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

FILED
NOV 17 1993
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
FRANK COOK REALTY INC.,)	NO. H-2853 SAC
FRANK L. COOK,)	
MICHAEL FRANCIS HEEDE,)	<u>STIPULATION IN</u>
)	<u>SETTLEMENT AND ORDER</u>
Respondents.)	

It is hereby stipulated by and between FRANK COOK REALTY INC., FRANK L. COOK, and MICHAEL FRANCIS HEEDE (sometimes referred to as Respondents), their attorneys of record, C. Breck Jones and Eric O. Larsen, and the Complainant, acting by and through Susan Y. Bennett, Counsel for the Department of Real Estate, as follows, for the purpose of settling and disposing of the Accusation filed on March 8, 1993:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be

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STATE OF CALIFORNIA
STD. 113 (REV. 8-72)
85 34769

1 submitted solely on the basis of the provisions of this
2 Stipulation.

3 2. Respondents have received, read and understand the
4 Statement to Respondent, the Discovery Provisions of the APA, and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. On March 19, 1993, Respondent MICHAEL FRANCIS HEEDE
8 filed a Notice of Defense pursuant to Section 11505 of the
9 Government Code for the purpose of requesting a hearing on the
10 allegations in the Accusation. On March 29, 1993, Respondents
11 COOK REALTY, INC. and FRANK L. COOK filed a Notice of Defense
12 pursuant to Section 11505 of the Government Code for the purpose
13 of requesting a hearing on the allegations in the Accusation.
14 Respondents hereby freely and voluntarily withdraw said Notices of
15 Defense. Respondents acknowledge that they understand that by
16 withdrawing said Notices of Defense they waive their right to
17 require the Commissioner to prove the allegations in the
18 Accusation at a contested hearing held in accordance with the
19 provisions of the APA and that they waive other rights afforded to
20 them in connection with the hearing such as the right to present
21 evidence in defense of the allegations in the Accusation and the
22 right to cross-examine witnesses.

23 4. Respondents, pursuant to the limitations set forth
24 below, hereby admit that the factual allegations in Paragraphs 2
25 through 11 of the Accusation filed in this proceeding are true and
26 correct and the Real Estate Commissioner shall not be required to
27 provide further evidence to prove such allegations.

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

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement in Settlement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

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

I

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, made the Accusation in his official capacity.

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II

Respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code) as follows:

(a) Respondent COOK REALTY, as a real estate corporation acting by and through Respondent COOK as designated broker-officer.

(b) Respondent COOK, as a real estate broker and designated broker-officer of Respondent COOK REALTY.

(c) Respondent HEEDE, as a restricted real estate salesperson in the employ of Respondent COOK REALTY.

III

At all times mentioned herein, Respondent COOK REALTY engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California, including selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of business opportunities on behalf of another or others, for compensation or in expectation of compensation.

IV

On or about June 11, 1990, in connection with the activities described in Paragraph III, above, Respondent COOK REALTY, acting through Respondent HEEDE, and on behalf of Thomas Esparza (hereinafter "Esparza"), presented an offer to purchase real property located at 2640 29th Avenue, Sacramento, California and owned by Jacqueline B. Cushard (hereinafter "Cushard").

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V

In connection with the transaction described in Paragraph IV, above, Respondent COOK REALTY and HEEDE, represented to Cushard that they had received the sum of \$1,000.00 in the form of a check from Esparza which would be deposited in trust upon acceptance of said offer to purchase.

VI

On or about June 12, 1990, Cushard made a counter offer to Esparza's offer and on June 14, 1990, Esparza accepted the counter offer. Thereafter, on or about June 27, 1990, escrow was opened.

VII

Respondent HEEDE failed to maintain said \$1,000.00 pursuant to the instructions of the rightful owner of said funds, or immediately deliver said \$1,000.00 check to Respondent COOK REALTY or Respondent COOK, into a neutral escrow depository, or deposit the funds into a trust account maintained by Respondent COOK REALTY.

VIII

On or about June 29, 1991, in connection with the activities described in Paragraph III, above, Respondent COOK REALTY acting through Respondent HEEDE, and on behalf of Sterling West (hereinafter "West"), presented an offer to purchase real property located at 1509 Bell Street, Sacramento, California.

IX

In connection with the transaction described in Paragraph VIII, above, Respondent HEEDE received the sum of

1 \$3,000.00 in the form of a check received from West, which was to
2 be deposited in trust upon acceptance of said offer to purchase.
3 Said offer was rejected.

4 X

5 In connection with the transaction described in
6 Paragraph VIII, above, Respondent HEEDE failed to deliver said
7 \$3,000.00 check pursuant to the instructions of the rightful owner
8 of said funds, or immediately deliver said \$3,000.00 check to
9 Respondent COOK REALTY or Respondent COOK, into a neutral escrow
10 depository, or deposit said funds into a trust account maintain by
11 Respondent COOK REALTY.

12 XI

13 In connection with the transactions described in
14 Paragraphs IV and VIII, Respondents COOK REALTY and COOK failed to
15 exercise reasonable supervision and control over the activities
16 for which a real estate license is required by Respondent HEEDE,
17 including but not limited to failing to cause Respondent HEEDE to
18 maintain trust funds pursuant to the instructions of the rightful
19 owners of said funds, or immediately cause trust funds received in
20 the course of business to be placed into the hands of their
21 principal, into a neutral escrow depository, or deposit trust
22 funds into a trust account

23 XII

24 The facts alleged above are grounds for the suspension
25 or revocation of all licenses or license rights of Respondent
26 HEEDE under Section 10145(c) of the Code in conjunction with
27 Section 10177(d) of the Code.

XIII

The facts alleged above are grounds for the suspension or revocation of all licenses or license rights of Respondent COOK and Respondent COOK REALTY under Section 10177(h) of the Code.

ORDER

I

RESPONDENT COOK REALTY INC.

1. All licenses and licensing rights of Respondent COOK REALTY INC. under the Real Estate Law are suspended for a period of fifteen days (15) days from the effective date of this Order; provided, however, that fifteen (15) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

a. Respondent COOK REALTY shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California;

b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent; and,

c. Respondent COOK REALTY shall prior to the effective date of the Order herein, submit proof satisfactory to

1 the Commissioner of payment of restitution in the amount of
2 \$1,0000.00 to Jacqueline B. Cushard; provided, however, that the
3 provisions of this paragraph may be satisfied by proof of payment
4 of restitution in the amount of \$1,000.00 to Jacqueline B. Cushard
5 by Respondents COOK and/or Respondent HEEDE.

6 II

7 RESPONDENT FRANK L. COOK

8 1. All licenses and licensing rights of Respondent
9 FRANK L. COOK under the Real Estate Law are suspended for a period
10 of fifteen days (15) days from the effective date of this Order;
11 provided, however, that fifteen (15) days of said suspension shall
12 be stayed for one (1) year upon the following terms and
13 conditions:

14 a. Respondent COOK shall obey all laws, rules and
15 regulations governing the rights, duties and responsibilities of a
16 real estate licensee in the State of California;

17 b. That no final subsequent determination be made,
18 after hearing or upon stipulation, that cause for disciplinary
19 action occurred within one (1) year of the effective date of this
20 Order. Should such a determination be made, the Commissioner may,
21 in his discretion, vacate and set aside the stay order and
22 reimpose all or a portion of the stayed suspension. Should no
23 such determination be made, the stay imposed herein shall become
24 permanent; and,

25 c. Respondent COOK shall prior to the effective
26 date of the Order herein, submit proof satisfactory to the
27 Commissioner of payment of restitution in the amount of \$1,0000.00

1 to Jacqueline B. Cushard; provided, however, that the provisions
2 of this paragraph may be satisfied by proof of payment of
3 restitution in the amount of \$1,000.00 to Jacqueline B. Cushard by
4 Respondents COOK REALTY and/or Respondent HEEDE.

5 III

6 RESPONDENT MICHAEL FRANCIS HEEDE

7 1. All licenses and licensing rights of Respondent
8 MICHAEL FRANCIS HEEDE under the Real Estate Law are suspended for
9 a period of forty-five days (45) days from the effective date of
10 this Order.

11 2. Respondent HEEDE shall, prior to the effective date
12 of the Order herein, submit proof satisfactory to the Commissioner
13 of payment of restitution in the amount of \$1,000.00 to
14 Jacqueline B. Cushard; provided, however, that the provisions of
15 this paragraph may be satisfied by proof of payment of restitution
16 in the amount of \$1,000.00 to Jacqueline B. Cushard by Respondents
17 COOK REALTY INC. and/or Respondent FRANK L. COOK. The
18 Commissioner may suspend the restricted license issued to
19 Respondent HEEDE pending a hearing held in accordance with Section
20 11500, et seq., of the Government Code, if payment is not timely
21 made as provided for herein, or as provided for in a subsequent
22 agreement between the Respondent and the Commissioner. The
23 suspension shall remain in effect until payment is made in full or
24 until Respondent HEEDE enters into an agreement satisfactory to
25 the Commissioner to provide for payment, or until a decision
26 providing otherwise is adopted following a hearing held pursuant
27 to this condition.

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Approved as to form:

DATED: 10-13-93

C. Breck Jones
C. BRECK JONES
Attorney for Respondents COOK REALTY
INC. and FRANK L. COOK

DATED: 9/30/93

[Signature]
ERIC O. LARSEN
Attorney for Respondent MICHAEL
FRANCIS HEEDE

* * *

The foregoing Stipulation and Agreement for Settlement
is hereby adopted by the Real Estate Commissioner as his Decision
and Order and shall become effective at 12 o'clock noon on
December 7, 1993.

IT IS SO ORDERED November 15, 1993.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

1 SUSAN Y. BENNETT, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
MAR 8 1993
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13)
14 **FRANK COOK REALTY INC.,**) NO. H-2853 SAC
15 **FRANK L. COOK,**)
16 **MICHAEL FRANCIS HEEDE,**) ACCUSATION
17 Respondents.)

18 The Complainant, Charles W. Koenig, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against **FRANK COOK REALTY INC.** (hereinafter "Respondent **COOK**
21 **REALTY**"); **FRANK L. COOK** (hereinafter "Respondent **COOK**"); and,
22 **MICHAEL FRANCIS HEEDE** (hereinafter "Respondent **HEEDE**"), is
23 informed and alleges as follows:

24 I

25 The Complainant, Charles W. Koenig, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation in
27 his official capacity.

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II

Respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code) as follows:

- (a) Respondent **COOK REALTY**, as a real estate corporation acting by and through Respondent **COOK** as designated broker-officer.
- (b) Respondent **COOK**, as a real estate broker and designated broker-officer of Respondent **COOK REALTY**.
- (c) Respondent **HEEDE**, as a restricted real estate salesperson in the employ of Respondent **COOK REALTY**.

III

At all times mentioned herein, Respondent **COOK REALTY** engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California, including selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of business opportunities on behalf of another or others, for compensation or in expectation of compensation.

IV

On or about June 11, 1990, in connection with the activities described in Paragraph III, above, Respondent **COOK REALTY**, acting through Respondent **HEEDE**, and on behalf of Thomas Esparza (hereinafter "Esparza"), presented an offer to purchase real property located at 2640 29th Avenue, Sacramento, California and owned by Jacqueline B. Cushard (hereinafter "Cushard").

V

1
2 In connection with the transaction described in
3 Paragraph IV, above, Respondent **COOK REALTY** and **HEEDE**,
4 represented to Cushard that they had received the sum of \$1,000.00
5 in the form of a check from Esparza which would be deposited in
6 trust upon acceptance of said offer to purchase.

7 VI

8 On or about June 12, 1990, Cushard made a counter offer
9 to Esparza's offer and on June 14, 1990, Esparza accepted the
10 counter offer. Thereafter, on or about June 27, 1990, escrow was
11 opened.

12 VII

13 Respondent **HEEDE** failed to maintain said \$1,000.00
14 pursuant to the instructions of the rightful owner of said funds,
15 or immediately deliver said \$1,000.00 check to Respondent **COOK**
16 **REALTY** or Respondent **COOK**, into a neutral escrow depository, or
17 deposit the funds into a trust account maintained by Respondent
18 **COOK REALTY**.

19 VIII

20 On or about June 29, 1991, in connection with the
21 activities described in Paragraph III, above, Respondent **COOK**
22 **REALTY** acting through Respondent **HEEDE**, and on behalf of
23 Sterling West (hereinafter "West"), presented an offer to
24 purchase real property located at 1509 Bell Street, Sacramento,
25 California.

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IX

In connection with the transaction described in Paragraph VIII, above, Respondent **HEEDE** received the sum of \$3,000.00 in the form of a check received from West, which was to be deposited in trust upon acceptance of said offer to purchase. Said offer was rejected.

X

In connection with the transaction described in Paragraph VIII, above, Respondent **HEEDE** failed to deliver said \$3,000.00 check pursuant to the instructions of the rightful owner of said funds, or immediately deliver said \$3,000.00 check to Respondent **COOK REALTY** or Respondent **COOK**, into a neutral escrow depository, or deposit said funds into a trust account maintain by Respondent **COOK REALTY**.

XI

In connection with the transactions described in Paragraphs IV and VIII, Respondent **COOK** failed to exercise reasonable supervision and control over the activities for which a real estate license is required by Respondent **HEEDE**, including but not limited to failing to keep or cause Respondent **HEEDE** to keep trust fund records and failing to maintain trust funds pursuant to the instructions of the rightful owners of said funds, or immediately cause trust funds received in the course of business to be placed into the hands of their principal, into a neutral escrow depository, or deposit trust funds into a trust account.

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XII

In connection with the transactions described in Paragraphs IV and VIII, above, Respondents **COOK REALTY** and **COOK** failed to maintain for three years and make available for inspection by the Commissioner of the Department of Real Estate or his representative, copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by them or obtained by them in connection with transactions for which a real estate broker license is required, in conformance with Section 10148 of the Code.

XIII

The facts alleged above are grounds for the suspension or revocation of all licenses or license rights of Respondent **HEEDE** under Section 10145(c) of the Code in conjunction with Section 10177(d) of the Code.

XIV

The facts alleged above are grounds for the suspension or revocation of all licenses or license rights of Respondent **COOK** under Section 10148 of the Code in conjunction with Section 10177(d) of the Code, and Section 10177(h) of the Code.

XV

The facts alleged above are grounds for the suspension or revocation of all licenses or license rights of Respondent **COOK REALTY** under Section 10148 of the Code in conjunction with Section 10177(d) of the Code.

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