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FILED
JUN 24 2003

DEPARTMENT OF REAL ESTATE

By Amir G. Zia

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-2624 SD
)	
DON PERRY AND ASSOCIATES,)	
a California Corporation, and)	
DONALD WALTER PERRY,)	
)	
Respondents.)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSES

TO: Respondents DON PERRY AND ASSOCIATES, a California Corporation, and DONALD WALTER PERRY

At all times mentioned herein since May 10, 1999, Respondents have been and now are licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code") as real estate brokers whose broker licenses were and now are restricted subject to the provisions of Section 10156.7 of the Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of the Code.

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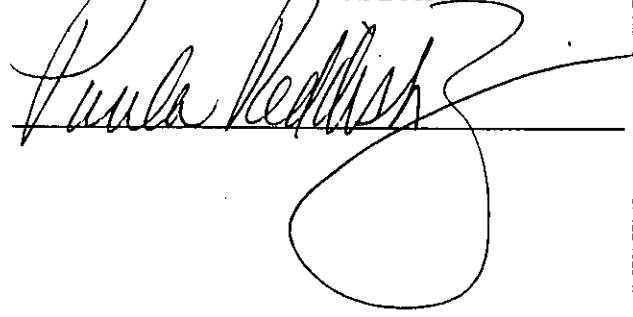
IT IS FURTHER ORDERED that all license certificates
and identification cards issued by the Department of Real Estate
which are in the possession of Respondents be immediately
surrendered by personal delivery or by mailing in the enclosed
self-addressed envelope to:

DEPARTMENT OF REAL ESTATE
Attention: Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

This Order shall be effective immediately.

DATED: June 17, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

FILED
OCT 11 2001

DEPARTMENT OF REAL ESTATE

Lucille C. Zani

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-2624 SD
)	
DON PERRY AND ASSOCIATES.)	<u>STIPULATION AND AGREEMENT</u>
a California Corporation, and)	
DONALD WALTER PERRY,)	
)	
Respondents.)	

It is hereby stipulated by and between Respondents DON PERRY AND ASSOCIATES, a corporation, and DONALD WALTER PERRY (hereinafter "Respondents"), individually and by and through David S. Bright, Esq., attorney of record herein for Respondents, and the Complainant, acting by and through James L. Beaver, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on April 26, 2001 in this matter (herein "the Accusation"):

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents

DRE No. H-2624 SD
DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act (APA), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement.

6 2. Respondents have received, read and understand the
7 Statement to Respondent, the Discovery Provisions of the APA and
8 the Accusation filed by the Department in this proceeding.

9 3. On May 8, 2001, Respondents filed Notices of
10 Defense pursuant to Section 11505 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents each hereby freely and voluntarily
13 withdraw said Notice of Defense. Respondents acknowledge that
14 Respondents understand that by withdrawing said Notice of Defense
15 Respondents will thereby waive Respondents' right to require the
16 Real Estate Commissioner (herein "the Commissioner") to prove the
17 allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that Respondents
19 will waive other rights afforded to Respondents in connection
20 with the hearing such as the right to present evidence in defense
21 of the allegations in the Accusation and the right to cross-
22 examine witnesses.

23 4. This Stipulation is based on the factual
24 allegations contained in the Accusation. In the interests of
25 expediency and economy, Respondents choose not to contest these
26 allegations, but to remain silent and understand that, as a

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 result thereof, these factual allegations, without being admitted
2 or denied, will serve as a prima facie basis for the disciplinary
3 action stipulated to herein. The Real Estate Commissioner shall
4 not be required to provide further evidence to prove said factual
5 allegations.

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

16 6. This Stipulation and Agreement shall not
17 constitute an estoppel, merger or bar to any further
18 administrative or civil proceedings by the Department with
19 respect to any matters which were not specifically alleged to be
20 causes for accusation in this proceeding.

21 7. Respondents understand that by agreeing to this
22 Stipulation and Agreement, Respondents jointly and severally
23 agree to pay, pursuant to Section 10148 of the California
24 Business and Professions Code, the cost of the audit which
25 resulted in the determination that Respondents committed the
26 trust fund violation(s) found in paragraph I, below, of the

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

Determination of Issues. The amount of said costs is \$5,166.06.

8. Respondents further understand that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the Determination Of Issues become final, and that the Commissioner may charge said Respondents, jointly and severally, for the costs of any audit conducted pursuant to Section 10148 of the California Business and Professions Code to determine if the trust fund violation(s) found in paragraph I, below, of the Determination of Issues have been corrected. The maximum costs of said audit shall not exceed \$5,166.06.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following Determination of Issues shall be made:

I

The acts and omissions of Respondents as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of such Respondents under the following provisions of the California Business and Professions Code (herein "the Code"):

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

(b) As to Paragraph IX(b) under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with

DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 Section 10177(d) of the Code;

2 (c) As to Paragraph IX(c) under Section 10145 of the
3 Code and Section 2831.2 of the Regulations in conjunction with
4 Section 10177(d) of the Code;

5 (d) As to Paragraph IX(d) under Section 10145 of the
6 Code and Section 2832.1 of the Regulations in conjunction with
7 Section 10177(d) of the Code;

8 (e) As to Paragraph IX(e) under Section 10145 of the
9 Code and Section 2834 of the Regulations in conjunction with
10 Section 10177(d) of the Code;

11 (f) As to Paragraph X(a) under Section 10160 of the
12 Code in conjunction with Sections 10165 and 10177(d) of the Code;

13 (g) As to Paragraph X(b) under Section 10161.8(a) of
14 the Code in conjunction with Sections 10165 and 10177(d) of the
15 Code; and

16 (h) As to Paragraph X(c) under Section 10161.8(b) of
17 the Code in conjunction with Sections 10165 and 10177(d) of the
18 Code.

19 II

20 The acts and omissions of Respondent DONALD WALTER
21 PERRY as described in Paragraph XI of the Accusation are grounds
22 for the suspension or revocation of the licenses and license
23 rights of Respondent DONALD WALTER PERRY under Sections 10177(g)
24 and 10177(h) of the Code and Section 10159.2 of the Code in
25 conjunction with Section 10177(d) of the Code.

26
27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

ORDER

I

1
2
3 All licenses and licensing rights of Respondent DON
4 PERRY AND ASSOCIATES under the Real Estate Law are revoked;
5 provided, however, a restricted corporate real estate broker
6 license shall be issued to such Respondent pursuant to Section
7 10156.5 of the Code if, within 90 days from the effective date of
8 the Decision entered pursuant to this Order, such Respondent:

9 (a) pays (jointly and severally with Respondent PERRY)
10 the sum of \$5,166.06 to the Department as and for the cost of the
11 audit which resulted in the determination that Respondents
12 committed the trust fund violation(s) found in paragraph I of the
13 Determination of Issues; and

14 (b) makes application for the restricted license and
15 pays to the Department the appropriate fee therefor.

16 The restricted license issued to Respondent shall be
17 subject to all of the provisions of Section 10156.7 of the Code
18 and to the following limitations, conditions and restrictions
19 imposed under authority of Section 10156.6 of the Code:

20 1. Any restricted license issued to Respondent
21 pursuant to this Decision shall be suspended for one hundred
22 (100) days from the date of issuance of said restricted license;
23 provided, however,

24 (a) If Respondent petitions, forty (40) days of said
25 one hundred (100) day suspension (or a portion thereof) shall be
26 stayed upon condition that:

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 (i) Respondent pays a monetary penalty pursuant to
2 Section 10175.2 of the Business and Professions Code at the rate
3 of \$125.00 for each day of the suspension for a total monetary
4 penalty of \$5,000.00.

5 (ii) Said payment shall be in the form of a cashier's
6 check or certified check made payable to the Recovery Account of
7 the Real Estate Fund. Said check must be received by the
8 Department prior to the effective date of the Decision in this
9 matter.

10 (iii) If Respondent fails to pay the monetary penalty in
11 accordance with the terms and conditions of the Decision, the
12 Commissioner may, without a hearing, vacate and set aside the
13 stay order, and order the immediate execution of all or any part
14 of the stayed suspension.

15 (iv) No final subsequent determination be made, after
16 hearing or upon stipulation, that cause for disciplinary action
17 against Respondent occurred within two (2) years of the effective
18 date of this Decision. Should such a determination be made, the
19 Commissioner may, in his or her discretion, vacate and set aside
20 the stay order, and order the execution of all or any part of the
21 stayed suspension, in which event the Respondent shall not be
22 entitled to any repayment nor credit, prorated or otherwise, for
23 money paid to the Department under the terms of this Decision.

24 (v) If Respondent pays the monetary penalty and if no
25 further cause for disciplinary action against the real estate
26 license of Respondent occurs within two (2) years from the

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 effective date of the Decision, then the stay hereby granted
2 shall become permanent.

3 (b) Sixty (60) days of said one hundred (100) day
4 suspension shall be stayed upon condition that:

5 (i) No final subsequent determination be made, after
6 hearing or upon stipulation, that cause for disciplinary action
7 against Respondent occurred within two (2) years of the effective
8 date of this Decision. Should such a determination be made, the
9 Commissioner may, in his or her discretion, vacate and set aside
10 the stay order, and order the execution of all or any part of the
11 stayed suspension, in which event the Respondent shall not be
12 entitled to any repayment nor credit, prorated or otherwise, for
13 money paid to the Department under the terms of this Decision.

14 (ii) If no further cause for disciplinary action
15 against the real estate license of Respondent occurs within two
16 (2) years from the effective date of the Decision, then the stay
17 hereby granted shall become permanent.

18 2. Any restricted license issued to Respondent
19 pursuant to this Decision may be suspended prior to hearing by
20 Order of the Commissioner in the event of Respondent's conviction
21 or plea of nolo contendere to a crime which is substantially
22 related to Respondent's fitness or capacity as a real estate
23 licensee.

24 3. Any restricted license issued to Respondent
25 pursuant to this Decision may be suspended prior to hearing by
26 Order of the Commissioner on evidence satisfactory to the

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 Commissioner that Respondent has violated provisions of the
2 California Real Estate Law, the Subdivided Lands Law, Regulations
3 of the Commissioner or conditions attaching to the restricted
4 license.

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

10 5. Pursuant to Section 10148 of the Code, Respondent
11 shall pay (jointly and severally with Respondent PERRY) the
12 Commissioner's reasonable cost, not to exceed \$5,166.06, for an
13 audit to determine if Respondents have corrected the trust fund
14 violation(s) found in Paragraph I of the Determination of Issues.
15 In calculating the amount of the Commissioner's reasonable cost,
16 the Commissioner may use the estimated average hourly salary for
17 all persons performing audits of real estate brokers, and shall
18 include an allocation for travel time to and from the auditor's
19 place of work. Respondent shall pay such cost within 45 days of
20 receiving an invoice from the Commissioner detailing the
21 activities performed during the audit and the amount of time
22 spent performing those activities. The Commissioner may suspend
23 the restricted license issued to respondent pending a hearing
24 held in accordance with Section 11500, et seq., of the Government
25 Code, if payment is not timely made as provided for herein, or as
26 provided for in a subsequent agreement between the Respondent and

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

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

6 II

7 All licenses and licensing rights of Respondent DONALD
8 WALTER PERRY under the Real Estate Law are revoked; provided,
9 however, a restricted real estate broker license shall be issued
10 to said Respondent pursuant to Section 10156.5 of the Code if,
11 within 90 days from the effective date of the Decision entered
12 pursuant to this Order, such Respondent:

13 (a) pays (jointly and severally with Respondent DON
14 PERRY AND ASSOCIATES) the sum of \$5,166.06 to the Department as
15 and for the cost of the audit which resulted in the determination
16 that Respondents committed the trust fund violation(s) found in
17 paragraph I of the Determination of Issues; and

18 (b) makes application for the restricted license and
19 pays to the Department the appropriate fee therefor.

20 The restricted license issued to Respondent shall be
21 subject to all of the provisions of Section 10156.7 of the Code
22 and to the following limitations, conditions and restrictions
23 imposed under authority of Section 10156.6 of the Code:

24 1. Any restricted license issued to Respondent
25 pursuant to this Decision shall be suspended for one hundred
26 (100) days from the date of issuance of said restricted license;

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 provided, however,

2 (a) If Respondent petitions, forty (40) days of said
3 one hundred (100) day suspension (or a portion thereof) shall be
4 stayed upon condition that:

5 (i) Respondent pays a monetary penalty pursuant to
6 Section 10175.2 of the Business and Professions Code at the rate
7 of \$125.00 for each day of the suspension for a total monetary
8 penalty of \$5,000.00.

9 (ii) Said payment shall be in the form of a cashier's
10 check or certified check made payable to the Recovery Account of
11 the Real Estate Fund. Said check must be received by the
12 Department prior to the effective date of the Decision in this
13 matter.

14 (iii) If Respondent fails to pay the monetary penalty in
15 accordance with the terms and conditions of the Decision, the
16 Commissioner may, without a hearing, vacate and set aside the
17 stay order, and order the immediate execution of all or any part
18 of the stayed suspension.

19 (iv) No final subsequent determination be made, after
20 hearing or upon stipulation, that cause for disciplinary action
21 against Respondent occurred within two (2) years of the effective
22 date of this Decision. Should such a determination be made, the
23 Commissioner may, in his or her discretion, vacate and set aside
24 the stay order, and order the execution of all or any part of the
25 stayed suspension, in which event the Respondent shall not be
26 entitled to any repayment nor credit, prorated or otherwise, for

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 money paid to the Department under the terms of this Decision.

2 (v) If Respondent pays the monetary penalty and if no
3 further cause for disciplinary action against the real estate
4 license of Respondent occurs within two (2) years from the
5 effective date of the Decision, then the stay hereby granted
6 shall become permanent.

7 (b) Sixty (60) days of said one hundred (100) day
8 suspension shall be stayed upon condition that:

9 (i) No final subsequent determination be made, after
10 hearing or upon stipulation, that cause for disciplinary action
11 against Respondent occurred within two (2) years of the effective
12 date of this Decision. Should such a determination be made, the
13 Commissioner may, in his or her discretion, vacate and set aside
14 the stay order, and order the execution of all or any part of the
15 stayed suspension, in which event the Respondent shall not be
16 entitled to any repayment nor credit, prorated or otherwise, for
17 money paid to the Department under the terms of this Decision.

18 (ii) If no further cause for disciplinary action
19 against the real estate license of Respondent occurs within two
20 (2) years from the effective date of the Decision, then the stay
21 hereby granted shall become permanent.

22 2. Any restricted license issued to Respondent
23 pursuant to this Decision may be suspended prior to hearing by
24 Order of the Commissioner in the event of Respondent's conviction
25 or plea of nolo contendere to a crime which is substantially
26 related to Respondent's fitness or capacity as a real estate

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

licensee.

1
2 3. Any restricted license issued to Respondent
3 pursuant to this Decision may be suspended prior to hearing by
4 Order of the Commissioner on evidence satisfactory to the
5 Commissioner that Respondent has violated provisions of the
6 California Real Estate Law, the Subdivided Lands Law, Regulations
7 of the Commissioner or conditions attaching to the restricted
8 license.

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

14 5. Pursuant to Section 10148 of the Code, Respondent
15 shall pay (jointly and severally with Respondent DON PERRY AND
16 ASSOCIATES) the Commissioner's reasonable cost, not to exceed
17 \$5,166.06, for an audit to determine if Respondents have
18 corrected the trust fund violation(s) found in Paragraph I of the
19 Determination of Issues. In calculating the amount of the
20 Commissioner's reasonable cost, the Commissioner may use the
21 estimated average hourly salary for all persons performing audits
22 of real estate brokers, and shall include an allocation for
23 travel time to and from the auditor's place of work. Respondent
24 shall pay such cost within 45 days of receiving an invoice from
25 the Commissioner detailing the activities performed during the
26 audit and the amount of time spent performing those activities.

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 The Commissioner may suspend the restricted license issued to
2 respondent pending a hearing held in accordance with Section
3 11500, et seq., of the Government Code, if payment is not timely
4 made as provided for herein, or as provided for in a subsequent
5 agreement between the Respondent and the Commissioner. The
6 suspension shall remain in effect until payment is made in full
7 or until Respondent enters into an agreement satisfactory to the
8 Commissioner to provide for payment, or until a decision
9 providing otherwise is adopted following a hearing held pursuant
10 to this condition.

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

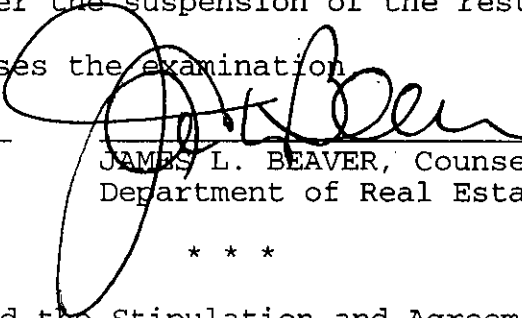
23 7. Respondent shall, within six (6) months from the
24 issuance of the restricted license, take and pass the
25 Professional Responsibility Examination administered by the
26 Department, including the payment of the appropriate examination

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

1 fee. If Respondent fails to satisfy this condition, the
2 Commissioner may order the suspension of the restricted license
3 until Respondent passes the examination

4 August 30, 2001
DATED


JAMES L. BEAVER, Counsel
Department of Real Estate


5 * * *

6
7 I have read the Stipulation and Agreement and have
8 discussed its terms with my attorney and its terms are understood
9 by me and are agreeable and acceptable to me. I understand that I
10 am waiving rights given to me by the California Administrative
11 Procedure Act (including but not limited to Sections 11506,
12 11508, 11509, and 11513 of the Government Code), and I willingly,
13 intelligently, and voluntarily waive those rights, including the
14 right of requiring the Commissioner to prove the allegations in
15 the Accusation at a hearing at which I would have the right to
16 cross-examine witnesses against me and to present evidence in
17 defense and mitigation of the charges.

18 8-30-01


DATED

DON PERRY AND ASSOCIATES
Respondent

19 By 
DONALD WALTER PERRY
20 Designated Officer - Broker

21 8-30-01

22 DATED


DONALD WALTER PERRY
23 Respondent

24 ///

25 ///

26 ///

27 DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

* * *

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

8/30/07
DATED

David S. Bright
DAVID S. BRIGHT
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on NOVEMBER 1, 2001.

IT IS SO ORDERED September 25, 2001.

PAULA REDDISH LINNEMANN
Real Estate Commissioner

Paula Reddish

DRE No. H-2624 SD

DON PERRY AND ASSOCIATES
and DONALD WALTER PERRY

FILED

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

MAY 10 2001

DEPARTMENT OF REAL ESTATE

By *Lucie G. Zin*

In the Matter of the Accusation of

DON PERRY AND ASSOCIATES,
a California Corporation, and
DONALD WALTER PERRY,

}

Case No. H-2624 SD

OAH No.

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, SUITE 6022, SAN DIEGO, CA 92101 on THURSDAY, AUGUST 30, 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: MAY 10, 2001

DEPARTMENT OF REAL ESTATE
By *James L. Beaver*
JAMES L. BEAVER 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)
7

FILED
APR 26 2001

DEPARTMENT OF REAL ESTATE

By *Laurie L. Rain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-2624 SD
12)
12 DON PERRY AND ASSOCIATES,) ACCUSATION
13 a California Corporation, and)
13 DONALD WALTER PERRY,)
14 Respondents.)
15)

16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against DON PERRY AND ASSOCIATES (hereinafter "DPA"), and DONALD
19 WALTER PERRY (hereinafter "PERRY"), is informed and alleges as
20 follows:

21 I

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

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II

At all times herein mentioned, Respondents DPA and PERRY (hereinafter "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code").

III

At all times herein mentioned, Respondent DPA was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent PERRY as designated officer-broker of Respondent DPA to qualify said corporation and to act for said corporation as a real estate broker. At all times mentioned herein since May 10, 1999, the license of Respondent DPA has been and now is a restricted corporate real estate broker license subject to terms, conditions and restrictions pursuant to Sections 10156.6 and 10156.7 of the Code.

IV

At all times herein mentioned, Respondent PERRY was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondent DPA. At all times mentioned herein since May 10, 1999, the license of Respondent PERRY has been and now is a restricted real estate broker license subject to terms, conditions and restrictions pursuant to Sections 10156.6 and 10156.7 of the Code. As said designated officer-broker, Respondent PERRY was at all times

1 mentioned herein responsible pursuant to Section 10159.2 of the
2 Code for the supervision of the activities of the officers,
3 agents, real estate licensees and employees of Respondent DPA
4 for which a license is required.

5
6 V

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

15 VI

16 At all times herein mentioned, Respondents engaged in
17 the business of, acted in the capacity of, advertised, or
18 assumed to act as real estate brokers within the State of
19 California within the meaning of Sections 10131(b) of the Code,
20 including the operation and conduct of a property management
21 business with the public wherein, on behalf of others, for
22 compensation or in expectation of compensation, Respondents
23 leased or rented and offered to lease or rent, and placed for
24 rent, and solicited listings of places for rent, and solicited
25 for prospective tenants of real property or improvements
26 thereon, and collected rents from real property or improvements
27 thereon.

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VII

In so acting as real estate brokers, as described in Paragraph VI above, Respondents accepted or received funds in trust (hereinafter "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 (hereinafter "trust fund accounts") maintained by Respondents for the handling of trust funds, including but not necessarily limited to the "Don Perry Realty Composite Trust Account, Account Number 0764-811253, maintained by Respondents at the Bonita, California, branch of Wells Fargo Bank (hereinafter "TA1").

IX

Within the three-year period immediately preceding the filing of this Accusation, in connection with the collection and disbursement of said trust funds, Respondents DPA and PERRY:

(a) Failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from TA1 as required by Section 2831 of Title 10, California Code of Regulations (hereinafter "the Regulations");

(b) Failed to keep a separate record for each beneficiary or transaction, accounting therein for all funds

1 which have been deposited into TA1, containing all information
2 required by Section 2831.1 of the Regulations;

3
4 (c) Failed to reconcile, at least once a month, the
5 balance of all separate beneficiary or transaction records with
6 the record of all trust funds received into and disbursed from
7 TA1, in compliance with Section 2831.2 of the Regulations;

8 (d) Caused, suffered or permitted the balance of
9 funds in TA1 to be reduced to an amount which, as of
10 December 31, 1999, was approximately \$22,477.26 less than the
11 aggregate liability of Respondent DPA to all owners of such
12 funds, and as of January 31, 2000, was approximately \$23,244.37
13 less than the aggregate liability of Respondent DPA to all
14 owners of such funds, without the prior written consent of the
15 owners of such funds; and

16 (e) Authorized Yvonne Perry, an unlicensed person
17 without fidelity bond coverage, to make disbursements from TA1,
18 in violation of Section 2834 of the Regulations.

19 X

20 Within the three-year period immediately preceding the
21 filing of this Accusation, in course of the property management
22 business described in Paragraph VI, above, Respondents DPA and
23 PERRY:

24 (a) Failed to retain possession of the real estate
25 licenses of two real estate salespersons, Bertha Orozco and
26 John Richard Kershaw, during the period such salespersons were
27 employed by Respondent DPA, in violation of Section 10160 of the
Code;

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2 (b) Failed to immediately notify the Real Estate
3 Commissioner in writing when a real estate salesperson, Bertha
4 Orozco, entered the employ of Respondent DPA, in violation of
5 Section 10161.8(a) of the Code; and

6 (c) Failed to immediately notify the Real Estate; and
7 Commissioner in writing when four real estate salespersons,
8 Eben Jorgen Gramer, Bernard Karl Schummer, Jorge S. Servin, and
9 Lily M. Todd, were terminated from the employ of Respondent DPA,
10 in violation of Section 10161.8(b) of the Code.

11 XI

12 Respondent PERRY failed to exercise reasonable
13 supervision over the acts of Respondent DPA in such a manner as
14 to allow the acts and events described in Paragraphs IX and X,
15 above, to occur.

16 XII

17 The facts alleged above are grounds for the suspension
18 or revocation of the licenses and license rights of Respondents
19 DPA and PERRY under the following provisions of the Code and/or
20 the Regulations:

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

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

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1 (c) As to Paragraph IX(c), under Section 10145 of the
2 Code and Section 2831.2 of the Regulations in conjunction with
3 Section 10177(d) of the Code;

4 (d) As to Paragraph IX(d), under Section 10145 of the
5 Code and Section 2832.1 of the Regulations in conjunction with
6 Section 10177(d) of the Code;

7 (e) As to Paragraph IX(e), under Section 10145 of the
8 Code and Section 2834 of the Regulations in conjunction with
9 Section 10177(d) of the Code;

10 (f) As to Paragraph X(a), under Section 10160 of the
11 Code in conjunction with Sections 10165 and 10177(d) of the
12 Code;

13 (g) As to Paragraph X(b), under Section 10161.8(a) of
14 the Code in conjunction with Sections 10165 and 10177(d) of the
15 Code; and

16 (h) As to Paragraph X(c), under Section 10161.8(b) of
17 the Code in conjunction with Sections 10165 and 10177(d) of the
18 Code.

19 XIII

20 The facts alleged in Paragraph XI, above, are grounds
21 for the suspension or revocation of the licenses and license
22 rights of Respondent PERRY under Section 10177(g) and/or Section
23 10177(h) of the Code and Section 10159.2 of the Code in
24 conjunction with Section 10177(d) of the Code.

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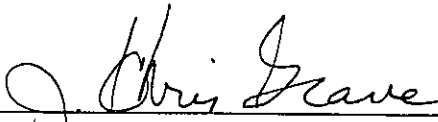
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2 PRIOR DISCIPLINE

3 Effective May 10, 1999, in Case No. H-2445 SD, the
4 Real Estate Commissioner revoked the real estate broker licenses
5 of Respondents DPA and PERRY for violation of Sections 10137 and
6 10138 of the Code, but granted each Respondent the right to the
7 issuance of a restricted real estate broker license, subject to
8 terms, conditions and restrictions pursuant to Sections 10156.6
9 and 10156.7 of the Code.

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

17 
18 J. CHRIS GRAVES
19 Deputy Real Estate Commissioner

20 Dated at San Diego, California,
21 this 17th day of April, 2001.
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