

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
JUN 24 2003

DEPARTMENT OF REAL ESTATE

By Laurie C. Ziri

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-2587 SD
12 ANITA MARIE ALKIRE,)
13 Respondent.)
14

15 ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

16 TO: ANITA MARIE ALKIRE

17 On November 27, 2001, a restricted real estate
18 broker license was issued by the Department of Real Estate to
19 Respondent ANITA MARIE ALKIRE on the terms, conditions and
20 restrictions set forth in the Real Estate Commissioner's
21 Decision of May 27, 2001, in Case No. H-2587 SD. This
22 Decision granted the right to the issuance of a restricted
23 real estate broker license subject to the provisions of
24 Section 10156.7 of the Business and Professions Code and to
25 enumerated additional terms, conditions and restrictions
26 imposed under authority of Section 10156.6 of said Code.

27 ///

1 On June 6, 2003, in Case No. H-2863 SD, an Accusation
2 by a Deputy Real Estate Commissioner of the State of California
3 was filed charging Respondent with violations of Section 10177(d)
4 of the Business and Professions Code of the State of California
5 in conjunction with Section 10148 of the Business and Professions
6 Code of the State of California.

7 NOW, THEREFORE, IT IS ORDERED under authority of
8 Section 10156.7 of the Business and Professions Code of the
9 State of California that the restricted real estate broker
10 license heretofore issued to Respondent and the exercise of any
11 privileges thereunder is hereby suspended pending final
12 determination made after the hearing on the aforesaid
13 Accusation.

14 IT IS FURTHER ORDERED that all license certificates
15 and identification cards issued by the Department of Real Estate
16 which are in the possession of Respondent be immediately
17 surrendered by personal delivery or by mailing in the enclosed
18 self-addressed envelope to:

19 Department of Real Estate
20 Attn: Flag Section
21 P. O. Box 187000
Sacramento, CA 95818-7000

22 This order shall be effective immediately.

23 IT IS SO ORDERED

24 PAULA REDDISH ZINNEBANN
25 Real Estate Commissioner
26
27

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

FILED

JUN - 1 2001

DEPARTMENT OF REAL ESTATE

[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-2587 SD
12)
12 AMERICAN SPIRIT REALTY,) OAH No. L-2001010128
13 ANITA MARIE ALKIRE,)
13 Respondents.) STIPULATION AND AGREEMENT
14)

15 It is hereby stipulated by and between AMERICAN SPIRIT
16 REALTY (hereinafter "AMERICAN SPIRIT") and ANITA MARIE ALKIRE
17 (hereinafter "Respondent ALKIRE") and their attorney of record
18 David S. Bright, and Complainant, acting by and through David A.
19 Peters, Counsel for the Department of Real Estate, as follows
20 for the purpose of settling and disposing of the Accusation
21 filed November 14, 2000 in this matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and
24 Respondents at a formal hearing on the Accusation, which hearing
25 was to be held in accordance with the provisions of the
26 Administrative Procedure Act (APA) (Government Code Section
27 11500 et seq.), shall instead and in place thereof be submitted

1 solely on the basis of the provisions of this Stipulation and
2 Agreement.

3 2. Respondents have received, read and understand
4 the Statement to Respondent, the Discovery Provisions of the
5 APA, and the Accusation filed by the Department of Real Estate
6 in this proceeding.

7 3. On December 19, 2000, Respondents filed their
8 Notices of Defense pursuant to Section 11505 of the Government
9 Code for the purpose of requesting a hearing on the allegations
10 in the Accusation. Respondents hereby freely and voluntarily
11 withdraw their Notices of Defense. Respondents acknowledge that
12 by withdrawing said Notices of Defense they will thereby waive
13 their right to require the Commissioner to prove the allegations
14 in the Accusation at a contested hearing held in accordance with
15 the provisions of the APA and that they will waive other rights
16 afforded to them in connection with the hearing such as the
17 right to present evidence in defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interests of
21 expedience and economy, Respondents choose not to contest these
22 allegations, but to remain silent and understand that, as a
23 result thereof, these factual allegations, without being
24 admitted or denied, will serve as a prima facia basis for the
25 disciplinary action stipulated to herein. The Real Estate
26 Commissioner shall not be required to provide further evidence
27 to prove said factual allegations.

1 5. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement as
3 her Decision in this matter, thereby imposing the penalty and
4 sanctions on Respondents' real estate licenses and license
5 rights as set forth in the below "Order". In the event that the
6 Commissioner in her discretion does not adopt the Stipulation
7 and Agreement, it shall be void and of no effect, and
8 Respondents shall retain the right to a hearing and proceeding
9 on the Accusation under all the provisions of the APA and shall
10 not be bound by any admission or waiver made herein.

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

18 7. Respondents understand that by agreeing to this
19 Stipulation and Agreement in Settlement, Respondents agree to
20 pay, pursuant to Section 10148 of the Business and Professions
21 Code, the cost of the audit which led to this disciplinary
22 action. The amount of said costs is \$5,903.77.

23 8. Respondents have received, read, and understand
24 the "Notice Concerning Costs of Subsequent Audit.". Respondents
25 further understand that by agreeing to this Stipulation and
26 Agreement in Settlement, the findings set forth below in the
27 DETERMINATION OF ISSUES become final, and that the Commissioner

1 may charge Respondents for the costs of any subsequent audit
2 conducted pursuant to Section 10148 of the Business and
3 Professions Code to determine if the violations have been
4 corrected. The maximum costs of said audit will not exceed
5 \$5,903.77.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, admissions
8 and waivers, and solely for the purpose of settlement of the
9 pending Accusation without a hearing, it is stipulated and
10 agreed that the following determination of issues shall be made:

11 I

12 The conduct of Respondent AMERICAN SPIRIT, as
13 described in the Accusation, constitutes cause for the
14 suspension or revocation of the real estate license and license
15 rights of Respondent AMERICAN SPIRIT under the provisions of
16 Business and Professions Code Section 10177(d) in conjunction
17 with Business and Professions Code Sections 10145, 10145(a) and
18 10148 and Sections 2832.1, 2831, 2831.1, 2831.2, 2832, 2834, and
19 2731 of Title 10, California Code of Regulations.

20 II

21 The conduct of Respondent ALKIRE, as described in the
22 Accusation, constitutes cause for the suspension or revocation
23 of the real estate license and license rights of Respondent
24 ALKIRE under the provisions of Business and Professions Code
25 Section 10177(h).

26 ///

27 ///

1 ORDER

2 I

3 A. The real estate broker license and all license
4 rights of Respondent AMERICAN SPIRIT REALTY under the Real
5 Estate Law are revoked; provided, however, a restricted real
6 estate broker license shall be issued to Respondent pursuant to
7 Section 10156.5 of the Business and Professions Code if
8 Respondent makes application therefor and pays to the Department
9 of Real Estate the appropriate fee for the restricted license
10 within ninety (90) days from the effective date of this
11 Decision. The restricted license issued to Respondent shall be
12 subject to all of the provisions of Section 10156.7 of the
13 Business and Professions Code and to the following limitations,
14 conditions and restrictions imposed under authority of Section
15 10156.6 of the Code:

16 1. The restricted license issued to Respondent may
17 be suspended prior to hearing by Order of the Real Estate
18 Commissioner in the event of Respondent's conviction or plea of
19 nolo contendere to a crime which is substantially related to
20 Respondent's fitness or capacity as a real estate licensee.

21 2. The restricted license issued to Respondent may
22 be suspended prior to hearing by Order of the Real Estate
23 Commissioner on evidence satisfactory to the Commissioner that
24 Respondent has violated provisions of the California Real Estate
25 Law, the Subdivided Lands Law, Regulations of the Real Estate
26 Commissioner or conditions attaching to the restricted license.

27 ///

1 3. Respondent shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations or restrictions of
4 a restricted license until two (2) years have elapsed from the
5 effective date of this Decision.

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

the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent shall prior to the effective date of
the Decision provide evidence satisfactory to the Commissioner
that Respondent has cured the trust fund shortages alleged in
the Accusation.

6. Any restricted real estate broker license issued
to Respondent may be suspended or revoked for a violation by
Respondent of any of the conditions attaching to the restricted
license.

II

A. The real estate broker license and all license rights of Respondent ANITA MARIE ALKIRE under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

///

/ / /

1 1. The restricted license issued to Respondent may
2 be suspended prior to hearing by Order of the Real Estate
3 Commissioner in the event of Respondent's conviction or plea of
4 nolo contendere to a crime which is substantially related to
5 Respondent's fitness or capacity as a real estate licensee.

6 2. The restricted license issued to Respondent may
7 be suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate
10 Law, the Subdivided Lands Law, Regulations of the Real Estate
11 Commissioner or conditions attaching to the restricted license.

12 3. Respondent shall not be eligible to apply for the
13 issuance of an unrestricted real estate license nor for the
14 removal of any of the conditions, limitations or restrictions of
15 a restricted license until two (2) years have elapsed from the
16 effective date of this Decision.

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

27 ///

Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until Respondent passes the examination.

6. Pursuant to Section 10148 of the Business and Professions Code, Respondents ALKIRE and/or AMERICAN SPIRIT shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondents have corrected the trust fund violations found in paragraph I of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem.

Respondents ALKIRE and/or AMERICAN SPIRIT shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely

1 made as provided for herein, or as provided for in a subsequent
2 agreement between the Respondent and the Commissioner. The
3 suspension shall remain in effect until payment is made in full
4 or until the Respondent enters into an agreement satisfactory to
5 the Commissioner to provide for payment, or until a decision
6 providing otherwise is adopted following a hearing held pursuant
7 to this condition.

8 7. Respondent shall prior to the effective date of
9 the Decision provide evidence satisfactory to the Commissioner
10 that Respondent has cured the trust fund shortages alleged in
11 the Accusation.

12 8. Any restricted real estate broker license issued
13 to Respondent may be suspended or revoked for a violation by
14 Respondent of any of the conditions attaching to the restricted
15 license.

16
17 5/15/01
18 DATED

16
17 David A. Peters
18 DAVID A. PETERS, Counsel
DEPARTMENT OF REAL ESTATE

19 * * *

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

1 allegations in the Accusation at a hearing at which I would have
2 the right to cross-examine witnesses against me and to present
3 evidence in defense and mitigation of the charges.

4
5 5/10/01
6 DATED

Anita Marie Alkire
AMERICAN SPIRIT REALTY
By: Anita Marie Alkire
Respondent

8
9 5/10/01
10 DATED

Anita Marie Alkire
ANITA MARIE ALKIRE
Respondent

11 I have reviewed the Stipulation and Agreement as to
12 form and content and have advised my client accordingly.

13
14 5/11/01
15 DATED

David S. Bright
DAVID S. BRIGHT
Attorney for Respondents

16 * * *

17 The foregoing Stipulation and Agreement for Settlement
18 is hereby adopted by the Real Estate Commissioner as her
19 Decision and Order and shall become effective at 12 o'clock noon
20 on June 21, 2001.

21 IT IS SO ORDERED May 25, 2001.

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

24 Paula Reddish Zinnemann
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 16 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

AMERICAN SPIRIT REALTY,
ANITA MARIE ALKIRE,

Case No. H-2587 SD

OAH No. L-2001010128

Respondent

SECOND AMENDED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CA 92101 on WEDNESDAY, APRIL 4, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: February 16, 2001

By

David A. Peters
DAVID A. PETERS *Counsel*

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE FEB - 8 2001
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Laurie A. Z...

In the Matter of the Accusation of

AMERICAN SPIRIT REALTY,
ANITA MARIE ALKIRE,

Case No. H-2587 SD

OAH No. L-2001010128

Respondent

FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the OFFICE OF ADMINISTRATIVE HEARINGS, 1350 Front Street, Room 6022, San Diego, CA 92101 on THURSDAY, MARCH 29, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: February 8, 2001

By

David A. Peters
DAVID A. PETERS

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 22 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

AMERICAN SPIRIT REALTY,
ANITA MARIE ALKIRE,

Case No. H-2587 SD

OAH No. L-2001010128

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the OFFICE OF ADMINISTRATIVE HEARINGS, 1350 Front Street, Room 6022, San Diego, CA 92101 on WEDNESDAY, FEBRUARY 21, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: January 22, 2001

By

David A. Peters

DAVID A. PETERS

Counsel

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)

FILED

NOV 14 2000

DEPARTMENT OF REAL ESTATE

By *Lucio A. Zan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-2587 SD

12 AMERICAN SPIRIT REALTY,)
13 ANITA MARIE ALKIRE,)

ACCUSATION

14 Respondents.)

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against AMERICAN SPIRIT REALTY (hereinafter "Respondent AMERICAN
18 SPIRIT") and ANITA MARIE ALKIRE (hereinafter "Respondent
19 ALKIRE"), is informed and 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
23 in his official capacity.

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1 II

2 Respondents AMERICAN SPIRIT and ALKIRE are licensed
3 and/or have license rights under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code) (hereinafter
5 "the Code") as follows:

6 AMERICAN SPIRIT REALTY - as a real estate broker
7 corporation acting by and through Respondent ALKIRE as its
8 designated broker officer.

9 ANITA MARIE ALKIRE - as a real estate broker and as
10 designated broker officer for Respondent AMERICAN SPIRIT.

11 III

12 Whenever reference is made in an allegation in this
13 Accusation to an act or omission of "Respondents", such
14 allegation shall be deemed to mean the act or omission of each
15 of the Respondents named in the caption hereof, acting
16 individually, jointly, and severally.

17 IV

18 Beginning on or before January 1, 1998 and continuing
19 through on or about January 31, 2000, Respondents engaged in the
20 business of, acted in the capacity of, advertised or assumed to
21 act as real estate brokers in the State of California, within
22 the meaning of Section 10131(b) of the Code wherein Respondents
23 for or in expectation of a compensation solicited prospective
24 tenants for, negotiated rental agreements for and collected
25 rents from real properties owned by another or others and
26 otherwise managed real properties in or near San Diego,
27 California.

V

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

VI

Beginning on or before January 1, 1998 and continuing through on or about January 31, 2000, Respondents maintained the following trust fund accounts:

<u>TITLE OF ACCOUNT AND NUMBER</u>	<u>BANK</u>
American Spirit Property Management	Union Bank
Client Trust Account (hereinafter "Bank Account #1")	Chula Vista, California
American Spirit Trust, Anita M. Alkire, Trustee	Washington Mutual Bank San Diego, California
(hereinafter "Bank Account #2")	

VII

In connection with the collection and disbursement of trust funds as described in Paragraph V above, Respondents failed to deposit and maintain said trust funds in Bank Account #1 in such manner that as of November 30, 1998, there was a shortage of \$11,273.66 of trust funds.

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VIII

In connection with the collection and disbursement of trust funds as described in Paragraph V above, Respondents failed to deposit and maintain said trust funds in Bank Account #2 in such manner that as of December 31, 1999, there was a shortage of \$7,270.30 of trust funds.

IX

In connection with the collection and disbursement of trust funds as described in Paragraph V above, Respondents failed to obtain the prior written consent of every principal who was an owner of trust funds in Account #1 and Account #2 prior to each disbursement where said disbursements reduced the balance of funds in said trust account to an amount less than the existing aggregate trust fund liability of Respondents to all owners of said trust funds in violation of Section 2832.1 of the Title 10, California Code of Regulations (hereinafter "Regulations").

X

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to maintain adequate columnar records of all trust funds received and disbursed in the manner required by Section 2831 of the Regulations.

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1 XI

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

8 XII

9 In connection with the receipt and disbursement of
10 trust funds described in Paragraph V above, Respondents failed
11 to adequately maintain and perform a reconciliation with records
12 of all trust funds received and disbursed as required by Section
13 2831.1 of the Regulations, at least once per month, in
14 conformance with Section 2831.2 of the Regulations.

15 XIII

16 In connection with the receipt and disbursement of
17 trust funds described in Paragraph V above, Respondents failed
18 to place trust funds accepted on behalf of another, into the
19 hands of the owner of the funds, into a neutral escrow
20 depository or into a trust fund account in the name of
21 Respondent as trustee at a bank or other financial institution
22 no later than three (3) business days following receipt of the
23 funds as required by Section 10145(a) of the Code and Section
24 2832 of the Regulations.

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27 ///

1 XIV

2 In connection with the receipt and disbursement of
3 trust funds described in Paragraph V above, Respondents
4 permitted withdrawals to be made from the Account #1 by someone
5 other than a corporate officer, or a salesperson licensed to
6 Respondents and authorized in writing by Respondents to withdraw
7 said funds, or an authorized unlicensed employee covered by a
8 fidelity bond indemnifying Respondents against loss in an amount
9 at least equal to the maximum amount of the trust funds to which
10 the employee has access at any time, in violation of Section
11 2834 of the Regulations.

12 XV

13 Within the three-year period immediately preceding the
14 filing of this Accusation, Respondents operated their real
15 estate business in San Diego, California, under the fictitious
16 business names of "Team Spirit Real Estate Group, Inc.",
17 "American Spirit Realty, Inc.", and "American Spirit Realty and
18 Mortgage" without Respondents obtaining a license bearing said
19 fictitious business name as required by Section 2731 of the
20 Regulations.

21 XVI

22 On or about March 17, 2000, a representative of the
23 Real Estate Commissioner, after service of a subpoena duces
24 tecum on Respondents, requiring that records, papers, books,
25 accounts and documents executed or obtained in connection with
26 transactions for which a real estate license is required be made
27 available for examination and inspection. Respondents failed

1 and refused to make aid records available for inspection and/or
2 failed to retain said records in violation of Section 10148 of
3 the Code.

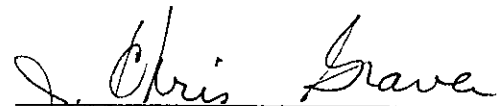
4 XVII

5 The facts alleged above are grounds for the suspension
6 or revocation of Respondents licenses under the following
7 sections of the Code and Regulations:

- 8 1) As to Paragraphs VII and VIII, under Section
9 10177(d) of the Code in conjunction with Section 10145 of the
10 Code;
- 11 2) As to Paragraph IX, under Section 10177(d) of the
12 Code in conjunction with Section 2832.1 of the Regulations;
- 13 3) As to Paragraph X, under Section 10177(d) of the
14 Code in conjunction with Section 2831 of the Regulations;
- 15 4) As to Paragraph XI, under Section 10177(d) of the
16 Code in conjunction with Section 2831.1 of the Regulations;
- 17 5) As to Paragraph XII, under Section 10177(d) of
18 the Code in conjunction with Section 2831.2 of the Regulations;
- 19 6) As to Paragraph XIII, under Section 10177(d) of
20 the Code in conjunction with Section 10145(a) of the Code and
21 Section 2832 of the Regulations;
- 22 7) As to Paragraph XIV, under Section 10177(d) of
23 the Code in conjunction with Section 2834 of the Regulations;
- 24 8) As to Paragraph XV, under Section 10177(d) of the
25 Code in conjunction with Section 2731 of the Regulations; and
- 26 9) As to Paragraph XVI, under Section 10177(d) of
27 the Code in conjunction with Section 10148 of the Code.

1 In the alternative, the acts and/or omissions of
2 Respondent ALKIRE, as described above, constitute failure on the
3 part of Respondent ALKIRE, as the designated broker-officer for
4 Respondent AMERICAN SPIRIT, to exercise reasonable supervision
5 and control over the licensed activities of Respondent AMERICAN
6 SPIRIT required by Section 10159.2 of the Code, and is cause for
7 the suspension or revocation of Respondent ALKIRE's licenses
8 and/or license rights under Section 10177(h) of the Code.

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

16
17 
18 J. CHRIS GRAVES
Deputy Real Estate Commissioner

19 Dated at San Diego, California,
20 this 23rd day of October, 2000.