

By Kathleen Contreras

1 my satisfaction that Respondent meets the requirements of law for
2 the issuance to Respondent of an unrestricted real estate broker
3 license and that it would not be against the public interest to
4 issue said license to Respondent.

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

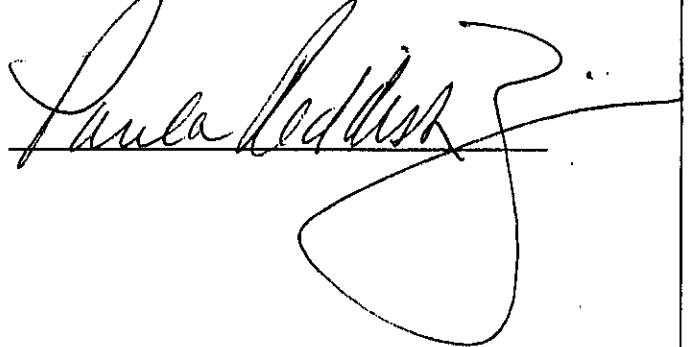
10 1. Submittal of a completed application and payment of
11 the fee for a real estate broker license.

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

17 This Order shall be effective immediately.

18 DATED: April 4, 2002.
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20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner

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1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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FILED
MAR - 2 2000

DEPARTMENT OF REAL ESTATE

Lucie A. Zai

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-2536 SD
12 CHERYL ROSELLA BERKSON,)	OAH NO. L-1999120390
13 Respondent.)	<u>STIPULATION AND AGREEMENT</u>

14
15 It is hereby stipulated by and between Respondent
16 CHERYL ROSELLA BERKSON (hereinafter "Respondent BERKSON"), and
17 the Complainant, acting by and through David A. Peters, Counsel
18 for the Department of Real Estate, as follows for the purpose
19 of settling and disposing of the Accusation filed on
20 November 17, 1999, in this matter:

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

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

5 3. On December 2, 1999, Respondent BERKSON filed a
6 Notice of Defense pursuant to Section 11505 of the Government
7 Code for the purpose of requesting a hearing on the allegations
8 in the Accusation. Respondent BERKSON hereby freely and
9 voluntarily withdraws said Notice of Defense. Respondent
10 BERKSON acknowledges that Respondent BERKSON understands that
11 by withdrawing said Notice of Defense Respondent BERKSON will
12 thereby waive Respondent BERKSON's right to require the
13 Commissioner to prove the allegations in the Accusation at a
14 contested hearing held in accordance with the provisions of the
15 APA and that Respondent BERKSON will waive other rights
16 afforded to Respondent BERKSON in connection with the hearing
17 such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondent BERKSON chooses not to
23 contest these allegations, but to remain silent and understands
24 that, as a result thereof, these factual allegations, without
25 being admitted or denied, will serve as a prima facie basis for
26 the disciplinary action stipulated to herein. The Real Estate
27 ///

1 Commissioner shall not be required to provide further evidence
2 to prove said factual allegations.

3 5. It is understood by the parties that the Real
4 Estate Commissioner may adopt the Stipulation and Agreement as
5 his decision in this matter, thereby imposing the penalty and
6 sanctions on Respondent BERKSON's real estate license and
7 license rights as set forth in the "Order" below. 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 BERKSON shall retain the right to a hearing and
11 proceeding on the Accusation under all the provisions of the
12 APA and shall not be bound by any admission or waiver made
13 herein.

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

21 7. Respondent BERKSON understands that by agreeing
22 to this Stipulation and Agreement, Respondent BERKSON agrees to
23 pay, pursuant to Section 10148 of the Business and Professions
24 Code, the cost of the audit which led to this disciplinary
25 action. The amount of said cost is \$4,613.51.

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1 8. Respondent BERKSON has received, read, and
2 understands the "Notice Concerning Costs of Subsequent Audits".
3 Respondent BERKSON understands that by agreeing to this
4 Stipulation and Agreement in Settlement, the findings set forth
5 below in the DETERMINATION OF ISSUES become final, and that the
6 Commissioner may charge Respondent BERKSON for the cost of any
7 audit conducted pursuant to Section 10148 of the Business and
8 Professions Code to determine if the violations have been
9 corrected. The maximum costs of said audit will not exceed
10 \$4,613.51.

11 DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations, admissions
13 and waivers, and solely for the purpose of settlement of the
14 pending Accusation without hearing, it is stipulated and agreed
15 that the following determination of issues shall be made:

16 I

17 The conduct of Respondent BERKSON, as described in the
18 Accusation, constitutes cause for the suspension or revocation
19 of the real estate license and license rights of Respondent
20 BERKSON under the provisions of Section 10177(d) of the
21 California Business and Professions Code ("Code") in conjunction
22 with Sections 10145 of the Code and Sections 2832.1, 2831,
23 2831.1, 2831.2, and 2834 of Title 10, California Code of
24 Regulations.

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1 **(b) The receipt of evidence that Respondent has**
2 violated provisions of the California Real
3 Estate Law, Subdivided Lands Law,
4 Regulations of the Real Estate Commissioner
5 or conditions attaching to the restricted
6 license.

7 **(2) Respondent BERKSON shall not be eligible to apply**
8 for issuance of an unrestricted real estate
9 license nor the removal of any of the conditions,
10 limitations or restrictions attaching to the
11 restricted license until one (1) year has elapsed
12 from the date of issuance of a restricted license
13 to Respondent.

14 **D. Respondent BERKSON shall, within nine (9) months**
15 **from the effective date of this ORDER, present evidence**
16 **satisfactory to the Real Estate Commissioner that she has, since**
17 **the most recent issuance of an original or renewal real estate**
18 **license, taken and successfully completed the continuing**
19 **education requirements of Article 2.5 of Chapter 3 of the Real**
20 Estate Law for renewal of a real estate license. If Respondent
21 BERKSON fails to satisfy this condition, the Commissioner may
22 order the suspension of the restricted license until Respondent
23 BERKSON presents such evidence. The Commissioner shall afford
24 Respondent BERKSON the opportunity for a hearing pursuant to the
25 Administrative Procedure Act to present such evidence.

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1 E. Respondent BERKSON shall, within six (6) months
2 from the effective date of the restricted license, take and pass
3 the Professional Responsibility Examination administered by the
4 Department including the payment of the appropriate examination
5 fee. If Respondent BERKSON fails to satisfy this condition, the
6 Commissioner may order the suspension of the restricted license
7 until Respondent BERKSON passes the examination.

8 F. Pursuant to Section 10148 of the Business and
9 Professions Code, Respondent BERKSON shall pay the
10 Commissioner's reasonable cost for: a) the audit which led to
11 this disciplinary action, and b) a subsequent audit to
12 determine if Respondent BERKSON has corrected the trust fund
13 violations found in Paragraph I of the Determination of Issues.
14 In calculating the amount of the Commissioner's reasonable cost,
15 the Commissioner may use the estimated average hourly salary for
16 all persons performing audits of real estate brokers, and shall
17 include an allocation for travel time to and from the auditor's
18 place of work. Respondent BERKSON shall pay such cost within
19 sixty (60) days of receiving an invoice from the Commissioner
20 detailing the activities performed during the audit and the
21 amount of time spent performing those activities. The
22 Commissioner may suspend the restricted license issued to
23 Respondent BERKSON pending a hearing held in accordance with
24 Section 11500, et seq., of the Government Code, if payment is
25 not timely made as provided for herein, or as provided for in a
26 subsequent agreement between the Respondent and the
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1 Commissioner. The suspension shall remain in effect until
2 payment is made in full or until Respondent BERKSON enters into
3 an agreement satisfactory to the Commissioner to provide for
4 payment, or until a decision providing otherwise is adopted
5 following a hearing held pursuant to this condition.

6 G. Respondent BERKSON shall prior to the effective
7 date of the Decision provide evidence satisfactory to the
8 Commissioner that Respondent BERKSON has cured the trust fund
9 shortage alleged in the Accusation.

10 H. Any restricted real estate broker license issued
11 to Respondent BERKSON may be suspended or revoked for a
12 violation by Respondent BERKSON of any of the conditions
13 attaching to the restricted license.

14
15 1/24/2000

16 DATED

David A. Peters

17 DAVID A. PETERS, Counsel
18 DEPARTMENT OF REAL ESTATE

19 * * *

20 I have read the Stipulation and Agreement and its
21 terms are understood by me and are agreeable and acceptable to
22 me. I understand that I am waiving rights given to me by the
23 California Administrative Procedure Act (including but not
24 limited to Sections 11506, 11508, 11509, and 11513 of the
25 Government Code), and I willingly, intelligently, and
26 voluntarily waive those rights, including the right of
27 requiring the Commissioner to prove the allegations in the
Accusation at a hearing at which I would have the right to

1 cross-examine witnesses against me and to present evidence in
2 defense and mitigation of the charges.

3
4 January 10, 2000
5 DATED

Cheryl Rosella Berkson
6 CHERYL ROSELLA BERKSON
7 Respondent

8 * * *

9 The foregoing Stipulation and Agreement for
10 Settlement is hereby adopted by the Real Estate Commissioner as
11 her Decision and Order and shall become effective at 12 o'clock
12 noon on March 23, 2000

13 IT IS SO ORDERED

February 8, 2000.
14 PAULA REDDISH ZINNEMANN
15 Real Estate Commissioner
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Paula Reddish Zinnemann

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

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

FILED
NOV 17 1999

DEPARTMENT OF REAL ESTATE

By *Marie A. Zan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-2536 SD
12 CHERYL ROSELLA BERKSON,) ACCUSATION
13 Respondent.)
14

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against CHERYL ROSELLA BERKSON dba Chase Management Services &
18 Brokerage (hereinafter "Respondent BERKSON"), is informed and
19 alleges as follows:

20 I

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

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2 II

3 Respondent is presently licensed and/or has license
4 rights under the Real Estate Law (Part 1 of Division 4 of the
5 California Business and Professions Code) (hereinafter "the
6 Code") as a real estate broker.

7 III

8 Beginning on or before January 1, 1998 through on or
9 about March 11, 1999, Respondent engaged in the business of,
10 acted in the capacity of, advertised or assumed to act as a real
11 estate broker in the State of California within the meaning of
12 Section 10131(a) of the Code, including the operation and conduct
13 of a real estate business with the public wherein, on behalf of
14 others and for compensation or in expectation of compensation,
15 Respondent sold or offered to sell, bought or offered to buy,
16 solicited prospective sellers or purchasers of, solicited or
17 obtained listings of, or negotiated the purchase, sale or
18 exchange of real property.

19 IV

20 Beginning on or before January 1, 1998 through on or
21 about March 11, 1999, Respondent engaged in the business of,
22 acted in the capacity of, advertised or assumed to act as a real
23 estate broker in the State of California within the meaning of
24 Section 10131(b) of the Code, including the operation and conduct
25 of a real estate property management business with the public
26 wherein, on behalf of others and for compensation or in
27 expectation of compensation, Respondent solicited prospective

1 tenants for, negotiated rental agreements for, collected rents
2 from and otherwise managed certain real properties located in or
3 near San Diego, California.

4 V

5 During the course of the real estate sales activities
6 described in Paragraph III above, and the property management
7 activities described in Paragraph IV above, Respondent received
8 and disbursed funds held in trust on behalf of another or others.

9 VI

10 Beginning on or before January 1, 1998 through on or
11 about March 11, 1999, Respondent maintained the following trust
12 fund accounts:

13	<u>TITLE AND ACCOUNT NO.</u>	<u>BANK</u>
14	Chase Management Services and Brokerage	Wells Fargo Bank
15	Cheryl Berkson Trust Account	San Diego, California
16	Account No. 0792-018368	
	(hereinafter "Trust Account #1")	
17	Chase Management Services and Brokerage	Wells Fargo Bank
18	Security Deposit Trust	San Diego, California
	Account No. 0829-327253	
	(hereinafter "Trust Account #2")	

19 VII

20 In connection with the collection and disbursement of
21 trust funds described in Paragraph V above, Respondent failed to
22 deposit and maintain said trust funds in Trust Account #1 in such
23 manner that as of February 3, 1999, there was a shortage of
24 \$53,318.40 of trust funds.

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VIII

Respondent failed to obtain prior written consent from each of the principals for the reduction of the aggregate balance of trust funds in Trust Account #1 to an amount less than the existing aggregate trust fund liability to the owners of said funds in violation of Section 2832.1 of Title 10, California Code of Regulations (hereinafter "the Regulations").

IX

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

X

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

XI

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondent failed to adequately maintain and perform a reconciliation with the records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations at least once per month, in conformance with Section 2831.2 of the Regulations.

1 XII

2 In connection with the trust fund accounts referred to
3 in Paragraph VI above, Respondent permitted withdrawals to be
4 made from said accounts by someone other than a salesperson
5 licensed by Respondent and authorized in writing by Respondent to
6 withdraw said funds, or an unlicensed employee covered by a
7 fidelity bond indemnifying Respondent against loss in an amount
8 sufficient to cover the maximum amount of funds to which the
9 employee had access at any time in violation of Section 2834 of
10 he Regulations.

11 XIII

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

16 (1) As to Paragraph VII, under Section 10177(d) of the
17 Code in conjunction with Section 10145 of the Code;

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

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

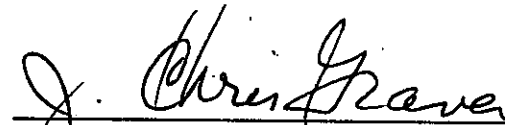
22 (4) As to Paragraph X, under Section 10177(d) of the
23 Code in conjunction with Section 2831.1 of the Regulations;

24 (5) As to Paragraph XI, under Section 10177(d) of the
25 Code in conjunction with Section 2831.1 and 2831.2 of the
26 Regulations; and

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1 (6) As to Paragraph XII, under Section 10177(d) of the
2 Code in conjunction with Section 2834 of the Regulations.

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

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11 
12 J. CHRIS GRAVES
13 Deputy Real Estate Commissioner

14 Dated at San Diego, California,
15 this 10th day of November, 1999.
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