

FILED  
 DEC - 9 1996  
 DEPARTMENT OF REAL ESTATE

*Laurie A. Zain*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
 STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	No. H-2628 SAC
JAMES WILLIAM KUYKENDALL,	)	
	)	
Respondent.	)	
_____	)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 20, 1991, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on June 10, 1991, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On April 25, 1995, 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.

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1 I have considered Respondent's petition and the evidence  
2 and arguments in support thereof including Respondent's record as  
3 a restricted licensee. Respondent has demonstrated to my  
4 satisfaction that Respondent meets the requirements of law for the  
5 issuance to Respondent of an unrestricted real estate broker  
6 license and that it would not be against the public interest to  
7 issue said license to him.

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

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

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

19 This Order shall be effective immediately.

20 DATED: 12-4-96

21 JIM ANTT, JR.  
22 Real Estate Commissioner

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FILED  
MAY 21 1991  
DEPARTMENT OF REAL ESTATE

*Laurie A. Zain*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
WACO PROPERTY MANAGEMENT ) NO. H-2628 SAC  
SERVICES, INC., )  
JAMES WILLIAM KUYKENDALL, )  
Respondents. )

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DECISION

The Proposed Decision dated May 6, 1991  
of Robert E. McCabe, Regional Manager, Department of Real Estate  
State of California, is hereby adopted as the Decision of the Real  
Estate Commissioner in the above-entitled matter.

The Decision shall become effective at 12 o'clock  
noon on June 10, 19 91.

IT IS SO ORDERED May 20, 19 91.

DEPARTMENT OF REAL ESTATE

By: *John R. Liberator*  
JOHN R. LIBERATOR  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	
WACO PROPERTY MANAGEMENT	)	No. H-2628 SAC
SERVICES, INC.,	)	
JAMES WILLIAM KUYKENDALL,	)	
	)	
Respondents.	)	
	)	

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PROPOSED DECISION

This matter was presided over as an uncontested case by Robert E. McCabe, Regional Manager, Department of Real Estate, as the designee of the Real Estate Commissioner, in Sacramento, California, on May 6, 1991.

DAVID A. PETERS Counsel, represented the Complainant.

Respondent WACO PROPERTY MANAGEMENT SERVICES, INC. (hereinafter "respondent WACO") and its attorney, Charles L. Gravett, III, and respondent JAMES WILLIAM KUYKENDALL (hereinafter "respondent KUYKENDALL") and his attorney, Osby Davis, were not present having waived appearance at the hearing.

The matter was submitted upon written Stipulation of the parties. Pursuant to the Stipulation, the following Decision is proposed, certified and recommended for adoption:

FINDINGS OF FACT

FIRST CAUSE OF ACCUSATION

I

The Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, made this Accusation in his official capacity.

II

Respondent WACO and respondent KUYKENDALL are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code").

### III

At all times herein mentioned, respondent WACO was licensed as a real estate corporation acting by and through respondent KUYKENDALL as its designated broker-officer.

### IV

At all times herein mentioned, respondent KUYKENDALL was licensed as a real estate broker and as the broker-officer of respondent WACO.

### V

Within the three-year period immediately preceding the filing of the Accusation, Respondents acting on behalf of another or others and in expectation of compensation, leased or rented, offered to lease or rent, solicited prospective tenants, or collected rents and otherwise managed certain real properties located in or near Vallejo, California.

### VI

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

### VII

In connection with the collection and disbursement of said trust funds, Respondents failed to deposit and maintain said funds in said bank account or disbursed said funds in such manner that as of May 31, 1990, there was a shortage of \$23,809.76 of trust funds in said bank account.

### VIII

Respondents failed to obtain the prior written consent of their principal for the reduction of the aggregate balance of trust funds in said bank account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

## SECOND CAUSE OF ACCUSATION

### IX

In connection with the collection and disbursement of trust funds on behalf of another or others as described in Paragraph VII above, Respondents failed to maintain adequate columnar records of all trust funds received and disbursed in violation of Section 2831 of the Regulations.

X

In connection with the collection and disbursement of trust funds on behalf of another or others as described in Paragraph VII above, Respondents failed to reconcile said trust accounts on a monthly basis, and to maintain a record of said reconciliations as required by Section 2831.2 of the Regulations.

DETERMINATION OF ISSUES

I

The standard of proof applied at the hearing was clear and convincing proof to a reasonable certainty.

II

Cause for disciplinary action against respondents WACO and KUYKENDALL pursuant to Business and Professions Code Section 10145 in conjunction with Section 10177(d) of the Code and Sections 2830, 2831, 2831.2, 2832 and 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations") in conjunction with Section 10177(d) of the Code.

ORDER

I

The real estate broker licenses and all license rights of Respondents under the Real Estate Law are revoked.

II

Restricted real estate broker licenses shall be issued to Respondents pursuant to Business and Professions Code Section 10156.5 if Respondents make application therefor and pay to the Department the appropriate fee for said licenses within ninety (90) days from the effective date of this Decision herein.

III

The restricted licenses issued to Respondents shall be subject to all 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 said Code:

(1) The licenses shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under the restricted licenses in the event of:

- (a) The conviction of Respondents (including a plea of nolo contendere) to a crime which bears a significant relation to Respondents' fitness or capacity as real estate licensees; or
- (b) The receipt of evidence that Respondents have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted licenses.

(2) Respondents shall not be eligible to apply for the issuance of unrestricted real estate licenses nor the removal of any of the conditions, limitations or restrictions attaching to the restricted licenses until one (1) year has elapsed from the effective date of the Decision in this matter.

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

(4) The restricted licenses of respondent KUYKENDALL may be suspended by order of the Real Estate Commissioner pending a final determination after a hearing if respondent KUYKENDALL fails to present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license within nine (9) months from the effective date of the Decision of the Real Estate Commissioner.

(5) Any restricted real estate broker license issued to Respondents pursuant to this Decision shall be suspended for thirty (30) days from the effective date of issuance of said restricted licenses. Provided, however, that:

- (a) Fifteen (15) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:
  - (i) Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
  - (ii) That no final subsequent determination be made, after hearing or upon Stipulation, that cause for disciplinary action occurred within one (1) year

of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

(b) The remaining fifteen (15) days of said suspension as to each Respondent shall be stayed upon condition that:

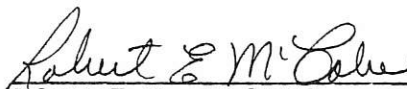
(i) Respondents petition pursuant to Business and Professions Code Section 10175.2 and pay a monetary penalty pursuant to Business and Professions Code Section 10175.2 at a rate of \$250.00 for each of the fifteen (15) days of said suspension as to both Respondents for a total monetary penalty of \$3,750.00. Said payment shall stay the suspension for respondent WACO and respondent KUYKENDALL.

(ii) Said payment shall be in the form of a cashier's check(s) or certified check(s) made payable to the Recovery Account of the Real Estate Fund. Said check(s) must be delivered to the Department prior to the effective date of the Decision in this matter. If Respondent(s) fail to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent(s) shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

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

(6) The restricted licenses may be suspended or revoked for a violation by Respondents of any of the conditions attaching to the restricted licenses.

DATED: May 6, 1991

  
\_\_\_\_\_  
ROBERT E. McCABE  
Regional Manager  
Department of Real Estate



1 DAVID A. PETERS, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000  
5  
6 (916) 739-3607

FILED  
SEP 20 1990  
DEPARTMENT OF REAL ESTATE

By Paula A. Cloud

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 WACO PROPERTY MANAGEMENT ) NO. H-2628 SAC  
13 SERVICES, INC., ) ACCUSATION  
14 JAMES WILLIAM KUYKENDALL, )  
15 Respondents. )  
16

17 The Complainant, Les R. Bettencourt, a Deputy Real  
18 Estate Commissioner of the State of California for cause of  
19 Accusation against WACO PROPERTY MANAGEMENT SERVICES, INC.,  
20 (hereinafter "Respondent WACO"), and JAMES WILLIAM KUYKENDALL  
21 (hereinafter "Respondent KUYKENDALL"), is informed and alleges as  
22 follows:

23 FIRST CAUSE OF ACCUSATION

24 I

25 The Complainant, Les R. Bettencourt, a Deputy Real  
26 Estate Commissioner of the State of California, makes this  
27 Accusation in his official capacity.

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II

Respondent WACO and Respondent KUYKENDALL are presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code").

III

At all times herein mentioned, Respondent WACO was licensed as a real estate corporation acting by and through Respondent KUYKENDALL as its designated broker-officer.

IV

At all times herein mentioned, Respondent KUYKENDALL was licensed as a real estate broker and as the broker-officer of Respondent WACO.

V

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

VI

Within the three year period immediately preceding the filing of this Accusation, Respondents acting on behalf of another or others and in expectation of compensation, leased or rented, offered to lease or rent, solicited prospective tenants, or collected rents and otherwise managed certain real properties located in or near Vallejo, California.

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VII

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

VIII

In connection with the collection and disbursement of said trust funds, Respondents failed to deposit and maintain said funds in said bank account or disbursed said funds in such manner that as of May 31, 1990, there was a shortage of \$23,809.76 of trust funds in said bank account.

IX

Respondents failed to obtain the prior written consent of their principal for the reduction of the aggregate balance of trust funds in said bank account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

X

The facts alleged above are grounds for the suspension or revocation of Respondents' licenses under Section 2830, 2832, and 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations") and Section 10145 of the Code in conjunction with Section 10177(d) of the Code.

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1                                   SECOND CAUSE OF ACCUSATION

2   XI

3                                   There is hereby incorporated in this second, separate  
4 and distinct cause of Accusation all of the allegations contained  
5 in Paragraphs I, II, III, IV, V, and VI of the First Cause of  
6 Accusation with the same force and effect as if herein fully set  
7 forth.

8   XII

9                                   In connection with the collection and disbursement of  
10 trust funds on behalf of another or others as described in  
11 Paragraph VII above, Respondents failed to maintain adequate  
12 columnar records of all trust funds received and disbursed in  
13 violation of Section 2831 of the Regulations.

14   XIII

15                                   In connection with the collection and disbursement of  
16 trust funds on behalf of another or others as described in  
17 Paragraph VII above, Respondents failed to reconcile said trust  
18 accounts on a monthly basis, and to maintain a record of said  
19 reconciliations as required by Section 2831.2 of the Regulations.

20   XIV

21                                   The facts alleged above are grounds for the suspension  
22 or revocation of Respondents' licenses under Sections 2831 and  
23 2831.2 of the Regulations in conjunction with Section 10177(d) of  
24 the Code.

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



LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Sacramento, California  
this 19th day of September, 1990