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FILED
JAN 13 2005

DEPARTMENT OF REAL ESTATE

By *Jean Brown*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of) No. H-2600 SD
TERESA MARIE SMELSER,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On July 30, 2001, a Decision was rendered herein
revoking the real estate broker license of Respondent.

On March 25, 2004, Respondent petitioned for
reinstatement of said real estate broker license, and the
Attorney General of the State of California has been given notice
of the filing of said petition.

I have considered Respondent's petition and the
evidence and arguments in support thereof. Respondent has failed
to demonstrate to my satisfaction that Respondent has undergone
sufficient rehabilitation to warrant the reinstatement of
Respondent's real estate broker license.

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1 The burden of proving rehabilitation rests with the
2 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
3 petitioner is required to show greater proof of honesty and
4 integrity than an applicant for first time licensure. The proof
5 must be sufficient to overcome the prior adverse judgment on the
6 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
7 395).

8 The Department has developed criteria in Section 2911
9 of Title 10, California Code of Regulations (Regulations) to
10 assist in evaluating the rehabilitation of an applicant for
11 reinstatement of a license. Among the criteria relevant in this
12 proceeding are:

13 (b) Restitution to any person who has suffered monetary
14 losses through "substantially related" acts or omissions of the
15 applicant. The Decision in this matter found that Respondent's
16 actions had resulted in a \$86,173 shortage in a trust account
17 controlled by Respondent. Respondent has provided no evidence
18 that said shortage has been cured. Consequently, Respondent has
19 failed to make restitution to persons who have suffered monetary
20 losses as a result of Respondent's acts.

21 (k) Correction of business practices resulting in
22 injury to others or with the potential to cause such injury.
23 Respondent has not acted in a fiduciary capacity, including the
24 handling of funds on behalf of another or others. Respondent has
25 not established that she has corrected her business practices.

26 (n) Change in attitude from that which existed at the

27 ///

1 time of the conduct in question as evidenced by any or all of the
2 following:

3 (1) Testimony of applicant.

4 (2) Evidence from family members, friends or other persons
5 familiar with applicant's previous conduct and with his
6 subsequent attitudes and behavioral patterns.

7 (3) Evidence from probation or parole officers or law
8 enforcement officials competent to testify as to applicant's
9 social adjustments.

10 (4) Evidence from psychiatrists or other persons competent
11 to testify with regard to neuropsychiatric or emotional
12 disturbances.

13 Respondent continues to minimize the nature of the
14 conduct that led to the disciplinary action in this matter and
15 denies that she has done anything wrong. Respondent's continued
16 assertion of a lack of wrongdoing demonstrates that Respondent
17 has not changed her attitude from that which existed at the time
18 the grounds for disciplinary action occurred.

19 Since Respondent has not established that she has
20 complied with Sections 2911(b), (k) and (n) of Title 10,
21 California Code of Regulations, I am not satisfied that
22 Respondent is sufficiently rehabilitated to receive a real estate
23 broker license.

24 NOW, THEREFORE, IT IS ORDERED that Respondent's
25 petition for reinstatement of her real estate broker license is
26 denied.

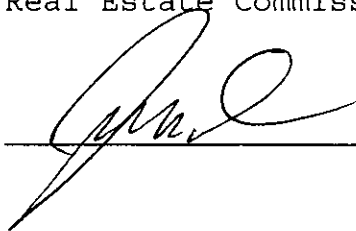
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This Order shall become effective at 12 o'clock
noon February 3, 2005.

DATED: 1-16-05

JEFF DAVI
Real Estate Commissioner



FILED

AUG - 6 2001

DEPARTMENT OF REAL ESTATE

Laurie Q. Zia

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ALBERT H. SMITH REAL ESTATE, INC.,)
AND TERESA MARIE SMELSER,)
Respondents.)

NO. H-2600 SD
OAH NO. L-2001020341

DECISION

The Proposed Decision dated July 16, 2001, 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 August 27, 2001.

IT IS SO ORDERED July 30, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALBERT H. SMITH REAL ESTATE, INC.,
and
TERESA MARIE SMELSER,

Respondents.

OAH NO. L-2001020341

CASE NO. H-2600 SD

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, at San Diego, California on June 27, 2001.

Department of Real Estate Counsel, James L. Beaver, represented complainant.

Respondent, Teresa Smelser, an officer of respondent, Albert H. Smith Real Estate, Inc., personally appeared and represented herself and the corporate respondent.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Accusation was filed by Daniel M. Hatt, in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California ("the Department").

2. On January 10, 1983, the Department issued respondent Albert H. Smith Real Estate, Inc., a corporate real estate broker's license. At all relevant times, that license was, and currently is, in full force and effect. From January 10, 1991 through February 7, 1991, and from May 16, 2000, through the present, respondent Smelser was, and currently is, the designated officer for respondent Albert H. Smith Real Estate, Inc. At all other times from January 10, 1983 through May 15, 2000, respondent Smelser acted as an "Additional Officer" for respondent Albert H. Smith Real Estate, Inc.

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3. On June 17, 1980, the Department issued respondent Smelser, a real estate salesperson's license. That license was in full force and effect until it terminated on July 30, 1982. That same day, July 30, 1982, the Department issued respondent Smelser a real estate broker's license. At all relevant times respondent's broker's license was, and currently is, in full force and effect.

4. On November 13 and 14, 2000, an auditor for the Department examined certain of respondents' books and records. The audit covered the period of time from October 1, 1997 through May 31, 2000. The audited records disclosed that at all relevant times, respondents engaged in the business of, acted in the capacity of, advertised, and assumed to act as real estate brokers within the State of California. Respondents were engaged in the property management business. Working in that capacity, respondents acted on behalf of others for compensation and they leased/rented, and/or, offered to lease/rent, and collected rent from real property. During this time frame respondent Smelser was not listed as the designated officer--broker on respondent Albert H. Smith Real Estate, Inc.'s license, however, she was still responsible for the records of the corporation because she was the Chief Financial Officer for respondent Albert H. Smith Real Estate, Inc. and, "took care of the books and prepared the monthly reconciliations" during the period covered by the audit.

5. The audit revealed that, as of February 29, 2000, respondents managed approximately ten (10) real properties (farmlands) for clients. As part of their property management duties respondents received funds in trust from or on behalf of owners and tenants; and, from time to time made disbursements of said funds. The funds which respondents' received were deposited into trust fund accounts. One of the accounts was the "Albert H. Smith Real Estate, Inc. Trust Account", Account number 03502899, maintained by respondents at the Brawley, California branch of Valley Independent Bank ("the trust account").

6. From January 1, 1999 to February 29, 2000, respondents received and deposited approximately \$840,000.00 into the trust account for their rental activities. As part of the audit, the auditor calculated the adjusted bank balance for the trust account and compared the adjusted balance to the trust account liability as of February 29, 2000. That comparison disclosed an \$86,173.35 shortage in the trust account. The shortage was caused by \$1,576.42 in bank fees/charges, \$44,500.00 in funds disbursed to the designated officer and the corporation without any supporting documents, and \$40,096.93 in "Unidentified Shortage". The shortage created a situation where the trust account had \$86,173.35 less than the aggregate liability of respondents' to all owners of the funds and there were no written consents, signed by any of the owners, authorizing any shortage, whatsoever.

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7. The audit also revealed the following:

During the period when respondent Smelser was responsible for maintaining the corporate books and records, respondent corporation, and respondent Smelser:

a. Failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from the trust account, as required by California Code of Regulations ("Regulations"), Title 10, section 2831.

b. Failed to keep a separate record for each beneficiary or transaction, accounting therein for all funds that were deposited into the account and containing all the information required by Regulations, section 2831.1.

c. Failed to retain, for three (3) years, copies of canceled checks and other trust records executed or obtained by respondents in connection with transactions for which a real estate brokers license is required.

d. Failed, after proper notice, to make the canceled checks and other trust records available for examination, inspection and copying by the auditor/designated representative of the Real Estate Commissioner.

8. Respondents' acts of allowing a shortage in the trust account and their failure to keep and maintain records, as required, constitutes negligence and incompetence in performing services for which a broker's license is required.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Based on Findings 4, 5, 6, 7, and 8, cause exists for discipline of respondents' licenses pursuant to Code section 10177, subdivision (g).

2. The Findings, considered in their entirety, reveal that both respondents engaged in numerous, repetitive, ongoing violations of Regulations sections 2831, 2831.1, 2832.1, and Code sections 10145 and 10148. Each violation gives rise to a separate and distinct cause for discipline of respondents' licenses pursuant to Code section 10177, subdivision (d).

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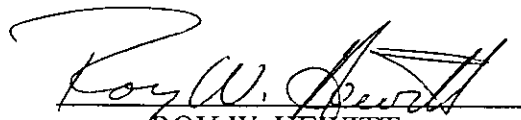
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate broker's license issued to respondent Albert H. Smith Real Estate, Inc., and all rights appurtenant thereto, is revoked.

The real estate broker's license issued to respondent Teresa Marie Smelser, and all rights appurtenant thereto, is revoked.

Dated: July 16, 2001.


ROY W. HEWITT

Administrative Law Judge
Office of Administrative Hearings

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

MAR 27 2001

DEPARTMENT OF REAL ESTATE

By Lucie A. Zinn

In the Matter of the Accusation of

ALBERT H. SMITH REAL ESTATE, INC.,
AND TERESA MARIE SMELSER,

}

Case No. H-2600 SD

OAH No. L-2001020341

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 WEDNESDAY, JUNE 27, 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.

Dated: MARCH 27, 2001

DEPARTMENT OF REAL ESTATE

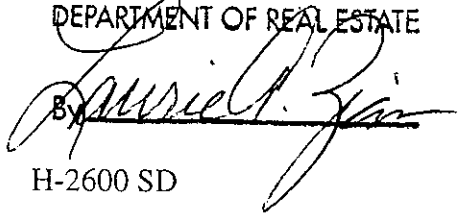
By James L. Beaver
JAMES L. BEAVER Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

FEB 28 2001

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of

ALBERT H. SMITH REAL ESTATE, INC.,
AND TERESA MARIE SMELSER,

}

Case No. H-2600 SD

OAH No. L-2001020341

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

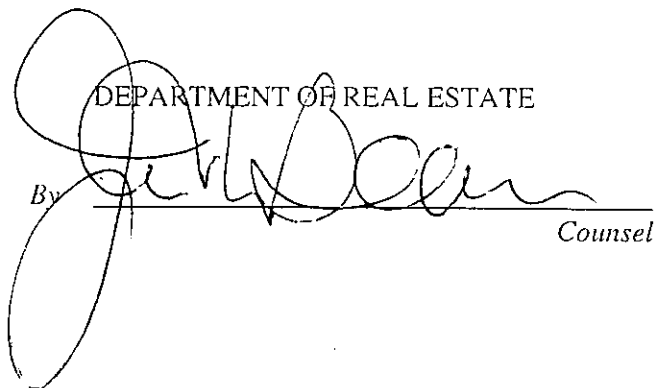
You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CA 92101 on MONDAY, APRIL 23, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation 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.

Dated: FEBRUARY 28, 2001

DEPARTMENT OF REAL ESTATE
By 
Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 DEPARTMENT OF REAL ESTATE
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 (916) 227-0788 (Direct)

FILED

JAN 25 2001

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-2600 SD
12)
12 ALBERT H. SMITH REAL ESTATE, INC.,) ACCUSATION
13 and TERESA MARIE SMELSER,)
14 Respondents.)

15 The Complainant, Daniel M. Hatt, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against Respondent ALBERT H. SMITH REAL ESTATE, INC. (herein
18 "SMITH"), and Respondent TERESA MARIE SMELSER (herein "SMELSER"),
19 is informed and alleges as follows:

20 I

21 The Complainant, Daniel M. Hatt, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in his official capacity.

24 II

25 At all times herein mentioned, Respondents SMITH and
26 SMELSER (herein "Respondents") were and now are licensed and/or
27 have license rights under the Real Estate Law (Part 1 of

1 Division 4 of the Business and Professions Code) (herein "the
2 Code").

3
4 III

5 At all times herein mentioned, SMITH was and now is
6 licensed by the Department of Real Estate of the State of
7 California (herein "the Department") as a corporate real estate
8 broker by and through SMELSER as designated officer-broker of
9 SMITH to qualify said corporation and to act for said
10 corporation as a real estate broker.

11 IV

12 At all times herein mentioned, SMELSER was and now is
13 licensed by the Department as a real estate broker, individually
14 and as designated officer-broker of SMITH. As said designated
15 officer-broker, SMELSER was at all times mentioned herein
16 responsible pursuant to Section 10159.2 of the Code for the
17 supervision of the activities of the officers, agents, real
18 estate licensees and employees of SMITH for which a license is
19 required.

20 V

21 Whenever reference is made in an allegation in this
22 Accusation to an act or omission of SMITH, such allegation shall
23 be deemed to mean that the officers, directors, employees,
24 agents and real estate licensees employed by or associated with
25 SMITH committed such act or omission while engaged in the
26 furtherance of the business or operations of SMITH and while
27 acting within the course and scope of their corporate authority
and employment.

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VI

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 Sections 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

VII

In so acting as real estate brokers, as described in Paragraph VI above, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said funds.

VIII

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund accounts") maintained by Respondents for the handling of trust funds, including but not necessarily limited to the "Albert H.

1 Smith Real Estate, Inc. Trust Account" account, Account Number
2 03502899, maintained by Respondents at the Brawley, California
3 branch of Valley Independent Bank (herein "B/A #1").
4

5 IX

6 Within the three-year period immediately preceding the
7 filing of this Accusation, in connection with the collection and
8 disbursement of said trust funds, SMITH and SMELSER:

9 (a) Failed to keep a columnar record in chronological
10 sequence of all trust funds received and disbursed from B/A #1
11 as required by Section 2831 of Title 10, California Code of
12 Regulations (herein "the Regulations");

13 (b) Failed to keep a separate record for each
14 beneficiary or transaction, accounting therein for all funds
15 which have been deposited into B/A #1, containing all
16 information required by Section 2831.1 of the Regulations; and

17 (c) Caused, suffered or permitted the balance of
18 funds in B/A #1 to be reduced to an amount which, as of
19 February 29, 2000, was approximately \$86,173.35 less than the
20 aggregate liability of SMITH to all owners of such funds,
21 without the prior written consent of the owners of such funds.

22 X

23 Within the three-year period immediately preceding the
24 filing of this Accusation, in connection with the collection and
25 disbursement of said trust funds, SMITH and SMELSER:

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1
2 (a) Failed to retain for three (3) years copies of
3 canceled checks and other trust records executed or obtained by
4 Respondent in connection with transactions for which a real
5 estate broker license is required; and/or

6 (b) Failed after notice to make such canceled checks
7 and other trust records available for examination, inspection
8 and copying by the designated representative of the Real Estate
9 Commissioner.

10 XI

11 SMELSER failed to exercise reasonable supervision over
12 the acts of SMITH in such a manner as to allow the acts and
13 events described in Paragraphs IX and X to occur.

14 XII

15 The facts alleged above are grounds for the suspension
16 or revocation of the licenses and license rights of SMITH and
17 SMELSER under the following provisions of the Code and/or the
18 Regulations:

19 (a) As to Paragraph IX(a), under Section 10145 of the
20 Code and Section 2831 of the Regulations in conjunction with
21 Section 10177(d) of the Code;

22 (b) As to Paragraph IX(b), under Section 10145 of the
23 Code and Section 2831.1 of the Regulations in conjunction with
24 Section 10177(d) of the Code;

25 (c) As to Paragraph IX(c), under Section 10145 of the
26 Code and 2832.1 of the Regulations in conjunction with Section
27 10177(d) of the Code; and

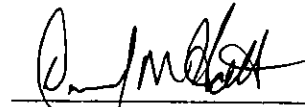
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1 (d) As to Paragraph X, under Section 10148 of the
2 Code in conjunction with Section 10177(d) of the Code.

3 XIII

4 The facts alleged in Paragraph XI, above, are grounds
5 for the suspension or revocation of the licenses and license
6 rights of SMELSER under Section 10177(g) and/or Section 10177(h)
7 of the Code and Section 10159.2 of the Code in conjunction with
8 Section 10177(d) 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 applicable provisions of law.

16 

17 DANIEL M. HATT
18 Deputy Real Estate Commissioner

19 Dated at Los Angeles, California,
20 this 12th day of January, 2001.