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FILED

APR 21 2005

DEPARTMENT OF REAL ESTATE

By Juan Aranda

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

In the Matter of the Accusation of) No. H-2664 SD
JON MILLER REALTY, INC.,)
JON MONROE MILLER,)
Respondents.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 19, 2002, an Order was rendered herein revoking the real estate broker licenses of Respondents but granting Respondents the right to apply for a restricted real estate broker license upon terms and conditions. Restricted real estate broker licenses were issued to Respondent JON MILLER REALTY, INC. and Respondent JON MONROE MILLER on April 10, 2002.

On July 12, 2004, Respondents petitioned for reinstatement of their real estate broker licenses and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petitions of Respondents and the evidence and arguments in support thereof including Respondents'

APR 21 2005

1 records as restricted licensees. Respondents have demonstrated
2 to my satisfaction that Respondents meet the requirements of law
3 for the issuance to Respondents of unrestricted real estate
4 broker licenses and that it would not be against the public
5 interest to issue said licenses to Respondents.

6 NOW, THEREFORE, IT IS ORDERED that Respondents'
7 petition for reinstatement is granted and that real estate broker
8 licenses be issued to Respondents if Respondents satisfy the
9 following condition within nine months from the date of this
10 Order:

11 1. Submittal of completed applications and payment of
12 the fees for real estate broker licenses.

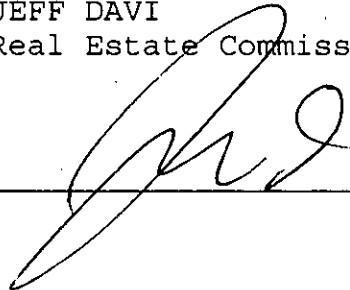
13 2. Submittal of evidence of Respondent JON MONROE
14 MILLER having, since the most recent issuance of an original or
15 renewal real estate license, taken and successfully completed the
16 continuing education requirements of Article 2.5 of Chapter 3 of
17 the Real Estate Law for renewal of a real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

18 This Order shall be effective immediately.

19 DATED: 3-24, 2005.

20 JEFF DAVI
21 Real Estate Commissioner

22
23
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26
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1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
MAR 21 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-2664 SD
12 JON MILLER REALTY, INC.,)
13 and)
14 JON MONROE MILLER,)
15 Respondents.)
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STIPULATION AND AGREEMENT

18 It is hereby stipulated by and between Respondent JON
19 MILLER REALTY, INC., (hereinafter "Respondent REALTY") and JON
20 MONROE MILLER (hereinafter "Respondent MILLER") and their
21 attorney of record, Franklin Geerdes, and the Complainant,
22 acting by and through Michael B. Rich, Counsel for the
23 Department of Real Estate, as follows for the purpose of
24 settling and disposing of the Accusation filed on September 13,
25 2001, in this matter (hereinafter "the Accusation"):

26 1. All issues which were to be contested and all
27

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

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

11 3. On September 24, 2001, Respondents filed a
12 Notice of Defense pursuant to Section 11505 of the Government
13 Code for the purpose of requesting a hearing on the allegations
14 in the Accusation. Respondents hereby freely and voluntarily
15 withdraw said Notice of Defense. Respondents acknowledge that
16 they understand that by withdrawing said Notice of Defense
17 Respondents will thereby waive their respective right to
18 require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that Respondents will waive other
21 rights afforded to Respondents in connection with the hearing
22 such as the right to present evidence in defense of the
23 allegations in the Accusation and the right to cross-examine
24 witnesses.

25 4. This Stipulation is based on the factual
26 allegations contained in the Accusation. In the interests of
27

1 expedience and economy, Respondents choose not to contest these
2 allegations, but to remain silent and understand that, as a
3 result thereof, these factual allegations, without being
4 admitted or denied, will serve as a prima facie basis for the
5 disciplinary action stipulated to herein. Respondent maintains
6 that the shortage alleged in the Accusation was reduced to
7 approximately \$10,350.00 and that Respondent deposited said sum
8 before the conclusion of the audit in order to cure the alleged
9 shortage. The Real Estate Commissioner shall not be required to
10 provide further evidence to prove said factual allegations.

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

22 6. The Order or any subsequent Order of the Real
23 Estate Commissioner made pursuant to this Stipulation and
24 Agreement shall not constitute an estoppel, merger or bar to
25 any further administrative or civil proceedings by the
26 Department of Real Estate with respect to any matters which

1 were not specifically alleged to be cause for accusation in
2 this proceeding.

3 7. Respondents understand that by agreeing to this
4 Stipulation and Agreement in Settlement, Respondents, and each of
5 them, jointly and severally, agree to pay, pursuant to Section
6 10148 of the Business and Professions Code, the cost of the audit
7 which led to this disciplinary action. The amount of said costs
8 is \$6,330.94.

9 8. Respondents have received, read, and understand
10 the "Notice Concerning Costs of Subsequent Audit". Respondents
11 further understand that by agreeing to this Stipulation and
12 Agreement in Settlement, the findings set forth below in the
13 DETERMINATION OF ISSUES become final, and that the Commissioner
14 may charge Respondents, and each of them, jointly and severally,
15 for the costs of any subsequent audit conducted pursuant to
16 Section 10148 of the Business and Professions Code to determine
17 if the violations have been corrected. The maximum costs of
18 said audit will not exceed \$6,330.94.

19
20 DETERMINATION OF ISSUES

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

The conduct of Respondent REALTY, as described in the Accusation, constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent under the provisions of: Section 10177(d) of the Business and Professions Code in conjunction with Sections 10145 of the Code, and Sections 2831, 2831.1, 2831.2, and 2832.1 of Title 10, California Code of Regulations; Section 10161 of the Code in conjunction with Section 2752 of the Regulations; and, Sections 10176(e) and (i) of the Code.

II

The conduct of Respondent MILLER as described in the Accusation, constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent MILLER under the provisions of: Section 10177(d) of the Business and Professions Code in conjunction with Sections 10145, and Section 2832.1 of Title 10, California Code of Regulations; Sections 10176(e) and (i) of the Code; and, Section 10177(h) of the Code.

ORDER

I

The respective real estate broker licenses and all license rights of Respondent JON MILLER REALTY, INC., and Respondent JON MONROE MILLER under the Real Estate Law are revoked; provided, however, a restricted corporate real estate broker license shall be issued to Respondent REALTY and a

1 restricted real estate broker license shall be issued to
2 Respondent MILLER pursuant to Section 10156.5 of the Business
3 and Professions Code if Respondents respectively make
4 application therefor and pay to the Department of Real Estate
5 the respective appropriate fee for the restricted license within
6 ninety (90) days from the effective date of this Decision. The
7 restricted licenses respectively issued to Respondents shall be
8 subject to all of the provisions of Section 10156.7 of the
9 Business and Professions Code and to the following limitations,
10 conditions and restrictions imposed under authority of Section
11 10156.6 of that Code:

12 1. The restricted licenses issued respectively to
13 Respondents may be suspended prior to hearing by Order of the
14 Real Estate Commissioner in the event of Respondent REALTY's or
15 Respondent MILLER's respective conviction or plea of nolo
16 contendere to a crime which is substantially related to
17 Respondent's fitness or capacity as a real estate licensee.

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

25 3. Respondents, respectively, shall not be eligible
26 to apply for the issuance of an unrestricted real estate license

1 nor for the removal of any of the conditions, limitations, or
2 restrictions of a restricted license until two (2) years have
3 elapsed from the effective date of this Decision.

4 4. Respondent MILLER shall, within nine (9) months
5 from the effective date of this Decision, present evidence
6 satisfactory to the Real Estate Commissioner that Respondent
7 MILLER has, since the most recent issuance of an original or
8 renewal real estate license, taken and successfully completed
9 the continuing education requirements of Article 2.5 of Chapter
10 3 of the Real Estate Law for renewal of a real estate License.
11 If Respondent MILLER fails to satisfy this condition, the
12 Commissioner may order the suspension of the restricted license
13 until Respondent MILLER presents such evidence. The
14 Commissioner shall afford Respondent MILLER the opportunity for
15 a hearing pursuant to the Administrative Procedure Act to
16 present such evidence.

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

24 6. Pursuant to Section 10148 of the Business and
25 Professions Code, Respondents and each of them, jointly and
26 severally, shall pay the Commissioner's reasonable cost for: a)

1 the audit which led to this disciplinary action and, b) a
2 subsequent audit to determine if Respondent has corrected the
3 trust fund violations found in paragraphs I and II of the
4 Determination of Issues. In calculating the amount of the
5 Commissioner's reasonable cost, the Commissioner may use the
6 estimated average hourly salary for all persons performing
7 audits of real estate brokers, and shall include an allocation
8 for travel time to and from the auditor's place of work.
9 Respondents shall pay such cost within sixty (60) days of
10 receiving an invoice from the Commissioner detailing the
11 activities performed during the audit and the amount of time
12 spent performing those activities. The Commissioner may suspend
13 the restricted licenses issued to Respondents pending a hearing
14 held in accordance with Section 11500, et seq., of the
15 Government Code, if payment is not timely made as provided for
16 herein, or as provided for in a subsequent agreement between the
17 Respondents and the Commissioner. The suspension shall remain
18 in effect until payment is made in full or until Respondents
19 enter into an agreement satisfactory to the Commissioner to
20 provide for payment, or until a decision providing otherwise is
21 adopted following a hearing held pursuant to this condition.

21 7. Respondents shall prior to the effective date of
22 the Decision provide evidence satisfactory to the Commissioner
23 that Respondents have cured the trust fund shortages alleged in
24 the Accusation.

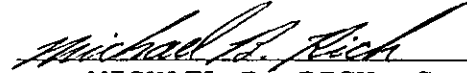
25 8. Any restricted real estate broker license issued
26 to Respondents may be suspended or revoked for a violation,
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1 respectively, by either Respondent of any of the conditions
2 attaching to the restricted licenses.

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3/5/02

DATED



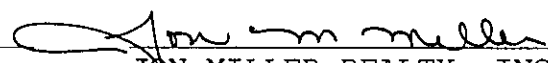
MICHAEL B. RICH, Counsel
DEPARTMENT OF REAL ESTATE

* * *

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

3-1-02

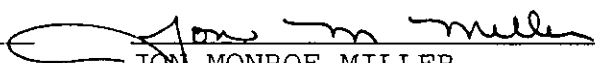
DATED



JON MILLER REALTY, INC.
Respondent
By: JON MONROE MILLER

3-1-02

DATED



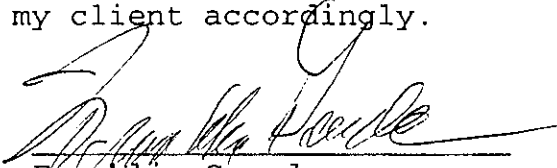
JON MONROE MILLER
Respondent

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

3-1-02

DATED

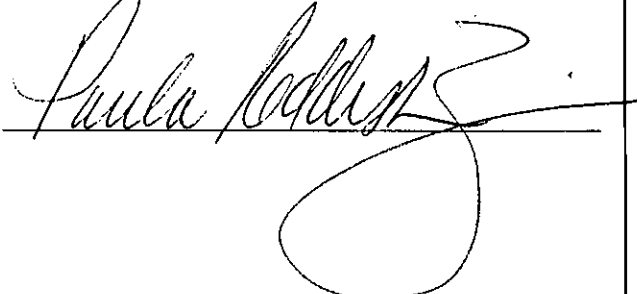

Franklin Geerdes
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement for Settlement is hereby adopted by the Real Estate Commissioner as her Decision and Order and shall become effective at 12 o'clock noon on April 10, 2002.

IT IS SO ORDERED March 19, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 21 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Accusation of

JON MILLER REALTY, INC. and
JON MONROE MILLER

} Case No. H-2664 SD

} OAH No. L-2001110316

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, CALIFORNIA 92101 on MARCH 5, 2002 and MARCH 6, 2002, at the hour of 9:00 AM respectively, 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: NOVEMBER 21, 2001

By Michael B. Rich
MICHAEL B. RICH, Counsel

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000

6 Telephone: (916) 227-0789

FILED
SEP 13 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JON MILLER REALTY, INC.,)
13 and JON MONROE MILLER,)
14 Respondents.)

NO. H- 2664 SD

ACCUSATION

15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for Causes of Accusation
17 against JON MILLER REALTY, INC., and JON MONROE MILLER, is
18 informed and alleges as follows:

19 FIRST CAUSE OF ACCUSATION

20 I

21 Respondents JON MILLER REALTY, INC., (hereafter
22 referred to as "Respondent JMR") and JON MONROE MILLER (hereafter
23 referred to as "Respondent MILLER") are presently licensed and/or
24 have license rights under the Real Estate Law, Part 1 of Division
25 4 of the California Business and Professions Code (hereafter the
26 "Code").

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II

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent JMR was and is licensed by the Department as a real estate broker corporation acting by and through Respondent MILLER as its designated broker officer.

IV

At all times herein mentioned, Respondent MILLER was and is licensed by the Department as a real estate broker, and as the designated broker officer of Respondent JMR.

V

Within the last three years, Respondents JMR and MILLER engaged in activities on behalf of others for which a real estate license is required, for or in expectation of compensation, and leased or rented, offered to lease or rent, solicited prospective tenants for, collected rents on, and/or managed certain real properties in California.

VI

Beginning in March of 2001, the Department conducted an audit of the above business activities of Respondent JMR for the time period of January 1, 1998 through March 12, 2001. During the course of the activities described above, Respondent JMR received and disbursed funds in trust on behalf of others.

///

1 VII

2 Within the last three years, Respondent JMR deposited
3 the above trust funds into a checking trust bank account at Bank
4 of America in Chula Vista, California, bearing account number
5 0232802373, in the name of "Jon Miller Realty, Inc." (hereafter
6 referred to as "Trust Account 1").

7 VIII

8 Within the last three years, Respondent JMR deposited
9 the above trust funds into a checking bank account at Bank of
10 America in Chula Vista, California, bearing account number
11 0232020333, in the name of "Jon Miller Realty, Inc. Security
12 Deposit Trust Account" (hereafter referred to as "Trust Account
13 2").

14 IX

15 In connection with the collection and disbursement of
16 trust funds, Respondents JMR and MILLER failed to deposit and
17 maintain the trust funds in a trust account or neutral escrow
18 depository, or to deliver them into the hands of the owners of
19 the funds, as required by Section 10145 of the Code, in such a
20 manner that as of October 31, 2000, there was a trust fund
21 shortage in the approximate sum of \$25,096.30 in Trust Account 1.

22 X

23 Respondents failed to obtain the prior written consents
24 of the principals for the reduction of the aggregate balance of
25 trust funds in Trust Account 1 to an amount less than the
26 existing aggregate trust fund liability to the owners of said
27 funds in conformance with Section 2832.1 of the Regulations.

XI

In connection with the receipt and disbursement of trust funds as above alleged, and as set forth in Audit No. SD00-0020, dated April 13, 2001, and accompanying working papers and exhibits, Respondent JMR:

(a) Failed to maintain a written control record of all trust funds received and disbursed containing all information required by Section 2831 of the Regulations, including but not limited to recordation of all deposits, recordation of dates of receipt, and recordation of accurate dates of deposit of trust funds for both Trust Account 1 and Trust Account 2;

(b) Failed to keep a separate record for each beneficiary or transaction, accounting for all funds that have been deposited to the broker's trust account, containing all of the information required by Section 2831.1 of the Regulations, including, but not limited to an accurate daily balance after posting transactions for Trust Account 2; and,

(c) Failed to reconcile the balance of separate beneficiary or transaction records with the control records of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations

1 as required by Section 2831.2 of the Regulations
2 for both Trust Account and Trust Account 2.

3 XII

4 Respondents JMR and MILLER commingled trust funds
5 with Respondent Miller's own money or property and converted said
6 trust funds to Respondents' own use or benefit or to purposes not
7 authorized by the rightful owner or owners of said funds.

8 XIII

9 The acts and/or omissions of Respondents as alleged
10 above constitute grounds for disciplinary action under the
11 following provisions:

12 (a) As to Respondents JMR and Miller as alleged in
13 Paragraph IX, under Section 10145 of the Code in
14 conjunction with Section 10177(d) of the Code;

15 (b) As to Respondents JMR and Miller as alleged in
16 Paragraph X, under Section 2832.1 of the
17 Regulations in conjunction with Section 10177(d)
18 of the Code.

19 (c) As to Respondent JMR as alleged in Paragraph
20 XI(a), under Section 10145 of the Code and Section
21 2831 of the Regulations in conjunction with
22 Section 10177(d) of the Code;

23 (d) As to Respondent JMR as alleged in Paragraph
24 XI(b), under Section 2831.1 of the Regulations in
25 conjunction with Section 10177(d) of the Code;
26 and,

27 ///

1 (e) As to Respondent JMR as alleged in Paragraph
2 XI(c), under Section 2831.2 of the Regulations in
3 conjunction with Section 10177(d) of the Code.

4 (f) As to Respondents JMR and MLLER as alleged in
5 Paragraph XII, under Sections 10176(e) and
6 10176(I) of the Code.

7 SECOND CAUSE OF ACCUSATION

8 XIV

9 There is hereby incorporated in this Second, separate
10 and distinct Cause of Accusation, all of the allegations
11 contained in Paragraphs I, II, III and IV of the First Cause of
12 Accusation with the same force and effect as if herein fully set
13 forth.

14 XV

15 Respondent JMR employed Jeffrey Scott Bell (hereafter
16 "Bell"), a licensed real estate salesperson, pursuant to a
17 written agreement dated September 9, 1996.

18 XVI

19 Respondent JMR employed Bruce G. Butler (hereafter
20 "Butler"), a licensed real estate salesperson, pursuant to a
21 written agreement dated May 6, 1999.

22 XVII

23 Respondent JMR did not notify the Commissioner of the
24 Department of Real Estate until March 22, 2001, of its employment
25 of Bell and Butler.

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1 XVIII

2 The failure of Respondent JMR to notify the
3 Commissioner of the Department of Real Estate in writing on the
4 prescribed form within five days of its employment of Bell and
5 Butler as alleged above constitute grounds for disciplinary
6 action under Section 2752 of the Regulations in conjunction with
7 Business and Professions Code Section 10161.

8 THIRD CAUSE OF ACTION

9 XIX

10 There is hereby incorporated in this Third, separate
11 and distinct Cause of Accusation, all of the allegations
12 contained in Paragraphs I, II, III and IV of the First Cause of
13 Accusation with the same force and effect as if herein fully set
14 forth.

15 XX

16 At all times above mentioned, Respondent MILLER was
17 responsible, as the designated officer of Respondent JMR, for the
18 supervision and control of the activities conducted on behalf of
19 the corporation by its officers and employees. Respondent MILLER
20 failed to exercise reasonable supervision and control over the
21 property management and employment activities of Respondent JMR.
22 In particular, Respondent MILLER permitted, ratified and/or
23 caused the conduct described in the First and Second Causes of
24 Accusation above to occur, and failed to take reasonable steps,
25 including but not limited to the handling of trust funds,
26 employment of salesperson licensees, and the implementation of

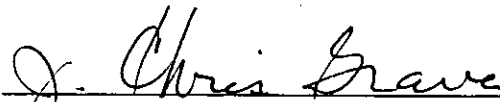
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1 policies, rules, procedures, and systems to ensure the compliance
2 of the company with the Real Estate Law.

3 XXI

4 The above acts and/or omissions of Respondent MILLER
5 constitute grounds for disciplinary action under the provisions
6 of Section 10177(h) of the Code.

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

14
15 
16 J. CHRIS GRAVES
Deputy Real Estate Commissioner

17 Dated at San Diego,
18 this 4th day of September, 2001

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