, 13 and 21.

4. Cause was established to discipline respondent Bennett's broker's license pursuant to Business and Professions Code section 10177(d) for willfully disregarding rules and regulations, to wit, Business and Professions Code section 10145, by reason of Findings 2, 4, 5, 6, 7, 8, 9, 14 and 21.

5. Cause was established to discipline respondent Bennett's broker's license pursuant to Business and Professions Code section 10177(d) for willfully disregarding rules and regulations, to wit, Title 10, CCR section 2726, by reason of Findings 2, 4, 5, 6, 7, 8, 9, 19 and 21.

6. Cause was not established to discipline respondent Bennett's broker's license pursuant to Business and Professions Code section 10177(d) for willfully disregarding rules and regulations, to wit, Title 10, CCR section 2834, by reason of Findings 2, 4, 5, 6, 7, 8, 9 and 18.

7. Cause was established to discipline respondent Bennett's broker's license pursuant to Business and Professions Code section 10177(h) for failure to exercise reasonable supervision over the activities of his salesperson, by reason of Findings 2, 3, 4, 5, 6, 7, 8, 9 and 22.

8. By way of mitigation, Bennett was immediately responsive and cooperative with the Department's auditor. He terminated his business relationship with Dederian and BGD. None of his conduct as broker indicates an inclination to defraud or any dishonest dealing with clients, trust funds or real estate transactions. There is no evidence of any Real Estate Law violations in the conduct of Cowles Mountain Realty. However, there are sufficient factors in aggravation to warrant discipline of Bennett's license. His conduct and testimony show an ongoing failure to fully comprehend some significant professional responsibilities and the laws that apply to his day to day activities as a broker. He placed inaccurate information on the fictitious name statement. He back dated the self-serving "April 9, 1996" agreement and appears not to understand why this was inappropriate. A restricted license will give Bennett the opportunity to finally learn the rules and regulations that apply to his licensed activities.

For the Second Cause of Action against Respondent Dederian:

9. Cause was not established to discipline respondent Dederian's salesperson's license pursuant to Business and Professions Code section 10177(d) for willfully violating Business and Professions Code section 10130, by reason of Findings 1, 2, 3, 4, 5, 6, 7, 8, 18, and 23.

10. Cause was established to discipline respondent Dederian's salesperson's license pursuant to Business and Professions Code sections 10176, subdivision (e), and 10177, subdivision (d), for commingling her own money with client trust funds, by reason of Findings 3, 4, 5, 6, 8, 9, 14, and 15.

11. Cause was established to discipline respondent Dederian's salesperson's license pursuant to Business and Professions Code sections 10176(i) and 10177(j), for conduct which constitutes dishonest dealing, by reason of Findings 3, 4, 5, 6, 8, 9, 14, 15, 17 and 24.

12. By way of mitigation, the evidence showed that Dederian cooperated with the auditor and provided the files and records that existed. She sold BGD in July, 1997, and repaid \$21,049 from sale proceeds to the Trust Account to make up the shortage. This is commendable but it does not mitigate the serious misconduct. It is fortuitous that any client suffered no loss. But for the Department's audit, Dederian would have continued to commingle funds and carry an ever-increasing Trust Account shortage.

Factors in aggravation include the intentional misuse of trust funds over a long period and the posting of several false accounting entries in an attempt to "balance" the accounts. At hearing Dederian did not acknowledge the gravity of her misconduct. She gave no indication that a similar ethical lapse would not recur in her performance of licensed activities. She has forfeited her privilege to hold a real estate salesperson's license.

ORDER

Re: Respondent Glenn Steven Bennett

not adapted

All licensing rights of respondent Glenn Steven Bennett under Real Estate Broker's license, Number 00775681, are revoked; provided, however, a restricted real estate broker 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 broker's license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.

not adopted
4. 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.

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

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

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

adopted
Re: Respondent Elizabeth Zoe Dederian

All licensing rights of respondent Elizabeth Zoe Dederian under Real Estate Salesperson's license number 00854598 are revoked.

Dated: August 31, 1998


JOYCE A. WHARTON
Administrative Law Judge
Office of Administrative Hearings

FILED
MAY 28 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Dy

In the Matter of the Accusation of

GLENN STEVEN BENNETT and
ELIZABETH ZOE DEDERIAN

Case No. H-2390 SD

OAH No. L-1998050312

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
Office of Administrative Hearings, 1350 Front Street, Suite 6022,
San Diego, California 92101

on Wednesday -- July 22, 1998, at the hour of 9:00 AM
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: May 28, 1998

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

1 DEIDRE L. JOHNSON, Counsel
2 State Bar No. 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6 Telephone: (916) 227-0789
7

FILED
MAR 18 1998
DEPARTMENT OF REAL ESTATE

By Jean Dunsen

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 GLENN STEVEN BENNETT and)
13 ELIZABETH ZOE DEDERIAN,)
Respondents.)

NO. H-2390 SD
ACCUSATION

14 The Complainant, C. Chris Graves, a Deputy Real Estate
15 Commissioner of the State of California, for causes of Accusation
16 against GLENN STEVEN BENNETT and ELIZABETH ZOE DEDERIAN, is
17 informed and alleges as follows:

18 PRELIMINARY ALLEGATIONS

19 I

20 The Complainant, J. Chris Graves, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 against Respondents in his official capacity and not otherwise.

23 II

24 Respondents GLENN STEVEN BENNETT and ELIZABETH ZOE
25 DEDERIAN are presently licensed and/or have license rights under
26 the Real Estate Law, Part 1 of Division 4 of the California
27 Business and Professions Code (hereafter the Code).

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III

At all times herein mentioned, Respondent GLENN STEVEN BENNETT (hereafter BENNETT) was and is licensed by the Department of Real Estate (hereafter the Department) as a real estate broker, individually and doing business as BGD PROPERTY MANAGEMENT COMPANY.

IV

At all times herein mentioned, Respondent ELIZABETH ZOE DEDERIAN (hereafter DEDERIAN) was and is licensed by the Department as a real estate salesperson. At no time herein between approximately February 14, 1996 and July 17, 1997, was DEDERIAN duly employed by any licensed real estate broker. On or about July 17, 1997, DEDERIAN became duly employed by BENNETT.

V

At least within the last three years, BENNETT, doing business as BGD PROPERTY MANAGEMENT COMPANY, engaged in activities for which a real estate license is required, and leased or rented, offered to lease or rent, solicited prospective tenants, and/or collected rents on, and managed certain real properties in California on behalf of others, for or in expectation of compensation.

FIRST CAUSE OF ACTION
(Respondent BENNETT only)

VI

Beginning in July of 1997, the Department conducted an audit of BENNETT's business. During the course of the property management activities described above, BENNETT received and disbursed funds in trust on behalf of others, and deposited the



1 trust funds into a bank account at North County Bank, San Diego,
2 California, bank account number 550103175, in the name of "BGD
3 PROPERTY MANAGEMENT CO.", (hereafter the Trust Account).

4 VII

5 Within the last three years, BENNETT authorized or
6 permitted withdrawals to be made from the Trust Account on the
7 signature of DEDERIAN only.

8 VIII

9 In connection with the collection and disbursement of
10 the above trust funds, BENNETT failed to deposit and maintain the
11 trust funds in the Trust Account, or in a neutral escrow
12 depository, or to deliver them into the hands of the owners of the
13 funds as required by Section 10145 of the Code, in such a manner
14 that as of June 30, 1997, there was a trust fund shortage in the
15 approximate sum of \$25,690.75.

16 IX

17 In connection with the receipt and disbursement of trust
18 funds as above alleged, BENNETT:

19 (a) Failed to maintain a written control record of all
20 trust funds received and disbursed containing all
21 information required by Section 2831 of Title 10,
22 California Code of Regulations (hereafter the
23 Regulations);

24 (b) Failed to deposit trust funds into a trust account
25 in the name of Respondent BENNETT as trustee at a
26 bank or other financial institution, in conformance
27 with Section 2832 of the Regulations;



- 1 (c) Failed to maintain separate beneficiary or
2 transaction records containing all information
3 required by Section 2831.1;
4 (d) Failed to reconcile the balance of separate
5 beneficiary or transaction records with the control
6 records of trust funds received and disbursed at
7 least once a month, and/or failed to maintain a
8 record of such reconciliations as required by
9 Section 2831.2 of the Regulations;
10 (e) Failed to obtain the prior written consent of the
11 principals for the reduction of the aggregate
12 balance of trust funds in the Trust Account to an
13 amount less than the existing aggregate trust fund
14 liability to the owners of said funds, in
15 conformance with Section 2832.1 of the Regulations;
16 (f) Failed to have a written broker-salesperson
17 agreement with Michael Lee Peterson, a licensed real
18 estate broker working as an agent within the last
19 three years for BGD PROPERTY MANAGEMENT COMPANY,
20 covering material aspects of the relationship as
21 required by Section 2726 of the Regulations; and,
22 (g) At least from February 14, 1996, failed to be a
23 signatory on the Trust Account as the broker for the
24 company, and/or failed to authorize in writing a
25 duly licensed salesperson employed by the broker to
26 be a signatory on the Trust Account as required by
27 Section 2834 of the Regulations.



1 X

2 Within the last three years and to at least June 30,
3 1997, BENNETT failed to exercise reasonable supervision over the
4 property management activities of DEDERIAN and BGD PROPERTY
5 MANAGEMENT COMPANY, including but not limited to the following:
6 BENNETT permitted, ratified and/or caused the conduct described in
7 Paragraphs VI through IX above to occur; and in addition, BENNETT
8 failed to reasonably or adequately review, oversee, inspect and
9 manage the personnel and activities of the company, and/or to
10 establish reasonable policies, rules, procedures and systems for
11 such review, oversight, inspection and management, including but
12 not limited to the handling of trust funds in compliance with the
13 law.

14 XI

15 The acts and/or omissions of Respondent BENNETT as
16 alleged above constitute grounds for disciplinary action under the
17 following provisions:

- 18 (a) As to Paragraphs VI and IX(b), under Section
19 10145 of the Code and Section 2832 of the
20 Regulations in conjunction with Section 10177(d)
21 of the Code.
- 22 (b) As to Paragraphs VII and IX(g), under Section 2834
23 of the Regulations, in conjunction with Section
24 10177(d) of the Code.
- 25 (c) As to Paragraph VIII, under Section 10145 of the
26 Code in conjunction with Section 10177(d) of the
27 Code.



- 1 (d) As to Paragraph IX(a), under Section 2831 of the
2 Regulations in conjunction with Section 10177(d) of
3 the Code.
4 (e) As to Paragraph IX(b), under Section 2832 of the
5 Regulations in conjunction with Section 10177(d) of
6 the Code.
7 (f) As to Paragraph IX(c), under Section 2831.1 of the
8 Regulations in conjunction with Section 10177(d) of
9 the Code.
10 (g) As to Paragraph IX(d), under Section 2831.2 of the
11 Regulations in conjunction with Section 10177(d) of
12 the Code.
13 (h) As to Paragraph IX(e), under Section 2832.1 of the
14 Regulations in conjunction with Section 10177(d) of
15 the Code.
16 (i) As to Paragraph IX(f), under Section 2726 of the
17 Regulations in conjunction with Section 10177(d) of
18 the Code.
19 (j) As to Paragraphs X, under Section 2725 of the
20 Regulations in conjunction with Section 10177(d) of
21 the Code, and Section 10177(h) of the Code.

22 SECOND CAUSE OF ACTION
23 (Respondent DEDERIAN only)

24 XII

25 At all times herein mentioned, DEDERIAN was the majority
26 owner of BGD PROPERTY MANAGEMENT COMPANY, and directed and
27 controlled its business affairs on a daily basis without the
reasonable supervision of a duly licensed employing broker.



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XIII

Within the last three years and to at least June 30, 1997, DEDERIAN, who is licensed as a real estate salesperson, acted or assumed to act as a real estate broker in conducting said business, including but not limited to the following: DEDERIAN actually ran the property management business of BGD PROPERTY MANAGEMENT COMPANY, hired and directed employees and agents of the company, entered into management contracts with property owners, deposited and/or withdrew monies or caused such deposits and/or withdrawals to be made, including commissions and trust funds, made unilateral decisions materially affecting the operation of the company, kept material books and records of the company, and disbursed monies for the expenses of the operation of the company.

XIV

Respondent DEDERIAN commingled monies belonging to her and/or pertaining to real property owned by her with monies belonging to others in the Trust Account, including but not limited to moneys owned by DEDERIAN in connection with her real property located at 5775 Tex Street, San Diego. DEDERIAN disbursed trust funds from the Trust Account for her own benefit, for company expenses, and for purposes and uses not authorized by the owners of the funds, in such a manner that as of June 30, 1997, approximately \$12,563.91 of the total trust fund shortage alleged in Paragraph VIII above was caused by DEDERIAN's personal negative balances allocated to the account.

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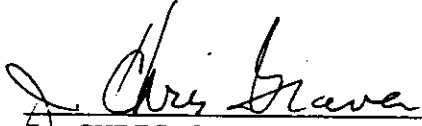
XV

The acts and/or omissions of DEDERIAN alleged in Paragraphs XII and XIII above violate Section 10130 of the Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d) of the Code.

XVI

The acts and/or omissions of DEDERIAN alleged in Paragraph XIV above constitute grounds for disciplinary action under the provisions of Sections 10176(e) and 10176(i) of the Code. In the alternative, said acts and/or omissions constitute grounds for disciplinary action under the provisions of Section 10177(j) 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 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 other provisions of law.


J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 11th day of March, 1998