

FLAG

FILED

JAN 29 2010

DEPARTMENT OF REAL ESTATE

By L. Lust

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DANA KYLE HORNE,

Respondent.

No. H-2745 SD

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 29, 2002, in Case No. H-2745 SD, a Decision was rendered revoking the real estate broker license of Respondent effective January 28, 2003, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on January 28, 2003, and Respondent has operated as a restricted licensee since that time.

On July 24, 2007, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker license, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

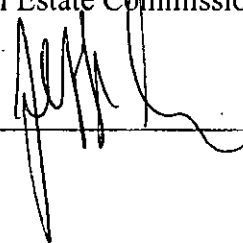
1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement is granted and that a real estate broker license be issued to Respondent if
3 Respondent satisfies the following conditions within twelve (12) months from the date of this
4 order:

- 5 1. Submittal of a completed application and payment of the fee for a real
6 estate broker license.
- 7 2. Submittal of evidence of having, since the most recent issuance of an
8 original or renewal real estate license, taken and successfully completed the continuing education
9 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
10 license.

11 This Order shall become effective immediately.

12 DATED: 1-21-10

13 JEFF DAVI
14 Real Estate Commissioner

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1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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7

FILED
JAN - 8 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-2745 SD
13 DANA KYLE HORNE,)
14 Respondent.) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between DANA KYLE HORNE,
16 individually and doing business as DANA HORNE REALTY (Respondent),
17 and the Complainant, acting by and through Deidre L. Johnson,
18 Counsel for the Department of Real Estate, as follows for the
19 purpose of settling and disposing the Accusation as to him filed
20 on June 27, 2002, in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedures Act (APA), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27 Stipulation and Agreement.

1 2. Respondent has received, read and understands the
2 Statement to Respondent, and the Discovery Provisions of the APA
3 filed by the Department of Real Estate in this proceeding.

4 3. On July 12, 2002, Respondent filed his Notice of
5 Defense pursuant to Section 11505 of the Government Code for the
6 purpose of requesting a hearing on the allegations in this
7 matter. Respondent hereby freely and voluntarily withdraws said
8 Notice of Defense. Respondent acknowledges that he understands
9 that by withdrawing said Notice of Defense he will thereby waive
10 his right to require the Commissioner to prove the allegations in
11 the Accusation at a contested hearing held in accordance with the
12 provisions of the APA, and that he will waive other rights
13 afforded to him in connection with the hearing such as the right
14 to present evidence in defense of the allegations in the
15 Accusation and the right to cross-examine witnesses.

16 4. Respondent, pursuant to the limitations set forth
17 below, hereby admits that the factual allegations in Paragraphs I
18 through IV of the Accusation filed in this proceeding are true
19 and correct and the Real Estate Commissioner shall not be
20 required to provide further evidence of such allegations.

21 5. Without admitting the truth of the allegations
22 contained in the remaining paragraphs of the Accusation,
23 Respondent stipulates that he will not interpose a defense
24 thereto. This Stipulation is based on the factual allegations as
25 to Respondent contained in the Accusation. In the interests of
26 expedience and economy, Respondent chooses not to contest these
27 allegations, but to remain silent and understands that, as a

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

6 6. Respondent has received, read and understands the
7 "Notice Concerning Costs of Audits." Respondent understands,
8 by agreeing to this Stipulation and Agreement, and after the
9 findings set forth below in the "Determination of Issues" become
10 final, that the Commissioner may charge Respondent for the costs
11 of the following audits that have been and may be conducted
12 pursuant to Section 10148 of the Business and Professions Code:

13 (a) Audit #SD-010025 dated January 23, 2002:
14 Not more than \$8,322.73;

15 (b) Future follow-up audit: Not more than
16 \$8,300.00.

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

27 8. The Order or any subsequent Order of the Real
Estate Commissioner made pursuant to this Stipulation and

1 Agreement shall not constitute an estoppel, merger, or bar to any
2 further administrative or civil proceedings by the Department of
3 Real Estate with respect to any matters which were not specifically
4 alleged to be causes for Accusation in this proceeding.

5 DETERMINATION OF ISSUES

6 By reason of the foregoing stipulations, admissions
7 and waivers, and for the purpose of settlement of the pending
8 Accusation as to Respondent without a hearing, it is stipulated
9 and agreed that the following determination of issues shall be
10 made:

11 The acts and/or omissions of Respondent DANA KYLE HORNE
12 as stipulated above violate Section 10145 of the California
13 Business and Professions Code (hereafter the Code), and
14 Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, and 2835 of
15 Title 10, California Code of Regulations, and constitute grounds
16 for disciplinary action against the real estate salesperson
17 license and license rights of Respondent under the provisions of
18 Sections 10137, 10176(e), 10176(f), and 10177(d) of the Code.

19 * * *

20 ORDER

21 A. All real estate license(s) and license rights of Respondent
22 DANA KYLE HORNE are hereby revoked.

23 B. A restricted real estate broker license shall be issued to
24 Respondent pursuant to Section 10156.6 of the Code if he
25 makes application therefor and pays to the Department of
26 Real Estate the appropriate fee for said license within
27 ninety (90) days from the effective date of the Decision.

1 C. The restricted license issued to Respondent shall be subject
2 to all of the provisions of Section 10156.7 of the Business
3 and Professions Code and to the following limitations,
4 conditions, and restrictions imposed under authority of
5 Section 10156.6 of that Code:

6 (1) Any restricted license issued to Respondent pursuant to
7 this Decision shall be suspended for thirty (30) days
8 from the date of issuance of said restricted license;
9 provided, however, that if Respondent petitions, said
10 suspension (or a portion thereof) shall be stayed upon
11 condition that:

12 (a) Respondent pays a monetary penalty pursuant to
13 Section 10175.2 of the Business and Professions
14 Code at the rate of \$100.00 per day, for each day
15 of the suspension, for a total maximum monetary
16 penalty of \$3,000.00;

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

22 (c) No further cause for disciplinary action against
23 the real estate license of Respondent occurs within
24 one year from the effective date of the Decision in
25 this matter;

26 (d) If Respondent fails to pay the monetary penalty in
27 accordance with the terms and conditions of the

1 Decision, the Commissioner may, without a hearing,
2 order the immediate execution of all or any part of
3 the stayed suspension in which event the Respondent
4 shall not be entitled to any repayment nor credit,
5 prorated or otherwise, for money paid to the
6 Department under the terms of this Decision; and
7 (e) If Respondent pays the monetary penalty and if no
8 further cause for disciplinary action against the
9 real estate license of Respondent occurs within
10 two (2) years from the effective date of the
11 Decision, the stay hereby granted shall become
12 permanent.

13 (2) The restricted license issued to Respondent may be
14 suspended prior to hearing by Order of the Real Estate
15 Commissioner in the event of Respondent's conviction
16 or plea of nolo contendere to a crime which is
17 substantially related to Respondent's fitness or
18 capacity as a real estate licensee.

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

26 (4) Respondent shall not be eligible to apply for the
27 issuance of an unrestricted real estate license, nor

1 the removal of any of the conditions of the restricted
2 license, until two (2) years have elapsed from the
3 effective date of this Decision.

4 (5) Respondent shall, prior to and as a condition of the
5 issuance of said restricted license, submit proof
6 satisfactory to the Commissioner of having taken and
7 completed the continuing education course on trust fund
8 accounting and handling specified in paragraph (3) of
9 subdivision (a) of Section 10170.5 of the Business and
10 Professions Code. Proof of satisfaction of this
11 requirement includes evidence that Respondent has
12 successfully completed the trust fund account and
13 handling continuing education course within one hundred
14 twenty (120) days prior to the effective date of the
15 Decision in this matter.

16 (6) Respondent shall, within nine (9) months from the
17 effective date of this Decision, present evidence
18 satisfactory to the Real Estate Commissioner that
19 Respondent has, since the most recent issuance of an
20 original or renewal real estate license, taken and
21 successfully completed the continuing education
22 requirements of Article 2.5 of Chapter 3 of the Real
23 Estate Law for renewal of a real estate license. If
24 Respondent fails to satisfy this condition, the
25 Commissioner may order the suspension of the restricted
26 license until the Respondent presents such evidence.
27 The Commissioner shall afford Respondent the opportunity

1 for hearing pursuant to the Administrative Procedure Act
2 to present such evidence.

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

11 (8) Pursuant to Section 10148 of the Business and
12 Professions Code, Respondent shall pay the
13 Commissioner's reasonable cost for the following
14 audits as a result of the above found violations:

15 (a) Audit #SD-010025 dated January 23, 2002:
16 Not more than \$8,322.73;

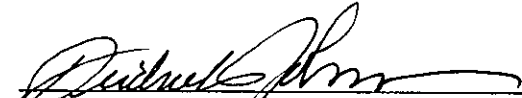
17 (b) Future follow-up audit: Not more than
18 \$8,300.00.

19 In calculating the amount of the Commissioner's
20 reasonable costs for each audit, the Commissioner may use
21 the estimated average hourly salary for all Department
22 Audit Section personnel performing audits of real estate
23 brokers, and shall include an allocation for travel time
24 to and from the auditor's place of work. Respondent
25 shall pay such costs within sixty (60) days of receiving
26 an invoice from the Commissioner detailing the activities
27 performed during each audit and the amount of time spent
performing those activities. The Commissioner may

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

12 October 11, 2002

13 DATED

12 

13 DEIDRE L. JOHNSON

14 Counsel for the Complainant

15 * * *

16 I have read the Stipulation and Agreement, have
17 discussed it with my counsel, and its terms are understood by me
18 and are agreeable and acceptable to me. I understand that I am
19 waiving rights given to me by the California Administrative
20 Procedure Act, and I willingly, intelligently and voluntarily
21 waive those rights, including the right of requiring the
22 Commissioner to prove the allegations as to me in the Accusation
23 at a hearing at which I would have the right to cross-examine
24 witnesses against me and to present evidence in defense and
25 mitigation of the charges.

26 10/9/02

27 DATED

26 

27 DANA KYLE HORNE, Respondent

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IT IS SO ORDERED October 9, 2002.

Real Estate Commissioner

Paula Redden

FILED
SEP 18 2002

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

DEPARTMENT OF REAL ESTATE

By Bethleen Contreras

In the Matter of the Accusation of

DANA K. HORNE,

} Case No. H-2745 SD

} OAH No. L-2002080356

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CA 92101** on **OCTOBER 15, 2002**, at the hour of **9:00 AM**, 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: SEPTEMBER 18, 2002

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
JUN 27 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 DANA KYLE HORNE,) NO. H-2745 SD
14) ACCUSATION
15 Respondent.)

16 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against DANA KYLE HORNE, is informed and alleges as follows:

19 I

20 Respondent DANA KYLE HORNE (hereafter Respondent) is
21 presently licensed and/or has license rights under the Real
22 Estate Law, Part 1 of Division 4 of the California Business and
23 Professions Code (hereafter the Code).

24 II

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

1 III

2 At all times herein mentioned, Respondent DANA KYLE
3 HORNE (hereafter Respondent) was and is licensed by the
4 Department as a real estate broker, individually and doing
5 business as DANA HORNE REALTY.

6 IV

7 At least within the last three years, Respondent
8 engaged in activities on behalf of others for which a California
9 real estate license is required, for or in expectation of
10 compensation, including but not limited to the following:

11 (a) Under Section 10131(a) of the Code, he sold
12 or offered to sell, bought or offered to buy,
13 solicited prospective sellers or purchasers
14 of, and/or negotiated the purchase, sale or
15 exchange of real property; and/or

16 (b) Under Section 10131(b) of the Code, he leased
17 or rented, offered to lease or rent, solicited
18 prospective tenants, collected rents on,
19 and/or managed certain real properties in
20 California.

21 V

22 Beginning in about December of 2001, the Department
23 conducted an audit of some of the above business activities of
24 Respondent for the time period of June 1, 2000, to November 30,
25 2001 (hereafter the audit period), as more particularly set forth
26 in Audit Report No. SD-010025 dated January 23, 2002, and
27 accompanying exhibits and working papers. During the course of

1 the activities described above, Respondent received and disbursed
2 funds in trust on behalf of others.

3 VI

4 Within the last three years, Respondent deposited the
5 trust funds into a bank account maintained at Bank of America in
6 San Diego, California, bearing account number 2467001533, in the
7 name of "Dana Horne dba Dana Horne Realty" (hereafter the bank
8 account).

9 VII

10 In connection with the collection and disbursement of
11 trust funds during the audit period as alleged above, Respondent
12 failed to deposit and maintain the trust funds in a trust account
13 or neutral escrow depository, or to deliver them into the hands
14 of the owners of the funds, as required by Section 10145 of the
15 Code, in such a manner that as of February 28, 2001, there was a
16 minimum trust fund shortage in the approximate total sum of
17 \$34,058.99.

18 VIII

19 In connection with the collection and disbursement of
20 trust funds during the audit period as alleged above, Respondent
21 failed to deposit and maintain the trust funds in a trust account
22 or neutral escrow depository, or to deliver them into the hands
23 of the owners of the funds, as required by Section 10145 of the
24 Code, in such a manner that as of October 31, 2001, there was a
25 minimum trust fund shortage in the approximate total sum of
26 \$18,640.21.

27 ///

IX

During the audit period, Respondent failed to maintain the trust funds as required by Section 10145 of the Code, in that Respondent commingled his own monies, pertaining to the management of real property owned in whole or in part by him, with the trust funds in the bank account. As of on or about October 31, 2001, Respondent owned interests in at least seven real properties, including three short-term vacation rentals, whose management monies in excess of \$200.00 were processed with the trust funds in the bank account.

X

In connection with the receipt and disbursement of trust funds as above alleged, Respondent:

- (a) Failed to deposit the trust funds into a trust account in the name of the real estate broker or his licensed fictitious business name as trustee, in conformance with Section 10145 of the Code and Section 2832 of Title 10, California Code of Regulations (hereafter the Regulations);
- (b) Failed to maintain a written control record of all trust funds received and disbursed containing all information required by Section 2831 of the Regulations, including but not limited to non-sufficient funds transactions, accurate daily balances, and security deposits;
- (c) Failed to maintain separate beneficiary or transaction records containing all information

1 required by Section 2831.1, including but not
2 limited to non-sufficient funds transactions, and
3 accurate daily balances;

4 (d) Failed to reconcile the balance of separate
5 beneficiary or transaction records for the bank
6 account with the control record of trust funds
7 received and disbursed at least once a month,
8 and/or failed to maintain a record of such
9 reconciliations as required by Section 2831.2 of
10 the Regulations; and

11 (e) Failed to obtain the prior written consents of the
12 principals for the reduction of the aggregate
13 balance of trust funds in the bank account to
14 an amount less than the existing aggregate trust
15 fund liability to the owners of said funds,
16 in conformance with Section 2832.1 of the
17 Regulations.

18 XI

19 Within the last three years, Respondent authorized or
20 permitted withdrawals to be made from some or all of the above
21 bank accounts upon the sole signature of Dawn Marie Youtsey, a
22 licensed employee, without specific written authorization from
23 Respondent to conduct such trust fund activities, pursuant to
24 Section 2834 of the Regulations.

25 XII

26 During the period from approximately July, 2000 through
27 March, 2001, Respondent employed and/or compensated Angela Denise

1 Jackson for activities for which a real estate license is
2 required when she was not licensed by the Department. On or
3 about March 29, 2001, Jackson was issued a conditional license
4 by the Department.

5 XIII

6 During the period from approximately April, 2001 to
7 October, 2001, Respondent employed and/or compensated Wendy
8 Denise Richard for activities for which a real estate license is
9 required when she was not licensed by the Department. On or
10 about October 12, 2001, Richard was issued a conditional license
11 by the Department.

12 XIV

13 During the audit period, Respondent claimed, demanded,
14 or received fees for compensation under exclusive written
15 agreements authorizing or employing him pursuant to Section 10131
16 as above alleged, where such agreements failed to contain
17 definite, specified dates of final and complete termination.

18 XV

19 The acts and/or omissions of Respondent as alleged
20 above constitute grounds for disciplinary action under the
21 following provisions:

- 22 (a) As to Paragraphs VII and VIII, under Section
23 10145 of the Code in conjunction with Section
24 10177(d) of the Code;
- 25 (b) As to Paragraph IX, under Section 10176(e) of
26 the Code and Section 2835 of Title 10,
27 California Code of Regulations (hereafter the

1 Regulations), in conjunction with Section
2 10177(d) of the Code;
3 (c) As to Paragraphs VI and X(a), under Section
4 10145 of the Code and Section 2832 of the
5 Regulations in conjunction with Section
6 10177(d) of the Code;
7 (d) As to Paragraph X(b), under Section 2831 of
8 the Regulations in conjunction with Section
9 10177(d) of the Code;
10 (e) As to Paragraph X(c), under Section 2831.1 of
11 the Regulations in conjunction with Section
12 10177(d) of the Code;
13 (f) As to Paragraph X(d), under Section 2831.2 of
14 the Regulations in conjunction with Section
15 10177(d) of the Code;
16 (g) As to Paragraph X(e), under Section 2832.1 of
17 the Regulations in conjunction with Section
18 10177(d) of the Code;
19 (h) As to Paragraph XI, under Section 2834 of the
20 Regulations in conjunction with Section
21 10177(d) of the Code;
22 (i) As to Paragraphs XII and XIII, under
23 Section 10137 of the Code; and
24 (j) As to Paragraph XIV, under Section 10176(f)
25 in conjunction with Section 10177(d) of the
26 Code.

27 ///

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

J. Chris Graves
J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 29th day of May, 2002