

FILED  
JUL 25 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Conteras

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
WILLIAM FRANK COGAN, JR., ) NO. H-2405 SD  
Respondent. )

ORDER GRANTING REINSTATEMENT OF LICENSE

On December 8, 1998, an Order was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on February 2, 1999, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On November 27, 2000, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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

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

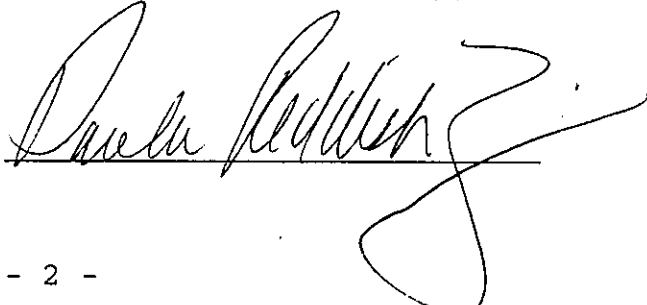
13 1. Submittal of a completed application and payment of  
14 the fee for a real estate broker license.

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

20 This Order shall be effective immediately.

21  
22 DATED: July 18, 2001

23  
24 PAULA REDDISH ZINNEMANN  
25 Real Estate Commissioner

26   
27

1 Department of Real Estate  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789.  
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FILED  
DEC 21 1998  
DEPARTMENT OF REAL ESTATE

*Laurie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 WILLIAM FRANK COGAN, JR., )  
13 Respondent. )  
14

NO. H-2405 SD

STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between WILLIAM FRANK  
16 COGAN, JR. (hereinafter "Respondent "), and the Complainant,  
17 acting by and through David A. Peters, Counsel for the Department  
18 of Real Estate, as follows for purpose of settling and disposing  
19 of the Accusation filed June 2, 1998 in this matter:

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

27 ///

H-2405 SD

- 1 -

STIPULATION OF  
WILLIAM FRANK COGAN, JR.

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

5           3.     On June 18, 1998, Respondent filed a Notice of  
6     Defense pursuant to Section 11505 of the Government Code for the  
7     purpose of requesting a hearing on the allegations in the  
8     Accusation. Respondent hereby freely and voluntarily withdraws  
9     said Notice of Defense. Respondent acknowledges that he  
10    understands that by withdrawing said Notice of Defense he will  
11    thereby waive his right to require the Commissioner to prove the  
12    allegations in the Accusation at a contested hearing held in  
13    accordance with the provisions of the APA and that he waives other  
14    rights afforded to him in connection with the hearing such as the  
15    right to present evidence in defense of the allegations in the  
16    Accusation and the right to cross-examine witnesses.

17          4.     This Stipulation is based on the factual  
18    allegations contained in the Accusation. In the interest of  
19    expedience and economy, Respondent chooses not to contest these  
20    allegations, but to remain silent and understands that, as a  
21    result thereof, these factual allegations, without being admitted  
22    or denied, will serve as a prima facie basis for the disciplinary  
23    action stipulated to herein. The Real Estate Commissioner shall  
24    not be required to provide further evidence to prove said factual  
25    allegations.

26    ///

1           5.     It is understood by the parties that the Real  
2 Estate Commissioner may adopt the Stipulation and Agreement as his  
3 Decision in this matter, thereby imposing the penalty and  
4 sanctions on Respondent's real estate license and license rights  
5 as set forth in the below "Order". In the event that the  
6 Commissioner in his discretion does not adopt the Stipulation and  
7 Agreement, it shall be void and of no effect, and Respondent shall  
8 retain the right to a hearing and proceeding on the Accusation  
9 under all the provisions of the APA and shall not be bound by any  
10 admissions or waiver made herein.

11           6.     The Order or any subsequent Order of the Real  
12 Estate Commissioner made pursuant to this Stipulation and  
13 Agreement shall not constitute an estoppel, merger or bar to any  
14 further administrative or civil proceedings by the Department of  
15 Real Estate with respect to any matters which were not  
16 specifically alleged to be causes for accusation in this  
17 proceeding.

18           7.     Respondent has received, read, and understands the  
19 "Notice Concerning Costs of Subsequent Audits". Respondent  
20 understands that by agreeing to this Stipulation and Agreement,  
21 the findings set forth below in the DETERMINATION OF ISSUES become  
22 final, and that the Commissioner may charge Respondent for the  
23 costs of any audit conducted pursuant to Section 10148 of the  
24 Business and Professions Code to determine if the violations have  
25 been corrected. The maximum costs of said audit will not exceed  
26 \$3,700.00.

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

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

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

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

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



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

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

15 F. Pursuant to Section 10148 of the Business and  
16 Professions Code, Respondent shall pay the Commissioner's  
17 reasonable cost for an audit to determine if Respondent has  
18 corrected the trust fund violations found in Paragraph I of the  
19 Determination of Issues. In calculating the amount of the  
20 Commissioner's reasonable cost, the Commissioner may use the  
21 estimated average hourly salary for all persons performing audits  
22 of real estate brokers, and shall include an allocation for travel  
23 costs, including mileage, time to and from the auditor's place of  
24 work and per diem. The Commissioner's reasonable costs shall in  
25 no event exceed \$3,700.00.

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- 1                   (1) Respondent shall pay such cost within 45 days of  
2                   receipt of an invoice from the Commissioner  
3                   detailing the activities performed during the audit  
4                   and the amount of time spent performing those  
5                   activities;  
6                   (2) If Respondent fails to pay, within 45 days from  
7                   receipt of the invoice specified above, the  
8                   Commissioner's reasonable costs for an audit to  
9                   determine if Respondent has corrected the  
10                  violations found as set forth in the Determination  
11                  of Issues above, the Commissioner may order the  
12                  indefinite suspension of Respondent's real estate  
13                  license and license rights. The suspension shall  
14                  remain in effect until payment is made in full, or  
15                  until Respondent enters into an agreement  
16                  satisfactory to the Commissioner to provide for  
17                  such payment. The Commissioner may impose further  
18                  reasonable disciplinary terms and conditions upon  
19                  Respondent's real estate license and license rights  
20                  as part of any such agreement; and  
21                  (3) Should no order vacating the stay be issued, either  
22                  in accordance with this condition or any other  
23                  condition of this Order, the stay imposed herein  
24                  shall become permanent.

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1           G.    Any restricted real estate broker license issued to  
2 Respondent may be suspended or revoked for a violation by  
3 Respondent of any of the conditions attaching to the restricted  
4 license.

5           8/27/98

6           DATED

7           David A. Peters

8           DAVID A. PETERS, Counsel  
9           DEPARTMENT OF REAL ESTATE

10           \* \* \*

11           I have read the Stipulation and Agreement, and its  
12 terms are understood by me and are agreeable and acceptable to  
13 me. I understand that I am waiving rights given to me by the  
14 California Administrative Procedure Act (including but not  
15 limited to Sections 11506, 11508, 11509, and 11513 of the  
16 Government Code), and I willingly, intelligently, and voluntarily  
17 waive those rights, including the right of requiring the  
18 Commissioner to prove the allegations in the Accusation at a  
19 hearing at which I would have the right to cross-examine  
20 witnesses against me and to present evidence in defense and  
21 mitigation of the charges.

22           8-31-98

23           DATED

24           William Frank Cogan, Jr.  
25           Respondent

26           \* \* \*

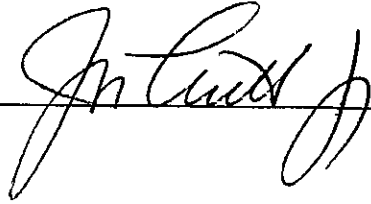
27           The foregoing Stipulation and Agreement for Settlement  
is hereby adopted by the Real Estate Commissioner as his Decision  
and Order and shall become effective at 12 o'clock noon on  
January 11, 1999.

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IT IS SO ORDERED 12/8, 1998.

JIM ANTT, JR.  
Real Estate Commissioner

  
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FILED  
JUL 20 1998

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Lauriel Zain

In the Matter of the Accusation of

WILLIAM FRANK COGAN, JR.,

Case No. H-2405 SD

OAH No. L-1998070103

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 the  
Office of Administrative Hearings, 1350 Front Street, Room 6022,  
San Diego, CA 92101

on Wednesday, September 2, 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: July 20, 1998

By

David A. Peters  
DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0781 (Direct)  
7

FILED  
JUN 2 1998  
DEPARTMENT OF REAL ESTATE

By *Laurie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 WILLIAM FRANK COGAN, JR., )  
13 Respondent. )  
14

NO. H-2405 SD

ACCUSATION

15 The Complainant, J. Chris Graves, a Deputy Real Estate  
16 Commissioner of the State of California for cause of Accusation  
17 against WILLIAM FRANK COGAN, JR. aka Cogan Properties and Total  
18 Concept Properties (hereinafter "Respondent"), is informed and  
19 alleges as follows:

20 I

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

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II

Respondent 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 the "Code") as a real estate broker.

III

Beginning on or before January 1, 1997 through on or about January 31, 1998, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(b) of the Code wherein Respondent for or in expectation of a compensation solicited prospective tenants for, negotiated rental agreements for and collected rents from real properties owned by another or others and otherwise managed real properties located in or near San Diego, California.

IV

During the course of the property management activities described in Paragraph III above, Respondent received and disbursed funds held in trust on behalf of another or others.

V

Beginning on or before January 1, 1997 and continuing through on or about January 31, 1998, Respondent maintained the following trust fund accounts:

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TITLE & ACCOUNT NO.

BANK

William F. Cogan  
dba Cogan Properties Trust Account  
Account No. 80124332  
(hereinafter "Account #1")

First National Bank  
San Diego, California

William F. Cogan  
dba Cogan Properties Trust Account  
Account No. 80180516  
(hereinafter "Account #2")

First National Bank  
San Diego, California

Total Concepts Property Management  
Total Concepts Properties Trust Account  
Account No. 012121855  
(hereinafter "Account #3")

First Pacific National  
Bank  
San Diego, California

Account #3 was not designated as a trust account in the  
name of Respondent as trustee at a bank or other financial  
institution as required by Section 2832 of Title 10, California  
Code of Regulations (hereinafter "Regulations").

VI

In connection with the collection and disbursement of  
trust funds described in Paragraph IV above, Respondent failed to  
deposit and maintain said trust funds in Account #1 and Account #2  
in such manner that as of January 31, 1998, there was a shortage  
of \$6,379.22 of trust funds.

VII

In connection with the collection and disbursement of  
trust funds described in Paragraph IV above, Respondent failed to  
deposit and maintain said trust funds in Account #3 in such manner  
that as of January 31, 1998, there was a shortage of \$3,300.12 of  
trust funds.

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VIII

Respondent failed to obtain prior written consent from each of the principals for the reduction of the aggregate balance of trust funds in Account #1, Account #2 and Account #3 to an amount less than the existing aggregate trust fund liability to the owners of said funds in violation of Section 2832.1 of the Regulations.

IX

In connection with the receipt and disbursement of trust funds in Account #1, Account #2 and Account #3, Respondent failed to maintain adequate columnar records of all trust funds received and disbursed in the manner required by Section 2831 of the Regulations.

X

In connection with the receipt and disbursement of trust funds described in Paragraph IV above, Respondent failed to maintain a separate record for each beneficiary or transaction, accounting therein for all said trust funds received, deposited, and disbursed in the manner required by Section 2831.1 of the Regulations.

XI

In connection with the trust fund accounts referred to in Paragraph V above, Respondent permitted withdrawals to be made from said accounts by someone other than a salesperson licensed by Respondent and authorized in writing by Respondent to withdraw said funds, or an unlicensed employee covered by a fidelity bond indemnifying Respondent against loss in an amount sufficient to



1 cover the maximum amount of funds to which the employee had access  
2 at any time in violation of Section 2834 of the Regulations.

3 XII

4 Within the three-year period immediately preceding the  
5 filing of this Accusation, Respondent operated his property  
6 management business in San Diego, California under the fictitious  
7 business name Total Concept Properties without Respondent  
8 obtaining a license from the Department of Real Estate bearing  
9 said fictitious business name as required by Section 2731 of the  
10 Regulations.

11 XIII

12 Within the three-year period immediately preceding the  
13 filing of this Accusation, in connection with the real estate  
14 activities described in Paragraph III above, Respondent failed to  
15 notify the Commissioner within the next business day that  
16 Respondent had closed his branch office located at 36120 El Cajon  
17 Boulevard, San Diego, California, and opened a new branch office  
18 located at 4204 Adams Avenue, San Diego, California as required by  
19 Section 2715 of the Regulations.

20 XIII

21 Within the three-year period immediately preceding the  
22 filing of this Accusation, Respondent failed to immediately notify  
23 the Commissioner in writing that real estate salesperson Chor Jit  
24 Yu's employment with Respondent was terminated as required by  
25 Section 10161.8 of the Code.

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XIV

The acts and/or omissions of Respondent described above are grounds for the suspension or revocation of all licenses and license rights of Respondent under the Code and Regulations as follows:

(1) As to Paragraph V, under Section 10177(d) of the Code in conjunction with Section 2832 of the Regulations;

(2) As to Paragraph VI and VII, under Section 10177(d) of the Code in conjunction with Section 10145 of the Code;

(3) As to Paragraph VIII, under Section 10177(d) of the Code in conjunction with Section 2832.1 of the Regulations;

(4) As to Paragraph IX, under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;

(5) As to Paragraph X, under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

(6) As to Paragraph XI, under Section 10177(d) of the Code in conjunction with Section 2834 of the Regulations;

(7) As to Paragraph XII, under Section 10177(d) of the Code in conjunction with Section 2731 of the Regulations;

(8) As to Paragraph XIII, under Section 10177(d) of the Code in conjunction with Section 2715 of the Regulations; and

(9) As to Paragraph XIV, under Section 10165 of the Code and Section 10161.8 of the Code.

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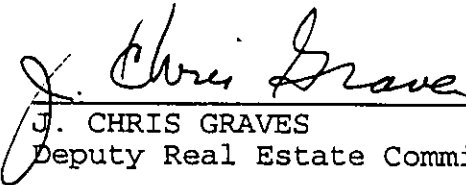
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1 WHEREFORE, Complainant prays that a hearing be conducted  
2 on the allegations of this Accusation and that upon proof thereof,  
3 a decision be rendered imposing disciplinary action against all  
4 licenses and license rights of Respondent under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

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9   
10 J. CHRIS GRAVES  
Deputy Real Estate Commissioner

11 Dated at San Diego, California  
12 this 22<sup>nd</sup> day of May, 1998.  
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