

FILED

MAR 23 2012

Department of Real Estate
BY: [Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-2573 FR
DEEROT REALTY, INC.,)	
D BEST REALTY, INC.,)	OAH No. 2011030045
JAMES WAYNE ROBINSON)	
and RICKEY NEAL BRADFORD,)	
)	DEEROT REALTY, INC., and
)	JAMES WAYNE ROBINSON
Respondents.)	ONLY

DECISION

The Proposed Decision dated February 17, 2012, 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 APR 13 2012.

IT IS SO ORDERED 3/16/12.

BARBARA J. BIGBY
Acting Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DEEROT REALTY, INC.; D BEST REALTY,
INC.; JAMES WAYNE ROBINSON; AND
RICKEY NEAL BRADFORD,

Respondents.

Case No. H-2573 FR

OAH No. 2011030045

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on February 3, 2012, in Sacramento, California.

Richard K. Uno, Real Estate Counsel, represented Luke Martin (complainant), Deputy Real Estate Commissioner of the State of California.

James Wayne Robinson and Rickey Neal Bradford each represented themselves. No appearance was made by or on behalf of Deerot Realty, Inc. Complainant reached a settlement with D Best Realty, Inc., prior to hearing, and no appearance was made by or on behalf of D Best Realty, Inc.

Evidence was received, the record was closed, and the matter was submitted for decision on February 3, 2012.

SUMMARY

Complainant filed an accusation seeking to discipline the real estate broker licenses issued to Deerot Realty, Inc.; D Best Realty, Inc.; and the designated officers of the respective corporations, James Wayne Robinson and Rickey Neal Bradford.¹ According to complainant, each corporation committed various violations of California's Real Estate Law, and the responsible officer failed to properly supervise his corporation's real estate activities. As discussed below, the evidence established that Deerot Realty, Inc., committed numerous violations of the Real Estate law, each of which constitutes cause to discipline its license. Each violation also constitutes cause to discipline Mr. Robinson's license based solely on his

¹ Complainant reached a settlement with D Best Realty, Inc., the day before the hearing, and this Proposed Decision has no effect on that settlement.

duty to supervise the corporation's real estate activities. There is insufficient evidence that D Best Realty, Inc., engaged in any activities for which a real estate license is required and, therefore, no cause exists to discipline Mr. Bradford's license. After considering all relevant evidence, it is necessary for public safety, health, and welfare to revoke Deerot Realty, Inc., and Mr. Robinson's real estate broker licenses.

FACTUAL FINDINGS

1. On December 16, 2010, complainant filed an accusation seeking to discipline the real estate broker licenses of Deerot Realty, Inc.; D Best Realty, Inc.; James Wayne Robinson; and Rickey Neal Bradford based on various violations of the Real Estate Law and the rules and regulations adopted pursuant thereto.

2. On December 31, 2010, attorney Dixon G. Kummer signed a Notice of Defense on Accusation on behalf of Deerot Realty, Inc., appointing himself as Deerot Realty, Inc.'s attorney of record. On October 20, 2011, Mr. Kummer was served with a Second Continued Notice of Hearing on Accusation at the address he provided on the Notice of Defense on Accusation.

3. This matter was called on the date and at the time and location specified in the Second Continued Notice of Hearing on Accusation. Neither Mr. Kummer nor anyone from his office appeared on behalf of Deerot Realty, Inc. While Mr. Kummer had sent complainant a Declaration of Dixon G. Kummer Re Continuance of Administrative Hearing purporting to withdraw as counsel of record for Deerot Realty, Inc., such attempt to withdraw was defective because there was no indication that Mr. Kummer gave notice of his attempt to withdraw to his client. (See, Cal. Code of Regs., § 1015, subd. (b) ["Any counsel or other representative may withdraw as counsel or representative of record by giving written notice to OAH and all parties of the withdrawal."])² Therefore, an evidentiary hearing on the allegations against Deerot Realty, Inc., was conducted as a default proceeding pursuant to Government Code section 11520.

4. On November 6, 1980, the Department of Real Estate (Department) issued Real Estate Salesperson License No. S/00800971 to James Wayne Robinson. That license was terminated on April 30, 2000, and Real Estate Broker License No. B/00800971 was issued on March 1, 2000. There is no history of prior discipline of either of his real estate licenses, and his broker license expires February 29, 2012, unless renewed or revoked.

5. On June 11, 1998, the Department issued Real Estate Salesperson License No. S/01240213 to Rickey Neal Bradford. That license was terminated on May 10, 2002, and

² While Mr. Kummer's Declaration states that Joshua A. Rosenthal also represents Deerot Realty, Inc., and Mr. Rosenthal was served with the Declaration, there is nothing in the record from Mr. Rosenthal or Deerot Realty, Inc., confirming such representation.

Real Estate Broker License No. B/01240213 was issued on May 11, 2002. There is no history of prior discipline of either of his real estate licenses, and his broker license expires May 10, 2014, unless renewed or revoked.

6. On May 25, 2001, the Department issued Corporate Real Estate Broker License No. C/01310839 to Deerot Realty, Inc. Mr. Robinson was the designated officer for the corporate broker license until the license expired on June 22, 2009.³ There is no history of prior discipline of the corporate broker license.

7. On October 22, 2009, the Department issued Corporate Real Estate Broker License No. C/01871763 to D Best Realty, Inc. Mr. Bradford was the designated corporate officer through January 6, 2010. There is no history of prior discipline of the corporate broker license, and the license expires October 21, 2013, unless renewed or revoked.

Unlicensed Real Estate Activity of Drar Ben Amy

8. On June 1, 2004, Andy Chavez hired Deerot Realty, Inc., as his exclusive agent "to rent, lease, operate and manage" a residential home located at 1013 R Street, Bakersfield, California. Drar Ben Amy signed the property management agreement as the owner of Deerot Realty, Inc. Deerot Realty, Inc., was entitled to 10 percent of the total job cost for any major repairs or restoration of the home as compensation for its services.⁴ Mr. Amy signed a rental agreement for the home with Selena Ann Stevenson on December 3, 2008.

9. On August 12, 2008, Bruno Del Bianco hired Deerot Realty, Inc., as his exclusive agent "to rent, lease, operate and manage" a 10-unit apartment building located at 2190 Monterey Street, Bakersfield, California. Mr. Amy signed the property management agreement as the owner of Deerot Realty, Inc. Deerot Realty, Inc.'s compensation consisted of a one time \$45 "initial set-up fee" and monthly management fees in the amount of \$45 per unit. It was also entitled to \$85 per hour for Mr. Amy to consult with Mr. Bianco (two hours each month were free) and 10 percent of the total job cost for any major repairs or restoration to any apartments.

10. Within the three years immediately preceding complainant's filing of the accusation,⁵ Mr. Amy executed the following rental agreements on behalf of Mr. Del Bianco:

³ The lapse, suspension, or voluntary surrender of a real estate license does not deprive the Department of jurisdiction to discipline the license. (Bus. & Prof. Code, § 10103.)

⁴ The other terms of its compensation outlined in the agreement were not legible.

⁵ "The accusation provided for by Section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action" (Bus. & Prof. Code, § 10101.)

Date	Apartment Unit	Tenant
February 4, 2008	3	Baldomero Garcia
February 11, 2009	4	Miguel F. Flores & Esperanza Rufino
April 29, 2008	7	Fred Edward Maestas Jr.
December 28, 2008 (Addendum)	10	Isidro B. Guzman & Jaime Bedoya
December 31, 2007 (Addendum)	4	Gabriel Guzman

11. On January 12, 2009, Mr. Del Bianco hired Deerot Realty, Inc., as his exclusive agent "to rent, lease, operate and manage" a four-unit apartment building located at 1806-1808 Larcus Street, Bakersfield, California. Mr. Amy signed the property management agreement as the owner of Deerot Realty, Inc. Deerot Realty, Inc.'s, compensation consisted of a one time \$45 per unit "initial set-up fee" and monthly management fees in the amount of \$45 per unit. It was also entitled to \$85 per hour for Mr. Amy to consult with Mr. Bianco (two hours each month were free) and 10 percent of the total job cost for any major repairs or restoration to any apartments.

12. Mr. Amy has never held a real estate license issued by the Department, nor has he ever been the designated officer for his company's corporate broker license.

Trust Fund Violations

13. At all times relevant to the accusation, Deerot Realty, Inc., maintained a trust account with Bank of America, Account Number 10761-03602 (trust account), for its real estate activities. Messrs. Amy and Robinson were the sole signatories on the account. A surety bond covering Mr. Amy's trust account activities was never obtained.

14. On June 4, 2009, Anthony L. Boiteux, a General Auditor III employed by the Department, commenced an audit of Deerot Realty, Inc.'s real estate activities. His audit covered the period from January 1, 2008, to March 31, 2009 (audit period), and included two visits to Deerot Realty, Inc.'s office, where he spoke with Messrs. Amy and Robinson, reviewed company records, and photocopied those records which he felt he needed to conduct his audit. The rest of Mr. Boiteux's audit consisted of his analysis of the data he collected and writing his report, all of which he did from his office.

15. Mr. Boiteux's audit revealed that, during the audit period, Deerot Realty, Inc., received rent from tenants living in properties it managed on behalf of the property owners – some pursuant to the property management agreements discussed above, others pursuant to agreements not included in the record. At least a portion of the rent received was deposited into the trust account. During the same period, Deerot Realty, Inc., paid expenses from the trust account on behalf of some of its principals.

16. As of March 31, 2009, there was a shortage in the trust account in the amount of \$125,135.31. Mr. Boiteux determined the amount of the shortage by calculating the amount of money Deerot Realty, Inc., held in trust for its principals as reflected on the individual owner statements and comparing that amount to the amount actually in the trust account as reflected by the bank statement. The owner statements showed that there should have been \$125,135.31 more in the trust account than there actually was. There is no evidence that Deerot Realty, Inc., obtained prior written permission from anyone to allow the trust account balance to drop below Deerot Realty, Inc.'s aggregate trust fund liability to owner's of funds in the trust account.

17. Mr. Boiteux traced \$49,000 of the total shortage to seven electronic transfers, each in the amount of \$7,000, from the trust account to Deerot Realty, Inc.'s general business account. When questioned about those transfers, Mr. Amy admitted to making them. He explained to Mr. Boiteux that he (Mr. Amy) owns a maintenance company, D-Best Construction & Maintenance, which performs maintenance work for the properties managed by Deerot Realty, Inc. He produced 32 invoices, which charged a total of \$44,058.46 for maintenance work performed in February and March 2009. He also produced 32 uncashed checks drawn against the trust account and made payable to D-Best Construction & Maintenance as payment of those invoices. Mr. Amy explained that he made the seven electronic transfers prior to writing the checks in the interest of expediency and intended to accurately account for the transfers later. He also claimed that the \$44,058.46 in uncashed checks should not be deducted from the available balance in the trust account because they have not been paid yet.

Mr. Amy's explanation does not make any sense because, according to him, the trust account was charged twice for the invoices – when he made the electronic transfers and when the checks were written to D-Best Construction & Maintenance. Besides, Mr. Amy's argument that the checks have not been cashed misses the point – the checks remain valid and are subject to being negotiated at any time. Therefore, Mr. Boiteux correctly deducted the amount of the checks from the balance available in the trust account.

18. Mr. Boiteux also traced \$3,568.67 of the shortage to a property located at 405 South Chester Avenue. Mr. Amy explained that he personally owns the property and does not manage it through Deerot Realty, Inc. His explanation was supported by the absence of any entries for income on the owner statements Deerot Realty, Inc., prepared for the property. Those statements did, however, show that money from the trust account was used to pay expenses on behalf of the property, such as a telephone bill, employee payroll, and pizza from Domino's Pizza. The payments totaled \$3,568.67.

19. Mr. Boiteux also traced \$10,000 of the shortage to a property located at 1893 Flower Street. Mr. Amy explained that he also personally owns the property and does not manage it through Deerot Realty, Inc. Nonetheless, Deerot Realty, Inc.'s owner statements showed a \$10,000 disbursement from the trust account on behalf of the property, despite there being no deposits.

20. Mr. Boiteux was unable to account for the remaining \$62,566.64 of the shortage.

21. Deerot Realty, Inc., failed to keep proper "control records" for trust funds received from and on behalf of its principals. "Control records" keep track of trust funds held by a broker by itemizing all funds received and disbursed. For trust funds received, the control records must show the date they were received, from whom they were received, and the amount received. For funds disbursed, the records must show the date of disbursement, the amount disbursed, the check number, and the name of the payee. For any trust funds not deposited in an account, the records must show the name of the depository and the date the funds were forwarded to the depository. The records must show a running total of all trust funds held.

Deerot Realty, Inc., did not record any of the \$7,000 electronic transfers from its trust account to its general business account. Nor did it accurately record the \$62,566.64 shortage that Mr. Boiteux was unable to trace.

22. Deerot Realty, Inc., failed to keep a "separate record" for each beneficiary or transaction related to the trust funds received from and on behalf of its principals. A "separate record" contains information similar to a control record, except it pertains to a specific beneficiary. For funds received, the separate record shows the date and amount of each deposit. When funds are disbursed, the record shows the date, check number, and amount of each disbursement. If the account in which the trust funds are deposited earns interest, the separate record must show the dates and amounts of interest earned and credited to the account. The record must show the balance of trust funds held for the particular beneficiary after the posting of each transaction.

While Deerot Realty, Inc.'s "owner statements" closely resemble the requisite separate records, they do not contain all of the necessary information. For instance, none of the \$7,000 electronic transfers discussed above is accounted for on any of the owner statements. Additionally, a statement for property located at 4400-A Fruitvale Avenue shows five disbursements from the trust account. However, each disbursement was actually made from a different bank account.

23. At no time were the trust funds Deerot Realty, Inc., held on behalf of its principals reconciled. A "reconciliation" involves the broker comparing the total amount of trust funds received during any given month with the total amount disbursed during the same month. As discussed above, there was a shortage of \$125,135.31 in the trust account as of March 31, 2009.

Unauthorized Employment

24. There is no evidence of Mary Jane Martin's licensure status with the Department at any time relevant to the accusation. Nor is there any evidence that Ms. Martin

engaged in any activities for which a real estate license is required. Furthermore, there is no evidence that Deerot Realty, Inc., or anyone purporting to act on its behalf, employed or compensated Ms. Martin for engaging in activities for which a real estate license is required.

25. Mr. Amy executed at least three property management agreements as the owner of Deerot Realty, Inc. Those agreements specify the method by which Deerot Realty, Inc., was to be compensated for managing the properties. Furthermore, several owner statements show disbursements to Deerot Realty, Inc., for "Management." This evidence is sufficient to create a reasonable inference that Mr. Amy was compensated directly or indirectly by Deerot Realty, Inc., as its owner, for managing properties.

26. Complainant alleged that Mr. Amy continued performing property management under Mr. Robinson's broker license after the expiration of Deerot Realty, Inc.'s license. There is insufficient evidence to support that allegation. There is also insufficient evidence that Mr. Amy performed property management duties on behalf of D Best Realty, Inc., or that he was paid, either directly or indirectly, by D Best Realty, Inc., for performing those duties.

27. There is no evidence of "Marisol's" licensure status with the Department at any time relevant to the accusation.⁶ Nor is there any evidence that Marisol engaged in any activities for which a real estate license is required. Furthermore, there is no evidence that D Best Realty, Inc., or anyone purporting to act on its behalf, employed or compensated Marisol for engaging in activities for which a real estate license is required.

Fraudulent Conduct/Misrepresentations

28. Deerot Realty, Inc., used funds from its trust account to pay expenses related to real property owned by Mr. Amy which was not managed through the company. (Factual Finding 18.) But there is no evidence that Deerot Realty, Inc., or anyone purporting to act on its behalf, made any representations or promises to any of its principals about the manner in which trust funds would be used. Therefore, there is no factual basis for concluding that Deerot Realty, Inc., made a substantial misrepresentation or false promise regarding the manner in which it would use trust funds.

29. Nonetheless, Deerot Realty, Inc., owed a fiduciary duty to each of its principals who owned funds held in the trust account. (See, *Bate v. Marsteller* (1959) 175 Cal.App.2d 573, 580-581.) That duty included the duty to disclose the fact that trust funds were used to pay Mr. Amy's personal expenses. (See, *Alhino v. Starr* (1980) 112 Cal.App.3d 158, 169 [real estate licensee must fully disclose all material facts concerning a transaction that may affect the principal's decision].) The nondisclosure of such information constitutes constructive fraud. (See, *Assilzadeh v. California Federal Bank, FSB* (2000) 82 Cal.App.4th 399, 415 [a broker's nondisclosure of material facts which it was obligated to disclose

⁶ The accusation identifies "Marisol" as an "unidentified person known as Marisol."

constitutes constructive fraud].) There is no evidence that Deerot Realty, Inc., or anyone purporting to act on its behalf, disclosed the use of trust funds to pay Mr. Amy's personal expenses.⁷

Evidence in Mitigation, Aggravation, and Rehabilitation

30. The Department is required to consider all competent evidence of rehabilitation when deciding whether a licensee's conduct warrants the imposition of discipline and, if so, what form of discipline is appropriate. (Bus. & Prof. Code, § 482.) No evidence was introduced of Deerot Realty, Inc.'s rehabilitation. Mr. Robinson offered little evidence of his rehabilitation, other than his explanation that he did not realize that Mr. Amy could not engage in property management under Deerot Realty, Inc.'s corporate broker license. He also explained that once he learned that Mr. Amy needed a separate broker license, Mr. Robinson told Mr. Amy to immediately stop his property management duties. With regard to the trust account, Mr. Robinson testified that he occasionally asked Mr. Amy if everything was okay with the account and whether the owner statements were being sent out in a timely manner. Mr. Amy supposedly assured Mr. Robinson that everything was fine. But such acts by Mr. Robinson fell woefully short of his duty to supervise Deerot Realty, Inc.'s real estate activities, and he admitted that his trust in Mr. Amy was misplaced.

Mr. Robinson was the designated corporate officer who was responsible for Deerot Realty, Inc.'s real estate activities. As such, he "is charged with the responsibility to assure corporate compliance with the real estate law." (*Holley v. Crank* (9th Cir. 2005) 400 F.3d 667, 672.) The above evidence establishes that Deerot Realty, Inc., committed numerous violations of the Real Estate Law as discussed further below. Mr. Robinson failed in his duties to supervise Deerot Realty, Inc.'s activities, resulting in a shortage of more than \$125,000 in the trust account. The fact that he was not sufficiently familiar with the law to know that Mr. Amy needed his own broker license emphasizes the danger Mr. Robinson poses to the public if he is allowed to continue as a real estate licensee.

Additionally, Mr. Robinson holds his own broker license independent of Deerot Realty, Inc.'s corporate license. With such license, he could employ licensed salespeople and would be responsible for supervising their real estate activities. (Bus. & Prof. Code, § 10132 ["a real estate salesman . . . is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker" to perform

⁷ While complainant would normally bear the burden of proving that no such disclosure occurred, it is appropriate to shift the burden to establish that such disclosure did occur to Deerot Realty, Inc. (See, *Sanchez v. Unemployment Insurance Appeals Board* (1977) 20 Cal.3d 55, 70-71 ["Thus we have held that 'Where the evidence necessary to establish a fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim.' [Citations.]") And its failure to affirmatively establish that the requisite information was disclosed supports a finding that Deerot Realty, Inc., committed constructive fraud.

duties for which a broker license is required]; Cal. Code of Regs., tit. 10, § 2725 [broker had a duty to supervise his salespeople].) But the law does not require anyone to supervise Mr. Robinson. And he did not offer sufficient evidence of his familiarity with the Real Estate Law such that the Department can have any confidence in his ability to effectively supervise other licensees.

While allowing Mr. Robinson to hold a restricted real estate salesperson license would allay the Department's concerns over his ability to effectively supervise other licensees, his failure to adequately supervise Deerot Realty, Inc.'s trust account, for which he was one of only two signatories, demonstrates a lack of sound judgment. He did not introduce sufficient evidence to show that he now has good judgment such that he is capable of performing the duties of a restricted salesperson in a manner consistent with public health, safety, and welfare.

31. As is discussed further below, cause exists to discipline Deerot Realty, Inc.'s corporate broker license based on the numerous violations of the Real Estate Law and rules and regulations adopted pursuant to such law. Cause also exists to discipline Mr. Robinson's broker license based solely on his failure to adequately supervise Deerot Realty, Inc.'s real estate activities. No cause, however, exists to discipline Mr. Bradford's broker license because there was no evidence that D Best Realty, Inc., engaged in any activities for which a real estate broker license was required during the period he was its designated officer. When all of the above evidence is considered, there is insufficient evidence to justify allowing Deerot Realty, Inc., or Mr. Robinson to keep their respective broker licenses, even on a restricted basis. Therefore, each of their broker licenses should be revoked.

LEGAL CONCLUSIONS

I. *Applicable Law*

A. *Trust Account Violations*

1. California's Real Estate Law requires a real estate broker to maintain a trust account whenever that broker is going to receive funds belonging to others. Business and Professions Code section 10145, subdivision (a), provides:

(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds....

2. The law provides the following with regard to a broker allowing the balance in its trust account to fall below the existing aggregate trust fund liability to all owners of the funds:

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of the funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

(Cal. Code of Regs., tit. 10, § 2832.1.)

3. The law limits who may be a signatory on a trust account to the following:

- (1) A salesperson licensed to the broker.
- (2) A person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.
- (3) An unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(Cal Code Regs., tit. 10, § 2834, subd. (a).)

4. Brokers are required to keep "control records" for their trust accounts.

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2....

(Cal. Code Regs., tit. 10, § 2831.)

5. Brokers are also required to keep "separate beneficiary records."

A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

6. And brokers must reconcile their "separate beneficiary records" with their "control records" on at least a monthly basis. (Cal. Code Regs., tit. 10, § 2831.2.)

B. *Unlawful Employment*

7. Business and Professions Code section 10137 provides:

It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her, or to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed.

It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

C. *Broker Supervision*

8. A real estate broker is required by law to "exercise reasonable supervision over the activities of his or her salespersons. . . ." (Cal. Code Regs., tit. 10, § 2725.)

9. When the broker is a corporation, a corporate officer must be designated as the person responsible for supervising the corporation's licensed activities.

If the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker without the payment of any further fee, such officer to be designated in the application of the corporation for a license. For each officer other than the officer so designated, through whom it engages in the business of real estate broker, the appropriate original or renewal fee is to be paid in addition to the fee paid by the corporation.

(Bus. & Prof. Code, § 10211.)

Business and Professions Code section 10159.2, subdivision (a), states:

The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in performance of acts for which a real estate license is required.

II. *Cause for Discipline*

A. *Trust Account Violations*

10. A real estate broker license may be disciplined if the broker willfully disregarded or violated the Real Estate Law or any rules or regulations adopted pursuant to such law. (Bus. & Prof. Code, § 10177, subdivision (d).) Cause exists to discipline Deerot Realty, Inc.'s broker license pursuant to Business and Professions Code section 10177, subdivision (d), based on its willful disregard or violation of the following provisions of the Real Estate Law or regulations adopted pursuant to such law:

a. As of March 31, 2009, there was a shortage in Deerot Realty, Inc.'s trust account in the amount of \$125,135.31, a violation of Business and Professions Code section 10145, subdivision (a). (Factual Finding 16.)

b. Deerot Realty, Inc., failed to obtain the prior written consent of every principal who was an owner of funds in its trust account to allow the balance to drop below the existing aggregate trust fund liability as required by California Code of Regulations, title 10, section 2832.1. (Factual Finding 16.)

c. Deerot Realty, Inc., failed to deposit and maintain funds, not placed

with principals or in escrow, in trust accounts as required by Business and Professions Code section 10145, subdivision (a). (Factual Findings 16-20 .)

d. Deerot Realty, Inc., allowed Mr. Amy, who was not licensed by the Department, to be a signatory on the trust account without the proper surety bond, a violation of California Code of Regulations, title 10, section 2834. (Factual Finding 13.)

e. Deerot Realty, Inc., failed to maintain "control records" of the funds in its trust account as required by California Code of Regulations, title 10, section 2831. (Factual Finding 21.)

f. Deerot Realty, Inc., failed to maintain "separate beneficiary records" as required by California Code of Regulations, title 10, section 2831.1. (Factual Finding 22.)

g. Deerot Realty, Inc., failed to perform monthly reconciliations of separate beneficiary records and control records as required by California Code of Regulations, title 10, section 2831.2. (Factual Finding 23.)

11. A real estate broker license may be disciplined if the broker "demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license." (Bus. & Prof. Code, § 10177, subd. (g).) The acts which constitute Deerot Realty, Inc.'s willful disregard or violation of the Real Estate Law and regulations adopted pursuant to such law discussed in Legal Conclusion 10 also demonstrate that it was negligent or incompetent. Therefore, those acts, jointly and severally, also constitute cause to discipline Deerot Realty, Inc.'s broker license pursuant to Business and Professions Code section 10177, subdivision (g).

12. A real estate broker license held by a corporate officer designated as the person responsible for supervising the corporation's real estate activities pursuant to Business and Professions Code section 10159.2, subdivision (a), may be disciplined if the former broker "failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required." (Bus. & Prof. Code, § 10177, subd. (h).)⁸ Such license may be disciplined also if the broker willfully disregarded or violated the Real Estate Law or any rules or regulations adopted pursuant to such law. (Bus. & Prof. Code, § 10177, subdivision (d).) James Wayne Robinson was the person responsible for Deerot Realty, Inc.'s real estate activities. (Factual Finding 6.) Therefore, for the same reason that cause exists to discipline Deerot Realty, Inc.'s broker license discussed in Legal Conclusion 10, cause also exists to discipline Mr. Robinson's broker license pursuant to

⁸ The officer responsible for the corporation's real estate activities must have his own real estate broker license, separate and apart from the corporation's broker license. (*Holley v. Crank, supra*, 400 F.3d 667, 671 ["In California, a corporation may hold a real estate broker's license, but only if it designates an officer who is qualified to hold a broker's license to serve as officer/broker of the corporation. Cal. Bus. & Prof. Code [sic] §§ 10158 and 10211."]; *In re Still* (Bankr. C.D.Cal. 2008) 393 B.R. 896, 912.)

Business and Professions Code section 10177, subdivisions (d) and (h), individually and collectively.

B. *Unauthorized Employment*

13. A real estate broker license may be disciplined if the broker has employed or compensated, directly or indirectly, an unlicensed person to perform any activity for which a real estate license is required. (Bus. & Prof. Code, § 10137.) For the reasons discussed in Factual Finding 25, cause exists to discipline Deerot Realty, Inc.'s broker license pursuant to Business and Professions Code section 10137 for having compensated, directly or indirectly, Drar Ben Amy for engaging in property management.

14. For the same reason that cause exists to discipline Deerot Realty, Inc.'s broker license discussed in Legal Conclusion 13, cause also exists to discipline Mr. Robinson's broker license pursuant to Business and Professions Code section 10177, subdivisions (d) and (h), individually and collectively, for Deerot Realty, Inc., having compensated, directly or indirectly, Mr. Amy for engaging in property management.

15. For the reasons discussed in Factual Finding 24, no cause exists to discipline Deerot Realty, Inc.'s broker license pursuant to Business and Professions Code section 10137 for purportedly having employed or compensated, directly or indirectly, Mary Jane Martin to perform activities for which a real estate license is required.

16. For the same reason that no cause exists to discipline Deerot Realty, Inc.'s broker license discussed in Legal Conclusion 15, no cause exists to discipline Mr. Robinson's broker license pursuant to Business and Professions Code section 10177, subdivisions (d) or (h), for Deerot Realty, Inc., purportedly having employed or compensated, directly or indirectly, Ms. Martin to perform activities for which a real estate license is required.

17. For the reasons discussed in Factual Finding 26, no cause exists to discipline Mr. Robinson's broker license pursuant to Business and Professions Code section 10137 for allegedly employing or compensating Mr. Amy for engaging in activities for which a real estate license is required after June 22, 2009.

18. Rickey Neal Bradford was the corporate officer responsible for D Best Realty, Inc.'s real estate activities from October 22, 2009, through January 6, 2010. (Factual Finding 7.) But for the reasons discussed in Factual Finding 26, no cause exists to discipline Mr. Bradford's broker license pursuant to Business and Professions Code section 10177, subdivisions (d) or (h), for D Best Realty, Inc., purportedly having employed or compensated, directly or indirectly, Mr. Amy to perform activities for which a real estate license is required.

19. For the reasons discussed in Factual Finding 27, no cause exists to discipline Mr. Bradford's broker license pursuant to Business and Professions Code section 10177,

subdivisions (d) or (h), for D Best Realty, Inc., purportedly having employed or compensated, directly or indirectly, Marisol to perform activities for which a real estate license is required.

C. *Misrepresentation, False Promise, or Other Fraudulent Conduct*

20. A real estate broker license may be disciplined if the broker makes a substantial misrepresentation. (Bus. & Prof. Code, § 10176, subd. (a).) For the reasons discussed in Factual Finding 28, Deerot Realty, Inc., did not make any substantial misrepresentations about the manner in which it would use the funds held in its trust account. Therefore, no cause exists to discipline Deerot Realty, Inc.'s broker license pursuant to Business and Professions Code section 10176, subdivision (a).

21. A real estate broker license may be disciplined if the broker makes "any false promises of a character likely to influence, persuade or induce." (Bus. & Prof. Code, § 10176, subd. (b).) For the reasons discussed in Factual Finding 28, Deerot Realty, Inc., did not make any such promises about the manner in which it would use the funds held in its trust account. Therefore, no cause exists to discipline Deerot Realty, Inc.'s broker license pursuant to Business and Professions Code section 10176, subdivision (b).

22. A real estate broker license may be disciplined if the broker engages in "any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing." (Bus. & Prof. Code, § 10176, subdivision (i).) For the reasons discussed in Factual Finding 29, Deerot Realty, Inc., committed constructive fraud by not disclosing to its principals who owned funds held in the trust account that such funds were being used to pay Mr. Amy's personal expenses. Therefore, cause exists to discipline Deerot Realty, Inc.'s broker license pursuant to Business and Professions Code section 10176, subdivision (i).

23. For the reasons discussed in Legal Conclusions 10, 11, 13, and 22, cause exists to discipline Deerot Realty, Inc.'s real estate broker license. The first three reasons also constitute cause to discipline Mr. Robinson's real estate broker license based solely on his having been the person responsible for Deerot Realty, Inc.'s licensed activities as discussed in Legal Conclusions 12 and 14. No cause exists to discipline either license based on Deerot Realty, Inc.'s purported employment or compensation of Ms. Martin (Legal Conclusions 15 and 16); Mr. Robinson's license for his alleged employment or compensation of Mr. Amy (Legal Conclusion 17); or Deerot Realty, Inc.'s license for making a misrepresentation or false promise (Legal Conclusions 20 and 21). Nor is there cause to discipline Mr. Bradford's license for D Best Realty, Inc.'s supposed employment or compensation of Mr. Amy or Marisol as discussed in Legal Conclusions 18 and 19. When all relevant evidence is considered, the appropriate discipline for both Deerot Realty, Inc., and Mr. Robinson's licenses is the outright revocation of both for the reasons discussed in Factual Findings 30 and 31.

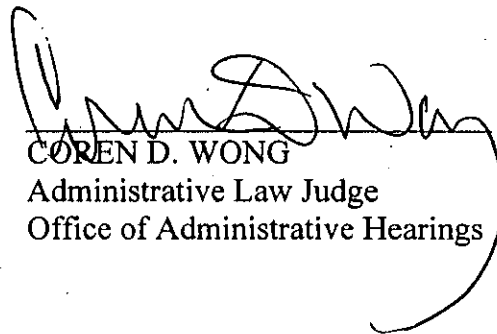
ORDER

1. All licenses and licensing rights of respondent Deerot Realty, Inc., under the Real Estate Law are REVOKED.

2. All licenses and licensing rights of respondent James Wayne Robinson under the Real Estate Law are REVOKED.

3. The accusation is DISMISSED as to Rickey Neal Bradford.

DATED: February 17, 2012


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

1 3. On January 3, 2011, Respondent filed a Notice of Defense pursuant to Section
2 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the
3 Accusation. Respondent acknowledges that Respondent understands that by withdrawing said
4 Notice of Defense Respondent will thereby waive Respondent's right to require the
5 Commissioner to prove the allegations in the Accusation at a contested hearing held in
6 accordance with the provisions of the APA and that Respondent will waive other rights afforded
7 to Respondent in connection with the hearing such as the right to present evidence in defense of
8 the allegations in the Accusation and the right to cross-examine witnesses.

9 4. Respondent, pursuant to the limitations set forth below, hereby admits that the
10 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
11 true and correct and the Real Estate Commissioner shall not be required to provide further
12 evidence of such allegations.

13 5. It is understood by the parties that the Real Estate Commissioner may adopt
14 the Stipulation and Agreement In Settlement and Order as her Decision in this matter, thereby
15 imposing the penalty and sanctions on Respondent's real estate license and license rights as set
16 forth in the below "Order". In the event that the Commissioner in her discretion does not adopt
17 the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect, and
18 Respondent shall retain the rights to a hearing and proceeding on the Accusation under all the
19 provisions of the APA and shall not be bound by any admission or waiver made herein.

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

25 7. It is understood by the parties that the current designated officer, Yitzchok
26 Yitzy Pearson, was not the designated officer during the time that acts occurred which are set
27 forth as factual allegations or statements of fact in the Accusation.

1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions and waivers, and solely for
3 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
4 agreed that the acts and/or omissions of Respondent, as described in the Accusation, constitute
5 grounds for the suspension or revocation of the licenses and license rights of D BEST REALTY,
6 INC. under the provisions of Section 10137 of the Code, and constitute grounds for the
7 suspension or revocation of the licenses and license rights of D BEST REALTY, INC. under the
8 provisions of Section 10137 of the Code.

9 ORDER

10 1. The corporate real estate broker license and license rights of Respondent
11 D BEST REALTY, INC., under the Real Estate Law are suspended for a period of sixty (60)
12 days from the effective date of this Order; provided, however, that if Respondent petitions,
13 thirty (30) days of said suspension shall be stayed upon condition that:

14 a. Respondent pays a monetary penalty pursuant to Section 10175.2 of the
15 Business and Professions Code at the rate of \$50.00 per day for thirty (30) days of the
16 suspension for a total monetary penalty of \$1,500.00.

17 b. Said payment shall be in the form of a cashier's check or certified check
18 made payable to the Recovery Account of the Real Estate Fund. Said check must be received by
19 the Department prior to the effective date of the Decision in this matter.

20 c. No further cause for disciplinary action against the real estate license of
21 Respondent occurs within one year from the effective date of the Decision in
22 this matter.

23 d. If Respondent fails to pay the monetary penalty in accordance with the
24 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
25 immediate execution of all or any part of the stayed suspension in which event the Respondent
26 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
27 Department under the terms of this Decision.

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e. If Respondent pays the monetary penalty, and if no further cause for disciplinary action against the real estate license of Respondent occurs within one (1) year from the effective date of the Decision, the stay hereby granted shall become permanent.

2. The remaining thirty (30) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and;

b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year from the effective date of this Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.

2/9/12
DATED

Richard K. Uno
RICHARD K. UNO, Counsel
DEPARTMENT OF REAL ESTATE

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I have read the Stipulation and Agreement in Settlement and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

2-2-12

DATED

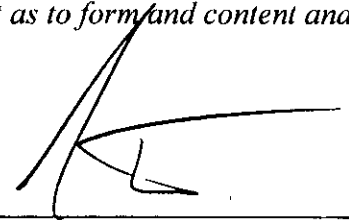


D BEST REALTY, INC.
Respondent
By the Designated Officer,
YITZCHOK YITZY PEARSON

I have reviewed this Stipulation and Agreement as to form and content and have advised my client accordingly.

2-6-12

DATED



JOSHUA A. ROSENTHAL
MEDLIN & HARGRAVE
Attorney for Respondent

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//
/

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

FILED

DEC 16 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-2573 FR
13 DEEROT REALTY, INC.,)
14 D BEST REALTY, INC.,) ACCUSATION
15 JAMES WAYNE ROBINSON)
16 and RICKEY NEAL BRADFORD,)
17 Respondents.)

18 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the
19 State of California, for Accusation against Respondent DEEROT REALTY, INC. (DEEROT),
20 Respondent D BEST REALTY, INC. (D BEST), Respondent JAMES WAYNE ROBINSON
21 (ROBINSON), and Respondent RICKEY NEAL BRADFORD (BRADFORD) is informed and
22 alleges as follows:

23 1

24 The Complainant makes this Accusation against Respondents in his official
25 capacity.

26 2

27 DEEROT was licensed until the expiration date of June 22, 2009, by the
Department of Real Estate (the Department) as a corporate real estate broker.

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D BEST is presently licensed by the Department as a corporate real estate broker.

ROBINSON is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real estate broker.

BRADFORD is presently licensed and/or has license rights under the Code as a real estate broker.

At all times herein mentioned until June 22, 2009, ROBINSON was licensed by the Department as the designated broker/officer of DEEROT. As the designated broker/officer, ROBINSON was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of DEEROT for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

From October 29, 2009 until January 7, 2010, BRADFORD was licensed by the Department as the designated broker/officer of D BEST. As the designated broker/officer, BRADFORD was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of D BEST for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a

1 property management business with the public wherein, on behalf of others, for compensation
2 or in expectation of compensation. Respondents leased or rented, or offered to lease or rent
3 places for rent, or solicited listings of places for rent or solicited for prospective tenants, or
4 negotiated the sale, purchase or exchange of leases on real property, or on a business
5 opportunity, or collected rents from tenants.

6 9

7 Whenever reference is made in an allegation in this Accusation to an act or
8 omission of DEEROT, such allegation shall be deemed to mean that the officers, directors,
9 employees, agents and real estate licensees employed by or associated with DEEROT
10 committed such act or omission while engaged in furtherance of the business or operations of
11 DEEROT and while acting within the course and scope of their corporate authority and
12 employment.

13 10

14 Whenever reference is made in an allegation in this Accusation to an act or
15 omission of D BEST, such allegation shall be deemed to mean that the officers, directors,
16 employees, agents and real estate licensees employed by or associated with D BEST committed
17 such act or omission while engaged in furtherance of the business or operations of D BEST and
18 while acting within the course and scope of their corporate authority and employment.

19 FIRST CAUSE OF ACTION

20 11

21 Beginning on June 4, 2009 and continuing intermittently through January 26,
22 2010, an Audit was conducted at 405 South Chester Avenue, Bakersfield, California and at the
23 Fresno District Office of the Department of Real Estate located at 2550 Mariposa Mall, Suite
24 3070, Fresno, California, where the Auditor examined records for the period of January 1, 2008
25 through March 31, 2009 (the Audit Period).

26 ///

27 ///

1
2 While acting as a real estate broker as described in Paragraph 8, above, and
3 within the Audit Period, DEEROT accepted or received funds in trust (trust funds) from or on
4 behalf of lenders, investors, borrowers and others in connection with the mortgage loan
5 brokerage activities, deposited or caused to be deposited those funds into a bank account
6 maintained by DEEROT at Bank of America, 1201 Baker Street, Bakersfield, California 93305,
7 Account No. 10761-03602, entitled "Deerot Realty Inc. Trust One" (Trust #1), and thereafter
8 from time to time made disbursements of said trust funds.

9
10 In the course of the activities described in Paragraph 8, in connection with the
11 collection and disbursement of trust funds, DEEROT:

- 12 (a) Had a shortage of \$125,135.31 in Trust #1 as of March 31, 2009, in
13 violation of Section 10145 of the Code;
- 14 (b) Failed to obtain the prior written consent of every principal who was an
15 owner of funds in Trust #1 to allow the balance to drop below the existing
16 aggregate trust fund liability as required by Section 2831.2 of the Code;
- 17 (c) Failed to deposit and maintain funds, not placed with principals or in
18 escrow, in trust accounts, as required by Section 10145 of the Code;
- 19 (d) Allowed Drar Ben Amy, who was unlicensed and unbonded to be a
20 signatory on the trust account in violation of Section 2834 of the Code;
- 21 (e) Failed to maintain records of all trust funds received and all trust funds
22 disbursed as required by Section 2831 of the Regulations;
- 23 (f) Failed to maintain separate beneficiary records as required by Section
24 2831.1 of the Regulations and
- 25 (g) Failed to perform monthly reconciliations of separate beneficiary records
26 and control records as required by Section 2831.2 of the Regulations.

27 ///

1 14

2 The acts and/or omissions of DEEROT as alleged above violate Sections 2831
3 (Control Records), 2831.1 (Separate Beneficiary Records), 2831.2 (Reconciliation Trust Fund
4 Records) and 2834 (Trust Account Withdrawals) of the Regulations and of Section 10145 (Trust
5 Fund Handling) of the Code and are grounds for discipline under Sections 10177(d) (Willful
6 Disregard/Violate Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate
7 Licensee) of the Code.

8 SECOND CAUSE OF ACTION

9 15

10 Complainant refers to Paragraphs 1 through 14, above, and incorporates them
11 herein by reference.

12 16

13 At no time during the last three year period did the Department license Drar Ben
14 Amy (AMY), either as a real estate salesperson or as a real estate broker.

15 17

16 At no time during the last three year period did the Department license Mary Jane
17 Martin (MARTIN), either as a real estate salesperson or as a real estate broker.

18 18

19 Within the three year period prior to the filing of this Accusation until June 22,
20 2009, DEEROT employed and compensated AMY and MARTIN to perform the activities
21 requiring a real estate license as alleged in Paragraph 8, above.

22 19

23 Within the last three years before the filing of this Accusation, AMY and
24 MARTIN engaged in property management activities including leasing or renting, soliciting
25 places for rent, soliciting prospective tenants, and collecting rents from tenants on properties
26 owned by landlords on behalf of DEEROT. AMY performed the above mentioned activities for
27 properties commonly known as 1806/1808 Larcus Avenue, 2190 Monterey Street and 1013 R

1 Street, each in Bakersfield, California. MARTIN performed the above mentioned activities for
2 properties commonly known as 14025 Via Contento, Bakersfield, California.

3 20

4 The facts alleged above constitute cause for the suspension or revocation of the
5 licenses and license rights of Respondent DEEROT under Section 10137 (Employ/Compensate
6 Unlicensed Person) of the Code.

7 THIRD CAUSE OF ACTION

8 21

9 Complainant refers to Paragraphs 1 through 20, above, and incorporates them
10 herein by reference.

11 22

12 Beginning June 23, 2009 through October 22, 2009, ROBINSON employed and
13 compensated AMY to perform the activities requiring a real estate license as alleged in
14 Paragraph 8, above.

15 23

16 Within the last three years before the filing of this Accusation, AMY engaged in
17 property management activities including leasing or renting, soliciting places for rent, soliciting
18 prospective tenants, and collecting rents from tenants on properties owned by landlords on
19 behalf of ROBINSON, including, but not limited to real property commonly known as
20 1806/1808 Larcus Avenue, 2190 Monterey Street and 1013 R Street, each in Bakersfield,
21 California.

22 24

23 The facts alleged above constitute cause for the suspension or revocation of the
24 licenses and license rights of Respondent ROBINSON under Section 10137
25 (Employ/Compensate Unlicensed Person) of the Code.

26 ///

27 ///

1 FOURTH CASE OF ACTION

2 25

3 Complainant refers to Paragraphs 1 through 24, above, and incorporates them
4 herein by reference.

5 26

6 At no time did the Department license an unidentified person known as Marisol
7 (MARISOL) either as a real estate salesperson or a real estate broker.

8 27

9 Beginning October 22, 2009 and continuing through the present, D BEST
10 employed and compensated AMY and MARISOL to perform the activities requiring a real
11 estate license as alleged in Paragraph 8, above.

12 28

13 Within the last three years before the filing of this Accusation, AMY and
14 MARISOL engaged in property management activities including leasing or renting, soliciting
15 places for rent, soliciting prospective tenants, and collecting rents from tenants on properties
16 owned by landlords on behalf of D BEST. AMY performed the above mentioned activities for
17 real property known as 1806/1808 Larcus Aveune, 2190 Monterey Street and 1013 R Street,
18 each in Bakersfield, California. MARISOL performed the above mentioned activities for real
19 property known as 3305 Bridge Street, Bakersfield, California.

20 29

21 The facts alleged above constitute cause for the suspension or revocation of the
22 licenses and license rights of Respondent D BEST under Section 10137 (Employ/Compensate
23 Unlicensed Person) of the Code.

24 FIFTH CAUSE OF ACTION

25 30

26 Complainant refers to Paragraphs 1 through 29, above, and incorporates them
27 herein, by reference.

1
2 At all times herein above mentioned, ROBINSON was responsible, as the
3 designated broker/officer of DEEROT, for the supervision and control of the activities
4 conducted on behalf of the corporation by its officers and employees to ensure its compliance
5 with the Real Estate Law and the Regulations. ROBINSON failed to exercise reasonable
6 supervision and control over the property management brokering activities of DEEROT. In
7 particular, ROBINSON permitted, ratified and/or caused the conduct described in the First and
8 Second and Third Causes of Action, above, to occur, and failed to take reasonable steps,
9 including but not limited to the handling of trust funds, supervision of employees, and the
10 implementation of policies, rules, procedures, and systems to ensure the compliance of the
11 corporation with the Real Estate Law and the Regulations.

12
13 The above acts and/or omissions of ROBINSON violate Section 2725 (Broker
14 Supervision) of the Regulations and Section 10159.5 (Broker Supervision) of the Code and are
15 grounds for disciplinary action under the provisions of Sections 10177(d) (Willful
16 Disregard/Violate Real Estate Law) and 10177(h) (Designated Officer Supervision) of the
17 Code.

18 SIXTH CAUSE OF ACTION

19
20 Complainant refers to Paragraphs 1 through 32, above, and incorporates the same
21 herein, by reference.

22
23 At all times herein above mentioned, BRADFORD was responsible, as the
24 designated broker/officer of D BEST, for the supervision and control of the activities conducted
25 on behalf of the corporation by its officers and employees to ensure its compliance with the Real
26 Estate Law and the Regulations. BRADFORD failed to exercise reasonable supervision and
27 control over the property management brokering activities of D BEST. In particular,

1 BRADFORD permitted, ratified and/or caused the conduct described in the Fourth Cause of
2 Action, above, to occur; and failed to take reasonable steps, including but not limited to the
3 handling of trust funds, supervision of employees and the implementation of policies, rules,
4 procedures and systems to ensure the compliance of the corporation with the Real Estate Law
5 and the Regulations.

6 35

7 The above acts and/or omissions of BRADFORD violate Section 2725 of the
8 Regulations and Section 10159.5 of the Code and are grounds for disciplinary action under the
9 provisions of Sections 10177(d) and 10177(h) of the Code.

10 SEVENTH CAUSE OF ACTION

11 36

12 Complainant refers to Paragraphs 1 through 35 above, and incorporates them
13 herein by reference.

14 37

15 DEEROT represented to owners of trust funds that said funds would be used for
16 the benefit of them or their properties to the extent of their specific beneficiary balances.

17 38

18 DEEROT used trust funds to pay expenses benefiting real property owned by
19 AMY, including telephone bills, employee payroll and pizza in the amount \$3,568.67 related to
20 405 South Chester Avenue, Bakersfield, California and various expenses in the amount of
21 \$10,000.00 relating to 1893 Flower Street, Bakersfield, California.

22 39

23 The representations, made by DEEROT to the owners of trust funds that their
24 funds would only be used for their benefit, were false; and DEEROT knew that they were false
25 when those representations were made. DEEROT represented that the trust funds would only
26 be used to benefit the owner of said funds to include them to retain DEEROT for property
27 management services.

1
2 The acts/omissions of DEEROT, described in Paragraphs 36 through 39, above,
3 are grounds for disciplinary action under Sections 10176(a) (Substantial Misrepresentation),
4 10176(b) (False Promises to Persuade/Induce) and 10176(i) (Conduct Constituting
5 Fraud/Dishonest Dealing)

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

11
12 

13 _____
LUKE MARTIN
14 Deputy Real Estate Commissioner

15 Dated at Fresno, California,
16 this 12th day of November, 2010.