

Louise A. Gian

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
) NO. H-2445 SAC
FRAN SHELTON & ASSOCIATES,)
LARRY GALE FEATHERSTON, and)
MARY LOUISE REDDING,)
)
) Respondents.)
)

DECISION

The Proposed Decision dated March 12, 1990 of Robert E. McCabe, Regional Manager, Department of Real Estate, State of California, as to respondents FRAN SHELTON & ASSOCIATES and LARRY GALE FEATHERSTON only is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision shall become effective at 12 o'clock noon on April 18, 19 90.

IT IS SO ORDERED 3-21, 19 90.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

[Signature]

II

Respondent ASSOCIATES 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 "Code"). At all times herein mentioned, respondent ASSOCIATES was licensed as a real estate corporation. Within the three-year period immediately preceding the filing of this Accusation through on or about February 11, 1988, respondent ASSOCIATES acted by and through its designated officer respondent FEATHERSTON.

III

Respondent FEATHERSTON is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code), as a real estate broker. Within the three-year period immediately preceding the filing of this Accusation through on or about February 11, 1988, respondent FEATHERSTON served as the designated broker officer for respondent ASSOCIATES.

IV

On or before January 1, 1987, respondent ASSOCIATES and respondent FEATHERSTON acting on behalf of another or others and in expectation of compensation managed certain rental real properties located in or near Chico, California.

V

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

VI

In connection with the collection and disbursement of said trust funds, respondents ASSOCIATES and FEATHERSTON failed to deposit and maintain said funds in said bank account in such manner that as of November 30, 1987, there was a shortage of \$42,289.38 of trust funds in said bank account and as of January 20, 1988, there was a shortage of \$25,155.47 of trust funds in said bank account.

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VII

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

SECOND CAUSE OF ACCUSATION

VIII

In connection with the property management activities described in Paragraph IV above, respondents ASSOCIATES and FEATHERSTON received and disbursed funds held in trust on behalf of another or others.

IX

Within the three-year period immediately preceding the filing of this Accusation in connection with the collection and disbursement of trust funds on behalf of another or others, respondents ASSOCIATES and FEATHERSTON commingled with their own money or property funds held in trust for others and converted said trust funds to their own use or benefit or for purposes not authorized by the rightful owners of said funds. The exact amount of said commingled and converted trust funds is unknown to Complainant, but well known to respondents ASSOCIATES and FEATHERSTON and is not less than \$652.86.

X

Within the three-year period immediately preceding the filing of this Accusation through on or about November 30, 1987, respondent FEATHERSTON as designated officer for respondent ASSOCIATES, failed to exercise reasonable supervision over respondents ASSOCIATES and real estate salesperson Mary Louise Redding (hereinafter "Redding"). Respondent FEATHERSTON's failure to reasonably supervise the activities of respondent ASSOCIATES and Redding for which a real estate license was required included, but are not limited to, the acts and omissions set forth below:

(1) In connection with the property management activities described in Paragraph V above, respondent FEATHERSTON failed to review, initial and date within five (5) working days all instruments having a material effect upon a party's rights or obligations prepared by respondent ASSOCIATES' employees, associates, or real estate salespersons.

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(2) In connection with the property management activities described in Paragraph V above, respondent FEATHERSTON failed to reasonably supervise Redding in the handling of trust funds.

DETERMINATION OF ISSUES

I

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

FIRST CAUSE OF ACCUSATION

II

Cause for disciplinary action against respondents ASSOCIATES and FEATHERSTON exists pursuant to Business and Professions Code Section 10145 in conjunction with Section 10177(d) of the Code and Sections 2830 and 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations") in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

III

Cause for disciplinary action against respondent ASSOCIATES exists pursuant to Business and Professions Code Sections 10176(e) and 10176(i).

IV

Cause for disciplinary action against respondent FEATHERSTON exists pursuant to Business and Professions Code Sections 10176(e), 10176(i) and 10177(h) and Section 2725 of the Regulations in conjunction with Section 10177(d) of the Code.

ORDER

I

The real estate broker licenses of respondents ASSOCIATES and FEATHERSTON (hereinafter "Respondents") are hereby revoked.

II

Restricted real estate broker licenses shall be issued to Respondents pursuant to Section 10156.5 of the Business and Professions Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for

said license(s) within ninety (90) days from the effective date of the Decision herein.

III

The restricted licenses issued to Respondents shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

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

- (a) The conviction of Respondent(s) (including a plea of nolo contendere) to a crime which bears a significant relation to Respondents' fitness or capacity as a real estate licensee; or
- (b) The receipt of evidence that Respondent(s) have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to these restricted licenses.

2. Respondent(s) shall not be eligible to apply for the issuance of unrestricted real estate licenses nor the removal of any of the conditions, limitations or restrictions attaching to the restricted licenses until one year has elapsed from the effective date of the Decision in this matter.

3. Respondent FEATHERSTON shall, within six (6) months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent FEATHERSTON fails to satisfy this condition, the Commissioner may order suspension of the restricted licenses of Respondents ASSOCIATES and FEATHERSTON until respondent FEATHERSTON passes the examination.

4. The restricted licenses of Respondents ASSOCIATES and FEATHERSTON may be suspended by order of the Real Estate Commissioner pending a final determination after a hearing if respondent FEATHERSTON fails to present evidence satisfactory to the Real Estate Commissioner that he 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 within nine (9) months from the effective date of the Decision of the Real Estate Commissioner.

Respondent FEATHERSTON individually and as designated officer for respondent ASSOCIATES or any other real estate broker corporation shall submit to the Real Estate Commissioner a Trust Fund Position Statement as of the last day of each calendar quarter (the accounting date) for so long as said restricted licenses shall remain in effect. If respondent FEATHERSTON engages in no real estate transactions as a real estate broker or acts as a broker salesperson for another broker during the calendar quarter in question, his quarterly report shall so state.

The Position Statement shall consist of the following:

1. A schedule of trust fund accountability with the following information for each transaction in which Respondents are accountable as agent or trustee to the owner of funds:

- (a) Account number;
- (b) Type of transaction (purchase and sale, property management, loan collection);
- (c) Name of principal or beneficiary;
- (d) Description of real property; and
- (e) Trust fund liability.

2. A report of trust funds in the custody and control of Respondents as of the accounting date consisting of:

- (a) A copy of Respondents' trust account bank statement showing the balance of funds in the account as of the accounting date; and
- (b) A schedule of uncleared checks drawn on the account adjusting the account to its true balance as of the accounting date.

3. A statement explaining any discrepancy between the total liability shown under (1) above and the adjusted trust account balance shown under (2) above.

The Trust Fund Position Statement shall be submitted by respondent FEATHERSTON to the Sacramento District Office of the Department of Real Estate not later than thirty (30) days after each accounting date. If Respondent has no trust fund liability as of an accounting date, his report to the Department shall so state.

Respondent FEATHERSTON shall certify the completeness and accuracy of each Position Statement to the best of his knowledge and belief.

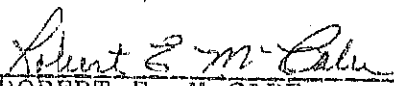
V

Respondent FEATHERSTON individually and as designated officer for respondent ASSOCIATES shall regularly report in writing to the Real Estate Commissioner all of their dealings in real estate undertaken as a broker, which reports shall set forth the following information for each such transaction:

- (a) The nature of the transaction and a brief description of the property involved;
- (b) The name and address of each party to the transaction;
- (c) The date of execution of the agreement and date of the closing of the transaction;
- (d) The name and address of the escrow agent, if any;
- (e) The purchase price of the property or the amount of the loan or other consideration involved;
- (f) An accounting of the receipt and disposition of funds received by Respondent as agent in the transaction; and
- (g) The amount of commission received.

Such reports shall be submitted quarterly to the Sacramento office of the Real Estate Commissioner prior to the fifteenth day of each January, April, July and October for so long as said restricted licenses shall be in effect, and each report shall contain the information hereinabove specified for the calendar quarter immediately preceding the submission of each such report.

DATED: March 12, 1990



ROBERT E. McCABE
Regional Manager
Department of Real Estate

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FILED
MAR 28 1990
DEPARTMENT OF REAL ESTATE

Lucille A. Zyan

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
FRAN SHELTON & ASSOCIATES,)
et al,)
Respondents.)

NO. H-2445 SAC

N 34768

NOTICE

TO: MARY LOUISE REDDING, Respondent
and
DOUGLAS M. BUSSEY, her Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 6, 1990, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 6, 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 February 8, 1990, and any written argument hereafter

1 submitted on behalf of respondent and complainant.

2 Written argument of respondent to be considered by
3 me must be submitted within 15 days after receipt of the
4 transcript of the proceedings of February 8, 1990, at the
5 Sacramento office of the Department unless an extension of the
6 time is granted for good cause shown.

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

12 DATED: March 26, 1990

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

15 John R. Liberator
16 BY: John R. Liberator
17 Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:) No. H-2445 SAC
)
FRAN SHELTON & ASSOCIATES,) OAH No. N-34768
LARRY GALE FEATHERSTON, and)
MARY LOUISE REDDING,)
)
)
) Respondents.)
_____)

PROPOSED DECISION

On February 8, 1990, in Sacramento, California, John D. Wagner, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by David A. Peters, Counsel, Department of Real Estate.

Respondent Mary Louise Redding was present and represented by Douglas M. Bussey, Attorney at Law. Respondents Fran Shelton & Associates and Larry Gale Featherston were no longer parties.

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

FINDINGS OF FACT

The Administrative Law Judge finds the following facts:

I

G. Mike Pace made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Respondent Redding is presently licensed and/or has license rights under the Real Estate Law, as a real estate salesperson. At all times herein mentioned and until December 1, 1987, respondent

Redding acted in the employ of respondent Fran Shelton & Associates, a licensed real estate corporation whose designated broker officer was Larry Gale Featherston.

III

From May 31, 1985, to December 1, 1987, Fran Shelton & Associates, Larry Gale Featherston, and respondent Redding, acting on behalf of others and in expectation of compensation, managed rental real properties located in or near Chico, California. During the management of these rental properties, respondent Redding received and disbursed funds held in trust on behalf of others. In connection with the collection and disbursement of said trust funds, respondent Redding failed to deposit and maintain said funds in a bank trust account such that as of November 30, 1987, there was a shortage of \$42,289.38 of trust funds in said account. Fran Shelton & Associates, Larry Gale Featherston, and respondent Redding failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in said bank trust account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

IV

In connection with the property management activities described in Finding III, Fran Shelton & Associates, Larry Gale Featherston, and respondent Redding received and disbursed funds held in trust on behalf of others. During the period from August 22, 1986, to November 30, 1987, respondent Redding comingled with her own money or property said funds held in trust for others and converted said trust funds to her own use or benefit or for purposes not authorized by the rightful owners of said funds. The amount of said comingled and converted trust funds was approximately \$33,000.

V

No substantial evidence of extenuation, mitigation or rehabilitation was received, other than the fact that respondent Redding has reimbursed the rightful owners of the money she comingled in the amount of \$18,000. The fact that respondent Redding may have had legitimate claims for unpaid compensation, reimbursements, and other benefits, against her partners, Fran Shelton & Associates and Larry Gale Featherston, which were unsatisfied, is not mitigation or extenuation for her satisfying such claims out of funds held in trust for property owners. Said funds were not funds of the property management business and should not have been used to satisfy business debts.

Although respondent Redding is remorseful and does not intend to use trust funds for unauthorized purposes in the future, it is clear that respondent Redding does not fully understand the concept of holding funds in trust for others and is not able to clearly distinguish between said trust funds, business operating funds, and funds owed to her. Respondent Redding is not rehabilitated.

DETERMINATION OF ISSUES

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause for discipline of respondent Mary Louise Redding's license was established for violation of:

1. Sections 2830 and 2832.1, title 10, of the California Code of Regulations, in conjunction with sections 10145 and 10177, subsection (d), of the Business and Professions Code, by reason of Finding III.
2. Section 10176, subsections (e) and (i), of the Business and Professions Code, by reason of Finding IV.

II

In view of the seriousness of the violations, the absence of extenuation or mitigation, and respondent's lack of rehabilitation, including her continuing lack of understanding and appreciation for the concept of trust monies, a concept which is fundamental to the activities of a real estate licensee, her license should be revoked.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate salesperson's license issued to respondent Mary Louise Redding is revoked.

Dated: March 6, 1990

John D. Wagner

JOHN D. WAGNER
Administrative Law Judge
Office of Administrative Hearings