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FILED
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DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-2727 SD
)	
GOLD KEY FINANCIAL, INC., a)	OAH No. L-2002050618
Corporation and STEVE RANDOLPH)	
JOHNSTON,)	
)	
Respondents.)	
)	

DECISION AFTER REMAND

This matter came on for hearing before Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, in San Diego, California, on January 14 and January 15, 2003. The matter as to Respondent BRENDA CASTILLO had theretofore been resolved pursuant to stipulation.

James L. Beaver, Counsel, represented the Complainant.

The Respondents GOLD KEY FINANCIAL, INC. ("GOLD KEY") and STEVE RANDOLPH JOHNSTON ("JOHNSTON") (herein jointly "Respondents") were represented by William J. Caldarelli and Alena Shamos, Attorneys at Law, of Mazzarella, Dunwoody &

1 Caldarelli, LLP.

2 Evidence was received, the record was closed, and the
3 matter was submitted.

4 On June 16, 2002, the Administrative Law Judge rendered
5 a Proposed Decision (hereinafter "the Proposed Decision") which
6 the Real Estate Commissioner declined to adopt as the
7 Commissioner's Decision herein. Pursuant to Section 11517 of the
8 Government Code of the State of California, Respondent was served
9 with notice of the Commissioner's determination not to adopt the
10 Proposed Decision along with a copy of the Proposed Decision.
11 Respondent was notified that the case would be decided by the
12 Commissioner upon the record, the transcript of proceedings held
13 on January 14 and January 15, 2003, and upon written argument
14 offered by Respondent and Complainant.

15 On November 12, 2003, the Real Estate Commissioner
16 issued the Commissioner's Decision After Rejection herein, to
17 become effective December 23, 2003.

18 On December 16, 2003, a Petition For Writ of
19 Administrative Mandate was timely filed by Respondents against
20 the Commissioner of Real Estate in the Superior Court of the
21 State of California, County of San Diego, Case No. GIC8822814.

22 On April 29, 2005 a Final Decision was entered in the
23 Superior Court of the State of California, County of San Diego,
24 Case No. GIC8822814 remanding this case to the Real Estate
25 Commissioner for further proceedings consistent with said Court's
26 tentative ruling of April 28, 2005.
27

1 I have given further careful consideration to the
2 record in this case, including the transcript of proceedings of
3 January 14 and January 15, 2003, written argument offered by
4 Complainant and Respondent, as well as the tentative ruling and
5 final decision in Superior Court of the State of California,
6 County of San Diego, Case No. GIC8822814. In particular, I have
7 given additional consideration to the findings in the Proposed
8 Decision relating to mitigation, extenuation and rehabilitation.

9 The following shall constitute the Decision After
10 Remand of the Real Estate Commissioner in these proceedings.

11 FACTUAL FINDINGS

12 1. J. Chris Graves made the Accusation in his
13 official capacity as a Deputy Real Estate Commissioner of the
14 State of California.

15 2. Respondent GOLD KEY was and now is licensed by the
16 Department as a corporate real estate broker by and through
17 Respondent JOHNSTON as designated officer-broker of GOLD KEY.
18 JOHNSTON was the responsible broker for GOLD KEY. JOHNSTON was
19 responsible for supervising the salespeople and seeing to it that
20 the corporation complied with the law. In addition, JOHNSTON was
21 and now is licensed by the Department as an individual real
22 estate broker. GOLD KEY was issued a license bearing the
23 fictitious business name "Network Escrow Services" on November
24 30, 1998 and a license bearing the fictitious business name
25 "Realty Executives Premier" on June 28, 2000. Respondent Johnston
26 was first licensed with the Department in 1987 as a real estate
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1 agent. In 1997, the Department issued him a real estate broker
2 license. Over the years his business has grown and prospered. He
3 has never been the subject of Department discipline, save this
4 incident, in the approximately 16 years he has been licensed by
5 the Department.

6 3. Respondent Castillo was never licensed by the
7 Department either as a real estate broker or as a real estate
8 salesperson prior to January 26, 2001.

9 4. JOHNSTON and his wife, "C.J." Johnston own GOLD
10 KEY. At the time of the hearing, GOLD KEY operated a real estate
11 resale brokerage with four offices at various locations employing
12 approximately 140 real estate salespersons, and in addition about
13 ten brokers who work as sales agents. JOHNSTON is the only real
14 estate broker licensed as an officer of GOLD KEY. Each of the
15 sales agents operates primarily out of one of the four branch
16 offices, and each of the branch offices has a branch manager.
17 JOHNSTON was not aware at the time of the hearing of the
18 procedure established by Section 10159.2(a) of the Code and
19 Section 2743 of the Regulations for delegation of a corporate
20 brokerage's supervisory responsibilities.

21 5. In July of 2000, just before Castillo's employment
22 by the firm, GOLD KEY employed approximately 50 sales agents,
23 operating out of the principal office on Bonita Road in San Diego
24 and a single branch office located on Otay Lakes Road. C.J.
25 Johnston was the Otay Lakes branch manager and JOHNSTON was the
26 Bonita branch manager. GOLD KEY also handled some of its own
27 escrows under the fictitious business name "Network Escrow

1 Services", an entity owned and operated by GOLD KEY. "Network
2 Financial Services" was the name for a mortgage company operated
3 by GOLD KEY under JOHNSTON's supervision. On July 7, 2000,
4 JOHNSTON's trusted associate, Gary Howerton, died in an
5 automobile accident. Prior to Howerton's death, his primary
6 responsibility was the hiring of agents and the payment of
7 commissions. Howerton was replaced by Anne Meyer. No evidence was
8 presented that Howerton or Meyer were ever licensed by the
9 Department of Real Estate.

10 6. On August 7, 2000, JOHNSTON signed Castillo's
11 application for a conditional real estate salesperson license,
12 which had not been signed by Castillo. This application was
13 received by DRE on September 15, 2000. Prior to the time JOHNSTON
14 signed the application his wife C.J. Johnston had interviewed
15 Castillo.

16 7. At the time Herlinda Sandoval was one of GOLD
17 KEY's sales agents. Sandoval had introduced Castillo, her high
18 school friend, to the office and was allowing Castillo to use
19 Sandoval's small private office on the premises and had given
20 Castillo some buyer leads. Castillo testified that her
21 understanding originally was that, once properly licensed, she
22 would be working for Sandoval, acting as Sandoval's "buyer's
23 agent", that Sandoval was working for GOLD KEY, so that Castillo
24 would also be working for GOLD KEY under Sandoval. Castillo
25 entered into a written contract with Sandoval covering their
26 arrangement.

27 8. Once Castillo learned she passed the salesperson

1 examination, she met with Sandoval, was provided a description of
2 her duties, and was instructed to participate in a training
3 program provided by JOHNSTON and C.J. Johnston. Castillo
4 participated in the classes.

5 9. JOHNSTON, Castillo and Anne Meyer, GOLD KEY's
6 operations manager, signed the Independent Contractor Agreement,
7 dated August 9, 2000, employing Castillo as one of GOLD KEY's
8 real estate agents. The form recited: "Whereas contractor
9 [Castillo] has been issued a real estate (salesman's/broker's)
10 license by the State of California..." JOHNSTON testified that at
11 that time he had given Meyer the responsibility for verifying
12 that each person applying for a position with GOLD KEY had a
13 valid real estate license.

14 10. From August 9, 2000 through January 25, 2001,
15 before Castillo was actually licensed, Castillo, acting in the
16 capacity of an agent employed by GOLD KEY, arranged the sale of
17 the following properties in the San Diego area:

- 18 (a) 3123 Pocitos Way, San Ysidro ("Pocitos");
19 (b) 1637 Shooting Star Court, San Ysidro ("Shooting Star");
20 (c) 1106 Purdy Court, Spring Valley ("Purdy");
21 (d) 2345 Greenbriar Court #C, Chula Vista ("Greenbriar");
22 (e) 787 Brockstone #201, Chula Vista ("Brockstone");
23 (f) 2105 Northshore #C, Chula Vista ("Northshore");
24 (g) 2223 Peachtree Circle, Chula Vista ("Peachtree");

25 11. Castillo conducted the Pocitos transaction during
26 the period between the initial sales agreement on August 26,
27 2000 until close of escrow on October 6, 2000. Castillo had some

1 direct supervision and direction from Sandoval, and substantially
2 no direct supervision by JOHNSTON, his wife or any other GOLD KEY
3 employee. On September 15, 2000, C.J. Johnston placed her dated
4 initials on every page of the Pocitos deposit receipt, including
5 the page bearing Castillo's signature as an agent working for
6 GOLD KEY. On October 10, 2000, JOHNSTON issued a \$1183.62 escrow
7 check and a \$136.62 escrow check to Castillo to compensate her
8 for her services in arranging the sale of the property on
9 Pocitos.

10 12. JOHNSTON admitted that at the time of the Pocitos
11 sales agreement he knew Castillo was working at the Otay Lakes
12 office, but explained that he was relying on the fact Meyer had
13 (mistakenly) cleared Castillo to work for GOLD KEY as a sales
14 agent.

15 13. Castillo conducted the Shooting Star transaction
16 during the period between the initial sales agreement on August
17 11, 2000 until close of escrow on October 17, 2000, when Castillo
18 was paid a \$1,037.80 commission and a \$159.39 processing fee by
19 the escrow holder. Castillo arranged the sale with some direct
20 supervision and direction from Sandoval, and substantially no
21 direct supervision by JOHNSTON, his wife or any other GOLD KEY
22 employee. On September 10, 2000, C.J. Johnston placed her dated
23 initials on every page of the Shooting Star deposit receipt,
24 including the page bearing Castillo's signature as an agent
25 working for GOLD KEY.

26 14. Castillo conducted the Purdy transaction during
27 the period between the initial sales agreement on September 7,

1 2000 until close of escrow on October 20, 2000, when Castillo was
2 paid a \$1,286.29 commission by the escrow holder. Castillo
3 arranged the Purdy sale with substantially no direct supervision
4 by Sandoval, JOHNSTON, his wife or any other GOLD KEY employee.
5 On September 22, 2000, C.J. Johnston placed her dated initials on
6 every page of the Purdy deposit receipt, including the page
7 bearing Castillo's signature as an agent working for GOLD KEY.

8 15. Castillo conducted the Greenbriar transaction
9 during the period between the initial sales agreement on August
10 26, 2000 until close of escrow on November 21, 2000. Castillo
11 arranged the Greenbriar sale with some direct supervision and
12 direction from Sandoval, and substantially no direct supervision
13 by JOHNSTON, his wife or any other GOLD KEY employee. On
14 September 15, 2000, C.J. Johnston placed her dated initials on
15 every page of the Greenbriar deposit receipt, including the page
16 bearing Castillo's signature as an agent working for GOLD KEY. On
17 November 1, 2000, JOHNSTON issued a \$136.62 escrow check and a
18 \$1,440.30 escrow check to Castillo to compensate her for her
19 services in arranging the sale of the property on Greenbriar.

20 16. Meanwhile, on October 10, 2000, the Department
21 sent a form letter to Castillo requiring the submission, on the
22 reverse of the form, of additional information "before additional
23 processing of your original license application." On either
24 October 20 or October 26, 2000, JOHNSTON signed the reverse of
25 the form letter, certifying he had read Castillo's answers on the
26 form, as well as her original license application. DRE received
27 the response on November 2, 2002.

1 17. Castillo conducted the Brockstone transaction
2 during the period between the initial sales agreement on October
3 23, 2000 until close of escrow on November 21, 2000, when
4 Castillo was paid a \$858.27 commission by the escrow holder.
5 Castillo arranged the Brockstone sale with substantially no
6 direct supervision by Sandoval, JOHNSTON, his wife or any other
7 GOLD KEY employee. On November 28, 2000, C.J. Johnston placed her
8 dated initials on every page of the Brockstone deposit receipt,
9 including the page bearing Castillo's signature as an agent
10 working for GOLD KEY.

11 18. Meanwhile, on December 5, 2000, DRE sent Castillo
12 a form letter advising that her original application was
13 unacceptable because it was unsigned, and requiring the
14 submission of a new signed application. On December 12, 2000,
15 JOHNSTON signed Castillo's second application for a conditional
16 real estate salesperson license. This application was received
17 by DRE on January 5, 2001.

18 19. Castillo conducted the Northshore transaction
19 during the period between the initial sales agreement on
20 December 7, 2000 until close of escrow on January 2, 2001, when
21 Castillo was paid a \$1,318.86 commission by the escrow holder.
22 Castillo conducted the Peachtree transaction during the period
23 between the initial sales agreement on December 27, 2000 until
24 close of escrow on January 23, 2001, when Castillo was paid a
25 \$1,512.39 commission by the escrow holder. Castillo worked on the
26 two transaction with substantially no direct supervision by
27 Sandoval, JOHNSTON, his wife or any other GOLD KEY employee. On

1 January 4, 2001, C.J. Johnston placed her dated initials on every
2 page of the Peachtree deposit receipt, including the page bearing
3 Castillo's signature as an agent working for GOLD KEY.

4 20. Between August 9, 2000 and January 25, 2001, while
5 Castillo was unlicensed, GOLD KEY employed and compensated
6 Castillo for arranging the Pocitos, Shooting Star, Purdy,
7 Greenbriar, Brockstone, Northshore and Peachtree transactions.
8 GOLD KEY employees prepared the commission disbursement
9 instructions relied on by escrow to disburse commission checks to
10 Castillo. In all but one transaction JOHNSTON's wife put her
11 dated initials on every page of the sales agreements prepared and
12 signed by Castillo as a GOLD KEY agent. Sections 10160¹ of the
13 Code and 2753² of the Regulations require a broker to hold the
14 license certificates of its salespersons at its main office. If
15 Respondent had insisted on obtaining Castillo's license
16 certificate before GOLD KEY employed or compensated Castillo,
17 Castillo's violations would not have occurred. Because of
18 Sections 10160 and 2753, Respondents cannot justify reliance on

19 _____
20 ¹ Section 10160 of the Code provides: "The real estate salesman's
21 license shall remain in the possession of the licensed real
22 estate broker employer until canceled or until the salesman
23 leaves the employ of the broker, and the broker shall make his
license and the licenses of his salesman available for
inspection by the commissioner or his designated
representative."

24 ² Section 2753 of the Regulations provides: "The license
25 certificate of a real estate salesperson licensee shall be
26 retained at the main business office of the real estate broker to
27 whom the salesperson is licensed. Upon the termination of
employment of the salesperson, the broker shall return the
license certificate to the salesperson within three business
days following the termination."

1 Castillo's statements about her license status. Alternatively,
2 the Department posts the license status of every broker on the
3 internet, so JOHNSTON and his employees could have verified
4 Castillo's license status at any time. There is no suggestion
5 they did so. In any event, Castillo presented no evidence
6 whatever to GOLD KEY that she was licensed, and GOLD KEY
7 certainly had no reasonable basis for treating Castillo as if she
8 were licensed. GOLD KEY held a corporate real estate license and
9 was Castillo's employing broker. Under Section 10137 in
10 conjunction with Section 10177(d), an employing broker's license
11 may be revoked if the broker compensates a person for performing
12 real estate functions if that person was unlicensed.

13 21. JOHNSTON is directly responsible for GOLD KEY's
14 unlicensed employment and compensation of Castillo because
15 JOHNSTON personally participated in the process of employing and
16 compensating Castillo. On August 7, 2000, JOHNSTON signed
17 Castillo's license application. On August 9, 2000, JOHNSTON
18 signed Castillo's employment agreement without verifying
19 Castillo's license status. At the time of the Pocitos sales
20 agreement, between August 26, 2000 and October 6, 2000, JOHNSTON
21 admittedly knew Castillo was working at the Otay Lakes office,
22 even though he had not verified Castillo's license status. On
23 October 10, 2000, JOHNSTON signed Castillo's commission checks
24 for the Pocitos transaction. On either October 20 or October 26,
25 2000, JOHNSTON knew that Castillo was not yet licensed because he
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1 was notified of that fact by the DRE form letter he signed on
2 that date. On November 1, 2000, JOHNSTON signed Castillo's
3 commission checks for the Greenbriar transaction. On December 12,
4 2000, JOHNSTON knew that Castillo was not yet licensed because on
5 that date he signed Castillo's second license application.
6 Thereafter, before the issuance of her license, Castillo handled
7 and was paid by GOLD KEY for the Northshore and Peachtree
8 transactions.

9 22. JOHNSTON was GOLD KEY's supervising broker. "The
10 entire statutory scheme requires the broker actively to conduct
11 his brokerage business and to supervise the activities of his
12 salesmen." Grand v. Griesinger (1958), 160 Cal. App. 2d 397, 406.
13 A designated real estate broker must reasonably be charged with
14 responsibility for the corporate compliance with the Real Estate
15 Law, for otherwise with no such fixed responsibility, the
16 statutory scheme described in Grand v. Griesinger would be
17 frustrated. Norman v. Department of Real Estate (1979) 93 Cal.
18 App. 3d 768. Section 10177(g) of the Code provides the
19 Commissioner may suspend or revoke the license of a supervising
20 broker for "demonstrated negligence or incompetence in
21 performing any act for which he or she is required to hold a
22 license" and Section 10177(h) provides the Commissioner may
23 suspend or revoke the license of a supervising broker who "(h) As
24 a broker licensee, failed to exercise reasonable supervision over
25 the activities of his or her salespersons, or, as the officer
26 designated by a corporate broker licensee, failed to exercise
27 reasonable supervision and control of the activities of the

1 corporation for which a real estate license is required..."

2 23. Section 10159.2 of the Code and Sections 2725¹ and
3 2743 of the Regulations require that supervision over the hiring
4 of agents, their licensed activity, and the payment of
5 commissions be unified in the designated officer or a properly -
6 appointed alternative officer - broker. Code Section 10159.2 and
7 Regulation 2743 establish an orderly procedure for delegating
8 supervisory responsibility to a properly - appointed alternative
9 officer - broker. JOHNSTON testified he was unaware of the
10 procedure and had not used it. Instead, he retained in his hands
11 alone statutory responsibility for supervising the licensed
12 activities of the resale brokerage, the mortgage loan brokerage,
13 and the escrow company, and the fifty licensees engaged in the
14 business. But instead of personally supervising sales
15 transactions and the employment and compensation of agents,

17 ¹ Section 2725 of the Regulations provides: "A broker shall
18 exercise reasonable supervision over the activities of his or
19 her salespersons. Reasonable supervision includes, as
20 appropriate, the establishment of policies, rules, procedures
21 and systems to review, (a) Transactions requiring a real estate
22 license. (b) Documents which may have a material effect upon the
23 rights or obligations of a party to the transaction. (c) Filing,
24 storage and maintenance of such documents. (d) The handling of
25 trust funds. (e) Advertising of any service for which a license is
26 required. (f) Familiarizing salespersons with the requirements
27 of federal and state laws relating to the prohibition of
discrimination. (g) Regular and consistent reports of licensed
activities of salespersons. The form and extent of such policies,
rules, procedures and systems shall take into consideration the
number of salespersons employed and the number and location of
branch offices. A broker shall establish a system for monitoring
compliance with such policies, rules, procedures and systems. A
broker may use the services of brokers and salespersons to assist
in administering the provisions of this section so long as the
broker does not relinquish overall responsibility for supervision
of the acts of salespersons licensed to the broker."

1 JOHNSTON used his wife to supervise the licensed activity of
2 agents at the Otay Lakes office and relied on a wholly untested
3 manager, Anne Meyer, to control the hiring of agents and payment
4 of commissions. Under the resulting management scheme, JOHNSTON
5 effectively disabled himself from preventing unlicensed activity.

6 24. By failing to ensure Castillo was properly
7 licensed before she performed real estate activities, Johnston
8 failed to exercise reasonable supervision over Castillo's
9 activities. Overwhelming undisputed evidence supports such a
10 finding. JOHNSTON was repeatedly provided opportunities to
11 question Castillo's activities and license status, but he failed
12 to do so repeatedly over a term of months. Castillo handled the
13 seven transactions with no supervision by JOHNSTON and little or
14 none by anyone else. A reasonable task for a supervising broker
15 is to ensure that its real estate employees are properly
16 licensed. This JOHNSTON did not do.

17 25. All evidence of mitigation, extenuation and
18 rehabilitation has been considered in this case.

19 26. In Respondents' favor is the prompt and courteous
20 cooperation extended to the Department's investigator in this
21 case by JOHNSTON personally and GOLD KEY's staff.

22 27. It is argued that Respondents are the victims of
23 wrongdoing by Castillo. That contention is unpersuasive. The
24 wrongdoing at issue in the hearing of this case was the conduct
25 by GOLD KEY and JOHNSTON in employing and compensating an
26 unlicensed person, and in the failure of JOHNSTON to provide
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1 adequate supervision. It stemmed from JOHNSTON's failure to
2 implement an effective system for supervising the licensed
3 activities of the brokerage. Castillo's misconduct was not at
4 issue in this hearing. Castillo was responsible for unlicensed
5 activity, but it was GOLD KEY and JOHNSTON who employed and
6 compensated Castillo for her work. Confusion over license status
7 by a completely inexperienced license applicant is much easier to
8 understand than the inability of an experienced broker such as
9 JOHNSTON to make sure he did not employ or compensate unlicensed
10 persons for activity requiring a real estate license.

11 28. It is contended that the death of Gary Howerton
12 in July, 2000 somehow mitigates the unlawful employment and
13 compensation of Castillo by Respondents between August 9, 2000
14 and January 25, 2001. The event may have exposed the weakness of
15 JOHNSTON's management system, but it certainly does not excuse
16 the deficiency. As designated officer, JOHNSTON was obligated
17 under Regulation 2725 to establish a system for monitoring
18 compliance with the Real Estate Law, taking into consideration
19 the number of salespersons employed and the number and location
20 of branch offices. JOHNSTON erred in relying too heavily on
21 Howerton for the integrity of that system, and JOHNSTON should
22 not have relied to the extent he did on Howerton's inexperienced
23 successor, Ann Meyer. Instead, the death of Howerton should have
24 prompted JOHNSTON to exercise greater vigilance, but there is no
25 indication he did so while Castillo was employed by the firm.
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1 29. Throughout these proceedings Respondents have
2 attempted to claim that Greg Dillon, a rival broker, is somehow
3 responsible for Respondents' plight. That contention is rejected
4 as entirely meritless. The conflict between Dillon and
5 Respondents may have caused the Department to learn of
6 Respondents' violations, but the conflict between Dillon and
7 Respondents did not cause Respondents to employ or compensate
8 Castillo.

9 30. Respondents contend Brenda Castillo's testimony
10 was self-serving, and should be disregarded. Castillo's direct
11 testimony focused on authenticating and confirming the
12 documentary evidence of her employment and compensation, and none
13 of that testimony is controverted in any respect. It was not
14 shown that Castillo had anything to gain from her testimony.
15 There was nothing in the record but entirely unfounded innuendo
16 to support the notion that Castillo's testimony was designed to
17 serve Dillon. The suggestion Castillo tried in her testimony to
18 shift responsibility for her violations to Respondents is
19 meritless. The case against Castillo was entirely settled long
20 before the hearing. Castillo's responsibility was not at issue at
21 the hearing. It was JOHNSTON whose testimony attempted to shift
22 responsibility to Castillo, to Herlinda Ryan-Sandoval, and to Ann
23 Meyer. But it was JOHNSTON's wife who reviewed Castillo's
24 transactions and it was JOHNSTON who authorized Castillo's
25 compensation.

26 31. Brenda Castillo testified that JOHNSTON dictated
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1 her initial statement to the Department, and JOHNSTON denied it.
2 Castillo testified that her employment agreement was backdated,
3 and JOHNSTON denied it, insisting that the existence of the
4 employment agreement caused him to assume that Meyer had properly
5 verified that Castillo was licensed. It is suggested that the
6 testimony of Brenda Castillo in these proceedings is unreliable
7 and should be given little weight. An assessment of credibility
8 is necessary to resolve these conflicts, but these are peripheral
9 issues that do not demand certain resolution. Since JOHNSTON
10 should not have delegated his supervisory responsibilities to
11 Meyer, when the employment agreement was executed is of little
12 significance. Regardless of when Castillo signed her employment
13 agreement, it is a fact that GOLD KEY employed her. Determining
14 when the agreement was signed is not a central issue. Similarly,
15 whether JOHNSTON dictated Castillo's statement to the DEPARTMENT
16 is not a pivotal issue: Castillo made the statement and is
17 responsible for its contents. It is not necessary to determine
18 whether JOHNSTON is also responsible for the contents of
19 Castillo's statement. On the other hand, Castillo's testimony
20 authenticating the Complainant's documentary evidence in this
21 case and confirming that she was employed and compensated by GOLD
22 KEY is entirely uncontroverted. Indeed, Respondents admit that
23 the factual allegations in the Accusation are true.

24 32. Respondents claim they have initiated changes in
25 the management system to avoid violations such as those that
26 occurred here. These changes rely heavily on newly acquired
27 computerized data management systems. It is too early to conclude

1 that these changes will prove effective. The testimony on this
2 point is strongly and undeniably self-serving. Only experience
3 over time will disclose whether the new system will facilitate
4 adequate supervision by GOLD KEY's designated officer.

5 33. Respondents say there is no evidence Respondents
6 intended to violate the law. For purposes of mitigation, this
7 contention is accepted to some degree and taken into
8 consideration in the "Order" set forth below. For purposes of
9 determining whether cause exists for discipline, this argument is
10 meritless. GOLD KEY violated the law in the only way a corporate
11 licensee can do so - through the acts and omissions of its
12 officers, agents and employees working on GOLD KEY's behalf. Its
13 "intent" is of limited significance. Aside from his failure to
14 provide adequate supervision, JOHNSTON's violations consisted of
15 performing the specific acts that constituted unlawful
16 compensation - signing the checks - and in part in executing a
17 series of documents directed toward accepting Castillo into GOLD
18 KEY's employment. There is no doubt that these were intentional
19 acts that violated the law. The intentional doing of an act
20 expressly prohibited by statute constitutes the offense denounced
21 by the law regardless of good motive or ignorance that the act
22 violated the law. See, for example, People v. Gory (1946) 28 Cal.
23 2d 450. A clear and undisputed violation warrants discipline,
24 despite the contention that the violation was unintentional.
25 Handeland v. Department of Real Estate (1976) 58 Cal. App. 3d
26 513.

27 34. It is argued that Respondents' conduct did not

1 harm the public. For purposes of mitigation, this is accepted to
2 some degree and taken into consideration in the "Order" set forth
3 below. For purposes of determining whether license discipline
4 should be imposed, this argument is of very limited value. The
5 imposition of discipline does not require a finding that any
6 party suffered actual loss (Stickel v. Harris (1985) 196 Cal.
7 App. 3d 575), or that the licensee acted in bad faith (Norman v.
8 Department of Real Estate (1979) 93 Cal. App. 3d 768).

9 LEGAL CONCLUSIONS

10 1. Business and Professions Code section 10137 makes
11 it unlawful to pay compensation for acts requiring a real estate
12 license to one who is not licensed. It reads:

13 "It is unlawful for any licensed real estate broker to
14 employ or compensate, directly or indirectly, any
15 person for performing any of the acts within the scope
16 of this chapter who is not a licensed real estate
17 broker, or a real estate salesman licensed under the
18 broker employing or compensating him; provided,
19 however, that a licensed real estate broker may pay a
20 commission to a broker of another State.

21 For a violation of any of the provisions of this
22 section, the commissioner may temporarily suspend or
23 permanently revoke the license of the real estate
24 licensee, in accordance with the provisions of this
25 part relating to hearings."

26 2. Business and Professions Code section 10159.2
27 mandates responsibility for supervision and control of a
corporation. It states in part:

"(a) The officer designated by a corporate broker
licensee pursuant to Section 10211 shall be responsible
for the supervision and control of the activities
conducted on behalf of the corporation by its officers
and employees as necessary to secure full compliance
with the provisions of this division, including the

1 supervision of salespersons licensed to the corporation
2 in the performance of acts for which a real estate
license is required."

3 3. Business and Professions Code section 10177 provides in
4 part:

5 "The commissioner may suspend or revoke the license of
6 a real estate licensee, or may deny the issuance of a
7 license to an applicant, who has done any of the
8 following, or may suspend or revoke the license of a
9 corporation, or deny the issuance of a license to a
corporation, if an officer, director, or person owning
or controlling 10 percent or more of the corporation's
stock has done any of the following:...

10 (d) Willfully disregarded or violated the Real Estate
11 Law... or the rules and regulations of the
12 commissioner for the administration and enforcement of
the Real Estate Law...

13 (g) Demonstrated negligence or incompetence in
14 performing any act for which he or she is required to
15 hold a license.

16 (h) As a broker licensee, failed to exercise
17 reasonable supervision over the activities of his or
18 her salespersons, or, as the officer designated by a
19 corporate broker licensee, failed to exercise
reasonable supervision and control of the activities of
the corporation for which a real estate license is
required...'

20 4. Cause was established to impose discipline on
21 Respondents GOLD KEY and JOHNSTON pursuant to Business and
22 Professions Code Section 10137 in conjunction with Section
23 10177(d) of the code by virtue of Factual Findings 1-21.

24 5. Cause was established to impose discipline on
25 Respondent JOHNSTON under Business and Professions Code Sections
26 10177(g) and 10177(h), and Section 10159.2 in conjunction with
27

1 Section 10177(d) by virtue of Factual Findings 1-24.

2 6. The standard of proof applied was clear and
3 convincing proof to a reasonable certainty.

4 7. Based on the foregoing facts and circumstances, it
5 appears the need to protect the public and deter future
6 violations requires that Respondents' broker licenses be
7 suspended.

8 ORDER

9 I

10 All licenses and licensing rights of Respondent GOLD
11 KEY FINANCIAL, INC. under the Real Estate Law are suspended for
12 a period of thirty (30) days from the effective date of the
13 Decision herein; provided, however thirty (30) days of said
14 thirty (30) day suspension shall be stayed upon condition that:

15 1. 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
18 effective date of the Decision herein. Should such a
19 determination be made, the Commissioner may, in his or her
20 discretion, vacate and set aside the stay order, and order the
21 execution of all or any part of the stayed suspension.

22 2. If no further cause for disciplinary action
23 against the real estate license of Respondent occurs within two
24 (2) years from the effective date of the Decision herein, then
25 the stay hereby granted shall become permanent.

26 II

27 All licenses and licensing rights of Respondent STEVE

1 RANDOLPH JOHNSTON under the Real Estate Law are suspended for a
2 period of thirty (30) days from the effective date of the
3 Decision herein; provided, however thirty (30) days of said
4 thirty (30) day suspension shall be stayed upon condition that:

5 1. 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
8 effective date of the Decision herein. Should such a
9 determination be made, the Commissioner may, in his or her
10 discretion, vacate and set aside the stay order, and order the
11 execution of all or any part of the stayed suspension.

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

16 This Decision shall become effective at 12 o'clock noon
17 on NOV 30 2005

18 IT IS SO ORDERED 10-22, 2005.

19 JEFF DAVI
20 Real Estate Commissioner
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The Decision After Rejection of the Real Estate
Commissioner of November 12, 2003, shall become effective at
12 o'clock noon on January 22, 2004.

DATED: 12/10/03

JOHN R. LIBERATOR
Chief Deputy Commissioner



1 On June 16, 2002, the Administrative Law Judge rendered
2 a Proposed Decision (hereinafter "the Proposed Decision") which I
3 declined to adopt as my Decision herein. Pursuant to Section
4 11517 of the Government Code of the State of California,
5 Respondent was served with notice of my determination not to
6 adopt the Proposed Decision along with a copy of the Proposed
7 Decision. Respondent was notified that the case would be decided
8 by me upon the record, the transcript of proceedings held on
9 January 14 and January 15, 2003, and upon written argument
10 offered by Respondent and Complainant.

11 Written argument was submitted on behalf of Respondent.
12 Written argument has been submitted on behalf of Complainant.

13 I have given careful consideration to the record in
14 this case, including the transcript of proceedings of January 14
15 and January 15, 2003 and written argument offered by Complainant
16 and Respondent.

17 The following shall constitute the Decision of the Real
18 Estate Commissioner in these proceedings.

19 FINDINGS OF FACT

20 1. J. Chris Graves made the Accusation in his
21 official capacity as a Deputy Real Estate Commissioner of the
22 State of California.

23 2. Respondent GOLD KEY was and now is licensed by the
24 Department as a corporate real estate broker by and through
25 Respondent JOHNSTON as designated officer-broker of GOLD KEY.
26 JOHNSTON was the responsible broker for GOLD KEY. JOHNSTON was
27 responsible for supervising the salespeople and seeing to it that

1 the corporation complied with the law. In addition, JOHNSTON was
2 and now is licensed by the Department as an individual real
3 estate broker. GOLD KEY was issued a license bearing the
4 fictitious business name "Network Escrow Services" on November
5 30, 1998 and a license bearing the fictitious business name
6 "Realty Executives Premier" on June 28, 2000. Respondent Johnston
7 was first licensed with the Department in 1987 as a real estate
8 agent. In 1997, the Department issued him a real estate broker
9 license. Over the years his business has grown and prospered. He
10 has never been the subject of Department discipline, save this
11 incident, in the approximately 16 years he has been licensed by
12 the Department.

13 3. Respondent Castillo was never licensed by the
14 Department either as a real estate broker or as a real estate
15 salesperson prior to January 26, 2001.

16 4. JOHNSTON and his wife, "C.J." Johnston own GOLD
17 KEY. At the time of the hearing, GOLD KEY operated a real estate
18 resale brokerage with four offices at various locations employing
19 approximately 140 real estate salespersons, and in addition about
20 ten brokers who work as sales agents. JOHNSTON is the only real
21 estate broker licensed as an officer of GOLD KEY. Each of the
22 sales agents operates primarily out of one of the four branch
23 offices, and each of the branch offices has a branch manager.
24 JOHNSTON was not aware at the time of the hearing of the
25 procedure established by Section 10159.2(a) of the Code and
26 Section 2743 of the Regulations for delegation of a corporate
27 brokerage's supervisory responsibilities.

1 5. In July of 2000, just before Castillo's employment
2 by the firm, GOLD KEY employed approximately 50 sales agents,
3 operating out of the principal office on Bonita Road in San Diego
4 and a single branch office located on Otay Lakes Road. C.J.
5 Johnston was the Otay Lakes branch manager and JOHNSTON was the
6 Bonita branch manager. GOLD KEY also handled some of its own
7 escrows under the fictitious business name "Network Escrow
8 Services", an entity owned and operated by GOLD KEY. "Network
9 Financial Services" was the name for a mortgage company operated
10 by GOLD KEY under JOHNSTON's supervision. On July 7, 2000,
11 JOHNSTON's trusted associate, Gary Howerton, died in an
12 automobile accident. Prior to Howerton's death, his primary
13 responsibility was the hiring of agents and the payment of
14 commissions. Howerton was replaced by Anne Meyer.

15 6. On August 7, 2000, JOHNSTON signed Castillo's
16 application for a conditional real estate salesperson license,
17 which had not been signed by Castillo. This application was
18 received by DRE on September 15, 2000. Prior to the time JOHNSTON
19 signed the application his wife C.J. Johnston had interviewed
20 Castillo.

21 7. At the time Herlinda Sandoval was one of GOLD
22 KEY's sales agents. Sandoval had introduced Castillo, her high
23 school friend, to the office and was allowing Castillo to use
24 Sandoval's small private office on the premises and had given
25 Castillo some buyer leads. Castillo testified that her
26 understanding originally was that, once properly licensed, she
27 would be working for Sandoval, acting as Sandoval's "buyer's

1 agent", that Sandoval was working for GOLD KEY, so that Castillo
2 would also be working for GOLD KEY under Sandoval. Castillo
3 entered into a written contract with Sandoval covering their
4 arrangement.

5 8. Once Castillo learned she passed the salesperson
6 examination, she met with Sandoval, was provided a description of
7 her duties, and was instructed to participate in a training
8 program provided by JOHNSTON and C.J. Johnston. Castillo
9 participated in the classes.

10 9. JOHNSTON, Castillo and Anne Meyer, GOLD KEY's
11 operations manager, signed the Independent Contractor Agreement,
12 dated August 9, 2000, employing Castillo as one of GOLD KEY's
13 real estate agents. The form recited: "Whereas contractor
14 [Castillo] has been issued a real estate (salesman's/broker's)
15 license by the State of California..." JOHNSTON testified that at
16 that time he had given Meyer the responsibility for verifying
17 that each person applying for a position with GOLD KEY had a
18 valid real estate license.

19 10. From August 9, 2000 through January 25, 2001,
20 before Castillo was actually licensed, Castillo, acting in the
21 capacity of an agent employed by GOLD KEY, arranged the sale of
22 the following properties in the San Diego area:

- 23 (a) 3123 Pocitos Way, San Ysidro ("Pocitos");
24 (b) 1637 Shooting Star Court, San Ysidro ("Shooting Star");
25 (c) 1106 Purdy Court, Spring Valley ("Purdy");
26 (d) 2345 Greenbriar Court #C, Chula Vista ("Greenbriar");
27 (e) 787 Brockstone #201, Chula Vista ("Brockstone");

1 (f) 2105 Northshore #C, Chula Vista ("Northshore");

2 (g) 2223 Peachtree Circle, Chula Vista ("Peachtree");

3 11. Castillo conducted the Pocitos transaction during
4 the period between the initial sales agreement on August 26,
5 2000 until close of escrow on October 6, 2000. Castillo had some
6 direct supervision and direction from Sandoval, and substantially
7 no direct supervision by JOHNSTON, his wife or any other GOLD KEY
8 employee. On September 15, 2000, C.J. Johnston placed her dated
9 initials on every page of the Pocitos deposit receipt, including
10 the page bearing Castillo's signature as an agent working for
11 GOLD KEY. On October 10, 2000, JOHNSTON issued a \$1183.62 escrow
12 check and a \$136.62 escrow check to Castillo to compensate her
13 for her services in arranging the sale of the property on
14 Pocitos.

15 12. JOHNSTON admitted that at the time of the Pocitos
16 sales agreement he knew Castillo was working at the Otay Lakes
17 office, but explained that he was relying on the fact Meyer had
18 (mistakenly) cleared Castillo to work for GOLD KEY as a sales
19 agent.

20 13. Castillo conducted the Shooting Star transaction
21 during the period between the initial sales agreement on August
22 11, 2000 until close of escrow on October 17, 2000, when Castillo
23 was paid a \$1,037.80 commission and a \$159.39 processing fee by
24 the escrow holder. Castillo arranged the sale with some direct
25 supervision and direction from Sandoval, and substantially no
26 direct supervision by JOHNSTON, his wife or any other GOLD KEY
27 employee. On September 10, 2000, C.J. Johnston placed her dated

1 initials on every page of the Shooting Star deposit receipt,
2 including the page bearing Castillo's signature as an agent
3 working for GOLD KEY.

4 14. Castillo conducted the Purdy transaction during
5 the period between the initial sales agreement on September 7,
6 2000 until close of escrow on October 20, 2000, when Castillo was
7 paid a \$1,286.29 commission by the escrow holder. Castillo
8 arranged the Purdy sale with substantially no direct supervision
9 by Sandoval, JOHNSTON, his wife or any other GOLD KEY employee.
10 On September 22, 2000, C.J. Johnston placed her dated initials on
11 every page of the Purdy deposit receipt, including the page
12 bearing Castillo's signature as an agent working for GOLD KEY.

13 15. Castillo conducted the Greenbriar transaction
14 during the period between the initial sales agreement on August
15 26, 2000 until close of escrow on November 21, 2000. Castillo
16 arranged the Greenbriar sale with some direct supervision and
17 direction from Sandoval, and substantially no direct supervision
18 by JOHNSTON, his wife or any other GOLD KEY employee. On
19 September 15, 2000, C.J. Johnston placed her dated initials on
20 every page of the Greenbriar deposit receipt, including the page
21 bearing Castillo's signature as an agent working for GOLD KEY. On
22 November 1, 2000, JOHNSTON issued a \$136.62 escrow check and a
23 \$1,440.30 escrow check to Castillo to compensate her for her
24 services in arranging the sale of the property on Greenbriar.

25 16. Meanwhile, on October 10, 2000, the Department
26 sent a form letter to Castillo requiring the submission, on the
27 reverse of the form, of additional information "before additional

1 processing of your original license application." On either
2 October 20 or October 26, 2000, JOHNSTON signed the reverse of
3 the form letter, certifying he had read Castillo's answers on the
4 form, as well as her original license application. DRE received
5 the response on November 2, 2002.

6 17. Castillo conducted the Brockstone transaction
7 during the period between the initial sales agreement on October
8 23, 2000 until close of escrow on November 21, 2000, when
9 Castillo was paid a \$858.27 commission by the escrow holder.
10 Castillo arranged the Brockstone sale with substantially no
11 direct supervision by Sandoval, JOHNSTON, his wife or any other
12 GOLD KEY employee. On November 28, 2000, C.J. Johnston placed her
13 dated initials on every page of the Brockstone deposit receipt,
14 including the page bearing Castillo's signature as an agent
15 working for GOLD KEY.

16 18. Meanwhile, on December 5, 2000, DRE sent Castillo
17 a form letter advising that her original application was
18 unacceptable because it was unsigned, and requiring the
19 submission of a new signed application. On December 12, 2000,
20 JOHNSTON signed Castillo's second application for a conditional
21 real estate salesperson license. This application was received
22 by DRE on January 5, 2001.

23 19. Castillo conducted the Northshore transaction
24 during the period between the initial sales agreement on
25 December 7, 2000 until close of escrow on January 2, 2001, when
26 Castillo was paid a \$1,318.86 commission by the escrow holder.
27 Castillo conducted the Peachtree transaction during the period

1 between the initial sales agreement on December 27, 2000 until
2 close of escrow on January 23, 2001, when Castillo was paid a
3 \$1,512.39 commission by the escrow holder. Castillo worked on the
4 two transaction with substantially no direct supervision by
5 Sandoval, JOHNSTON, his wife or any other GOLD KEY employee. On
6 January 4, 2001, C.J. Johnston placed her dated initials on every
7 page of the Peachtree deposit receipt, including the page bearing
8 Castillo's signature as an agent working for GOLD KEY.

9 20. Between August 9, 2000 and January 25, 2001, while
10 Castillo was unlicensed, GOLD KEY employed and compensated
11 Castillo for arranging the Pocitos, Shooting Star, Purdy,
12 Greenbriar, Brockstone, Northshore and Peachtree transactions.
13 GOLD KEY employees prepared the commission disbursement
14 instructions relied on by escrow to disburse commission checks to
15 Castillo. In all but one transaction JOHNSTON's wife put her
16 dated initials on every page of the sales agreements prepared and
17 signed by Castillo as a GOLD KEY agent. Sections 10160¹ of the
18 Code and 2753² of the Regulations require a broker to hold the

19
20 ¹ Section 10160 of the Code provides: "The real estate salesman's
21 license shall remain in the possession of the licensed real
22 estate broker employer until canceled or until the salesman
23 leaves the employ of the broker, and the broker shall make his
license and the licenses of his salesman available for
inspection by the commissioner or his designated
representative."

24 ² Section 2753 of the Regulations provides: "The license
25 certificate of a real estate salesperson licensee shall be
26 retained at the main business office of the real estate broker to
27 whom the salesperson is licensed. Upon the termination of
employment of the salesperson, the broker shall return the
license certificate to the salesperson within three business
days following the termination."

1 license certificates of its salespersons at its main office. If
2 Respondent had insisted on obtaining Castillo's license
3 certificate before GOLD KEY employed or compensated Castillo,
4 Castillo's violations would not have occurred. Because of
5 Sections 10160 and 2753, Respondents cannot justify reliance on
6 Castillo's statements about her license status. In any event,
7 Castillo presented no evidence whatever to GOLD KEY that she was
8 licensed, and GOLD KEY certainly had no reasonable basis for
9 treating Castillo as if she were licensed. GOLD KEY held a
10 corporate real estate license and was Castillo's employing
11 broker. Under Section 10137 in conjunction with Section 10177(d),
12 an employing broker's license may be revoked if the broker
13 compensates a person for performing real estate functions if that
14 person was unlicensed.

15 21. JOHNSTON is directly responsible for GOLD KEY's
16 unlicensed employment and compensation of Castillo because
17 JOHNSTON personally participated in the process of employing and
18 compensating Castillo. On August 7, 2000, JOHNSTON signed
19 Castillo's license application. On August 9, 2000, JOHNSTON
20 signed Castillo's employment agreement without verifying
21 Castillo's license status. At the time of the Pocitos sales
22 agreement, between August 26, 2000 and October 6, 2000, JOHNSTON
23 admittedly knew Castillo was working at the Otay Lakes office,
24 even though he had not verified Castillo's license status. On
25 October 10, 2000, JOHNSTON signed Castillo's commission checks
26
27

1 for the Pocitos transaction. On either October 20 or October 26,
2 2000, JOHNSTON knew that Castillo was not yet licensed because he
3 was notified of that fact by the DRE form letter he signed on
4 that date. On November 1, 2000, JOHNSTON signed Castillo's
5 commission checks for the Greenbriar transaction. On December 12,
6 2000, JOHNSTON knew that Castillo was not yet licensed because on
7 that date he signed Castillo's second license application.
8 Thereafter, before the issuance of her license, Castillo handled
9 and was paid by GOLD KEY for the Northshore and Peachtree
10 transactions.

11 22. JOHNSTON was GOLD KEY's supervising broker. "The
12 entire statutory scheme requires the broker actively to conduct
13 his brokerage business and to supervise the activities of his
14 salesmen." Grand v. Griesinger (1958), 160 Cal. App. 2d 397, 406.
15 A designated real estate broker must reasonably be charged with
16 responsibility for the corporate compliance with the Real Estate
17 Law, for otherwise with no such fixed responsibility, the
18 statutory scheme described in Grand v. Griesinger would be
19 frustrated. Norman v. Department of Real Estate (1979) 93 Cal.
20 App. 3d 768. Section 10177(g) of the Code provides the
21 Commissioner may suspend or revoke the license of a supervising
22 broker for "demonstrated negligence or incompetence in
23 performing any act for which he or she is required to hold a
24 license" and Section 10177(h) provides the Commissioner may
25 suspend or revoke the license of a supervising broker who "(h) As
26 a broker licensee, failed to exercise reasonable supervision over
27 the activities of his or her salespersons, or, as the officer

1 designated by a corporate broker licensee, failed to exercise
2 reasonable supervision and control of the activities of the
3 corporation for which a real estate license is required..."

4 23. Instead of personally supervising sales
5 transactions and the employment and compensation of agents,
6 JOHNSTON used his wife to supervise the licensed activity of
7 agents at the Otay Lakes office and used Anne Meyer to control
8 the hiring of agents and payment of commissions. JOHNSTON
9 established a management scheme that made him unable to prevent
10 unlicensed activity. But Section 10159.2 of the Code and
11 Sections 2725¹ and 2743 of the Regulations require that
12 supervision over the hiring of agents, their licensed activity,
13 and the payment of commissions be unified in the designated
14 officer or a properly - appointed alternative officer - broker.

15 24. By failing to ensure Castillo was properly
16

17 ¹ Section 2725 of the Regulations provides: "A broker shall
18 exercise reasonable supervision over the activities of his or
19 her salespersons. Reasonable supervision includes, as
20 appropriate, the establishment of policies, rules, procedures
21 and systems to review, (a) Transactions requiring a real estate
22 license. (b) Documents which may have a material effect upon the
23 rights or obligations of a party to the transaction. (c) Filing,
24 storage and maintenance of such documents. (d) The handling of
25 trust funds. (e) Advertising of any service for which a license is
26 required. (f) Familiarizing salespersons with the requirements
27 of federal and state laws relating to the prohibition of
discrimination. (g) Regular and consistent reports of licensed
activities of salespersons. The form and extent of such policies,
rules, procedures and systems shall take into consideration the
number of salespersons employed and the number and location of
branch offices. A broker shall establish a system for monitoring
compliance with such policies, rules, procedures and systems. A
broker may use the services of brokers and salespersons to assist
in administering the provisions of this section so long as the
broker does not relinquish overall responsibility for supervision
of the acts of salespersons licensed to the broker."

1 licensed before she performed real estate activities, Johnston
2 failed to exercise reasonable supervision over Castillo's
3 activities. Overwhelming undisputed evidence supports such a
4 finding. JOHNSTON was repeatedly provided opportunities to
5 question Castillo's activities and license status, but he failed
6 to do so repeatedly over a term of months. Castillo handled the
7 seven transactions with no supervision by JOHNSTON and little or
8 none by anyone else. A reasonable task for a supervising broker
9 is to ensure that its real estate employees are properly
10 licensed. This JOHNSTON did not do.

11 25. All evidence of mitigation, extenuation and
12 aggravation has been considered in this case.

13 LEGAL CONCLUSIONS

14 1. Business and Professions Code section 10137 makes
15 it unlawful to pay compensation for acts requiring a real estate
16 license to one who is not licensed. It reads:

17 "It is unlawful for any licensed real estate broker to
18 employ or compensate, directly or indirectly, any
19 person for performing any of the acts within the scope
20 of this chapter who is not a licensed real estate
21 broker, or a real estate salesman licensed under the
22 broker employing or compensating him; provided,
23 however, that a licensed real estate broker may pay a
24 commission to a broker of another State.

25 For a violation of any of the provisions of this
26 section, the commissioner may temporarily suspend or
27 permanently revoke the license of the real estate
licensee, in accordance with the provisions of this
part relating to hearings."

28 2. Business and Professions Code section 10159.2
29 mandates responsibility for supervision and control of a
30 corporation. It states in part:

1 “(a) The officer designated by a corporate broker
2 licensee pursuant to Section 10211 shall be responsible
3 for the supervision and control of the activities
4 conducted on behalf of the corporation by its officers
5 and employees as necessary to secure full compliance
6 with the provisions of this division, including the
7 supervision of salespersons licensed to the corporation
8 in the performance of acts for which a real estate
9 license is required.”

10 3. Business and Professions Code section 10177 provides in
11 part:

12 “The commissioner may suspend or revoke the license of
13 a real estate licensee, or may deny the issuance of a
14 license to an applicant, who has done any of the
15 following, or may suspend or revoke the license of a
16 corporation, or deny the issuance of a license to a
17 corporation, if an officer, director, or person owning
18 or controlling 10 percent or more of the corporation’s
19 stock has done any of the following:...

20 (d) Willfully disregarded or violated the Real Estate
21 Law... or the rules and regulations of the
22 commissioner for the administration and enforcement of
23 the Real Estate Law...

24 (g) Demonstrated negligence or incompetence in
25 performing any act for which he or she is required to
26 hold a license.

27 (h) As a broker licensee, failed to exercise
 reasonable supervision over the activities of his or
 her salespersons, or, as the officer designated by a
 corporate broker licensee, failed to exercise
 reasonable supervision and control of the activities of
 the corporation for which a real estate license is
 required...’

 4. Cause was established to impose discipline on
Respondents GOLD KEY and JOHNSTON pursuant to Business and
Professions Code Section 10137 in conjunction with Section

1 10177(d) of the code by virtue of Factual Findings 1-21.

2 5. Cause was established to impose discipline on
3 Respondent JOHNSTON under Business and Professions Code Sections
4 10177(g) and 10177(h), and Section 10159.2 in conjunction with
5 Section 10177(d) by virtue of Factual Findings 1-24.

6 6. Based on the foregoing facts and circumstances, it
7 appears the need to protect the public and deter future
8 violations requires that Respondents' broker licenses be revoked
9 with the right to the issuance of restricted broker licenses.

10 7. The standard of proof applied was clear and
11 convincing proof to a reasonable certainty.

12 ORDER

13 I

14 All licenses and licensing rights of Respondent GOLD
15 KEY FINANCIAL, INC. under the Real Estate Law are revoked;
16 provided, however, a restricted corporate real estate broker
17 license shall be issued to said Respondent pursuant to Section
18 10156.5 of the Business and Professions Code if, within 90 days
19 from the effective date of the Decision entered pursuant to
20 this Order, the Respondent makes application for the restricted
21 license and pays to the Department of Real Estate the
22 appropriate fee therefor.

23 The restricted license issued to Respondent shall be
24 subject to all of the provisions of Section 10156.7 of the
25 Business and Professions Code and to the following limitations,
26 conditions and restrictions imposed under authority of Section
27 10156.6 of that Code:

1 1. Any restricted license issued to Respondent
2 pursuant to this Decision shall be suspended for thirty (30) days
3 from the date of issuance of said restricted license; provided,
4 however, if Respondent petitions, thirty (30) days of said thirty
5 (30) day suspension (or a portion thereof) shall be stayed upon
6 condition that:

7 (a) Respondent pays a monetary penalty pursuant to
8 Section 10175.2 of the Business and Professions Code at the rate
9 of \$100.00 for each day of the suspension for a total monetary
10 penalty of \$3,000.00.

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

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

21 (d) No final subsequent determination be made, after
22 hearing or upon stipulation, that cause for disciplinary action
23 against Respondent occurred within two (2) years of the effective
24 date of this Decision. Should such a determination be made, the
25 Commissioner may, in his or her discretion, vacate and set aside
26 the stay order, and order the execution of all or any part of the
27 stayed suspension, in which event the Respondent shall not be

1 entitled to any repayment nor credit, prorated or otherwise, for
2 money paid to the Department under the terms of this Decision.

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

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

13 3. The restricted license issued to Respondent may
14 be suspended prior to hearing by Order of the Real Estate
15 Commissioner on evidence satisfactory to the Commissioner that
16 Respondent has violated provisions of the California Real
17 Estate Law, the Subdivided Lands Law, Regulations of the Real
18 Estate Commissioner or conditions attaching to the restricted
19 license.

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

25 II

26 All licenses and licensing rights of Respondent STEVE
27 RANDOLPH JOHNSTON under the Real Estate Law are revoked;

1 provided, however, a restricted real estate broker license
2 shall be issued to such Respondent pursuant to Section 10156.5
3 of the Business and Professions Code if, within 90 days from
4 the effective date of the Decision entered pursuant to this
5 Order, the Respondent makes application for the restricted
6 license and pays to the Department of Real Estate the
7 appropriate fee therefor.

8 The restricted license issued to such Respondent
9 shall be subject to all of the provisions of Section 10156.7 of
10 the Business and Professions Code and to the following
11 limitations, conditions and restrictions imposed under
12 authority of Section 10156.6 of that Code:

13 1. Any restricted license issued to Respondent
14 pursuant to this Decision shall be suspended for thirty (30) days
15 from the date of issuance of said restricted license; provided,
16 however, if Respondent petitions, thirty (30) days of said thirty
17 (30) day suspension (or a portion thereof) shall be stayed upon
18 condition that:

19 (a) Respondent pays a monetary penalty pursuant to
20 Section 10175.2 of the Business and Professions Code at the rate
21 of \$100.00 for each day of the suspension for a total monetary
22 penalty of \$3,000.00.

23 (b) Said payment shall be in the form of a cashier's
24 check or certified check made payable to the Recovery Account of
25 the Real Estate Fund. Said check must be received by the
26 Department prior to the effective date of the Decision in this
27 matter.

1 (c) If Respondent fails to pay the monetary penalty in
2 accordance with the terms and conditions of the Decision, the
3 Commissioner may, without a hearing, vacate and set aside the
4 stay order, and order the immediate execution of all or any part
5 of the stayed suspension.

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

15 (e) If Respondent pays the monetary penalty and if no
16 further cause for disciplinary action against the real estate
17 license of Respondent occurs within two (2) years from the
18 effective date of the Decision, then the stay hereby granted
19 shall become permanent.

20 2. The restricted license issued to such Respondent
21 may be suspended prior to hearing by Order of the Real Estate
22 Commissioner in the event of the Respondent's conviction or
23 plea of nolo contendere to a crime which is substantially
24 related to Respondent's fitness or capacity as a real estate
25 licensee.

26 3. The restricted license issued to such Respondent
27 may be suspended prior to hearing by Order of the Real Estate

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

6 4. Respondent shall not be eligible to apply for the
7 issuance of an unrestricted real estate license or for the
8 removal of any of the conditions, limitations or restrictions
9 of a restricted license until two (2) years have elapsed from
10 the effective date of this Decision.

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

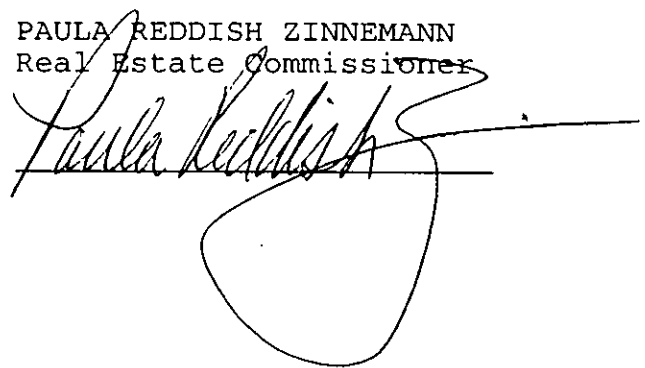
23 6. Respondent shall, within six (6) months from the
24 issuance of the restricted license, take and pass the
25 Professional Responsibility Examination administered by the
26 Department, including the payment of the appropriate examination
27 fee. If Respondent fails to satisfy this condition, the

1 Commissioner may order the suspension of the restricted license
2 until Respondent passes the examination.

3 This Decision shall become effective at 12 o'clock noon
4 on DECEMBER 23, 2003.

5 IT IS SO ORDERED November 12, 2003.

6 PAULA REDDISH ZINNEMANN
7 Real Estate Commissioner

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FILED

JUL 30 2003

DEPARTMENT OF REAL ESTATE

By Laurie A. Zier

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
GOLD KEY FINANCIAL, INC.,)	No. H-2727 SD
a corporation, and)	
STEVE RANDOLPH JOHNSTON,)	L-2002050618
)	
Respondents.)	

NOTICE

TO: GOLD KEY FINANCIAL, INC., and STEVE RANDOLPH JOHNSTON, Respondents, and WILLIAM J. CARDARELLI and ALENA SHAMOS, their Counsels.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 16, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 16, 2003, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on January 14

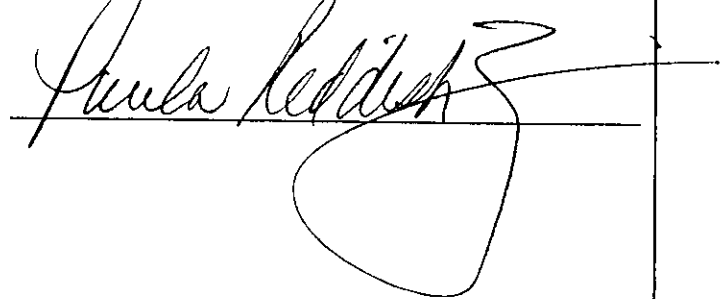
1 and 15, 2003, and any written argument hereafter submitted on
2 behalf of Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of January 14 and 15, 2003, at the Sacramento
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Sacramento office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: July 22, 2003

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15 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

GOLD KEY FINANCIAL, INC., a
corporation, STEVE RANDOLPH
JOHNSTON, and BRENDA ZULEMA
CASTILLO,

Respondents.

Case No. H-2727 SD

OAH No. L2002050618

PROPOSED DECISION

On January 14 and 15, 2003, in San Diego, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Counsel, represented the complainant.

William J. Cardarelli and Alena Shamos, Attorneys at Law, of Mazzarella, Dunwoody & Caldarelli, LLP, represented respondent.

The matter was submitted on January 15, 2003.

FACTUAL FINDINGS

1. The Accusation was made and filed by J. Chris Graves in his official capacity as a Deputy Real Estate Commissioner of the State of California, and not otherwise.
2. At all times relevant to the determination of the issues in this case respondent Gold Key Financial, Inc. (hereinafter "Gold Key") was licensed by the Department as a corporate real estate broker by and through respondent Steve Randolph Johnston (hereinafter "Johnston") as designated officer-broker of Gold Key to qualify the corporation and to act for the corporation as a real estate broker.
3. At all times relevant, Johnston was licensed by the Department as a real estate broker, individually and as designated officer-broker of Gold Key. As the designated officer-broker, Johnston was responsible pursuant to Business and Professions Code section

10159.2 for the supervision of the activities of the officers, agents, real estate licensees and employees of Gold Key for which a license is required.

4. On January 26, 2001, the Department issued a license to respondent Brenda Zulema Castillo as a real estate salesperson. Respondent Castillo was never licensed by the Department in any capacity prior to January 26, 2001.

5. At all times relevant, respondents engaged in the business of, acted in the capacity of, advertised and assumed to act as real estate brokers in the State of California within the meaning of section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, respondents sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and sale of real property.

6. The allegations in this case are very simple and straightforward. So is the explanation for non-compliance. What is not so simple and straightforward is the issue of discipline. Complainant and respondent see the case in a dramatically different way.

7. The foundational allegation against respondent is that he hired a woman, Castillo, who engaged in activities for which a real estate salesperson's license was required, all before she had such a license issued. Specifically, it is alleged that she acted as a real estate salesperson with respect to seven real estate transactions from August 9, 2000 until January 25, 2001 while she was unlicensed. The real property in question is as follows:

- a. 3123 Pocitos Way, San Ysidro, California
- b. 1637 Shooting Star Court, San Ysidro, California
- c. 1106 Purdy Court, Spring Valley, California
- d. 2345 Greenbriar Court #C, Chula Vista, California
- e. 787 Brockstone #201, Chula Vista, California
- f. 2105 Northshore #C, Chula Vista, California
- g. 2223 Peachtree Circle, Chula Vista, California

8. Respondent has admitted that the charges are true. There is no question (nor has there ever been a dispute) about what happened. Respondent is not happy that these events occurred but he has never ever failed to acknowledge that they happened. In order to determine the appropriate level of discipline (if any) it is crucial to understand the context in which this mistake took place. Furthermore, it is important to evaluate the mindset of the respondent and to examine the actions he may have taken since the violations to determine if he is sufficiently rehabilitated. License discipline is not an end in itself. It is the exercise of the police power of the state in the service of necessity. Individuals have their license disciplined to further the ends of public safety, welfare and protection. If license discipline involves restrictions of a licensee's activity (e.g., probation or other restrictions) there must be a reasonable relationship between the specific restriction and public protection. There is no formula involved. The underlying question that must be answered is, even if a violation is

found, whether public protection reasonably requires probationary oversight. That has been the focus in this case.

9. Respondent Johnston was first licensed with the Department in 1987 as a real estate agent. In 1997, the Department issued him a real estate broker license. Over the years his business has grown and prospered. He has never been the subject of Department discipline, save this incident, in the approximately 16 years he has been licensed by the Department.

10. The wrongdoing in this case stems from the activities of Brenda Zulema Castillo. She was a high school friend of Herlinda Ryan-Sandoval, one of the real estate agents at Gold Key. At her friend's urging Castillo went to work for Ryan-Sandoval as her assistant. She studied for and took the real estate exam. On or about July 31, 2000, Castillo was notified that she had passed the exam. She contacted the DRE by phone and based upon that conversation, she erroneously concluded that she was eligible to sell real estate. Over the next six months, she performed duties for Ryan-Sandoval and Gold Key that required a real estate license. She received a portion of the commission at the close of the seven transactions referenced above. Despite having passed the license exam, Castillo did not actually receive her license until January 26, 2001.

11. During the month of July 2000, Gold Key and Johnston suffered a terrible loss. Their Operations Manager, Gary Howerton died in a fiery crash on a San Diego freeway. Howerton was Johnston's best friend and trusted worker and his sudden death was devastating and dislocating. Howerton's death resulted in the promotion of another employee who tried to assume the administrative duties of Howerton. In August 2000, Castillo approached Howerton's replacement about becoming a real estate agent for Gold Key. She told Howerton's replacement that she had passed the real estate exam and that the DRE had cleared her to sell real estate. Based upon Castillo's mistaken understanding and the mistaken reliance by Howerton's replacement, Castillo was hired as an independent contractor by Gold Key and allowed to participate in the receipt of commissions. During these six months respondent Johnston did not realize that Castillo remained unlicensed. Johnston should have but this was an extraordinary time. There should be no misunderstanding about this finding. Johnston was negligent in this regard. His failure to adequately supervise fell below the standard of care. The standard of care requires that a professional act in a way consistent with a set of legal requirements that occur irrespective of whether respondent was distracted or not. There is a huge difference between an excuse and an explanation. Respondent has provided an explanation of why this happened which is reasonable and understandable. At no time has respondent attempted to use these facts as an excuse to avoid legal responsibility.

12. Greg Dillon is a competing real estate businessman. He operates his business in the same geographical area and competes with respondent for agents, customers and business. Although their relationship was at one time cordial, it is now anything but. Over the last few years, Dillon has attempted to discredit respondent in order to obtain a business advantage. The relationship is bitter. On December 11, 2000, Dillon filed a complaint with the DRE alleging that respondent was using numerous unlicensed persons to sell real estate.

None of these allegations were true except for Castillo. It is ironic to say the least but Dillon hired Castillo to work for him a few days before the Accusation was filed by the DRE. Furthermore, he provided Castillo with his own attorney to represent Castillo in the Accusation filed against her.

13. A significant issue in this case involves findings that hinge on credibility determinations. Brenda Zulema Castillo told a tale. Respondent told the truth. Castillo was undeserving of belief. She was and is an opportunist whose story kept changing to suit herself. It is strongly and undeniably self-serving. It changed to suit herself and her new employer Greg Dillon. Its hallmark is a shifting of responsibility and pointing a finger elsewhere. If anyone in this case fails to take responsibility, it is Castillo. Respondent has acknowledged his culpability from the first moment that the DRE contacted him. He is embarrassed by this lapse but accepts responsibility for it and has taken good faith and substantial steps to avoid a reoccurrence.

14. As a result of the acknowledged mistakes, respondent has instituted changes within his organization to prevent a repeat of this mistake. These are changes of substance and very clearly designed to insure compliance with the laws and regulations of the DRE. They are not window dressing, meant solely to convey the "impression" of change in business practice.

15. All evidence of mitigation, extenuation and aggravation has been considered in this case. These factors are contained in the findings above but deserve restatement and further elaboration.

The first factor is the lack of intent to break the law. If respondent knowingly took part in this scheme to have unlicensed workers engage in real estate transactions or in any way tried to deceive the DRE during the investigation then serious discipline should be imposed. The record is devoid of credible evidence of a knowing violation. This was a mistake caused by a series of events that are unlikely to duplicate themselves.

The second factor relates to the context in which this violation occurred. Castillo had passed the real estate test. She was supervised by an agent in these transactions. There was no harm to the public. She misunderstood her conversation with the DRE and respondent's new operations officer did as well. However, this is not a *de minimis* violation. It is significant due to its potential for consumer harm.

The third factor relates to the response of respondent to these charges and his changes in business practice. Respondent's efforts were sincere and his cooperation with the DRE was prompt, appropriate and honest. He analyzed how this happened and took steps to create an internal system that would prevent a reoccurrence even if the company were faced, in the future, with the extraordinary turmoil of a key employee's death.

16. Rehabilitation is not an event but rather a process. The opportunity at a second chance has long and deep roots in our culture and our law. We do not insist that people wear the scarlet letter for a lifetime. But the opportunity at a second chance does not

come automatically, simply earned with the passage of time. Rather, we all must earn our second chance. This is the core of the notion of rehabilitation. Society takes it as a given that we all make mistakes, some larger than others. When our mistakes are social mistakes, breaches of the licensing laws and regulations, for example, society imposes certain disabilities on us. We are penalized for our conduct by incarceration, fines, probation, community service, etc. Implicit in this set of disabilities imposed by society is a deeper truth. Society no longer trusts us completely. We have lost, at least temporarily, the trust of the community that we can do the tasks of citizenship without some oversight, some monitoring. Furthermore, depending on the social breach and depending on one's job, society may say that the breach is such that one can't be trusted to continue working in a particular area. The social breach may be inconsistent with the particular type of work one is engaged in.

17. Rehabilitation is a process by which an individual earns back the trust of the community. It is composed of two very different modes of change. The first is attitudinal and involves the demonstration of a change of mind and heart. The second involves changes in behavior. To establish the change of mind and heart, one must come to terms with the underlying criminal behavior. One must demonstrate awareness and understanding that it was wrong and that it was harmful. One must accept responsibility for the actions, not blaming it on others or excusing it. One must, in a word, show remorse. To establish a change in behavior, one must demonstrate a track record of consistently appropriate behavior over an extended period of time. In this way, society has the benefit of making a considered judgement with sufficient evidence.

18. There is no specific formula to establish rehabilitation. Each case must be evaluated on its own unique set of factors. Depending on what the stakes are, society may ask for a more compelling demonstration of rehabilitation from some than others. This is particularly so in these cases involving the laws and regulations surrounding the purchase and sale of real estate in California. The people of the State of California have a legitimate right to expect that those licensed by the Department of Real Estate are competent and honest.

19. The California Department of Real Estate is charged with licensing and regulating a broad variety of endeavors all linked by one common thread. For most Californians, the single most valuable asset is their home. Not only is it an economic asset, it is the roof over their head and has powerful social and psychological significance. For these reasons alone, the Department must scrupulously evaluate all such alleged wrongdoing with an eye toward its paramount duty of public protection. At the same time, the Department must weigh individual due process rights and the strong public policy which favors freedom from governmental restraints unless necessary to insure public protection.

20. The issue here is not whether respondent has violated the laws and regulations of the Department of Real Estate. The error is not disputed nor does respondent deny that he was and is responsible for the supervision of his business operations. The issue is what is the appropriate action to take consistent with the overriding goal of public protection. Based upon the totality of the circumstances, respondent has established that he has done the things

that are required to operate as a DRE licensee without probationary oversight or restrictions on his licenses. Respondent has done what any licensing agency would want. He has accepted responsibility. He has shown remorse. He has taken the steps necessary to avoid a reoccurrence. He has re-earned the right to be trusted.

21. This record is filled to the brim with paper. There are motions, documents, memoranda, notices, requests, and offers of proof. Most have been generated by respondent in his effort to demonstrate that the DRE has acted in a manner that is not consistent with its duty of fairness. Respondent has maintained that there is strong evidence that Greg Dillon used his relationship with a DRE employee named Luke Martin to do two things. One is to secure a favorable disposition of charges against Dillon in a prior disciplinary matter and the second is to use the relationship with Martin to further Dillon's personal agenda against respondent. There are many very interesting facts pointed to by respondent that are curious to say the least. However, they do not require findings nor do they require further inquiry. A reviewing court might feel differently but none of the facts suggested by respondent require further exploration to reach the result in this case. This is so for two reasons. The first is the presumption that official duties have been carried out lawfully. The second is that these facts are unnecessary in order to make appropriate findings in this case. There is no question that there appears to be disparate treatment of respondent and Dillon. Dillon was the subject of DRE investigation which resulted in a Desist and Refrain Order. This was the result of activities involving an unlicensed employee. The DRE seeks significant discipline from respondent in this case. Quite simply, there are many reasons that apparently similar cases are treated differently and result in disparate outcomes. The trier of fact in this case made the Factual Findings, the Legal Conclusions and the Order herein based on the facts in **this** case and based on the factors set forth.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10137 makes it unlawful to pay compensation for acts requiring a real estate license to one who is not licensed. It reads in relevant part:

“It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesman licensed under the broker employing or compensating him; provided, however, that a licensed real estate broker may pay a commission to a broker of another State.

...

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.”

2. Business and Professions Code section 10159.2 mandates responsibility for supervision and control of a corporation. It states in relevant part:

“(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.”

3. Business and Professions Code section 10177 provides in relevant part:

“The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has done any of the following:

...

- (d) Willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law. . .
- (e) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.
- (f) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.
- (g) . . .”

4. Cause was established to impose discipline on respondents Gold Key and Johnston in that they failed to supervise pursuant to Business and Professions Code section 10137 in conjunction with section 10177(d) of the code by virtue of Factual Findings 1-21. The facts found to be true are grounds for the imposition of discipline under section 10148 in conjunction with section 10177(d) of the Business and Professions Code.

5. Cause was established to impose discipline on respondent Johnston under Business and Professions Code sections 10177(g) and 10177(h), and section 10159.2 in conjunction with section 10177(d) by virtue of Factual Findings 1-21.

6. The disciplinary order entered below is made after due consideration of the facts that were proved, not the facts that were alleged. It is based upon the assumption that public protection is the primary reason for the existence of government regulation in the area

of real estate transactions and that the public is entitled to be safe from dishonest, incompetent, or distracted practitioners. It is also based upon the assumption that the administrative disciplinary process does not exist for the purposed of punishment and a disciplinary order should reflect the nature of the conduct and the need for future oversight.

7. In this case, all evidence of extenuation, mitigation and aggravation has been considered. Issues of credibility have been weighed in making the above Factual Findings and they, too, inform the Order entered below.

8. The issues raised by respondent of misconduct by Department of Real Estate personnel, of unequal application of the law, are an unfortunate distraction to this case. They played no direct role in the Factual Findings nor in the Order entered below. The administrative law judge made the above Factual Findings and Legal Conclusions in a manner consistent with the dictates of Government Code section 11425.50(c). The administrative law judge has been hearing cases involving licensees of the California Department of Real Estate for the last 14 years and has used that accumulated perspective in evaluating the evidence. Government Code section 11425.50(c) states:

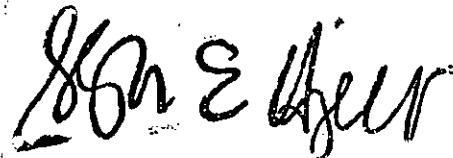
“The statement of the factual basis of the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer’s experience, technical competence, and specialized knowledge may be used in evaluating evidence.”

9. The Administrative Law Judge declines to take Official Notice of the various documents requested by respondent on the grounds that they are not relevant to the determination of issues herein and unnecessary to reach the result in this case. They will be made a part of the record in this case should a reviewing court disagree.

ORDER

Not adopted } Pursuant to Business and Professions Code section 495, the licenses and licensing rights of respondents Steve Randolph Johnston and Gold Key Financial, Inc., a Corporation, shall be publicly reprovod.

DATED: 6/16/03



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

NOV - 8 2002

DEPARTMENT OF REAL ESTATE

By Laurie J. [Signature]

In the Matter of the Accusation of

GOLD KEY FINANCIAL, INC.,
AND STEVE RANDOLPH JOHNSTON,

}

Case No. H-2727 SD

OAH No. L-2002050618

Respondents

FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

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 JANUARY 14 & 15, 2003, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: NOVEMBER 8, 2002

By James L. Beaver
JAMES L. BEAVER, COUNSEL

RE 501 (Rev. 8/97)

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

FILED
SEP 12 2002

DEPARTMENT OF REAL ESTATE

By 

10 BEFORE THE DEPARTMENT OF REAL ESTATE

11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of) DRE No. H-2727 SD
14)
15 GOLD KEY FINANCIAL, INC., a) STIPULATION AND AGREEMENT
16 Corporation, STEVE RANDOLPH)
17 JOHNSTON and BRENDA ZULEMA)
18 CASTILLO,)
19 Respondents.)

19 It is hereby stipulated by and between Respondent
20 BRENDA ZULEMA CASTILLO (hereinafter "Respondent"), individually
21 and by and through Mark D. Stavros, Esq., attorney of record
22 herein for Respondent, and the Complainant, acting by and through
23 James L. Beaver, Counsel for the Department of Real Estate
24 (herein "the Department"), as follows for the purpose of settling
25 and disposing of the Accusation filed on May 8, 2002 in this
26 matter (herein "the Accusation"):

27 DRE No. H-2727 SD

BRENDA ZULEMA CASTILLO

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

8 2. Respondent has received, read and understands the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department in this proceeding.

11 3. On May 17, 2002, Respondent filed a Notice of
12 Defense pursuant to Section 11505 of the Government Code for the
13 purpose of requesting a hearing on the allegations in the
14 Accusation. Respondent hereby freely and voluntarily withdraws
15 said Notice of Defense. Respondent acknowledges that Respondent
16 understands that by withdrawing said Notice of Defense Respondent
17 will thereby waive Respondent's right to require the Real Estate
18 Commissioner (herein "the Commissioner") to prove the allegations
19 in the Accusation at a contested hearing held in accordance with
20 the provisions of the APA and that Respondent will waive other
21 rights afforded to Respondent in connection with the hearing such
22 as the right to present evidence in defense of the allegations in
23 the Accusation and the right to cross-examine witnesses.

24 4. Respondent, pursuant to the limitations set forth
25 below, hereby admits that the factual allegations in the
26 Accusation are true and correct and stipulate and agree that the
27 Real Estate Commissioner shall not be required to provide further

evidence of such allegations.

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

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

17 DETERMINATION OF ISSUES

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

22 I

23 The acts and omissions of Respondent BRENDA ZULEMA
24 CASTILLO as described in the Accusation are grounds for the
25 suspension or revocation of the licenses and license rights of
26 Respondent CASTILLO under Section 10130 the California Business

27 DRE No. H-2727 SD

BRENDA ZULEMA CASTILLO

and Professions Code (hereinafter "the Code") in conjunction with
Section 10177(d) of the Code.

ORDER

I

All licenses and licensing rights of Respondent BRENDA
ZULEMA CASTILLO under the Real Estate Law are suspended for a
period of ninety (90) days from the effective date of the
Decision herein; provided, however,

(a) If Respondent petitions, forty (40) days of said
ninety (90) day suspension (or a portion thereof) shall be stayed
upon condition that:

(1) Respondent pays a monetary penalty pursuant to
Section 10175.2 of the Code at the rate of \$250.00 for each day
of the suspension for a total monetary penalty of \$10,000.00.

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

(i3) If Respondent fails to pay the monetary penalty in
accordance with the terms and conditions of the Decision, the
Commissioner may, without a hearing, vacate and set aside the
stay order, and order the immediate execution of all or any part
of the stayed suspension.

(4) No final subsequent determination be made, after
hearing or upon stipulation, that cause for disciplinary action

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1 against Respondent occurred within two (2) years of the effective
2 date of the Decision herein. Should such a determination be made,
3 the Commissioner may, in his or her discretion, vacate and set
4 aside the stay order, and order the execution of all or any part
5 of the stayed suspension, in which event the Respondent shall not
6 be entitled to any repayment nor credit, prorated or otherwise,
7 for money paid to the Department under the terms of this
8 Decision.

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

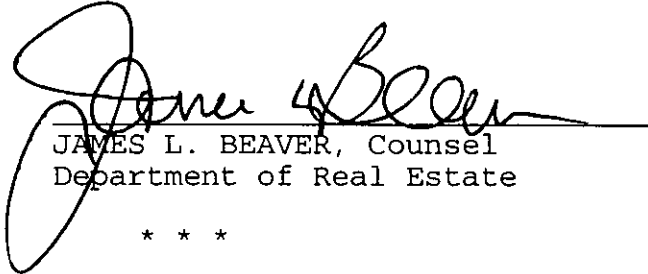
14 (b) Fifty (50) days of said ninety (90) day suspension
15 shall be stayed upon condition that no final subsequent
16 determination be made, after hearing or upon stipulation, that
17 cause for disciplinary action against Respondent occurred within
18 two (2) years of the effective date of the Decision herein.

19 (1) Should such a determination be made, the
20 Commissioner may, in his or her discretion, vacate and set aside
21 the stay order, and order the execution of all or any part of the
22 stayed suspension, in which event the Respondent shall not be
23 entitled to any repayment nor credit, prorated or otherwise, for
24 money paid to the Department under the terms of this Decision.

25 (2) If no order vacating the stay is issued, and if no
26 further cause for disciplinary action against the real estate
27 license of Respondent occurs within two (2) years from the

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

3 August 19, 2002
4 DATED


5 JAMES L. BEAVER, Counsel
6 Department of Real Estate

7 * * *

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

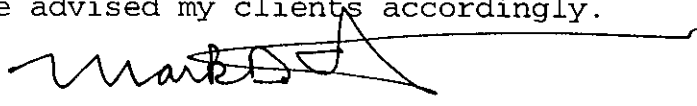
19 8/15/02
20 DATED


21 BRENDA ZULEMA CASTILLO
22 Respondent

23 * * *

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

26 7-29-02'
27 DATED


28 MARK D. STAVROS
29 Attorney for Respondents

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31 ///

32 DRE No. H-2727 SD

BRENDA ZULEMA CASTILLO

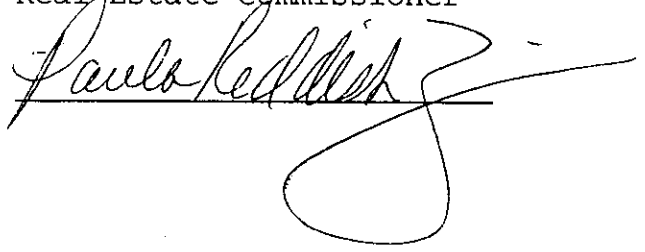
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* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter as to Respondent
BRENDA ZULEMA CASTILLO and shall become effective at 12 o'clock
noon on OCTOBER 3, 2002.

IT IS SO ORDERED August 30, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 26 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GOLD KEY FINANCIAL, INC.,
a Corporation,
STEVE RANDOLPH JOHNSTON,
and BRENDA ZULEMA CASTILLO,

}

By Lucie A. Zini

Case No. H-2727 SD

OAH No. L-2002050618

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

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 TUESDAY, AUGUST 13, 2002, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: JUNE 26, 2002

By

James L. Beaver
JAMES L. BEAVER, Counsel (12)

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
MAY - 8 2002

DEPARTMENT OF REAL ESTATE

By Laurie L. Zain

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-2727 SD
12 GOLD KEY FINANCIAL, INC.)
13 a Corporation,) ACCUSATION
14 STEVE RANDOLPH JOHNSTON,)
15 and BRENDA ZULEMA CASTILLO,)
Respondents.)

16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California, as and for an
18 Accusation herein against Respondents GOLD KEY FINANCIAL, INC.,
19 a Corporation, STEVE RANDOLPH JOHNSTON and BRENDA ZULEMA
20 CASTILLO (hereinafter "Respondents"), is informed and alleges as
21 follows:

22 I

23 Respondents are presently licensed and/or have license
24 rights under the Real Estate Law, Part 1 of Division 4 of the
25 Business and Professions Code (hereinafter "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 Respondents in his official capacity.

III

At all times herein mentioned, Respondent GOLD KEY FINANCIAL, INC. (hereinafter "GOLD KEY") 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 STEVE RANDOLPH JOHNSTON (hereinafter "JOHNSTON") as designated officer-broker of GOLD KEY to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, JOHNSTON was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of GOLD KEY. As said designated officer-broker, JOHNSTON was and now is responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of GOLD KEY for which a license is required.

V

On January 26, 2001, the Department issued a license to Respondent BRENDA ZULEMA CASTILLO (hereinafter "CASTILLO") as a real estate salesperson. Respondent CASTILLO was never licensed by the Department either as a real estate broker or as a real estate salesperson prior to January 26, 2001.

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2 VI

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

11 VII

12 At all times herein mentioned, Respondents engaged in
13 the business of, acted in the capacity of, advertised and
14 assumed to act as real estate brokers in the State of California
15 within the meaning of Section 10131(a) of the Code, including
16 the operation and conduct of a real estate resale brokerage with
17 the public wherein, on behalf of others, for compensation or in
18 expectation of compensation, Respondents sold and offered to
19 sell, bought and offered to buy, solicited prospective sellers
20 and purchasers of, solicited and obtained listings of, and
21 negotiated the purchase and sale of real property.

22 VIII

23 At all times mentioned herein from August 9, 2000
24 through January 25, 2001, GOLD KEY and JOHNSTON employed and
25 compensated CASTILLO to perform the acts and conduct the
26 activities described in Paragraph VII, above, including but not
27 limited to the activities described in Paragraph IX, below.

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- 3 -

IX

From August 9, 2000 through January 25, 2001, in the course of the activities and employment described in Paragraphs VII and VIII, above, CASTILLO, acting for and on behalf of another or others, for or in expectation of compensation, negotiated and arranged the purchase and sale of real property, including but not limited to the following lots, units or parcels of real property:

- (a) 3123 Pocitos Way, San Ysidro, California;
- (b) 1637 Shooting Star Court, San Ysidro, California;
- (c) 1106 Purdy Court, Spring Valley, California;
- (d) 2345 Greenbriar Court #C, Chula Vista, California;
- (e) 787 Brockstone #201, Chula Vista, California;
- (f) 2105 Northshore #C, Chula Vista, California; and
- (g) 2223 Peachtree Circle, Chula Vista, California.

X

In acting as described above, CASTILLO violated Section 10130 of the Code, and GOLD KEY and JOHNSTON violated Section 10137 of the Code.

XI

At all times mentioned herein, JOHNSTON failed to exercise reasonable supervision over the acts of GOLD KEY and its agents and employees in such a manner as to allow the acts and omissions on the part of GOLD KEY and CASTILLO, described above, to occur.

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2 XII

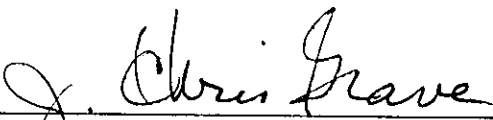
3 The facts alleged above are grounds for the suspension
4 or revocation of the licenses and license rights of Respondents
5 under the following provisions of the Code:

6 (a) As to Respondents GOLD KEY and JOHNSTON under
7 Section 10137 the Code in conjunction with Section 10177(d) of
8 the Code;

9 (b) As to Respondent CASTILLO under Section 10130 the
10 Code in conjunction with Section 10177(d) of the Code; and

11 (c) As to Respondent JOHNSTON under Section 10177(g)
12 and/or Section 10177(h) of the Code and Section 10159.2 of the
13 Code in conjunction with Section 10177(d) of the Code.

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

21 
22 J. CHRIS GRAVES
23 Deputy Real Estate Commissioner

24 Dated at San Diego, California,
25 this 26th day of April, 2002.
26
27