

1 TRULY SUGHRUE, Counsel  
2 State Bar No. 223266  
3 Department of Real Estate  
4 P.O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0781

**FILED**  
AUG 03 2005

DEPARTMENT OF REAL ESTATE  
By *Arne Khan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 DON PERRY, DON PERRY & ) No. H-2871 SD  
13 ASSOCIATES, a California )  
14 Corporation, and KENNETH DEE )  
15 SKELTON, )  
Respondents. )

16 ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

17 TO: DON PERRY & ASSOCIATES, a California Corporation,  
18 Respondent

19 On January 21, 2004, a restricted real estate broker  
20 license was issued by the Department of Real Estate to  
21 Respondent on the terms, conditions and restrictions set forth  
22 in the Real Estate Commissioner's Order of December 5, 2003, in  
23 Case No. H-2871 SD. This Order provided that the right to a  
24 restricted real estate broker license was subject to the  
25 provisions of Section 10156.6 of the Business and Professions  
26 Code (Code).

27 \\\

1 On July 1, 2005, in Case No. H-3231 SD, an Accusation  
2 by a Deputy Real Estate Commissioner of the State of California  
3 was filed charging Respondent with a violation of Sections  
4 10145 and 10177(d) of the Code and Sections 2832.1, 2832, and  
5 2831 of Chapter 6, Title 10, California Code of Regulations,  
6 for the suspension or revocation of all licenses and license  
7 rights of Respondent under the Real Estate Law.

8 NOW, THEREFORE, IT IS ORDERED under authority of  
9 Section 10156.7 of the Business and Professions Code of the  
10 State of California that the restricted real estate broker  
11 license heretofore issued to Respondent and the exercise of any  
12 privileges thereunder is hereby suspended pending a final  
13 determination made after the hearing on the aforesaid  
14 Accusation.

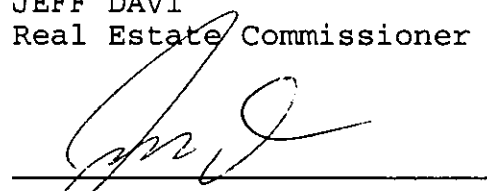
15 IT IS FURTHER ORDERED that all license certificates  
16 and identification cards issued by the Department of Real  
17 Estate which are in possession of Respondent be immediately  
18 surrendered by personal delivery or by mailing in the enclosed  
19 self-addressed envelope to:

20 Department of Real Estate  
21 ATTN: Flag Section  
22 P.O. Box 187007  
Sacramento, CA 95818-7007

23 This Order is effective immediately.

24 DATED: 8-1-05.

25 JEFF DAVI  
26 Real Estate Commissioner

27 

PLAZA

FILED  
JUL 28 2005

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TRULY SUGHRUE, Counsel  
State Bar No. 223266  
Department of Real Estate  
P.O. Box 187007  
Sacramento, CA 95818-7007  
  
Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE  
*By Anne Sherrin*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
 ) No. H-2871 SD  
 )  
DON PERRY, DON PERRY & )  
ASSOCIATES, a California )  
Corporation, and KENNETH DEE )  
SKELTON, )  
 )  
Respondents. )

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: DON PERRY, Respondent

On January 21, 2004, a restricted real estate salesperson license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Order of December 5, 2003, in Case No. H-2871 SD. This Order provided that the right to a restricted real estate salesperson license was subject to the provisions of Section 10156.6 of the Business and Professions Code (Code).

\\  
\\

1 On July 1, 2005, in Case No. H-3231 SD, an Accusation  
2 by a Deputy Real Estate Commissioner of the State of California  
3 was filed charging Respondent with a violation of Sections  
4 10145 and 10177(d) of the Code and Sections 2832.1, 2832, and  
5 2831 of Chapter 6, Title 10, California Code of Regulations,  
6 for the suspension or revocation of all licenses and license  
7 rights of Respondent under the Real Estate Law.

8 NOW, THEREFORE, IT IS ORDERED under authority of  
9 Section 10156.7 of the Business and Professions Code of the  
10 State of California that the restricted real estate salesperson  
11 license heretofore issued to Respondent and the exercise of any  
12 privileges thereunder is hereby suspended pending a final  
13 determination made after the hearing on the aforesaid  
14 Accusation.

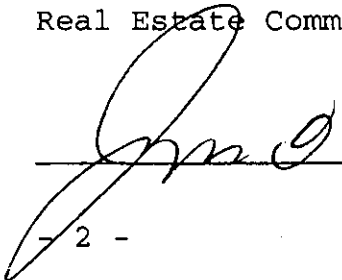
15 IT IS FURTHER ORDERED that all license certificates  
16 and identification cards issued by the Department of Real  
17 Estate which are in possession of Respondent be immediately  
18 surrendered by personal delivery or by mailing in the enclosed  
19 self-addressed envelope to:

20 Department of Real Estate  
21 ATTN: Flag Section  
22 P.O. Box 187007  
Sacramento, CA 95818-7007

23 This Order is effective immediately.

24 DATED: 7.22.05

25 JEFF DAVI  
26 Real Estate Commissioner

27   
- 2 -

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

FILED  
DEC 31 2003

DEPARTMENT OF REAL ESTATE

By Laurie A. Zinn

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) DRE No. H-2871 SD  
12 )  
13 DON PERRY AND ASSOCIATES. ) STIPULATION AND AGREEMENT  
14 a California Corporation, and )  
15 DONALD WALTER PERRY, )  
16 Respondents. )

17 It is hereby stipulated by and between Respondents DON  
18 PERRY AND ASSOCIATES, a corporation, and DONALD WALTER PERRY  
19 (hereinafter "Respondents"), individually and by and through  
20 David S. Bright, Esq., attorney of record herein for Respondents,  
21 and the Complainant, acting by and through James L. Beaver,  
22 Counsel for the Department of Real Estate (herein "the  
23 Department"), as follows for the purpose of settling and  
24 disposing of the Accusation filed on June 10, 2003 in this matter  
(herein "the Accusation"):

25 1. All issues which were to be contested and all  
26 evidence which was to be presented by Complainant and Respondents

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

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

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

9 3. On June 23, 2003, Respondents filed Notices of  
10 Defense pursuant to Section 11505 of the Government Code for the  
11 purpose of requesting a hearing on the allegations in the  
12 Accusation. Respondents each hereby freely and voluntarily  
13 withdraw said Notice of Defense. Respondents acknowledge that  
14 Respondents understand that by withdrawing said Notice of Defense  
15 Respondents will thereby waive Respondents' right to require the  
16 Real Estate Commissioner (herein "the Commissioner") to prove the  
17 allegations in the Accusation at a contested hearing held in  
18 accordance with the provisions of the APA and that Respondents  
19 will waive other rights afforded to Respondents in connection  
20 with the hearing such as the right to present evidence in defense  
21 of the allegations in the Accusation and the right to cross-  
22 examine witnesses.

23 4. This Stipulation is based on the factual  
24 allegations contained in the Accusation. In the interests of  
25 expediency and economy, Respondents choose not to contest these  
26 allegations, but to remain silent and understand that, as a

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

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

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

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

21 7. Pursuant to the Decision in Case No. H-2824 SD,  
22 Respondents have previously agreed to pay and been ordered to  
23 pay, pursuant to Section 10148 of the California Business and  
24 Professions Code, costs in the sum of \$3,038.68 of the audit  
25 which resulted in the determination that Respondents committed  
26 the trust fund violation(s) found in paragraph I, below, of the

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

1 Determination of Issues. Respondents agree to pay said costs or  
2 provide proof of such payment prior to the effective date of the  
3 Decision herein.

4 8. Respondents further understand that by agreeing to  
5 this Stipulation and Agreement in Settlement, the findings set  
6 forth below in the Determination Of Issues become final, and that  
7 the Commissioner may charge said Respondents, jointly and  
8 severally, for the costs of any audit conducted pursuant to  
9 Section 10148 of the California Business and Professions Code to  
10 determine if the trust fund violation(s) found in paragraph I,  
11 below, of the Determination of Issues have been corrected. The  
12 maximum costs of said audit shall not exceed \$3,038.68.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and  
15 waivers and solely for the purpose of settlement of the pending  
16 Accusation without hearing, it is stipulated and agreed that the  
17 following Determination of Issues shall be made:

18 I

19 The acts and omissions of Respondents as described in  
20 the Accusation are grounds for the suspension or revocation of  
21 the licenses and license rights of such Respondents under the  
22 following provisions of the California Business and Professions  
23 Code (herein "the Code"):

24 (a) As to Paragraph IX(a) under Section 10145 of the  
25 Code and Section 2831.2 of the Regulations in conjunction with  
26 Section 10177(d) of the Code; and

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY



1 (b) As to Paragraph IX(b) under Section 10145 of the  
2 Code and Section 2832.1 of the Regulations in conjunction with  
3 Section 10177(d) of the Code.

4 II

5 The acts and omissions of Respondent DONALD WALTER  
6 PERRY as described in Paragraph XV of the Accusation are grounds  
7 for the suspension or revocation of the licenses and license  
8 rights of Respondent DONALD WALTER PERRY under Sections 10177(g)  
9 and 10177(h) of the Code and Section 10159.2 of the Code in  
10 conjunction with Section 10177(d) of the Code.

11 ORDER

12 I

13 All licenses and licensing rights of Respondent DON  
14 PERRY AND ASSOCIATES under the Real Estate Law are revoked;  
15 provided, however, a restricted corporate real estate broker  
16 license shall be issued to such Respondent pursuant to Section  
17 10156.5 of the Code if, within 90 days from the effective date of  
18 the Decision entered pursuant to this Order, such Respondent:

19 (a) pays (jointly and severally with Respondent  
20 PERRY), or provides proof of such payment, the sum of \$3,036.68  
21 to the Department as and for the cost of the audit which resulted  
22 in the determination that Respondents committed the trust fund  
23 violation(s) found in paragraph I of the Determination of Issues;  
24 and

25 (b) makes application for the restricted license and  
26 pays to the Department the appropriate fee therefor.

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

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

5                   1.    Any restricted license issued to Respondent  
6 pursuant to this Decision shall (in lieu of vacating the stay of  
7 the suspension granted in Case No. H-2624 SD) be suspended for  
8 one hundred (100) days from the date of issuance of said  
9 restricted license; provided, however, if Respondent petitions,  
10 one hundred (100) days of said one hundred (100) day suspension  
11 (or a portion thereof) shall be stayed upon condition that:

12                   (a)   Respondent pays a monetary penalty pursuant to  
13 Section 10175.2 of the Business and Professions Code at the rate  
14 of \$100.00 for each day of the suspension for a total monetary  
15 penalty of \$10,000.00.

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

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

26                   (d)   No final subsequent determination be made, after

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

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

9 (e) 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, then the stay hereby granted  
13 shall become permanent.

14 2. Any restricted license issued to Respondent  
15 pursuant to this Decision may be suspended prior to hearing by  
16 Order of the Commissioner in the event of Respondent's conviction  
17 or plea of nolo contendere to a crime which is substantially  
18 related to Respondent's fitness or capacity as a real estate  
19 licensee.

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

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DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

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

6                   5.   Pursuant to Section 10148 of the Code, Respondent  
7 shall pay (jointly and severally with Respondent PERRY) the  
8 Commissioner's reasonable cost, not to exceed \$3,038.68, for an  
9 audit to determine if Respondents have corrected the trust fund  
10 violation(s) found in Paragraph I of the Determination of Issues.  
11 In calculating the amount of the Commissioner's reasonable cost,  
12 the Commissioner may use the estimated average hourly salary for  
13 all persons performing audits of real estate brokers, and shall  
14 include an allocation for travel time to and from the auditor's  
15 place of work. Respondent shall pay such cost within 45 days of  
16 receiving an invoice from the Commissioner detailing the  
17 activities performed during the audit and the amount of time  
18 spent performing those activities. The Commissioner may suspend  
19 the restricted license issued to respondent pending a hearing  
20 held in accordance with Section 11500, et seq., of the Government  
21 Code, if payment is not timely made as provided for herein, or as  
22 provided for in a subsequent agreement between the Respondent and  
23 the Commissioner. The suspension shall remain in effect until  
24 payment is made in full or until Respondent enters into an  
25 agreement satisfactory to the Commissioner to provide for  
26 payment, or until a decision providing otherwise is adopted

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

1 following a hearing held pursuant to this condition.

2 II

3 All licenses and licensing rights of Respondent DONALD  
4 WALTER PERRY under the Real Estate Law are revoked; provided,  
5 however, a restricted real estate salesperson license shall be  
6 issued to said Respondent pursuant to Section 10156.5 of the Code  
7 if, within 90 days from the effective date of the Decision  
8 entered pursuant to this Order, such Respondent:

9 (a) pays (jointly and severally with Respondent DON  
10 PERRY AND ASSOCIATES), or provides proof of such payment, the sum  
11 of \$3,038.68 to the Department as and for the cost of the audit  
12 which resulted in the determination that Respondents committed  
13 the trust fund violation(s) found in paragraph I of the  
14 Determination of Issues;

15 (b) makes application for the restricted license and  
16 pays to the Department the appropriate fee therefor.

17 The restricted license issued to Respondent shall be  
18 subject to all of the provisions of Section 10156.7 of the Code  
19 and to the following limitations, conditions and restrictions  
20 imposed under authority of Section 10156.6 of the Code:

21 1. Any restricted license issued to Respondent  
22 pursuant to this Decision shall (in lieu of vacating the stay of  
23 the suspension granted in Case No. H-2624 SD) be suspended for  
24 one hundred (100) days from the date of issuance of said  
25 restricted license; provided, however, if Respondent petitions,  
26 one hundred (100) days of said one hundred (100) day suspension

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

1 (or a portion thereof) shall be stayed upon condition that:

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

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

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

16 (d) No final subsequent determination be made, after  
17 hearing or upon stipulation, that cause for disciplinary action  
18 against Respondent occurred within two (2) years of the effective  
19 date of this Decision. 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 (e) If Respondent pays the monetary penalty and if no  
26 further cause for disciplinary action against the real estate

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

1 license of Respondent occurs within two (2) years from the  
2 effective date of the Decision, then the stay hereby granted  
3 shall become permanent.

4 2. Any restricted license issued to Respondent  
5 pursuant to this Decision may be suspended prior to hearing by  
6 Order of the Commissioner in the event of Respondent's conviction  
7 or plea of nolo contendere to a crime which is substantially  
8 related to Respondent's fitness or capacity as a real estate  
9 licensee.

10 3. Any restricted license issued to Respondent  
11 pursuant to this Decision may be suspended prior to hearing by  
12 Order of the Commissioner on evidence satisfactory to the  
13 Commissioner that Respondent has violated provisions of the  
14 California Real Estate Law, the Subdivided Lands Law, Regulations  
15 of the Commissioner or conditions attaching to the restricted  
16 license.

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

22 5. Pursuant to Section 10148 of the Code, Respondent  
23 shall pay (jointly and severally with Respondent DON PERRY AND  
24 ASSOCIATES) the Commissioner's reasonable cost, not to exceed  
25 \$3,038.68, for an audit to determine if Respondents have  
26 corrected the trust fund violation(s) found in Paragraph I of the

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

1 Determination of Issues. In calculating the amount of the  
2 Commissioner's reasonable cost, the Commissioner may use the  
3 estimated average hourly salary for all persons performing audits  
4 of real estate brokers, and shall include an allocation for  
5 travel time to and from the auditor's place of work. Respondent  
6 shall pay such cost within 45 days of receiving an invoice from  
7 the Commissioner detailing the activities performed during the  
8 audit and the amount of time spent performing those activities.  
9 The Commissioner may suspend the restricted license issued to  
10 respondent pending a hearing held in accordance with Section  
11 11500, et seq., of the Government Code, if payment is not timely  
12 made as provided for herein, or as provided for in a subsequent  
13 agreement between the Respondent and the Commissioner. The  
14 suspension shall remain in effect until payment is made in full  
15 or until Respondent enters into an agreement satisfactory to the  
16 Commissioner to provide for payment, or until a decision  
17 providing otherwise is adopted following a hearing held pursuant  
18 to this condition.

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

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY



1 restricted license until the Respondent presents such evidence.  
2 The Commissioner shall afford Respondent the opportunity for a  
3 hearing pursuant to the Administrative Procedure Act to present  
4 such evidence.

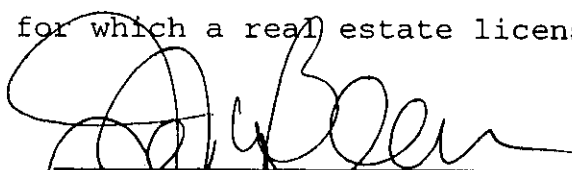
5 7. Respondent shall, within six (6) months from the  
6 issuance of the restricted license, take and pass the  
7 Professional Responsibility Examination administered by the  
8 Department, including the payment of the appropriate examination  
9 fee. If Respondent fails to satisfy this condition,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

12 8. Respondent shall submit with any application for  
13 license under an employing broker, or any application for  
14 transfer to a new employing broker, a statement signed by the  
15 prospective employing real estate broker on a form approved by  
16 the Department of Real Estate which shall certify:

17 a. That the employing broker has read the Decision of  
18 the Commissioner which granted the right to a restricted license;  
19 and

20 b. That the employing broker will exercise close  
21 supervision over the performance by the restricted licensee  
22 relating to activities for which a real estate license is  
23 required.

24 Nov 20 2003  
DATED

  
JAMES L. BEAVER, Counsel  
Department of Real Estate

26 \* \* \*

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

1 I have read the Stipulation and Agreement and have  
 2 discussed its terms with my attorney and its terms are understood  
 3 by me and are agreeable and acceptable to me. I understand that I  
 4 am waiving rights given to me by the California Administrative  
 5 Procedure Act (including but not limited to Sections 11506,  
 6 11508, 11509, and 11513 of the Government Code), and I willingly,  
 7 intelligently, and voluntarily waive those rights, including the  
 8 right of requiring the Commissioner to prove the allegations in  
 9 the Accusation at a hearing at which I would have the right to  
 10 cross-examine witnesses against me and to present evidence in  
 11 defense and mitigation of the charges.

12 10/16/03  
 13 DATED

DON PERRY AND ASSOCIATES  
 Respondent

14 By Donald Walter Perry  
 15 DONALD WALTER PERRY  
 Designated Officer - Broker

16 10/16/03  
 17 DATED

Donald Walter Perry  
 DONALD WALTER PERRY  
 Respondent

\* \* \*

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

21 10/16/03  
 22 DATED

David S. Bright  
 DAVID S. BRIGHT  
 Attorney for Respondents

24 ///  
 25 ///  
 26 ///

27 DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
 and DONALD WALTER PERRY

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\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted by me as my Decision in this matter and shall become  
effective at 12 o'clock noon on JANUARY 21, 2004.

IT IS SO ORDERED December 5, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner



**BY: John R. Liberator  
Chief Deputy Commissioner**

DRE No. H-2871 SD

DON PERRY AND ASSOCIATES  
and DONALD WALTER PERRY

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JUL 18 2003

DEPARTMENT OF REAL ESTATE

By Lauriel J. Zini

In the Matter of the Accusation of

DON PERRY AND ASSOCIATES,  
a California Corporation, and  
DONALD WALTER PERRY,

}

Case No. H-2871 SD

OAH No. L-2003060771

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 MONDAY, OCTOBER 20, 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.

Dated: JULY 18, 2003

DEPARTMENT OF REAL ESTATE

By James L. Beaver  
JAMES L. BEAVER, Counsel

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  
JUN 10 2003

DEPARTMENT OF REAL ESTATE

By Laurie L. Zin

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No.: H-2871 SD  
12 )  
12 DON PERRY AND ASSOCIATES, ) ACCUSATION  
12 a California Corporation, and )  
13 DONALD WALTER PERRY, )  
14 )  
14 Respondents. )  
15 )

16 The Complainant, J. Chris Graves, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Accusation  
18 against DON PERRY AND ASSOCIATES (hereinafter "DPA"), and DONALD  
19 WALTER PERRY (hereinafter "PERRY"), is informed and alleges as  
20 follows:

21 I

22 The Complainant, J. Chris Graves, a Deputy Real Estate  
23 Commissioner of the State of California, makes this Accusation  
24 in his official capacity.

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II

At all times herein mentioned, Respondents DPA and PERRY (hereinafter "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code").

III

At all times herein mentioned, Respondent DPA 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 PERRY as designated officer-broker of Respondent DPA to qualify said corporation and to act for said corporation as a real estate broker. At all times mentioned herein since May 10, 1999, the license of Respondent DPA has been and now is a restricted corporate real estate broker license subject to terms, conditions and restrictions pursuant to Sections 10156.6 and 10156.7 of the Code.

IV

At all times herein mentioned, Respondent PERRY was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondent DPA. At all times mentioned herein since May 10, 1999, the license of Respondent PERRY has been and now is a restricted real estate broker license subject to terms, conditions and restrictions pursuant to Sections 10156.6 and 10156.7 of the Code. As said designated officer-broker, Respondent PERRY was at all times

1 mentioned herein responsible pursuant to Section 10159.2 of the  
2 Code for the supervision of the activities of the officers,  
3 agents, real estate licensees and employees of Respondent DPA  
4 for which a license is required.  
5

6 V

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

15 VI

16 At all times herein mentioned, Respondents engaged in  
17 the business of, acted in the capacity of, advertised, or  
18 assumed to act as real estate brokers within the State of  
19 California within the meaning of Sections 10131(b) of the Code,  
20 including the operation and conduct of a property management  
21 business with the public wherein, on behalf of others, for  
22 compensation or in expectation of compensation, Respondents  
23 leased or rented and offered to lease or rent, and placed for  
24 rent, and solicited listings of places for rent, and solicited  
25 for prospective tenants of real property or improvements  
26 thereon, and collected rents from real property or improvements  
27 thereon.

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VII

In so acting as real estate brokers, as described in Paragraph VI above, Respondents accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said funds.

VIII

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (hereinafter "trust fund accounts") maintained by Respondents for the handling of trust funds, including but not necessarily limited to the "Don Perry Realty Composite Trust Account", Account Number 0764-811253, maintained by Respondents at the Bonita, California, branch of Wells Fargo Bank (hereinafter "TA").

IX

Between on or about November 1, 2001 and on or about February 28, 2003, in connection with the collection and disbursement of said trust funds, Respondents DPA and PERRY:

(a) Failed to reconcile, at least once a month, the balance of all separate beneficiary or transaction records with the record of all trust funds received into and disbursed from TA, in compliance with Section 2831.2 of the Regulations; and

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1  
2 (b) Caused, suffered or permitted the balance of  
3 funds in TA to be reduced to an amount which, as of February 28,  
4 2003, was approximately \$7,261.28 less than the aggregate  
5 liability of Respondent DPA to all owners of such funds, without  
6 the prior written consent of the owners of such funds.

7 XI

8 Respondent PERRY failed to exercise reasonable  
9 supervision over the acts of Respondent DPA in such a manner as  
10 to allow the acts and events described in Paragraphs IX and X,  
11 above, to occur.

12 PRIOR DISCIPLINE

13 XII

14 Effective May 10, 1999, in Case No. H-2445 SD, the  
15 Real Estate Commissioner revoked the real estate broker license  
16 of Respondents DPA and PERRY for violation of Sections 10137 and  
17 10138 of the Code, but granted each Respondent the right to the  
18 issuance of a restricted real estate broker license, subject to  
19 terms, conditions and restrictions pursuant to Sections 10156.6  
20 and 10156.7 of the Code.

21 XIII

22 Effective November 1, 2001, in Case No. H-2624 SD, for  
23 violation by Respondents DPA and PERRY of Sections 10145, 10160,  
24 10161.8(a), 10161.8(b), 10165, and 10177(d) of the Code and  
25 Sections 2831, 2831.1, 2831.2, 2832.1, and 2834 of the  
26 Regulations, and for additional violations by Respondent PERRY  
27 of Sections 10159.2, 10177(d), 10177(g) and 10177(h) of the  
Code, the Real Estate Commissioner revoked the real estate

1 broker license of Respondents DPA and PERRY, but granted each  
2 Respondent the right to the issuance of a restricted real estate  
3 broker license, subject to terms, conditions and restrictions  
4 pursuant to Sections 10156.6 and 10156.7 of the Code, including  
5 but not limited to the suspension of the restricted real estate  
6 broker licenses of DPA and PERRY for a period of 100 days each,  
7 stayed upon condition, among others, that no final subsequent  
8 determination be made, after hearing or upon stipulation, that  
9 cause for disciplinary action against such Respondent occurred  
10 within two (2) years after November 1, 2001.

11  
12 XIV

13 The facts alleged above are grounds for the suspension  
14 or revocation of the licenses and license rights of Respondents  
15 DPA and PERRY under the following provisions of the Code and/or  
16 the Regulations:

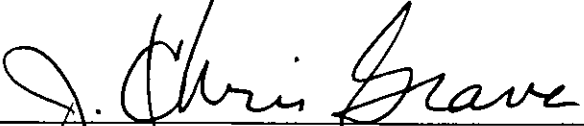
17 (a) As to Paragraph IX(a), under Section 10145 of the  
18 Code and Section 2831.2 of the Regulations in conjunction with  
19 Section 10177(d) of the Code; and

20 (b) As to Paragraph IX(b), under Section 10145 of the  
21 Code and Section 2832.1 of the Regulations in conjunction with  
22 Section 10177(d) of the Code.

23 XV

24 The facts alleged in Paragraph XI, above, are grounds  
25 for the suspension or revocation of the licenses and license  
26 rights of Respondent PERRY under Section 10177(g) and/or Section  
27 10177(h) of the Code and Section 10159.2 of the Code in  
conjunction with Section 10177(d) of the Code.

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

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10   
11 J. CHRIS GRAVES  
12 Deputy Real Estate Commissioner

13 Dated at San Diego, California,  
14 this 6<sup>th</sup> day of June, 2003.  
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