

FILED
AUG - 4 1994

DEPARTMENT OF REAL ESTATE

By Laurence A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LAURENCE LEE CONE,) No. H-2421 SAC
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 25, 1990, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to the issuance of a restricted real
estate broker license. A restricted real estate broker license
was issued to Respondent on August 20, 1990, and Respondent has
operated as a restricted licensee without cause for disciplinary
action against Respondent since that time.

On April 26, 1993, Respondent petitioned for
reinstatement of said real estate broker license, and the Attorney
General of the State of California has been given notice of the
filing of said petition.

///

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

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

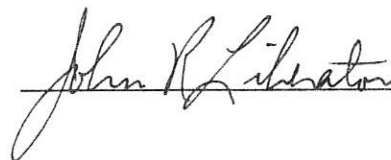
12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

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

19 This Order shall be effective immediately.

20 DATED: August 3, 1994

21 JOHN R. LIBERATOR
22 Interim Commissioner

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FILED
OCT 14 1992
DEPARTMENT OF REAL ESTATE

By Laurie A. Zhan

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID WILLIAM PRACHT,)
Respondent.)

No. H-2421 SAC

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 25, 1990, a Decision was rendered herein
revoking the real estate salesperson 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 August 20, 1990, and
Respondent has operated as a restricted licensee without cause for
disciplinary action against Respondent since that time.

On January 8, 1992, Respondent petitioned for
reinstatement of said real estate salesperson 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
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

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

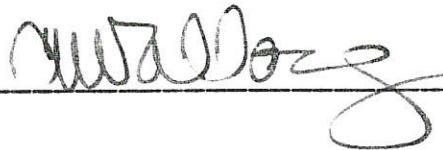
13 1. Submittal of a completed application and payment of
14 the fee for a real estate salesperson license.

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

20 This Order shall be effective immediately.

21 DATED: 10/8/92

22 CLARK WALLACE
23 Real Estate Commissioner

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FILED
JUL 31 1990
DEPARTMENT OF REAL ESTATE

Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
DAVID WILLIAM PRACHT,)	NO. H-2421 SAC
LAURENCE LEE CONE dba)	OAH No. N-34308
L. L. CONE & ASSOCIATES,)	
Respondents.)	

DECISION AFTER REJECTION

The matter came on for hearing before Harvey R. Zall, Administrative Law Judge of the Office of Administrative Hearings, in Sacramento, California, on October 12 and 13, 1989.

David A. Peters, Counsel, represented the complainant.

Respondent DAVID WILLIAM PRACHT was present and represented himself.

Respondent LAURENCE LEE CONE was present and represented himself.

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

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1 On February 1, 1990, the Administrative Law Judge
2 submitted a Proposed Decision I declined to adopt as my Decision
3 herein. Pursuant to Section 11517(c) of the Government Code of
4 the State of California, Respondents were served with notice of my
5 determination not to adopt the Proposed Decision of the
6 Administrative Law Judge along with a copy of said Proposed
7 Decision. Respondents were notified that the case would be
8 decided by me upon the record, the transcript of proceedings held
9 on October 12 and 13, 1989 and upon any written argument offered
10 by Respondents. Both Respondents have submitted written
11 argument.

12 I have given careful consideration to the record in this
13 case including the transcript of proceedings of October 12 and 13,
14 1989.

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

17 FINDINGS OF FACT

18 I

19 Charles W. Koenig, a Deputy Real Estate Commissioner of
20 the State of California, made and filed the Accusation in his
21 official capacity.

22 II

23 On a date not revealed by the evidence, but prior to
24 June 20, 1986, respondent DAVID WILLIAM PRACHT, (hereinafter
25 "respondent PRACHT") was licensed as a real estate salesperson.
26 On June 20, 1986, respondent PRACHT's license expired. Respondent
27 PRACHT's license remained expired until February 11, 1987, when

1 the license was renewed. The license is presently in full force
2 and effect and will expire by operation of law on February 10,
3 1992.

4 At all material times herein, respondent LAURENCE LEE
5 CONE (hereinafter "respondent CONE") was licensed as a real estate
6 broker.

7 III

8 On or about November 6, 1986, respondent PRACHT
9 willfully used the term "realtor" in describing himself in
10 connection with a prospective real estate transaction. In a
11 letter dated November 6, 1986, addressed to a Mr. Robert Smith, a
12 prospective real estate client, respondent PRACHT identified
13 himself as an "...active member of...the Board of Realtors". This
14 letter was created and signed at the direction of respondent
15 PRACHT.

16 The term "realtor" is a registered trademark and the
17 only persons authorized to use it are members in good standing of
18 a local Board of Realtors affiliated with the National Association
19 of Real Estate Boards. Although at one time respondent PRACHT
20 belonged to the Nevada County Board of Realtors, an affiliated
21 board, respondent PRACHT's membership in the organization lapsed
22 on November 15, 1984. Hence, in November of 1986, respondent
23 PRACHT was not a member of any Board of Realtors and was not
24 authorized to describe himself as a "realtor".

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IV

From on or about June 16, 1986, through on or about March 24, 1987, respondent PRACHT advertised services for which a real estate license is required using the name "Pracht Realty" without the name of respondent PRACHT's broker being set forth. During the time in question, respondent PRACHT handed out and/or caused to be handed out his business card to potential real estate clients. Furthermore, respondent PRACHT caused a sign to be placed on the front door of his office. Additionally, respondent PRACHT caused ads to be placed in the yellow pages of the local telephone directory and in an advertising brochure for a local cultural event.

The business cards, the sign and the ads referred to "Pracht Realty" without setting forth the name of respondent PRACHT's employing broker.

V

As found above in Finding II, respondent PRACHT's real estate salesperson's license was expired from on or about June 20, 1986, and continuing to on or about February 11, 1987. During this period of time, respondent PRACHT engaged in acts for which a real estate license is required for or in expectation of a compensation in connection with six separate real estate transactions.

Respondent PRACHT testified at hearing that in May of 1986, he timely filed an application for a license renewal with the complainant Department. He further testified he believed his license had been in due course renewed until in late January or

1 early February of 1987 when he learned that some question arose
2 regarding his license status. A search of the complainant
3 Department's licensing files failed to produce any record of a
4 renewal application by respondent PRACHT for the time in question.
5 Respondent PRACHT's testimony on this matter is found not
6 credible.

7 VI

8 From on or about June 16, 1986, through on or about
9 February 2, 1987, respondent CONE operated his real estate broker
10 business under the fictitious name "L. L. Cone and Associates"
11 without, however, having obtained from complainant Department a
12 real estate broker license under that name.

13 VII

14 Respondent CONE employed respondent PRACHT as a real
15 estate salesperson. Respondent PRACHT first commenced working for
16 respondent CONE in December of 1984. Respondent CONE was
17 respondent PRACHT's employing broker. Respondent CONE failed
18 immediately or within five days to notify the Real Estate
19 Commissioner that respondent PRACHT had entered his employment as
20 a real estate salesperson.

21 VIII

22 From on or about June 20, 1986, to and continuing
23 through on or about February 11, 1987, respondent CONE employed
24 and compensated respondent PRACHT who during this time, while his
25 license was expired, performed acts for which a real estate
26 salesperson license was required. The acts are the same acts that
27 are referred to in Finding V.

From on or about June 16, 1986, and continuing at various times thereafter, respondent CONE while acting as a real estate broker failed to exercise reasonable supervision of the activities of his salesperson respondent PRACHT for which a real estate license is required as follows:

1. Allowing respondent PRACHT to advertise services for which a real estate broker license is required using the name "Pracht Realty" without the name of respondent CONE, respondent PRACHT's employing broker, being set forth. These advertising services have already been set forth in Finding IV; and

2. Allowing respondent PRACHT, during a time when respondent PRACHT's real estate salesperson license was expired, to engage in real estate activities. These real estate activities have already been set forth in Finding V.

A real estate broker's reasonable supervision over the activities of his real estate salesperson would include ensuring that the salesperson was at all relevant times properly licensed and that in advertising his services had complied with all provisions of pertinent laws and regulations. Further, as a matter of law, a broker is charged with knowledge of the fact whether or not his salesperson has or has not a license. (Firpo vs. Murphy (1925) 72 Cal.App. 249, 253.)

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Both Respondents presented evidence of mitigation.

Respondent CONE admitted that he had made "errors", but stated they were inadvertent and not intentional. No members of the public were harmed as a result of respondent CONE's activities. Respondent CONE now has a much better understanding of his duties and responsibilities as a real estate broker.

Respondent PRACHT also testified that his violations involved no intent to deceive. Regarding the 1986 correspondence in which respondent PRACHT made use of the term "realtor", respondent PRACHT stated that in 1984 he created a form letter which was stored in his wife's computer. At the time the standard form letter was created, respondent PRACHT was a member in good standing of the Nevada County Board of Realtors. Respondent PRACHT simply neglected to omit the reference to "realtor" in the 1986 correspondence. Respondent PRACHT had no intent to deceive when he described himself as a "realtor" in his November 1986 letter. As soon as he became aware that he was required to list his employing broker in all his advertising services, respondent PRACHT changed the sign over the door of his office to indicate that he was associated with respondent CONE.

Respondent PRACHT is an active member of a number of community associations and service clubs in the Nevada City/Grass Valley area.

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XI

At hearing, Respondents asserted the Accusation was barred by the pertinent statute of limitations. Complainant Department responded in a letter brief that the acts alleged in "...each of the causes of accusation [were] not barred by the statute of limitations".

Admittedly, most of the acts alleged in the Accusation, and established by the evidence, fall within the applicable statute of limitations which provides, in pertinent part, that:

"The accusation provided by section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action...".
(Business and Professions Code section 10101).

However, in connection with the first cause of Accusation which alleges that respondent PRACHT willfully used the term "realtor" when he did not belong to an affiliated Board of Realtors, evidence was admitted of a letter dated "May 7, 1986" in which defendant described himself as a "realtor". Since the Accusation was filed on June 15, 1989, the May 14, 1986 letter is outside the three year statute of limitations and cannot be used as a basis of discipline. As was noted in Hall v. Scudder (1946) 74 Cal.App.2d 433, 436, it is only conduct "...within the immediately preceding three years" which furnishes a cause for revocation.

Further, in the fourth cause of Accusation, respondent CONE was alleged to have employed respondent PRACHT without "immediately notifying the Commissioner thereof in writing". The regulations, section 2752 of Title 10, of the California Code of

1 Regulations, construe "immediately" as meaning "within five days".
2 Yet, the uncontradicted evidence establishes that respondent CONE
3 first employed respondent PRACHT on or about December 14, 1984.
4 By failing to notify the Commissioner in writing by on or about
5 December 19, 1984, that respondent CONE had taken into his
6 employee respondent PRACHT as a licensed salesperson, respondent
7 CONE was in violation of the law. This failure, however, cannot
8 be the basis of discipline since respondent CONE's omission
9 occurred more than three years before the filing of the present
10 Accusation.

11 DETERMINATION OF ISSUES

12 I

13 Clear and convincing evidence to a reasonable certainty
14 establishes cause for discipline of respondent PRACHT's license
15 for violation of Business and Professions Code, section 10177(e)
16 by reason of Finding III.

17 II

18 Clear and convincing evidence to a reasonable certainty
19 establishes cause for discipline of respondent PRACHT's license
20 for violation of Business and Professions Code, section 10177(d)
21 and Title 10, California Code of Regulations, section 2770 by
22 reason of Finding IV.

23 III

24 Clear and convincing evidence to a reasonable certainty
25 establishes cause for discipline of respondent PRACHT's license
26 for violation of Business and Professions Code, sections 10177(d),
27 10131, 10130 and 10132 by reason of Finding V.

1 IV

2 Clear and convincing evidence to a reasonable certainty
3 establishes cause for discipline of respondent CONE's license for
4 violation of Business and Professions Code, sections 10177(d) and
5 10159.5 and section 2731 of Title 10 of the California Code of
6 Regulations by reason of Finding VI.

7 V

8 Clear and convincing evidence to a reasonable certainty
9 establishes cause for discipline of respondent CONE's license for
10 violation of Business and Professions Code, section 10137 by
11 reason of Finding VIII.

12 VI

13 Clear and convincing evidence to a reasonable certainty
14 establishes cause for discipline of respondent CONE's license for
15 violation of Business and Professions Code, section 10177(h) by
16 reason of Finding IX.

17 VII

18 Complainant did not establish a violation of Business and
19 Professions Code, sections 10161.8 and 10165 and section 2752 of
20 Title 10 of the California Code of Regulations by reason of
21 Finding VII and XI.

22 ORDER

23 I

24 All real estate licenses and licensing rights issued to
25 respondent DAVID WILLIAM PRACHT by the Department of Real Estate
26 are revoked pursuant to Determination of Issues I, II and III;
27 provided, however, a restricted real estate salesperson license

1 shall be issued to Respondent pursuant to section 10156.5 of the
2 Business and Professions Code if Respondent makes application
3 therefor within thirty (30) days from the effective date of this
4 decision. The restricted license issued to Respondent shall be
5 subject to all of the provisions of section 10156.7 of the
6 Business and Professions Code and to the following limitations,
7 conditions and restrictions imposed under authority of section
8 10156.6 of that Code:

9 1. The restricted license issued to Respondent may be
10 suspended prior to hearing by Order of the Real Estate
11 Commissioner in the event of Respondent's conviction or plea of
12 nolo contendere to a crime which bears a significant relation to
13 Respondent's fitness or capacity as a real estate licensee.

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

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

25 4. Respondent shall, within six (6) months from the
26 effective date of this decision, present evidence satisfactory to
27 the Real Estate Commissioner that Respondent has, since the most

1 recent issuance of an original or renewal real estate license,
2 taken and successfully completed the continuing education
3 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
4 for renewal of a real estate license. If Respondent fails to
5 satisfy this condition, the Commissioner may order the suspension
6 of the restricted license until the Respondent presents such
7 evidence. The Commissioner shall afford Respondent the
8 opportunity for a hearing pursuant to the Administrative Procedure
9 Act to present such evidence.

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

17 6. Any restricted license issued to Respondent pursuant
18 to this decision shall be suspended for thirty (30) days from the
19 effective date of issuance of said restricted license.

20 Twenty (20) days of said suspension shall be stayed upon
21 the following terms and conditions:

22 (a) Respondent shall obey all laws, rules and
23 regulations governing the rights, duties and
24 responsibilities of a real estate licensee in the State
25 of California.

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

10 7. Respondent shall submit with any application for
11 license under an employing broker, or any application for transfer
12 to a new employing broker, a statement signed by the prospective
13 employing real estate broker which shall certify:

14 (1) That the employing real estate broker has read the
15 Decision of the Commissioner which granted the right to a
16 restricted license; and

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

21 II

22 All real estate licenses and licensing rights issued to
23 respondent LAURENCE LEE CONE by the Department of Real Estate are
24 revoked pursuant to Determination of Issues IV, V and VI;
25 provided, however, a restricted real estate broker license shall
26 be issued to Respondent pursuant to section 10156.5 of the
27 Business and Professions Code if Respondent makes application

1 therefor within thirty (30) days from the effective date of this
2 decision. The restricted license issued to Respondent shall be
3 subject to all of the provisions of section 10156.7 of the
4 Business and Professions Code and to the following limitations,
5 conditions and restrictions imposed under authority of section
6 10156.6 of that Code:

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

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

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

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

15 6. Any restricted license issued to Respondent pursuant
16 to this decision shall be suspended for thirty (30) days from the
17 effective date of issuance of said restricted license.

18 Twenty (20) days of said suspension shall be stayed upon
19 the following terms and conditions:

20 (a) Respondent shall obey all laws, rules and
21 regulations governing the rights, duties and
22 responsibilities of a real estate licensee in the State
23 of California.

24 (b) That no final subsequent determination be made,
25 after hearing or upon stipulation, that cause for
26 disciplinary action occurred with one (1) year of the
27 effective date of this decision. Should such a

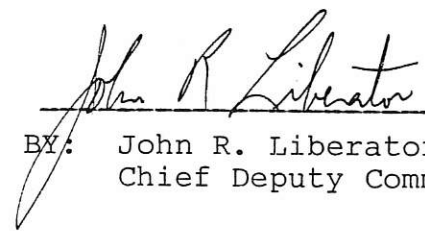
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determination be made, the Commissioner may, in his
discretion, vacate and set aside the stay order and
reimpose all or a portion of the stayed suspension.
Should no such determination be made, the stay imposed
herein shall become permanent.

This Decision shall become effective at 12 o'clock noon
on August 20, 1990.

IT IS SO ORDERED July 25, 1990.

JAMES A. EDMONDS, JR.
Real Estate Commissioner


BY: John R. Liberator
Chief Deputy Commissioner

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FILED
FEB 21 1990
DEPARTMENT OF REAL ESTATE

Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID WILLIAM PRACHT,)
LAURENCE LEE CONE, dba)
L. L. Cone & Associates,)
Respondents.)

NO. H-2421 SAC
N 34308

NOTICE

TO: DAVID WILLIAM PRACHT and LAURENCE LEE CONE, Respondents

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated February 1, 1990, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated February 1, 1990, 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 including the transcript of the proceedings held on October 12 and 13, 1989, and any written arguments hereafter submitted on behalf of respondents and complainant.

1 Written arguments of respondents to be considered by
2 me must be submitted within 15 days after receipt of the
3 transcript of the proceedings of October 12 and 13, 1989, at
4 the Sacramento office of the Department unless an extension of
5 the time is granted for good cause shown.

6 Written argument of complainant to be considered by
7 me must be submitted within 15 days after receipt of the
8 arguments of respondents at the Sacramento office of the
9 Department of Real Estate unless an extension of the time is
10 granted for good cause shown.

11 DATED: February 15, 1990

12 JAMES A. EDMONDS, JR.
13 Real Estate Commissioner

14 by: John R. Liberator
15 JOHN R. LIBERATOR
16 Chief Deputy Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
DAVID WILLIAM PRACHT,	) No. H-2421 SAC
LAWRENCE LEE CONE	)
dba L. L. CONE & ASSOCIATES,	) OAH NO. N-34308
	)
	)
Respondents.	)
	)

PROPOSED DECISION

On October 12 and 13, 1989, in Sacramento, California, Harvey R. Zall, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, Department of Real Estate, represented complainant.

Respondent Pracht represented himself.

Respondent Cone represented himself, dba L. L. Cone and Associates.

Evidence was received and the record remained open for receipt of briefing by the parties. Complainant's brief was received on November 1, 1989 and marked as Exhibit 17. Respondents failed to submit any briefing.

The record was closed on November 22, 1989 and the matter was submitted.

FINDINGS OF FACT

I

Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in his official capacity.

II

On a date not revealed by the evidence, but prior to June 20, 1986, David William Pracht, (hereinafter "respondent Pracht") was licensed as a real estate salesperson. On June 20, 1986, respondent Pracht's license expired. Respondent Pracht's license remained

expired until February 11, 1987, when the license was renewed. The license is presently in full force and effect and will expire by operation of law on February 10, 1992.

At all material times herein, Lawrence Lee Cone (hereinafter "respondent Cone") was licensed as a real estate broker.

III

On or about November 6, 1986, respondent Pracht willfully used the term "realtor" in describing himself in connection with a prospective real estate transaction. In a letter dated November 6, 1986, addressed to a Mr. Robert Smith, a prospective real estate client, respondent Pracht identified himself as an "...active member of...the Board of Realtors". This letter was created and signed at the direction of respondent Pracht.

The term "realtor" is a registered trademark and the only persons authorized to use it are members in good standing of a local Board of Realtors affiliated with the National Association of Real Estate Boards. Although at one time respondent Pracht belonged to the Nevada County Board of Realtors, an affiliated board, respondent Pracht's membership in the organization lapsed on November 15, 1984. Hence, in November of 1986, respondent Pracht was not a member of any Board of Realtors and was not authorized to describe himself as a "realtor".

IV

From on or about June 16, 1986, through on or about March 24, 1987, respondent Pracht advertised services for which a real estate license is required using the name "Pracht Realty" without the name of respondent Pracht's broker being set forth. During the time in question, respondent Pracht handed out and/or caused to be handed out his business card to potential real estate clients. Furthermore, respondent Pracht caused a sign to be placed on the front door of his office. Additionally, respondent Pracht caused ads to be placed in the yellow pages of the local telephone directory and in an advertising brochure for a local cultural event.

The business cards, the sign and the ads referred to "Pracht Realty" without setting forth the name of respondent Pracht's employing broker.

V

As found above in Finding II, respondent Pracht's real estate salesperson's license was expired from on or about June 20, 1986, and continuing to on or about February 11, 1987. During this period of time, respondent Pracht engaged in acts for which a real estate license is required for or in expectation of a compensation in connection with six separate real estate transactions.

Respondent Pracht testified at hearing that in May of 1986, he timely filed an application for a license renewal with the

complainant Department. He further testified he believed his license had been in due course renewed until in late January or early February of 1987 when he learned that some question arose regarding his license status. A search of the complainant Department's licensing files failed to produce any record of a renewal application by respondent Pracht for the time in question. Respondent Pracht's testimony on this matter is found not credible.

VI

From on or about June 16, 1986, through on or about February 2, 1987, respondent Cone operated his real estate broker business under the fictitious name "L. L. Cone and Associates" without, however, having obtained from complainant Department a real estate broker license under that name.

VII

Respondent Cone employed respondent Pracht as a real estate salesperson. Respondent Pracht first commenced working for respondent Cone in December of 1984. Respondent Cone was respondent Pracht's employing broker. Respondent Cone failed immediately or within five days to notify the Real Estate Commissioner that respondent Pracht had entered his employment as a real estate salesperson.

VIII

From on or about June 20, 1986, to and continuing through on or about February 11, 1987, respondent Cone employed and compensated respondent Pracht who during this time, while his license was expired, performed acts for which a real estate salesperson's license was required. The acts are the same acts that are referred to in Finding V.

IX

From on or about June 16, 1986, and continuing at various times thereafter, respondent Cone while acting as a real estate broker failed to exercise reasonable supervision of the activities of his salesperson respondent Pracht for which a real estate license is required as follows:

1. Allowing respondent Pracht to advertise services for which a real estate broker's license is required using the name "Pracht Realty" without the name of respondent Cone, respondent Pracht's employing broker, being set forth. These advertising services have already been set forth in Finding IV; and
2. Allowing respondent Pracht, during a time when respondent Pracht's real estate salesperson's license was expired, to engage in real estate activities. These real estate activities have already been set forth in Finding V.

A real estate broker's reasonable supervision over the activities of his real estate salesperson would include ensuring that the salesperson was at all relevant times properly licensed and that in advertising his services had complied with all provisions of pertinent laws and regulations. Further, as a matter of law, a broker is charged with knowledge of the fact whether or not his salesperson has or has not a license. (Firpo v. Murphy (1925) 72 Cal.App. 249, 253.)

X

Both respondents presented evidence of mitigation. Respondent Cone admitted that he had made "errors" but stated they were inadvertent and not intentional. No members of the public were harmed as a result of respondent Cone's activities. Respondent Cone now has a much better understanding of his duties and responsibilities as a real estate broker.

Respondent Pracht also testified that his violations involved no intent to deceive. Regarding the 1986 correspondence in which respondent Pracht made use of the term "realtor", respondent Pracht stated that in 1984 he created a form letter which was stored in his wife's computer. At the time the standard form letter was created, respondent Pracht was a member in good standing of the Nevada County Board of Realtors. Respondent Pracht simply neglected to omit the reference to "realtor" in the 1986 correspondence. Respondent Pracht had no intent to deceive when he described himself as a "realtor" in his November 1986 letter. As soon as he became aware that he was required to list his employing broker in all his advertising services, respondent Pracht changed the sign over the door of his office to indicate that he was associated with respondent Cone.

Respondent Pracht is an active member of a number of community associations and service clubs in the Nevada City/Grass Valley area.

XI

At hearing, respondents asserted the Accusation was barred by the pertinent statute of limitations. Complainant Department responded in a letter brief that the acts alleged in "...each of the causes of accusation [were] not barred by the statute of limitations".

Admittedly, most of the acts alleged in the Accusation, and established by the evidence, fall within the applicable statute of limitations which provides, in pertinent part, that:

"The accusation provided by section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action...". (Business and Professions Code section 10101).

However, in connection with the first cause of Accusation which alleges that respondent Pracht willfully used the term "realtor"

when he did not belong to an affiliated Board of Realtors, evidence was admitted of a letter dated "May 7, 1986" in which defendant described himself as a "realtor". Since the Accusation was filed on June 15, 1989, the May 14, 1986 letter is outside the three year statute of limitations and cannot be used as a basis of discipline. As was noted in Hall v. Scudder (1946) 74 Cal.App.2d 433, 436, it is only conduct "...within the immediately preceding three years" which furnishes a cause for revocation.

Further, in the fourth cause of Accusation, respondent Cone was alleged to have employed respondent Pracht without "immediately notifying the Commissioner thereof in writing". The regulations, section 2752 of Title 10, of the California Code of Regulations, construe "immediately" as meaning "within five days". Yet, the uncontradicted evidence establishes that respondent Cone first employed respondent Pracht on or about December 14, 1984. By failing to notify the Commissioner in writing by on or about December 19, 1984, that respondent Cone had taken into his employee respondent Pracht as a licensed salesperson, respondent Cone was in violation of the law. This failure, however, cannot be the basis of discipline since respondent Cone's omission occurred more than three years before the filing of the present Accusation.

DETERMINATION OF ISSUES

I

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Pracht's license for violation of Business and Professions Code, section 10177(e) by reason of Finding III.

II

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Pracht's license for violation of Business and Professions Code, section 10177(d) and Title X, California Code of Regulations, section 2770 by reason of Finding IV.

III

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Pracht's license for violation of Business and Professions Code, sections 10177(d), 10131, 10130 and 10132 by reason of Finding V.

IV

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Cone's license for violation of Business and Professions Code, sections 10177(d) and 10159.5 and section 2731 of Title X of the California Code of Regulations by reason of Finding VI.

V

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Cone's license for violation of Business and Professions Code, section 10137 by reason of Finding VIII.

VI

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Cone's license for violation of Business and Professions Code, section 10177(h) by reason of Finding IX.

VII

Complainant did not establish a violation of Business and Professions Code, sections 10161.8 and 10165 and section 2752 of Title X of the California Code of Regulations by reason of Finding VII and XI.

ORDER

I

All real estate licenses and licensing rights issued to respondent David William Pracht by the Department of Real Estate are revoked pursuant to Determination of Issues I, II and III, separately and for all of them.

II

All real estate licenses and licensing rights issued to respondent David William Pracht by the Department of Real Estate are revoked; provided, however, a restricted real estate license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor within thirty 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 bears a significant relation 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 five years have elapsed from the date of issuance of the restricted license to respondent.
4. Respondent shall, within six 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 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 which shall certify:
- (1) That the employing real estate broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (2) That the employing real estate broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

III

All real estate licenses and licensing rights issued to respondent Lawrence Lee Cone by the Department of Real Estate are revoked pursuant to Determination of Issues IV, V and VI, separately and for all of them.

IV

All real estate licenses and licensing rights issued to respondent Lawrence Lee Cone by the Department of Real Estate are revoked; provided, however, a restricted real estate license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor within thirty 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:

- NOT
ADOPTED**
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 bears a significant relation 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 three years have elapsed from the date of issuance of the restricted license to respondent.
 4. Respondent shall, within six 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

**NOT
ADOPTED**

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.

Dated: February 1, 1990.

H. R. Zall

HARVEY R. ZALL

Administrative Law Judge

Office of Administrative Hearings

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 (916) 739-3607
6
7

FILED
JUN 15 1989

DEPARTMENT OF REAL ESTATE

By *Lucie A. Zia*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DAVID WILLIAM PRACHT,)
13 LAWRENCE LEE CONE dba)
14 L. L. CONE & ASSOCIATES,)
15 Respondents.)

NO. H-2421 SAC

ACCUSATION

16 The Complainant, Charles W. Koenig, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against DAVID WILLIAM PRACHT (hereinafter "respondent PRACHT"),
19 and LAWRENCE LEE CONE, dba L. L. CONE & ASSOCIATES (hereinafter
20 "respondent CONE") is informed and alleges as follows:

21 FIRST CAUSE OF ACCUSATION

22 I

23 The Complainant, Charles W. Koenig, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation
25 against respondents PRACHT and CONE in his official capacity.

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II

Respondents PRACHT and CONE are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code") as follows:

DAVID WILLIAM PRACHT - as a real estate salesperson;
and
LAWRENCE LEE CONE - as a real estate broker.

III

On or about June 20, 1986, Respondent PRACHT's real estate salesperson license expired. Said license was not renewed until on or about February 11, 1987.

IV

At all times material herein, respondents PRACHT and CONE were performing acts requiring a real estate license for or in expectation of a compensation.

V

Beginning within the three-year period immediately preceding the filing of this Accusation through on or about November 6, 1986, respondent PRACHT willfully used the term "realtor" in connection with the solicitation of prospective sellers or purchasers of, or in connection with the solicitation of listings for the sale of real property and for other purposes.

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VI

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The word "realtor" is a registered trade mark and may only be used by members in good standing of a board of realtors in the county where said business is transacted.

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VII

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Beginning within the three-year period immediately preceding the filing of this Accusation through on or about November 6, 1986, respondent PRACHT was not a member of the Nevada County Board of Realtors.

10

VIII

11

The acts and/or omissions of respondent PRACHT described above are grounds for the revocation or suspension of respondent PRACHT's license under Section 10177(e) of the Code.

14

SECOND CAUSE OF ACCUSATION

15

IX

16

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

20

X

21

Beginning within the three-year period immediately preceeding the filing of this Accusation through on or about March 24, 1987, respondent PRACHT advertised services for which a real estate license is required using the name "Pracht Realty" without the name of respondent PRACHT's employing broker being set forth.

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XI

The acts and omissions of respondent PRACHT described in Paragraph X above, are grounds for the revocation or suspension of respondent PRACHT's license under Section 2770 of Title 10, California Code of Regulations (hereinafter "Regulations") in conjunction with Section 10177(d).

THIRD CAUSE OF ACCUSATION

XII

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

XIII

Beginning on or about June 20, 1986 and continuing through on or about February 11, 1987, respondent PRACHT's real estate salesperson license was expired. During said period, respondent PRACHT engaged in real estate sales activities for which a real estate license is required including the selling or offering to sell, buying or offering to buy, soliciting prospective selles or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of real property for or in expectation of a compensation. Said real estate sales activities engaged in by respondent PRACHT included, but are not limited to the following real estate sales transactions:

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///

	<u>BUYER</u>	<u>SELLER</u>	<u>PROPERTY</u>
1			
2	Donald H. & Yvonne E. Roberts	Edward L. Britton	19903 New Rome Road Nevada County, Calif. APN: 34-300-09
3			
4	Quenton W. & Phyllis A. Koon	Van E. & Barbara T. Reimer	APN: 37-301-01
5			
6	Milton B. Wilson & Shirl Alger Stark	James Douglas & Barbara Bellinger Anderson	17174 Cofax Highway Grass Valley, Calif. APN: 28-050-29
7			
8	Dario P. Davidson	Kenneth R. & Margaret E. Rosecrans	13341 Idaho-Maryland Rd., Nevada City, CA APN: 12-080-06
9			
10	H. Thomas & Delores Jean Unsell	Diane B. Frauta, as trustee	12958 Butterfly Dr. Nevada City, Calif. APN: 37-301-11
11			
12	Ardith M. Kuhn	Paul T. & Elsie Downs	10145 Tillicum Way Nevada City, Calif. APN: 4-150-11
13			

14 XIV

15 The acts and omissions of respondent PRACHT described in
 16 Paragraph XIII above, constitute acts for which a real estate
 17 license is required under the provisions of Section 10131 of the
 18 Code, in violation of Sections 10130 and 10132 of the Code in
 19 conjunction with Section 10177(d) of the Code.

20 FOURTH CAUSE OF ACCUSATION

21 XV

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

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XVI

Beginning within the three-year period immediately preceding the filing of this Accusation through on or about February 2, 1987, respondent CONE operated his real estate broker business under the fictitious name L. L. CONE & ASSOCIATES without having applied for or having obtained a real estate broker license under that name.

XVII

Beginning within the three-year period immediately preceding the filing of this Accusation through on or about February 11, 1987, respondent CONE employed respondent PRACHT as a real estate salesperson without immediately notifying the Commissioner thereof in writing.

XVIII

Beginning on or about June 20, 1986 and continuing through on or about February 11, 1987, in connection with the real estate sales activities described in Paragraph XIII above, respondent CONE employed or compensated, directly or indirectly, respondent PRACHT (expired real estate salesperson), to perform acts for which a real estate license is required.

XIX

Beginning within the three-year period immediately preceding the filing of this Accusation and continuing at various times thereafter, respondent CONE while acting as a real estate broker failed to exercise reasonable supervision over the activities of his salesperson respondent PRACHT for which a real estate license is required as follows:

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 Respondents, 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 the
7 provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

12 Dated at Sacramento, California
13 this 13th day of June, 1989.