

FILED
FEB 24 1992
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DONALD FREDERICK SUTHERLAND,) NO. H-2468 SAC
MARLENE GAYLE SUTHERLAND,)
SUTHERLAND INVESTMENTS, INC.,) OAH NO. N-35258
Respondents.)

AMENDED DECISION AFTER RECONSIDERATION

On August 10, 1990, a Decision was rendered herein by the Real Estate Commissioner which revoked the real estate broker license and license rights of respondent SUTHERLAND INVESTMENTS, INC., and the real estate salesperson license of respondent FREDERICK SUTHERLAND. Said Decision was to become effective on September 12, 1990.

Respondents petitioned the Superior Court, Placer County, California, for a Stay and for a Writ of Mandate. On February 8, 1991, the Superior Court entered judgment granting Preemptory Writ of Mandate remanding the cause to the Real Estate Commissioner "for reconsideration of the issue of appropriate punishment and issuance of proper findings thereon."

1 On April 17, 1991, a "Decision After Reconsideration"
2 was rendered by the Real Estate Commissioner which revoked all
3 licenses and license rights of DONALD FREDERICK SUTHERLAND and of
4 SUTHERLAND INVESTMENTS, INC., and this Decision was filed on
5 April 29, 1991.

6 Respondents petitioned the Superior Court, Placer
7 County, California, for a Stay and for a Writ of Mandate with
8 respect to the "Decision After Reconsideration" filed April 29,
9 1991. On November 20, 1991, the Superior Court entered judgment
10 granting a Peremptory Writ of Mandate remanding the cause to the
11 Real Estate Commissioner for reconsideration of the discipline as
12 to SUTHERLAND INVESTMENTS, INC.

13 I have reconsidered said Decision in accordance with the
14 Judgment and Peremptory Writ of Mandate of the Superior Court,
15 Placer County, and the "Decision After Reconsideration" filed
16 April 29, 1991 is modified to read as follows:

17 On May 4, 1990, in Sacramento, California, Muriel Evens,
18 Administrative Law Judge, Office of Administrative Hearings, State
19 of California, heard this matter.

20 Roland Adickes, Staff Counsel, represented Complainant.

21 Johanson, Buckwalter & Koons, by Kenneth D. Buckwalter,
22 Attorney at Law, represented Respondents.

23 Evidence was received and the record remained open for
24 the receipt of closing argument. Argument was received, the
25 record was closed and the matter was submitted.

26 ///

27 ///

1 FINDINGS OF FACT

2 I

3 Respondents are licensed by the Department of Real
4 Estate as follows:

- 5 1. DONALD SUTHERLAND is licensed as a real estate salesperson.
6 2. MARLENE SUTHERLAND is licensed as a real estate broker and is
7 licensed as the designated real estate broker-officer of
8 SUTHERLAND INVESTMENTS, INC.
9 3. SUTHERLAND INVESTMENTS, INC., is a corporate real estate
10 broker, with MARLENE SUTHERLAND, as designated broker-officer
11 (Business and Professions Code Sections 10211, 10159).

12 Respondents were so licensed at all relevant times.

13 II

14 On or about June 21, 1988, the Court of Appeal for the
15 Third Appellate District upheld a finding of the trial court
16 that respondents DONALD FREDERICK SUTHERLAND and SUTHERLAND
17 INVESTMENTS, INC., obtained secret profits while acting in a
18 fiduciary relationship with the Mountain Investment Group
19 (MIG).

20 Although the caption of the opinion of the Court of
21 Appeal referred to "DONALD SUTHERLAND, SUTHERLAND INVESTMENTS,
22 INC., DONALD SUTHERLAND and MARLENE SUTHERLAND doing business as
23 ALL-TRADE, Defendants and Appellants" the Court of Appeal deter-
24 mined as a fact that "DONALD SUTHERLAND admitted that Sutherland
25 Investment, Inc., and All Trades are his alter egos." (emphasis
26 added) Opinion of the Court of Appeal, p. 1, footnote 1. It was
27 thus a fact in the civil case that there was "such a unity of

1 interest and ownership that the individuality, or separateness of
2 the said person and corporation has ceased" Wood v. Elling
3 Corporation (1977) 20 Cal 3d 353, 365, fn. 9.

4 By affirming the judgment of the trial court, this
5 determination of fact by the Court of Appeal, to wit, the unity of
6 interest and ownership between DONALD SUTHERLAND and SUTHERLAND
7 INVESTMENTS is conclusive in an administrative proceeding.

8 Moreover, this admission by DONALD SUTHERLAND is
9 corroborated by the facts in the administrative record that DONALD
10 SUTHERLAND was one of the two initial directors of SUTHERLAND
11 INVESTMENTS, INC. (Articles of Incorporation), that he was the
12 "Chief Executive Officer", and the "Chief Financial Officer" as
13 well as the agent for the service of process of the corporation
14 (Statement By Domestic Stock Corporation), while MARLENE GAYLE
15 SUTHERLAND was merely the secretary of the corporation, and the
16 second of the two initial directors.

17 Based on the determination by the Court of Appeal and
18 the facts stated above, I find that the acts and/or omissions of
19 DONALD SUTHERLAND and of SUTHERLAND INVESTMENTS, INC., in the
20 secret profit transaction described in the opinion of the Court of
21 Appeal were one and the same and that DONALD SUTHERLAND and
22 SUTHERLAND INVESTMENTS, INC., are equally responsible for said
23 acts and/or omissions and I follow the Court of Appeal in
24 referring to DONALD SUTHERLAND and SUTHERLAND INVESTMENTS, INC.,
25 together as one and the same person designated, technically, as
26 "Respondents".

27 ///

III

1
2 In August, 1980, MIG entered into a property management
3 contract with respondents DONALD SUTHERLAND and SUTHERLAND
4 INVESTMENTS, INC. Pursuant to the contract, MIG employed
5 Respondents to rent, lease, manage and sell the real properties it
6 held. In addition, Respondents agreed to employ and supervise all
7 labor required for the operation and maintenance of the premises,
8 including repairs, decorating and alterations. MIG agreed to pay
9 Respondents a six percent management fee plus \$35.00 per hour for
10 the "supervision of alterations, repairs and the like." To
11 provide the repair and upkeep services, Respondents started doing
12 business under the name All Trades.

13 In or about 1981, respondents DONALD SUTHERLAND and
14 SUTHERLAND INVESTMENTS, INC., entered into an agreement with MIG
15 to remodel two buildings, proceeding in the same manner as the
16 property maintenance work. Respondents' practice was to hire and
17 pay the necessary labor and then bill MIG under the name "All
18 Trades" for the labor plus a substantial mark-up. "All Trades"
19 was not a separate business entity. For example, a laborer might
20 be hired for \$8.00 per hour, but MIG was billed for \$15.00 per
21 hour. The mark-up was not disclosed to MIG. Respondents used a
22 perforated invoice for billing costs to MIG. The bottom part
23 showed the actual costs of goods and services, the top part the
24 charge billed to MIG. Respondents sent the top part to MIG and
25 kept the bottom part for their bookkeeping.

26 In or about November, 1981, MIG members visited the
27 remodeling project and were dissatisfied with it. Respondents

1 DONALD SUTHERLAND and SUTHERLAND INVESTMENTS, INC., were termin-
2 ated and were eventually asked for an accounting. Respondents
3 refused to provide an accounting, and MIG was required to file a
4 civil action seeking an accounting, disgorging of secret profits
5 and damages. MIG was awarded judgment from the trial court and
6 Respondents appealed.

7 The Court of Appeal affirmed a modified award for secret
8 profits of \$10,061.25 in favor of MIG.

9 The Court of Appeal stated expressly in its opinion that
10 Respondents had no contractual basis for charging the mark-ups and
11 that respondent DONALD SUTHERLAND and his "alter ego", respondent
12 SUTHERLAND INVESTMENTS, INC., was in effect "paid twice for his
13 services, once in his six percent management fee and once again
14 through his mark-up for obtaining the service. The Court of
15 Appeal sustained the trial court's finding that Respondents did
16 not disclose the mark-up to their principals.

17 In addition to the modified award for secret profit, the
18 Court of Appeal affirmed an award of \$1,167.00 to MIG for its
19 expenses in hiring an accountant after respondents DONALD
20 SUTHERLAND and SUTHERLAND INVESTMENTS, INC., refused to provide a
21 complete accounting. The Court of Appeal stated that respondent
22 DONALD SUTHERLAND when requested by his principals for a complete
23 account took "the position that his dealings under the name All-
24 Trades were none of [his principals'] business".

25 The lack of contractual basis for the mark-ups, the use
26 of the divided invoice, the use of the fictitious business name
27 "All Trades", the failure to disclose the mark-up to Respondents'

1 principals from the start (for example by providing a copy of the
2 complete billing document), and the refusal to render an account-
3 ing when challenged by the principals, all taken together support
4 the inference that Respondents' conduct was intentional and it is
5 hereby found that respondents DONALD SUTHERLAND and SUTHERLAND
6 INVESTMENTS, INC., intentionally concealed the mark-up from their
7 principals.

8 IV

9 Respondents are active in local real estate board
10 activities, including memberships on several committees, as well
11 as other community groups. However this activity did not prevent
12 respondents DONALD SUTHERLAND and SUTHERLAND INVESTMENTS, INC.,
13 from engaging in the conduct described above. There is no record
14 of prior discipline.

15 Respondent DONALD SUTHERLAND had the primary contact with
16 MIG. He said it was not his intent to harm, since he wanted to
17 continue to do business with MIG and its individual investors. He
18 said he did not think the hourly rate charged was that important,
19 since the project had a cap, and as long as the charges did not
20 exceed the cap, he felt he had disclosed all that was required.

21 When questioned whether he at the present time
22 understood that the Court of Appeal had found that there was no
23 contract between Respondents and the group of investors under
24 which Respondents were entitled to receive \$60,000 (the alleged
25 cap) without having to account for that money to the investors,
26 respondent DONALD SUTHERLAND stated "I'm not sure. I just don't
27 know."

DETERMINATION OF ISSUES

I

Respondents argue that the statute of limitations runs from the time of the trial judgment against Respondents in 1985, more than three years before the issuance of the Accusation. The Department contends the statute of limitations runs from the issuance of the decision of the Court of Appeal in 1988.

While the Department may have had the option of issuing an Accusation following the judgment of the trial court, Respondents did appeal that judgment on the issues relevant to this matter. It is likely the hearing on the Accusation would have been stayed pending the appellate decision.

Business and Professions Code, Section 10177.5, the charged violation, provides for the filing of an Accusation following a "final judgment" in a civil action based on fraud, misrepresentation, or deceit. While the trial court judgment is final for the purposes of appeal, it is not the final judgment for the purposes of administrative disciplinary action under Section 10177.5. Accordingly, the Accusation was timely filed.

II

Cause for discipline of the licenses of respondents DONALD SUTHERLAND and SUTHERLAND INVESTMENTS, INC., for violation of Business and Professions Code, Section 10177.5 was established by Findings II and III.

///

///

///

1 ORDER

2 I

3 All real estate licenses and licensing rights issued to
4 respondent DONALD FREDERICK SUTHERLAND by the Department of Real
5 Estate are revoked.

6 II

7 All real estate licenses and licensing rights issued to
8 SUTHERLAND INVESTMENTS, INC., are revoked.

9 As hereby modified and amended, the Decision of
10 April 17, 1991 (filed April 29, 1991), shall become effective at
11 12 o'clock noon on March 16, 1992.

12 DATED:

February 20, 1992

13 CLARK WALLACE
14 Real Estate Commissioner

15 Clark Wallace
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
APR 29 1991
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DONALD FREDERICK SUTHERLAND,) NO. H-2468 SAC
MARLENE GAYLE SUTHERLAND,) OAH NO. N-35258
SUTHERLAND INVESTMENTS, INC.,)
Respondents.)

DECISION AFTER RECONSIDERATION

On August 10, 1990, a Decision was rendered herein by the Real Estate Commissioner which revoked the real estate broker license and license rights of respondent SUTHERLAND INVESTMENTS, INC., and the real estate salesperson license of respondent FREDERICK SUTHERLAND. Said Decision was to become effective on September 12, 1990.

Respondents petitioned the Superior Court, Placer County, California, for a Stay and for a Writ of Mandate. On February 8, 1991, the Superior Court entered judgment granting Preemptory Writ of Mandate remanding the cause to the Real Estate Commissioner "for reconsideration of the issue of appropriate punishment and issuance of proper findings thereon."

1 I have reconsidered said Decision in accordance with the
2 Judgment and Peremptory Writ of Mandate of the Superior Court,
3 Placer County, and the Decision is modified to read as follows:

4 On May 4, 1990, in Sacramento, California, Muriel Evens,
5 Administrative Law Judge, Office of Administrative Hearings, State
6 of California, heard this matter.

7 Roland Adickes, Staff Counsel, represented complainant.

8 Johanson, Buckwalter & Koons, by Kenneth D. Buckwalter,
9 Attorney at Law, represented Respondents.

10 Evidence was received and the record remained open for
11 the receipt of closing argument. The record was closed and the
12 matter was submitted.

13 FINDINGS OF FACT

14 I

15 Respondents are licensed by the Department of Real
16 Estate as follows:

17 1. DONALD SUTHERLAND is licensed as a real estate
18 salesperson.

19 2. MARLENE SUTHERLAND is the designated real estate
20 broker-officer of SUTHERLAND INVESTMENTS, INC.

21 3. SUTHERLAND INVESTMENTS, INC., is a corporate real
22 estate broker, with MARLENE SUTHERLAND, the designated
23 broker-officer.

24 Respondents were so licensed at all relevant times.

25 ///

26 ///

27 ///

II

On or about June 21, 1988, the Court of Appeal for the Third Appellate District upheld a finding of a trial court that respondents DONALD FREDERICK SUTHERLAND and SUTHERLAND INVESTMENTS, INC., obtained secret profits while acting in a fiduciary relationship with the Mountain Investment Group (MIG).

III

In August, 1980, MIG entered into a property management contract with Respondents. Pursuant to the contract, MIG employed Respondents to rent, lease, manage and sell the real properties it held. In addition, Respondents agreed to employ and supervise all labor required for the operation and maintenance of the premises, including repairs, decorating and alterations. MIG agreed to pay Respondents a six percent management fee plus \$35.00 per hour for the "supervision of alterations, repairs and the like." To provide the repair and upkeep services, Respondents started doing business under the name All Trades.

In or about 1981, Respondents entered into an agreement with MIG to remodel two buildings, proceeding in the same manner as the property maintenance work. Respondents' practice was to hire and pay the necessary labor and then bill MIG under the name "All Trades" for the labor plus a substantial mark-up. "All Trades" was not a separate business entity. For example, a laborer might be hired for \$8.00 per hour, but MIG was billed for \$15.00 per hour. The mark-up was not disclosed to MIG. Respondents used a perforated invoice for billing costs to MIG. The bottom part showed the actual costs of goods and services, the

1 top part the charge billed to MIG. Respondents sent the top part
2 to MIG and kept the bottom part for their bookkeeping.

3 In or about November, 1981, MIG members visited the
4 remodeling project and were dissatisfied with it. Respondents
5 were terminated and were eventually asked for an accounting.
6 Respondents refused to provide an accounting, and MIG was required
7 to file a civil action seeking an accounting, disgorging of secret
8 profits and damages. MIG was awarded judgment from the trial
9 court and Respondents appealed.

10 The Court of Appeal affirmed a modified award for secret
11 profits of \$10,061.25 in favor of MIG.

12 The Court of Appeal stated expressly in its opinion that
13 Respondents had no contractual basis for charging the mark-ups and
14 that respondent DONALD SUTHERLAND and his "alter ego", respondent
15 SUTHERLAND INVESTMENTS, INC., was in effect "paid twice for his
16 services, once in his six percent management fee and once again
17 through his mark-up for obtaining the service. The Court of
18 Appeal sustained the trial court's finding that Respondents did
19 not disclose the mark-up to their principals.

20 In addition to the modified award for secret profit, the
21 Court of Appeal affirmed an award of \$1,167.00 to MIG for its
22 expenses in hiring an accountant after Respondents refused to
23 provide a complete accounting. The Court of Appeal stated that
24 respondent DONALD SUTHERLAND when requested by his principals for
25 a complete account took "the position that his dealings under the
26 name All Trades were none of [his principals'] business".

27 ///

1 The lack of contractual basis for the mark-ups, the use
2 of the divided invoice, the use of the fictitious business name
3 "All Trades", the failure to disclose the mark-up to Respondents'
4 principals from the start (for example by providing a copy of the
5 complete billing document), and the refusal to render an
6 accounting when challenged by the principals, all taken together
7 support the inference that Respondents' conduct was intentional
8 and it is hereby found that Respondents intentionally concealed
9 the mark-up from their principals.

10 IV

11 Respondents are active in local real estate board
12 activities, including memberships on several committees, as well
13 as other community groups. There is no record of prior
14 discipline.

15 Respondent DONALD SUTHERLAND had the primary contact
16 with MIG. He said it was not his intent to harm, since he wanted
17 to continue to do business with MIG and its individual investors.
18 He said he did not think the hourly rate charged was that
19 important, since the project had a cap, and as long as the charges
20 did not exceed the cap, he felt he had disclosed all that was
21 required.

22 When questioned whether he at the present time
23 understood that the Court of Appeal had found that there was no
24 contract between Respondents and the group of investors under
25 which Respondents were entitled to receive \$60,000 (the alleged
26 cap) without having to account for that money to the investors,
27 ///

1 respondent DONALD SUTHERLAND stated "I'm not sure. I just don't
2 know."

3 When questioned about the Court of Appeal's finding that
4 Respondents took the position vis-a-vis the investor group that
5 Respondents' dealings under the name All Trades were none of the
6 investors' business, respondent DONALD SUTHERLAND stated that
7 after two (2) years of litigation with the investors, he felt he
8 had "no obligation to show them the difference between the All
9 Trades billing, what I received and what I was paying out",
10 because his business did not make a profit "in the year that this
11 happened."

12 He now thinks he should have disclosed "all", but also
13 wonders how an Accusation could be filed against "somebody when
14 they've done everything they could." He has changed how his
15 billings are handled.

16 V

17 Respondent's testimony described in Paragraph IV,
18 offered at the administrative hearing to show mitigation does not,
19 in fact, mitigate the seriousness of Respondents' conduct. It
20 still reflects a lack of awareness of the wrongfulness of
21 Respondents' prior conduct. Respondents DONALD SUTHERLAND and
22 SUTHERLAND INVESTMENTS, INC., intentionally kept the mark-up from
23 the knowledge of their principals and Respondents should have
24 known that this conduct was dishonest and violated the fiduciary
25 duty Respondents owed to their principals.

26 ///

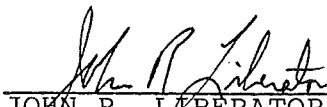
27 ///

1 All real estate licenses and licensing rights issued to
2 SUTHERLAND INVESTMENTS, INC., are revoked.

3 As hereby modified and amended, the Decision of
4 August 10, 1990, shall become effective at 12 o'clock noon on
5 May 20 , 1991.

6 DATED: April 17, 1991

7 DEPARTMENT OF REAL ESTATE

8
9 
10 JOHN R. LIBERATOR
11 Chief Deputy Real Estate
12 Commissioner
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
JUL 23 1990
DEPARTMENT OF REAL ESTATE

By Emily J. J. J.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DONALD FREDERICK SUTHERLAND,)
MARLENE GAYLE SUTHERLAND,)
SUTHERLAND INVESTMENTS, INC.,)
Respondents.)

NO. H-2468 SAC
N 35258

DECISION

The Proposed Decision dated July 26, 1990,
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the Decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on September 12, 19 90.

IT IS SO ORDERED August 20, 19 90.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	No. H-2468 SAC
	)	
DONALD FREDERICK SUTHERLAND,	)	OAH No. N-35258
MARLENE GAYLE SUTHERLAND,	)	
SUTHERLAND INVESTMENTS, INC.,	)	
	)	
Respondent.	)	

PROPOSED DECISION

On May 4, 1990, in Sacramento, California, Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Roland Adickes, Staff Counsel, represented complainant.

Johanson, Buckwalter & Koons, by Kenneth D. Buckwalter, Attorney at Law, represented respondents.

Evidence was received and the record remained open for the receipt of closing argument. The record was closed and the matter was submitted.

FINDINGS OF FACT

I

Respondents are licensed by the Department of Real Estate as follows:

1. Donald Sutherland is licensed as a real estate salesperson.

2. Marlene Sutherland is the designated real estate broker officer of Sutherland Investments, Inc.

3. Sutherland Investments, Inc. is a corporate real estate broker, with Marlene Sutherland the designated broker-officer.

Respondents were so licensed at all relevant times.

II

On or about June 21, 1988, the Court of Appeal for the Third Appellate District upheld a finding of a trial court that respondents

obtained secret profits while acting in a fiduciary relationship with the Mountain Investment Group (MIG).

III

In August, 1980, MIG entered into a property management contract with respondents. Pursuant to the contract, MIG employed respondents to rent, lease, manage and sell the real properties it held. In addition, respondents agreed to employ and supervise all labor required for the operation and maintenance of the premises, including repairs, decorating and alterations. MIG agreed to pay respondents a six percent management fee plus \$35 per hour for the "supervision of alterations, repairs and the like." To provide the repair and upkeep services, respondents started doing business under the name All Trades.

In or about 1981, respondents entered into an agreement with MIG to remodel two buildings, proceeding in the same manner as the property maintenance work. Respondents' practice was to hire and pay the necessary labor and then bill MIG for the labor plus a substantial mark-up. For example, a laborer might be hired for \$8 per hour, but MIG was billed for \$15 per hour. The mark-up was not disclosed to MIG. Respondents used a perforated invoice for billing costs to MIG. The bottom part showed the actual costs of goods and services, the top part the charge billed to MIG. Respondents sent the top part to MIG and kept the bottom part for their bookkeeping.

In or about November, 1981, MIG members visited the remodeling project and were dissatisfied with it. Respondents were terminated and eventually asked for an accounting. Respondents refused to provide an accounting, and MIG was required to file a civil action seeking an accounting, disgorging of secret profits and damages. MIG was awarded judgment from the trial court and respondents appealed.

The Court of Appeal affirmed a modified award for secret profits of \$10,061.25 in favor of MIG. In addition, the Court affirmed an award of \$1,167 to MIG for its expenses in hiring an accountant after respondents refused to provide a complete accounting.

IV

Respondents are active in local real estate board activities, including memberships on several committees, as well as other community groups. There is no record of prior discipline.

Respondent Donald Sutherland had the primary contact with MIG. He said it was not his intent to harm, since he wanted to continue to do business with MIG and its individual investors. He said he did not think the hourly rate charged was that important, since the project had a cap, and as long as the charges did not exceed the cap, he felt he had disclosed all that was required. He now thinks he should have disclosed "all". He has also changed how his billings are handled.

Respondent Donald Sutherland knew or should have known that he was being dishonest with his clients and violating the fiduciary duty owed to them. There was no evidence that respondent Marlene Sutherland exercised any supervision over the activities of respondent Donald Sutherland.

DETERMINATION OF ISSUES

I

Respondents argue that the statute of limitations runs from the time of the trial judgment against respondents in 1985, more than three years before the issuance of the Accusation. The Department contends the statute of limitations runs from the issuance of the decision of the Court of Appeal in 1988.

While the Department may have had the option of issuing an Accusation following the judgment of the trial court, respondents did appeal that judgment on the issues relevant to this matter. It is likely the hearing on the Accusation would have been stayed pending the appellate decision.

Business and Professions Code, section 10177.5, the charged violation, provides for the filing of an Accusation following a "final judgment" in a civil action based on fraud, misrepresentation or deceit. While the trial court judgment is final for the purposes of appeal, it is not necessarily the final judgment for the purposes of administrative disciplinary action. Accordingly, the Accusation was timely filed.

II

Cause for discipline of respondents' license for violation of Business and Professions Code section 10177.5 was established by Finding II.

ORDER

All real estate licenses and licensing rights issued to respondent Donald Frederick Sutherland by the Department of Real Estate are revoked.

All real estate licenses and licensing rights issued to Sutherland Investments, Inc. are revoked.

Dated: July 26, 1990


MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

1 ROLAND ADICKES, Counsel
2 Department of Real Estate
3 P.O. Box 187000
4 Sacramento, CA 95818-7000

5 (916) 739-3607

FILED
DEC 27 1989
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DONALD FREDERICK SUTHERLAND,) NO. H-2468 SAC
13 MARLENE GAYLE SUTHERLAND,)
14 SUTHERLAND INVESTMENTS, INC.,) ACCUSATION
15 Respondents.)

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California for cause of
18 Accusation against DONALD FREDERICK SUTHERLAND, MARLENE GAYLE
19 SUTHERLAND, and SUTHERLAND INVESTMENTS, INC. (hereinafter
20 "Respondents") is informed and alleges as follows:

21 1.

22 The Complainant, Les R. Bettencourt, a Deputy Real
23 Estate Commissioner of the State of California, makes this
24 Accusation in his official capacity.

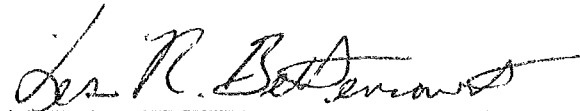
25 2.

26 Respondents are presently licensed, and/or have license
27 rights under the Real Estate Law (Part 1 of Division 4 of the
Business and Professions Code) (Code) 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) as
6 described above and for such other and further relief as may be
7 proper under the provisions of law.

8

9



LES R. BETTENCOURT

Deputy Real Estate Commissioner

10

11

12 Dated at Sacramento, California

13 this 13th day of December, 1989.

14

15

16

17

18

19

20

21

22

23

24

25

26

27