

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
AUG 08 2000

DEPARTMENT OF REAL ESTATE

By Jean M. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-2467 SD
12 HARRIET DARLENE CRAIN,) OAH NO. L-1999030114
13 Respondent.) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between HARRIET
16 DARLENE CRAIN (hereafter Respondent) represented by David S.
17 Bright, White and Bright, Attorneys at Law, and the
18 Complainant, acting by and through Deidre L. Johnson, Counsel
19 for the Department of Real Estate, as follows for the purpose
20 of settling and disposing the Accusation filed on January 16,
21 1999, in this matter:

22 1. This matter came on for hearing before
23 Administrative Law Judge Vallera J. Johnson, State of California,
24 Office of Administrative Hearings, in San Diego, California, on
25 October 20 and 21, and November 8, 1999. Deidre L. Johnson, Real
26 Estate Counsel, represented Complainant J. Chris Graves, a Deputy
27 Real Estate Commissioner, Department of Real Estate, State of

1 California (hereafter the Department). David S. Bright, Esq.,
2 White and Bright, represented Respondent, who was present during
3 the hearing. The matter was submitted on December 13, 1999.

4 2. On January 28, 2000, the Administrative Law Judge
5 rendered a Proposed Decision that the Real Estate Commissioner
6 declined to adopt as the Decision herein. Pursuant to Section
7 11517(c) of the California Government Code (Administrative
8 Procedure Act), Respondent was served with notice of the
9 determination not to adopt the Proposed Decision of the
10 Administrative Law Judge along with a copy of said Proposed
11 Decision. Respondent was notified that the case would be decided
12 upon the record, the transcript of proceedings held on the above
13 dates, and upon any written arguments offered by Respondent and
14 Complainant.

15 3. Respondent hereby freely and voluntarily waives her
16 right to submit argument, and waives other rights afforded to her
17 under the Administrative Procedure Act, and agrees that this
18 matter shall instead and in place thereof be decided solely on
19 the basis of the provisions of this Stipulation and Agreement.

20 4. Respondent and Complainant agree that the Factual
21 Findings and Legal Conclusions contained in the Proposed Decision
22 of January 28, 2000, shall be adopted as part of the Decision in
23 this matter with the following additions, deletions, and
24 modifications.

25 5. The third paragraph of Paragraph 8 of the Factual
26 Findings at the bottom of page 3 of the Proposed Decision is
27 hereby deleted.

1 6. The following new Paragraph 8(a) of the Factual
2 Findings is added:

3 During the exit interview, Borrromeo informed Respondent
4 that she was in violation of this regulation [Section 2834 of
5 Title 10, California Code of Regulations] 'because the fidelity
6 bond for the trust account in question has a deductible, and the
7 regulation prohibits a deductible as part of the fidelity bond.
8 The regulation expressly provides that the bond's coverage must
9 be in an amount "... at least equal to the maximum amount of the
10 trust funds to which the employee has access at any time." Since
11 the deductible amount is \$2,500.00, the result is that \$2,500.00
12 of the account's trust funds are not covered by the bond itself.
13 The bond in place could not therefore cover the maximum amount of
14 trust funds in the account even if the bond's total amount of
15 \$100,000.00 was otherwise the correct maximum to which an
16 unlicensed employee was exposed.

17 7. Paragraph 2 of the Legal Conclusions on page 8 of
18 the Proposed Decision is hereby amended as follows:

19 Pursuant to Business and Professions Code section
20 10177(d), cause exists to discipline Respondent's license in that
21 Respondent violated Title 10, California Code of Regulations,
22 section 2834, by reason of Findings 3, 4, 5, 6, 7, 8, and 8(a).

23 8. The following new Paragraph 8 of the Legal
24 Conclusions is hereby added:

25 Based on the above findings, the nature of the
26 violations, and corrections made by Respondent, it is determined
27 that the imposition of discipline against Respondent's real

1 estate broker license and license rights is not necessary for the
2 protection of the public in this proceeding.

3 9. It is understood by the parties that the Real
4 Estate Commissioner may adopt this Stipulation and Agreement as
5 the decision in this matter, thereby imposing the penalty and
6 sanctions on the real estate license(s) and license rights of
7 Respondent as set forth in the below "Order". In the event
8 that the Commissioner in her discretion does not adopt the
9 Stipulation and Agreement, it shall be void and of no effect,
10 and Respondent shall retain the right to proceed under all the
11 provisions of the APA and shall not be bound by any waiver made
12 herein.

13 10. Respondent has received, read and understands the
14 "Notice Concerning Costs of Subsequent Audit." Respondent
15 understands, by agreeing to this Stipulation and Agreement, and
16 after the findings set forth below in the "Determination of
17 Issues" become final, that the Commissioner may charge Respondent
18 for the costs of an audit that may be conducted pursuant to
19 Section 10156.6 of the Business and Professions Code. The
20 maximum costs of said audit shall not exceed \$2,000.00.

21 11. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation and
23 Agreement shall not constitute an estoppel, merger or bar to any
24 further administrative or civil proceedings by the Department of
25 Real Estate with respect to any matters which were not
26 specifically alleged to be causes for accusation in this
27 proceeding.

1 until Respondent enters into an agreement satisfactory to the
2 Commissioner to provide for payment.

3
4
5 June 23 2000
6 DATED

Deidre L. Johnson
7 DEIDRE L. JOHNSON
8 Counsel for the Complainant

9 * * *

10 I have read the Stipulation and Agreement, have
11 discussed it with my counsel or understand that I have the right
12 to consult with counsel, and its terms are understood by me and
13 are agreeable and acceptable to me. I understand that I am
14 waiving rights given to me by the California Administrative
15 Procedure Act, and I willingly, intelligently and voluntarily
16 waive those rights, including the right to present argument in
17 defense and mitigation of the charges.

18
19 6-16-00
20 DATED

Harriet Darlene Crain
21 HARRIET DARLENE CRAIN
22 Respondent

23 APPROVED AS TO FORM:

24
25 6-14-00
26 DATED

David S. Bright
27 DAVID S. BRIGHT
Attorney for Respondent

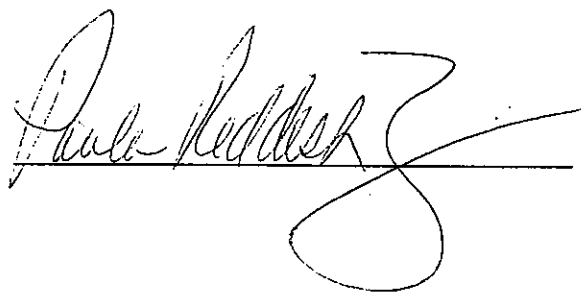
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on August 28, 2000.

IT IS SO ORDERED July 27, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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FILED
FEB 29 2000

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-2467 SD
)	
HARRIET DARLENE CRAIN,)	L-1999030114
)	
)	
Respondent.)	
)	

NOTICE

TO: Respondent HARRIET DARLENE CRAIN, and DAVID S. BRIGHT, ESQ., her Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 28, 2000, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 28, 2000, 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 20

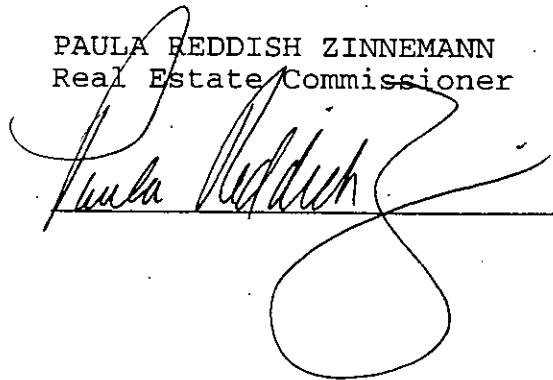
1 and 21 and November 8, 1999, and any written argument hereafter
2 submitted on behalf of Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of October 20 and 21 and November 9, 1999, at
6 the Sacramento office of the Department of Real Estate unless an
7 extension of the time is granted for good cause shown.

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

13 DATED: February 22, 2000

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15 PAULA REDDISH ZINNEMANN
16 Real Estate Commissioner

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

In the Matter of the Accusation of:

HARRIET DARLENE CRAIN,

Respondent.

Case No. H-2467 SD

OAH No. L-1999030114

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on October 20 and 21 and November 8, 1999.

Deidre L. Johnson, Real Estate Counsel, represented complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

David S. Bright, Esq., White and Bright, represented respondent Harriet Darlene Crain, who was present during the hearing.

The matter was submitted on December 13, 1999.

FACTUAL FINDINGS

1. J. Chris Graves filed Accusation Case No. 2467 SD, dated January 13, 1999, against Harriet Darlene Crain (respondent) in his official capacity as Deputy Real Estate Commissioner, State California, Department of Real Estate (Department).

Respondent filed a Notice of Defense, dated February 3, 1999, requesting a hearing in this matter.

After the hearing, the record remained open for receipt of written closing argument. Complainant's Closing Argument was filed on November 29, 1999 and marked Exhibit 15. On December 6, 1999, respondent Harriet Darlene Crain's Closing Argument was filed and marked Exhibit J. Complainant's Reply Argument was filed on December 13, 1999 and marked Exhibit 16. On the same date, the record was closed, and the matter was submitted.

2. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 3 of the California Business and Professions Code.

3. At all times relevant herein, respondent was and is licensed by the Department as a real estate broker, individually and doing business as Mission Realty.

4. For at least three years prior to the date of the filing of the Accusation, respondent engaged in activities for which a real estate license was required. During this time period, she leased or rented, offered to lease or rent, solicited prospective tenants, and/or collected rents on, and managed certain real properties in California on behalf of others, for and in expectation of compensation.

5. The audit of respondent's real estate activities was initiated by a complaint from the owner of Byer Construction, a contractor hired by respondent and one of her property owners, to do remodeling work. Based on his complaint, the Department investigated allegations of mishandling trust funds and payments and determined that respondent did not commit the violations alleged by the contractor but filed the Accusation in this case alleging other violations.

6. By letter, dated March 3, 1998, Jennifer Borrromeo (Borrromeo), an auditor from the Department, notified respondent that she would be examining her documents to determine whether she was in compliance with the statutes and regulations relating to the handling of trust funds. In this letter, the auditor listed a series of documents that she would need, including, among other things, "... other documents as needed/requested." Finally, the auditor explained that the letter was the notice required by Business and Professions Code section 10148 of the Department's intention to examine, inspect and copy her books, accounts and records retained in connection with transactions for which a license was required.

On March 17 and 18, 1998, Borrromeo performed the investigation audit of some of respondent's real estate activities for the period January 1, 1997 through February 28, 1998.

7. During the course of the property management activities described in Finding 4, during the audit period, respondent received and disbursed trust funds on behalf of others and deposited the trust funds into four bank accounts at Union Bank of California in Fallbrook, California, as follows:

A. Account No. 0810002018 was in the name of Mission Realty, Mission Realty Trust Account (Account No. 1); the signatories on this account were

respondent, Raymond W. Crain, Peggy J. Crain (Crain) and Raymond W. Crain, Jr.; the purpose of this account was to handle trust funds for property management activities;

B. Account No. 0810471522 was in the name of Mission Realty Trust Account (Account No. 2); the signatories of this account were Jean Rodewald, and respondent; the purpose of this account was to handle trust funds for the property management activities of owner Jean Rodewald, specifically for renovation work on 223, 225, 235 and 237 Woodcrest;

C. Account No. 0813041001 was in the name of Mission Realty (Account No. 3); the signatories on this account were respondent and Raymond W. Crain; this account was a savings account for funds to pay property taxes for one owner;

D. Account No. 0810472251 was in the name of Mission Realty Trust Account (Account No. 4); the signatories on this account were Raymond W. Crain and respondent; the purpose of this account was to handle property management activities for one property.

8. Respondent has employed Crain, her daughter-in-law, in her real estate business for over 14 years. For at least three years prior to January 1999, respondent authorized Crain to make withdrawals from Account No. 1. There is no evidence that Crain made any withdrawals from this account.

At no time relevant herein has the Department licensed Crain as a real estate salesperson or in any other capacity. During the audit period, respondent maintained fidelity bond coverage in the amount of \$100,000.00, with a deductible of \$2,500.00. According to respondent's records for this account, the maximum amount of trust funds to which Crain had access exceeded \$100,000 approximately nine days per month between August 30, 1997 through February 27, 1998. The maximum amount of trust funds to which Crain had access was \$142,419.81, as of February 6 through 8, 1998, in violation of Title 10, California Code of Regulations, section 2834.

During the exit interview, Borromeo informed respondent that she was in violation of this regulation because the fidelity bond has a deductible, and the Department has a policy that prohibits a deductible as part of the fidelity bond. Nothing in the Department's statutes or regulations prohibits a deductible as part of the fidelity bond. Prior to an attempt to enforce this policy, the agency must notify its licensees. No testimony or documentary evidence was offered to establish that the Department has provided its licensees written notice of this policy.

On March 20, 1998, respondent provided the corrected bank signature card to have Crain's name removed from Account No. 1 thereby revoking her authorization to withdraw funds from this account.

9. Respondent used the Yardi software program to maintain her property management account records. There are numerous versions of this program for various computers. The auditor relies on the licensee to explain what version she has and how she uses the software in the operation of her business.

10. Every broker is required to maintain a record of all trust funds received. This record must be in columnar format and in chronological sequence and include the information set forth in Title 10, California Code of Regulations, section 2831(a). A broker is in compliance with the foregoing regulation if she complies with Title 10, California Code of Regulation, section 2831(c).

Respondent asserted that she complied with Title 10, California Code of Regulations, section 2831(a) because she maintained her records in accordance with Title 10, California Code of Regulations, section 2831(c) and provided testimony and evidence in support of this argument. Some of the documentary evidence submitted by respondent are considered source documents, i.e., cancelled checks, receipts, deposit slips, bank statements, etc. These documents were not in the columnar form or chronological sequence required by Title 10, California Code of Regulations, section 2831. The date of receipt of funds must be in the columnar records, not in the source documents. Respondent's columnar records show the date of deposit into the account, not the date of receipt of the funds. Respondent has check registers that have check numbers. These registers were not provided during or following the audit. Based on the foregoing, respondent did not establish that she complied with Title 10, California Code of Regulations, section 2831.

The record of trust funds received and disbursed from Account No. 1 did not include the check numbers and/or the dates funds were received. It was not in complete chronological sequence. It included groups of check numbers but was not supported by a check disbursement journal that was provided to the auditor.

The record of trust funds received and disbursed from Account No. 2 and Account No. 3 did not include the dates funds were received.

The computer-generated record of trust funds received and disbursed from Account No. 4 did not include check numbers and the dates funds were received. It was not always in chronological sequence. The manual record of trust funds received and disbursed from Account No. 4 included check numbers but did not include the dates the trust funds were received.

Respondent did not maintain a record of trust funds received and disbursed containing the information required by Title 10, California Code of Regulations, section 2831, for Accounts No. 1, 2, 3 and 4 including, but not limited to, the dates on which trust funds were received.

11. If a broker accepts trust funds on behalf of another, she is required to place the money in the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account maintained in accordance with Title 10, California Code of Regulations, section 2830.

As set forth in Finding 6, respondent accepted funds on behalf of a property owner to pay real estate taxes for the property and placed the money in a bank account, opened in 1990 as Mission Realty, a trust account. Later, it was changed to Mission Realty, a trust savings account. However, based on the documents reviewed by the auditor, i.e., the bank signature cards and bank statements, for Account No. 3, she determined that it is designated as Mission Realty, a business savings account, not a trust account. Respondent believed that the account was a trust account and overlooked the lack of trust account designation on the bank statements that she received on a monthly basis. She established that the bank treated Account No. 3 as a trust account in that when sued and a judgment entered against her in 1995, the plaintiff in the action filed a lien against respondent's accounts, including Account No. 3; no funds were withdrawn from any of the trust accounts, including Account No. 3.

When the auditor informed respondent that the account was not a trust account, on March 20, 1998, respondent provided the corrected bank signature card, modified to reflect the trust account designation; and it was not necessary for respondent to establish a new account.

12. A broker is required to keep a separate record for each beneficiary or transaction, accounting for all funds deposited to the broker's bank trust account. The record must be in chronological sequence, in columnar form and contain the information set forth in Title 10, California Code of Regulations, section 2831.1, including "the balance after posting transactions on any date". The broker's records for each separate account must reflect a balance at the end of each day.

During the audit, respondent produced the documents of the type sampled in B-1.7 (Separate Property Records) of Exhibit 8. This includes an income statement supported by a transaction register, neither of which indicates each transaction (a receipt of disbursement) in daily chronological order with the information required by Title 10, California Code of Regulations, specifically the daily balance for each property. During the hearing, respondent submitted Exhibit D, a separate ledger for a property. Respondent can provide a similar document for each property that she

manages. Respondent did not produce Exhibit D or a similar document for each property during or subsequent to the audit to Borromeo.

The separate records for each property in Account No. 1 did not include daily balances, after posting transactions for any given day.

13. Complainant does not dispute that respondent reconciled the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month. However, he alleges that respondent does not keep or maintain these records, as required by the regulation.

Respondent did not provide evidence to Borromeo that she maintained the required records either during or following the audit. Respondent's bookkeeper admitted to the Department's auditor, once the reconciliation occurs at Mission Realty, the records are destroyed. Respondent's computer software is capable of electronically storing monthly reconciliation records for three years. She did not provide evidence to the auditor during or following the audit that she maintains a record of reconciliation of the balance of separate beneficiary or transaction records with the control record of trust records received and disbursed at least once a month.

14. Among other things, the Department alleges that respondent failed to notify the Department of employment and/or termination of certain real estate salesperson licensees, including but not limited to James Dixon Dickinson, Casper Mark Howard and Robert Curtis Kahle.

Casper Mark Howard, aka C. Mark Howard, terminated his employment with respondent on January 17, 1991, more than seven years prior to the filing of the Accusation in this case. Pursuant to Business and Professions Code section 10101, the Department is prohibited from prosecuting respondent for any failure to notify the Department of termination of employment of this salesperson because her obligation to provide the written notification to the Department of the foregoing arose more than three years prior to the filing of the Accusation against her.

As part of the audit, Borromeo reviewed the list of real estate salespeople employed by respondent, as of March 9, 1998. The auditor informed her that, prior to this date, the Department had no record that respondent provided written notification that she terminated the employment of Robert Curtis Kahle (Kahle) or that she employed James Dixon Dickenson (Dickenson). Respondent filed with the Department a Salesperson Change of Application form for Kahle, dated March 17, 1998, with a termination date of January 16, 1996 and the same form, reflecting the employment of Dickenson, reflecting an employment date of January 8, 1998, dated March 19, 1998.

Prior to the audit, respondent had a regular procedure to notify the Department any time that a real estate salesperson was employed or terminated employment with her business. At times, respondent authorized the agent or her secretary to mail the document to the Department. Prior to March 1998, she took no affirmative steps to confirm that the Department received her documents. Following the audit, she instituted an additional procedure to send the Salesperson Change Application form via certified mail, in order to have documentation to establish that the forms were sent and the Department received it.

15. The Department licensed respondent as a real estate salesperson in 1976 and as a real estate broker in 1978. During this audit, she made an effort to be cooperative and to abide by the Department's statutes and regulations.

As set forth in Finding 8, when informed by the auditor that she inappropriately authorized Crain to make withdrawals from Account No. 1, respondent immediately removed Crain's name from the bank signature card that authorized her to withdraw funds from this account and provided documentary evidence to Borromeo.

As set forth in Finding 11, when she learned from the auditor that the bank's documentation did not reflect that Account No. 3 was a trust account, respondent immediately contacted the bank, and arranged to have bank documents changed to reflect that it was a trust account. Thereafter, she provided documentary evidence of the foregoing to the auditor.

As set forth in Finding 14, when informed by Borromeo that the Department had no record of the change of employment of Kahle and Dickinson, she immediately filed the appropriate documents and modified her procedure to confirm that the Department receives the notification in the future.

Regarding the record keeping requirements, respondent provided sufficient documentation for the auditor to balance her accounts and to determine that there was no shortage in any of her four accounts. As set forth in Findings 10, 12 and 13, respondent's computer software has the ability to provide the documentation required by the Department's regulations, but she did not provide it to the auditor.

16. The Department has licensed respondent as a broker for over 20 years. With the exception of the unsubstantiated complaint that caused complainant to initiate the audit in this case, there is no evidence that a complaint has been filed against her license or that it has been previously disciplined. There is no evidence that any member of the public has suffered financial loss as a result of respondent's real estate activities. Respondent has employed over 100 agents. According to the

evidence she did not file the Department's Salesperson Change Application for two of these 100 agents.

Respondent is hands-on broker who is aware and involved in the administration of her office. She is active not only in her community but also in the real estate industry. She is knowledgeable of the statutes and regulations governing the licensees of the Department and has made a good effort to comply therewith. Throughout the audit, Borromeo found respondent to be cooperative. As set forth in Findings 8, 11 and 14, respondent immediately corrected violations brought to her attention by the auditor and provided her with evidence thereof in March 1998. Though respondent's record keeping was not in complete compliance with the Department's regulations, the auditor was able to utilize available data to reconcile her four accounts and to determine that there was no shortage in any account.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177(d), cause exists to discipline respondent's license in that respondent violated Business and Professions Code sections 10145 and Title 10, California Code of Regulations, section 2832, by reason of Findings 3, 4, 5, 6, 7 and 11.

2. Pursuant to Business and Professions Code section 10177(d), cause exists to discipline respondent's license in that respondent violated Title 10, California Code of Regulations, section 2834, by reason of Findings 3, 4, 5, 6, 7 and 8.

3. Pursuant to Business and Professions Code section 10177(d), cause exists to discipline respondent's license in that respondent violated Title 10, California Code of Regulations, section 2831, by reason of Findings 3, 4, 5, 6, 7, 9 and 10.

4. Pursuant to Business and Professions Code section 10177(d), cause exists to discipline respondent's license in that she violated Title 10, California Code of Regulations, section 2831.1, by reason of Findings 3, 4, 5, 6, 7, 9 and 12.

5. Pursuant to Business and Professions Code section 10177(d), cause exists to discipline respondent's license in that she violated Title 10, California Code of Regulations, section 2831.2, by reason of Findings 3, 4, 5, 6, 7, 9 and 13.

6. Pursuant to Business and Professions Code section 10177(d), cause exists to discipline respondent's license in that she violated Business and Professions Code section 10161.8, by reason of Findings 3, 4, 5, 6, 7 and 14.

7. As stated in Business and Professions Code section 10050, the principal responsibility of the Real Estate Commissioner is to enforce all of the Department's laws "... in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees." Therefore, the facts (Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14) and the evidence of mitigation and/or rehabilitation (Findings 15 and 16) have been considered when determining the discipline necessary to protect the public from respondent's or omissions. Based upon the foregoing, the Order set forth below is made.

ORDER

All licenses and licensing rights of respondent Harriett Darlene Crain, doing business as Mission Realty, are publicly revoked.

DATED: January 28, 2000



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

NOT ADOPTED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 25 1999

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

HARRIET DARLENE CRAIN,

}

Case No. H-2467 SD

OAH No. L-1999030114

Laurie A. Jain

Respondent

THIRD CONTINUED
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 Monday, November 8, 1999, at the hour of 9:30 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: October 25, 1999

By *Deidre L. Johnson*
DEIDRE L. JOHNSON Counsel

FILED
JUL 22 1999

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

HARRIET DARLENE CRAIN,

}

Case No. H-2467 SD

OAH No. L- 1999030114

Respondent

SECOND CONTINUED
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, California 92101

on October 20, 1999, and October 21, 1999, 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 21, 1999

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

FILED

MAY 25 1999

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

HARRIET DARLENE CRAIN,

}

Case No. H-2467 SD

OAH No. L-1999030114

Respondent

FIRST CONTINUED
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, California 92101

on July 22, 1999, and July 23, 1999, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: May 25, 1999

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

MAR 11 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

HARRIET DARLENE CRAIN,

Case No. H-2467 SD

OAH No. L-1999030114

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, California 92101

on May 21, 1999, 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.

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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: March 11, 1999

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

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

FILED

JAN 16 1999

DEPARTMENT OF REAL ESTATE

By Jean Lumeta

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 HARRIET DARLENE CRAIN,)
14 Respondent.)

NO. H- 2467 SD
ACCUSATION

16 The Complainant, C. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against HARRIET DARLENE CRAIN, is informed and alleges as follows:

19 I

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

23 II

24 Respondent HARRIET DARLENE CRAIN (hereafter Respondent)
25 is presently licensed and/or has license rights under the Real
26 Estate Law, Part 1 of Division 4 of the California Business and
27 Professions Code (hereafter the Code).

1 III

2 At all times herein mentioned, Respondent was and is
3 licensed by the Department of Real Estate (hereafter the
4 Department) as a real estate broker, individually and doing
5 business as MISSION REALTY.

6 IV

7 At least within the last three years, Respondent engaged
8 in activities for which a real estate license is required, and
9 leased or rented, offered to lease or rent, solicited prospective
10 tenants, and/or collected rents on, and managed certain real
11 properties in California on behalf of others, for or in
12 expectation of compensation.

13 V

14 Beginning in March of 1998, the Department conducted an
15 audit of Respondent's business. During the course of the property
16 management activities described above, Respondent received and
17 disbursed funds in trust on behalf of others, and deposited the
18 trust funds into four bank accounts at Union Bank of California in
19 Fallbrook, California, as follows:

- 20 (1) Account No. 0810002018, in the name of Mission
21 Realty Trust Account (hereafter Account No. 1);
22 (2) Account No. 0810471522, in the name of Mission
23 Realty Trust Account (hereafter Account No. 2);
24 (3) Account No. 0813041001, in the name of Mission
25 Realty (hereafter Account No. 3); and,
26 (4) Account No. 0810472251, in the name of Mission
27 Realty Trust Account (hereafter Account No. 4).

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VI

Within the last three years, Respondent authorized or permitted withdrawals to be made from Account No. 1 on the signature of Peggy J. Crain, an employee, and from Account No. 2 on the signature of Jean Rodewald, a property owner, among others, when neither of them was licensed by the Department as a real estate broker or a real estate salesperson. At no time herein were either Crain or Rodewald duly bonded as an employee of Respondent's with the requisite fidelity bond insurance coverage to conduct such trust account activities, pursuant to Section 2834 of Title 10, California Code of Regulations (hereafter the Regulations).

VII

In connection with the receipt and disbursement of trust funds as above alleged, Respondent:

- (a) Failed to maintain a written control record of all trust funds received and disbursed containing all information required by Section 2831 of the Regulations for Accounts No. 1, 2, 3, and 4, including but not limited to the dates on which trust funds were received;
- (b) Failed to deposit trust funds into Account No. 3 in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 2832 of the Regulations;
- (c) Failed to maintain separate beneficiary or transaction records containing all information

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required by Section 2831.1, as to Account No. 1,
including but not limited to daily balances;

(d) Failed to maintain a record of reconciliation
of the balance of separate beneficiary or
transaction records with the control record of
trust funds received and disbursed at least once
a month, as required by Section 2831.2 of the
Regulations;

(e) Failed to timely notify the Department of the
employment and/or termination of certain real
estate salesperson licensees, including but not
limited to Rita Lucille Donahue, James Dixon
Dickinson, C. Mark Howard, and Robert Curtis Kahle.

VIII

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

(a) As to Paragraphs V(3) and VII(b), under Section
10145 of the Code and Section 2832 of the
Regulations in conjunction with Section 10177(d) of
the Code.

(b) As to Paragraph VI, under Section 2834 of the
Regulations, in conjunction with Section 10177(d)
of the Code.

(c) As to Paragraph VII(a), under Section 2831 of the
Regulations in conjunction with Section 10177(d) of
the Code.

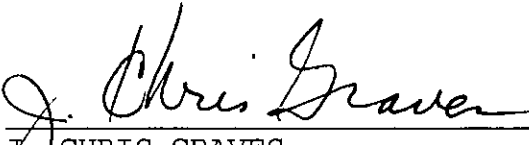
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(d) As to Paragraph VII(c), under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code.

(e) As to Paragraph VII(d), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code.

(f) As to Paragraph VII(e), under Section 10161.8 of the Code in conjunction with Section 10177(d) of the Code.

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


J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 13th day of January, 1999