

FILED
AUG - 7 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JAY MILLER SMITH,) NO. H-2873 SAC
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 1, 1994, a Decision After Rejection was rendered herein revoking the real estate broker license of Respondent, 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 August 1, 1994.

On June 3, 2002, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to

1 my satisfaction that Respondent meets the requirements of law for
2 the issuance to Respondent of an unrestricted real estate broker
3 license and that it would not be against the public interest to
4 issue said license to Respondent.

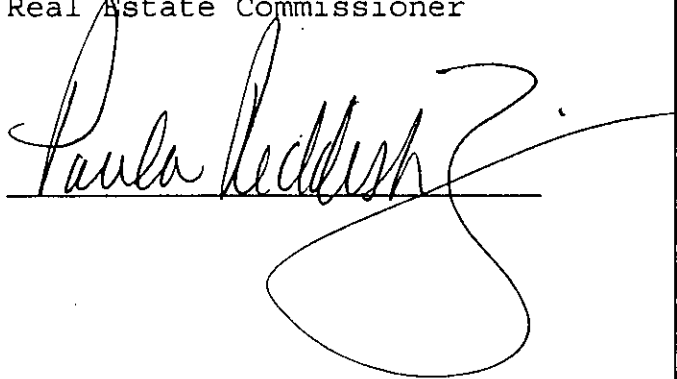
5 NOW, THEREFORE, IT IS ORDERED that Respondent's
6 petition for reinstatement is granted and that a real estate
7 broker license be issued to Respondent, if Respondent satisfies
8 the following condition within nine months from the date of this
9 Order:

10 1. Submittal of a completed application and payment
11 of the fee for a real estate broker license.

12 This Order shall be effective immediately.

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14 DATED: July 8, 2003.

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16 PAULA REDDISH ZINNEBANN
Real Estate Commissioner

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FILED
JUL 11 1994

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

JAY MILLER SMITH,
RICHARD CLAYTON SCRIBNER,
DAVID KAZIMIERZ JUREWICZ,
COLEEN KAY JUREWICZ,

NO. H-2873 SAC

OAH NO. N-43267

Respondents.)

DECISION AFTER REJECTION

The matter came on for hearing before Stephen J. Smith, Administrative Law Judge of the Office of Administrative Hearings, in Sacramento, California, on November 22, 1993.

Susan Y. Bennett, Counsel, represented the Complainant.

Nancy Hotchkiss, Attorney at Law, represented respondent Jay Miller Smith, who was also present.

Respondent Richard Clayton Scribner appeared in person without an attorney and represented himself.

1 Respondents David Kazimierz Jurewicz and Colleen Kay
2 Jurewicz did not appear as the Department settled the case against
3 them in their entireties prior to the administrative hearing.

4 Evidence was received, the hearing was closed, and the
5 matter was submitted.

6 On January 25, 1994, the Administrative Law Judge
7 submitted a Proposed Decision which I declined to adopt as my
8 Decision herein. Pursuant to Section 11517(c) of the Government
9 Code of the State of California, Respondents were served with
10 notice of my determination not to adopt the Proposed Decision of
11 the Administrative Law Judge along with a copy of said Proposed
12 Decision. Respondents were notified that the case would be
13 decided by me upon the record, the transcript of proceedings held
14 on November 22, 1993, and upon any written argument offered by
15 Respondents.

16 I have given careful consideration to the record in
17 this case including the transcript of proceedings of November 22,
18 1993.

19 The following shall constitute the Decision of the Real
20 Estate Commissioner in this proceeding:

21 The Proposed Decision dated January 25, 1994, is hereby
22 adopted in its entirety and shall constitute the Decision of the
23 Real Estate Commissioner in this proceeding, with the following
24 modification to the Order:

25 At paragraph I.5, pages 15 and 16 of the Proposed
26 Decision:

27 "Mr. Scribner shall, within nine months from the
effective date of this Decision, present evidence

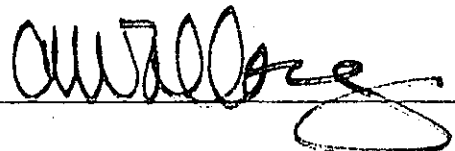
1 satisfactory to the Real Estate Commissioner that Mr.
2 Scribner has, since the most recent issuance of an
3 original or renewal real estate licensee, taken and
4 successfully completed the continuing education
5 requirements of Article 2.5 of Chapter 3 of the Real
6 Estate Law for renewal of a real estate license. If Mr.
7 Scribner fails to satisfy this condition, the
8 Commissioner may order the suspension of the restricted
9 license until Mr. Scribner presents such evidence. The
10 Commissioner shall afford Mr. Scribner the opportunity
11 for a hearing pursuant to the Administrative Procedure
12 Act to present such evidence."

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

27 This Decision shall become effective at 12 o'clock noon
28 on August 1, 1994.

IT IS SO ORDERED 7/1, 1994.

CLARK WALLACE
Real Estate Commissioner



By Kathleen Contreras

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NOTICE

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 November 22,

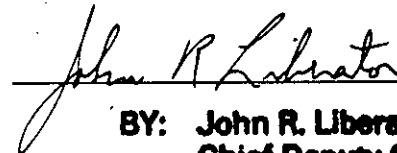
1 1993, and any written argument hereafter submitted on behalf of
2 respondents and complainant.

3 Written argument of respondents to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of November 22, 1993, at the Sacramento office
6 of the Department of Real Estate unless an extension of the time
7 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 respondents 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: February 24, 1994

14 CLARK WALLACE
15 Real Estate Commissioner

16 
17 BY: **John R. Liberator**
18 **Chief Deputy Commissioner**

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JAY MILLER SMITH,
RICHARD CLAYTON SCRIBNER,
DAVID KAZIMIERZ JUREWICZ,
COLLEEN KAY JUREWICZ

Respondents.

No. H-2873 SAC

OAH No. N-43267

PROPOSED DECISION

On November 22, 1993, in Sacramento, California, Stephen J. Smith, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Susan Y. Bennett, Counsel, Department of Real Estate, State of California, represented the complainant.

Nancy Hotchkiss, Attorney at Law, and David Robertson, Attorney at Law, of Trainor, Robertson, Smits and Wade, Attorneys at Law, represented Jay Miller Smith.

Richard Clayton Scribner appeared in person without an attorney and represented himself.

David Kazimierz Jurewicz and Colleen Kay Jurewicz did not appear, for the reasons set forth below.

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

FINDINGS OF FACT

I

On April 14, 1993, Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (hereafter "the Department"), State of California, acting in his official capacity, made and filed the charges contained in the Accusation and caused it to be filed on April 28, 1993. In so doing, he acted pursuant to the authority of Business and Professions Code section 10175, which furnishes the Department jurisdiction to revoke, suspend or otherwise impose disciplinary action upon any holder of a real estate license issued by the Department, provided clear and convincing competent evidence exists in support of the action. The Department is not deprived of jurisdiction to proceed with a disciplinary action even if the license is inactive, suspended, surrendered or restricted in some fashion.

Each of the named respondents timely filed Notices of Defense to the Accusation pursuant to Government Code section 11506. The matters were set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to Business and Professions Code section 10175 and Government Code section 11500, et. seq.

On May 13, 1993, Mr. Koenig, again acting in his official capacity, made the charges and allegations contained in the First Amended Accusation and caused it to be filed. Pursuant to Government Code section 11507, each respondents' previously filed Notices of Defense were deemed fully effective to controvert all the allegations of the First Amended Accusation. However, each respondent again filed a new Notice of Defense to the First Amended Accusation. The First Amended Accusation was set for an evidentiary hearing, as set forth previously.

II

Previous to the matter being heard before the Administrative Law Judge, the Department resolved the First Amended Accusation and its allegations against David Kazimierz Jurewicz and Colleen Kay Jurewicz, and settled the cases against them in their entireties. Therefore, this Decision does not relate to or effect either of the respondents Jurewicz in any manner.

III

Jay Miller Smith was first licensed by the Department as a real estate salesperson on a date not established but before August 23, 1984. The license expired on August 25, 1985, having never been used and never placed with an employing or supervising broker. On April 20, 1992, the Department issued Mr. Smith a

real estate broker's license. The license is in full force and effect and is due to expire on April 19, 1996, unless renewed. There is no history of previous disciplinary action by the Department against Mr. Smith or his license.

Richard Clayton Scribner was first licensed by the Department as a real estate broker on a date not established in 1985. As of January 1, 1990, Mr. Scribner had two fictitious business name registrations on file with the Department under his license and for which he represented to the Department that he was the responsible broker, those of Equity Marketing and Equity Research Property Company. These fictitious business name registrations were each canceled by Mr. Scribner on June 3, 1991. On November 19, 1990, the dba's of Homeseller's Assistance and R.C.S. Developments were added by Mr. Scribner to his license. On July 26, 1991, the dba of The Matchmaker Home Connection was added to his license. The license has been continuously renewed and is in full force and effect, due to expire on October 24, 1993, unless renewed. There is no history of previous disciplinary action against Mr. Scribner or his license by the Department.

IV

On a date not established in 1985, Mr. Scribner and Mr. Smith formed a California limited partnership that was later named Oak Terrace Associates I. Mr. Scribner and Mr. Smith were the only two general partners. The partnership was formed in order to acquire a 20-unit apartment building located 1326 Oak Terrace Court, County of Sacramento, State of California, and to complete the conversion of the units to condominiums, which was begun by Oak Terrace Associates I's predecessor, L and D Development. There was no evidence regarding either Mr. Scribner's or Mr. Smith's roles, if any, in L and D Development. It was not disputed that the conversion of the apartment house to condominiums, and the marketing of the converted units to individual purchasers constituted a subdivision of lands subject to the provisions of Business and Professions Code sections 11000 and 11004.5. The subdivided lands were collectively known as Oak Terrace Condominiums, upon the conversion and offer of its units for sale to the public by Oak Terrace Associates I.

V

On a date not established but before May 9, 1984, L and D Developments, predecessor to Oak Terrace Associates I, filed an application with the Department for the issuance of a Final Subdivision Public Report. Among other things, the subdivider filed with its application budgets for the maintenance of common areas in the development, together with unit owner dues assessments proposed to raise funds for both common area maintenance and for long-term reserves. These long-term reserves were to be held until needed to perform major deferred

maintenance or structural repairs such as roof replacement or failure of physical plant equipment such as a hot water heater.

On March 9, 1984, the Department issued Oak Terrace Associates I a Final Subdivision Public Report for the Oak Terrace Condominium conversion project. Issuance of the Final Report cleared the way for Oak Terrace Associates I to begin marketing the converted units to the public. On December 17, 1985, Mr. Scribner, on behalf of Oak Terrace Associates I, filed with the Department an application to amend the Final Subdivision Public report. The amendments were approved by the Department and incorporated into the Final Subdivision Public Report on May 9, 1986. The amendments included, among other things, the submission of budgets by the subdividers, as set forth below, and the registration of the change of name of the subdivider from L and D Development to Oak Terrace Associates I, a California Limited partnership. The Amended Final Report was due to expire on March 8, 1989, unless renewed. The Amended Final Report, among numerous other provisions, contained the following language:

"MAINTENANCE AND OPERATIONAL EXPENSES: The subdivider has submitted a budget for the maintenance and operation of the common areas and for long-term reserves. This budget was reviewed by the Department of Real Estate in April, 1986. You should obtain a copy of this budget from the subdivider. Under this budget, the prorated monthly assessment against each subdivision unit ranges from \$121.69 to \$143.02, of which \$41.91 to \$51.17 is a monthly contribution to long-term reserves and is not to pay for current operating expenses."

The Amended Final Report also required that a Homeowner's Association was required to be formed no later than six months after the close of the sale of the first unit sold. This Association was to have supervisory authority over the assessments for common area maintenance, long-term reserves, and how the dues assessments were to be spent.

VI

Mr. Scribner and Mr. Smith, through Oak Terrace Associates I, sold and conveyed title to five units of the Oak Terrace Condominiums to purchasers from the public between June 5, 1990 and September 21, 1990. The Amended Final Subdivision Public Report expired March 8, 1989, and had not been renewed by Oak Terrace Associates I. At the time of each of these five sales of units in the subdivision, therefore, there was no valid and current Final Subdivision Public Report on file with the Department. Further, at the time of these five sales, Oak Terrace Associates I had not filed with the Department a Notice of Intention and completed questionnaire, as required by Business and Professions Code section 11010.

VII

A great deal of evidence was offered by the Department regarding the alleged harm that was done to owners of units sold by Oak Terrace Associates I due to its failure to create, collect dues for and maintain a long-term reserve account. The First Amended Accusation does not plead for recovery of restitution on behalf of these unit owners from either or both of Mr. Smith or Mr. Scribner or their partnership for their failures as principals of Oak Terrace Associates I to collect and retain long-term reserves. There was no allegation that the representations and agreements made by Oak Terrace Associates I to the Department and later set forth in the Final Subdivision Public Report created an express or implied contractual or trust obligation on the part of Oak Terrace Associates I and its principals to collect such long-term reserves for the benefit of the unit purchasers. Therefore, regardless of the proof adduced on the issue of damages caused by these failures, no restitution award can be made because breach of contractual or trust obligation was not alleged and pleaded, nor does the pleading allege and provide fair notice to the respondents that they would might be required to respond to claims for monetary recovery.

Further, the issue of damages caused by respondent subdividers failure collect dues from unit owners to fund the long-term reserves promised in the Final Subdivision Public Report's budgets is only loosely related to the respondent subdividers' failure to amend and renew the Final Subdivision Public Report when it expired. These damages began to accrue early in the life of the subdivision, and had accrued and compounded for over five years at the time the Final Subdivision Public Report expired. Any purchaser of a subdivision unit during the period the Final Subdivision Public Report was valid was damaged similarly to later purchasers, at a time the violation the Department alleges in the Accusation had not yet occurred. Therefore, it is impossible to conclude that the respondents/ subdividers' omission to obtain a renewed Final Subdivision Public Report proximately caused the damages the Department offered in evidence. Those damages were being caused independently of the failure to renew the Final Subdivision Public Report well before that failure occurred. Those damages were caused by an entirely separate but related violation, that of respondents' willful failure to fund the long-term reserves as promised in the Final Subdivision Public Report. That violation, a breach of trust and a form of self-dealing, was not alleged, and restitution for such a violation is not available in this action.

VIII

This is not to conclude that respondents/subdividers' conduct in refusing to collect the full amount of dues specified in the Final Subdivision Public Report and retain long-term

reserves did not cause damage to unit owners in the subdivision, or that timely amendment and renewal of the Final Subdivision Public Report would not have mitigated or prevented damages to purchasers that bought after the Report expired. For the five purchasers that bought units from respondents after the Final Subdivision Public Report expired, had respondents sought a renewed and amended Final Subdivision Public Report in accordance with the requirements of the Real Estate Law and particularly the Subdivided Lands Act, the Department's auditors certainly would have discovered the fact that long-term reserves had not been collected and retained by respondents. The certain outcome of such a discovery would have been a Desist and Refrain Order issuing from the Department, barring any further unit sales until such time respondents fully funded the long-term reserves account. By failing to seek renewal of the report, respondents were able to avoid the Departments' audit and the inevitable issuance of a Desist and Refrain Order. This enabled respondents to continue to sell units without additional scrutiny.

The evidence of damages caused by the failure of respondents to collect and retain long-term reserves was received for the limited purpose of determining relative culpability and an appropriate penalty for allowing the Final Subdivision Public Report to lapse, and for selling five units without a current report in existence. Respondents contend that mitigation exists because damages to unit owners were minimal, if not entirely illusory, because the unit owners had decided among themselves to handle long-term maintenance problems by special assessments when the particular problem that required a capital expenditure would arise. This procedure was employed, for example, when the exteriors of the units needed painting.

There is mitigation present here. There was no evidence that any unit-owner dues that were actually collected by respondents were ever misappropriated, misapplied or otherwise squandered. The funds collected were, without exception, spent entirely upon the maintenance and operation of the common facilities of Oak Terrace. Further, there was no evidence that respondents collected dues and retained them for themselves or their own purposes. What dues respondents collected were faithfully applied to the maintenance and operation of the common areas of the subdivision without fail.

Mr. Smith testified that there was a homeowner's association formed and conducting at least annual meetings from 1986 forward, with a large and well attended meeting in 1990. The meetings before 1990 were small or not attended at all. However, one of the unit owners testified that there was no homeowners' association formed or meeting in August 1990, when he moved in. This owner's testimony was persuasive and credible on this point of when respondents caused the homeowner's association to be formed and commence meeting, while Mr. Smith's testimony on this point was not. Both, however, agree that a homeowners'

association was formed and beginning to be active in mid to late 1991. It is clear that a fledgling association was formed and meeting by October 1991, the time at which the association wrested management of the subdivision's common area maintenance and operations away from respondents and their agents, and hired Riverside Management. Before that time, for most of the first six years of the subdivision, the respondents/subdividers paid little heed the Final Subdivision Public Report requirement to form an association and establish it as overseer of the collection and retention of dues and maintenance and operation of the common areas. As majority owner of units, Oak Terrace Associates I at first performed the dues collection task in-house, and later through managers.

Once formed, the association promptly replaced Oak Terrace Associates I and its agents as managers of common area maintenance and operations and retained Riverside Management. This occurred in October 1991. Riverside Management's representative struggled with respondents for nearly two years before being able to obtain the records of the subdivision's financial records from Mr. Smith, and had to file a small claims civil suit in order to induce him to surrender the records. The Riverside Management agent was surprised at the significant amount of deferred maintenance that had accumulated at the subdivision due to the declining and poorly maintained common areas and facilities.

The homeowners' association is currently independent and operating, and respondents correctly contend that this organization has decided among itself not to assess itself dues periodically for long-term reserves, preferring instead to assess special amounts when necessary to correct particular deferred maintenance problems. In this manner, the unit owners have assessed themselves \$100 per unit for badly needed paint, and another larger sum monthly for two years to pay for a new roof. Respondents contend this is how they operated the association when they controlled it through Oak Terrace Associates I, and from these facts they conclude any current shortfalls in long-term reserves were not the result of their failure to collect and retain long-term dues, but rather were the result of a conscious choice of the unit owners' collectively of the manner in which they elected to deal with long-term deferred maintenance problems.

To embrace respondents' contention requires the fact finder to assume that the manner in which respondents dealt with long-term reserves when respondents were majority owners of units stands upon an equal footing with the manner in which the current, fully independent association has elected to deal with the problem. The assumption cannot be fairly made.

One purpose of requiring the formation of the unit-owner's association was to monitor the collection of assessments

and reserves, and to act as a check against the subdividers, who, without the check of the association, could work its own will regarding any common area issue through its majority unit ownership position. Even had an association been formed early on, the subdividers had the majority of votes because it owned all or nearly all the units, and thus could work its will regardless of the input of other unit owners. This early voting dominance of the subdividers created a trust obligation upon Oak Terrace Associates I, and respondents as general partners of that entity, for the benefit of later unit owners. The terms of the trust obligation, based on their representations in the Final Public Subdivision Report, are that the subdividers will not fail to assess dues from themselves and other unit owners to contribute to the sinking fund established to offset the depreciation of the assets of the common area facilities, to protect the interests of the subsequent purchasers. The Final Subdivision Public Report spells out the rough parameters of this trust obligation, with at least two of its express terms requiring the subdividers to create a long-term reserves fund to offset the depreciation of the common area facilities, and an independent unit-owner's association to insure that the trust obligations are carried out.

Early on in the subdivision, the common areas were in good condition and the risk of a deferred maintenance item requiring a special assessment for capital improvement such as roof failure was minimal. At the time the association should have been formed pursuant to the Final Subdivision Public Report, the subdividers/respondents owned a substantial majority of the units. The dues collected by the respondents/subdividers through the five years the Public Report was in effect, and even up to October 1991, the time the association retained a new manager to get its finances in order, just barely covered the development's common area operating and current maintenance expenses. Up to late 1991, the dues were \$85 per month per unit. The budget set forth in the Final Subdivision Public Report required monthly dues of between \$121.69 to \$143.02, of which \$41.91 to \$51.17 was to be retained to long-term reserves. Respondents consciously and knowingly elected to collect only the current portion of the dues, and declined to collect and retain the long-term portion.

It is readily apparent that in order to fund the long-term reserves account per the budgets submitted to the Department in support of the Final Subdivision Public Report, the subdividers would have had to significantly increase the individual unit monthly dues in order to fund this account. As the majority owner of units, the financial burden of collecting, predominately from themselves, the full amount of the dues set forth in the Final Subdivision Public Report would have fallen squarely upon the shoulders of the subdividers. The respondents/subdividers declined to undertake this additional financial burden upon themselves, thus depriving later owners of the benefit of the accumulation of dues to create the long-term

reserves. By so doing, the respondent subdividers bestowed a significant financial benefit upon themselves at the expense of the later owners, who would be required to later pay for the deferred maintenance as it came due.

The conscious decision by respondents to handle any deferred maintenance obligation that might come up by special assessment of unit owners rather than by periodic dues collection was a consummately low risk means by which Oak Terrace Associates I and respondents as general partners bestowed upon themselves significant short term financial benefits, and transferred to unsuspecting later purchasers accumulating deferred maintenance obligations, such obligations being accentuated by the poor quality short term maintenance of common areas being performed in the interim.

In this instance, had the plan and budgets in the Final Subdivision Public Report been followed, there would have been approximately \$50,000 in long-term reserves available at the present time to enable the association to repair the roof and make several other very necessary capital improvements, such as replacing the central hot water heater and repairing pot holes in the parking lot. There is no evidence in the record from which it can be ascertained the amount of this sum apportionable to contributions that should have been made by Oak Terrace Associates I for units it owned during these several years. Since no long-term reserves were ever collected, there is nothing currently available for the making of these repairs. The owners association, despite its election to handle long-term deferred maintenance by special assessments, is nevertheless without options when it comes to the problems it currently faces, such as a roof that has exhausted its useful life, a blown central hot water heater, badly decayed parking lot paving and an urgently needed paint job.

Respondents contend that there is no real harm done by their failure to collect and retain long-term reserves because the money for deferred maintenance items must be paid by the unit owners, whether periodically over time in the form of dues that include the portion for long-term reserves, or by a larger individual assessments to solve a particular maintenance need, such as the owners' association is doing now to liquidate the cost of the replacement of the roof.

Respondents' contentions are wholly lacking in merit. The respondent subdividers represented to the Department, and the Department, based on those representations, represented to all potential unit purchasers, that an owners' association would be formed, and one of its duties would be to see to it that dues that included a portion for long-term reserves were collected and retained. If this had been done, as represented and agreed, there would have been a significant amount of money available for the comfortable resolution of rather substantial repair problems,

such as the replacement of the roof. Instead, the respondent/ subdividers bestowed a significant financial benefit upon themselves by keeping current dues to a minimum while they were the majority unit owners, and leaving payment of these larger individual assessments, when deferred maintenance items came due, to their successors as the units were sold.

Because these matters were not handled as represented in the Final Subdivision Public Report, the current association finds itself in something of a crisis, having to scramble to raise at least \$30,000 for a new roof, and potentially as much as \$50,000 from its unit owners to take care of the deferred maintenance problems that can wait no longer. This has resulted in the current association having little option and flexibility in resolving its deferred maintenance problems other than to burden itself with substantial assessments on each unit owner. It is difficult to assign much merit to respondents' contentions that the current association has rejected the option of collecting a portion of dues periodically for long-term reserves, when it has no option but to pursue substantial project-related assessments because the development is in dire need of capital improvement maintenance.

The current no-option situation faced by the unit owners came about essentially without the consent of the current unit owners other than the subdividers. Those that are left to pay the bills had no input. The contention that the unit owners choose to pursue liquidation of deferred maintenance obligations in the same manner as the subdividers did would have more force if the association had been placed into a position by the subdividers in which the association could make an independent decision free of the significant financial urgency of dire deferred maintenance needs. It may be that the association would have still chosen this more burdensome option for dealing with deferred maintenance, had there been no maintenance emergencies. However, under the circumstances extant in this manner, no meaningful conclusion can be drawn from the current association's election to pursue liquidation of deferred maintenance by substantial special assessments because the subdividers left the association no meaningful option.

Due to all of the circumstances set forth above, respondents' contentions that their conduct in failing to collect and retain long-term reserves did not damage the association and later owners must be rejected as lacking in merit and refuted by the great weight of the evidence. Further, the contention that this situation was created by harmless oversight and negligence on the part of respondents is also rejected. There can be little doubt that over the years it was readily apparent to both respondents that the dues collected monthly were barely meeting minimum operating expenses, and that there would be nothing save a special assessment available for a big ticket repair such as roof replacement, which must inevitably appear. Month after

month, year after year, respondents made conscious decisions to collect only the bare minimum, predominately from themselves for most of the period, and retain nothing for long-term reserves. With a clearly apparent financial motivation to obtain the financial benefit inherent in the decision not to collect and retain long-term reserves, and to undertake for themselves only the most minimal of short term burdens for operations and maintenance of common areas, respondents' claim of unintentional oversight and neglect withers.

The conscious decisions made month after month to decline to collect and fund a long-term reserve are not somehow ameliorated or made less damaging if the majority of the owners chose to resolve long-term deferred maintenance problems as they arose by paying a pro rata assessment. It is readily apparent that as the majority owner, the subdivider may, by employing such a device, thereby avoid almost if not all financial responsibility for its proportionate share of accumulating deferred maintenance by taking the gamble that no such deferred maintenance problem will surface until after the subdivider has sold most or all the units, leaving the remaining owners subject to a substantial, growing and ever more certain deferred financial obligation. To sustain such a claim as a defense to the requirement to collect and retain the long-term reserves in accordance with the Final Subdivision Public Report would permit the subdividers to use their majority ownership to lower their own financial burdens in the near term, as the deferred maintenance items accumulated, and then transfer the accumulated burdens to future owners. Those owners will, as the current association does, find themselves digging deep to come up with funding to correct the maturing deferred maintenance items when they inevitably come due. To permit this to occur would allow the subdivider, by employment of its majority ownership status, to avoid funding its fair share of depreciating common area assets, and potentially escape this liability altogether, if units sell before the deferred maintenance items come due.

IX

Circumstances in justification do not exist. There was no evidence that failure make certain the Final Subdivision Public Report was current and renewed and sales of subdivision units after the expiration of the Final Subdivision Public Report were justified in any manner. The few circumstances in mitigation are those set forth above, that the dues actually collected were actually deployed in their entirety for the benefit of maintenance and operation of the common area and its facilities. Other than that mentioned earlier regarding the faithful application of dues collected to common area immediate operations and maintenance needs, there was little other evidence of circumstances in mitigation. There was little evidence in rehabilitation.

Mr. Scribner apparently withdrew from active participation in Oak Terrace Associates I in late 1991, when the homeowner's association hired Riverside Management and he began a battle with cancer. He was treated for cancer starting in late 1991, and was inactive for a significant period thereafter while recuperating. There was no evidence that the Department has been required to discipline Mr. Scribner or his license before this project, and there is no evidence of any subsequent violation. Mr. Scribner continues to make his living as a real estate professional, but offered little explanation of his current licensed activities. Mr. Smith testified that he and Mr. Scribner continue to be involved as general partners in at least three other real estate projects, but both were rather vague in offering any details. Mr. Scribner, although acknowledging that he was aware of the requirement to renew and amend if necessary the Final Subdivision Public Report, and admitting his mistake in not attending to the renewal before selling more units, nevertheless offered no testimony regarding how he intended to make certain the problem never recurred. Mr. Scribner offered no evidence regarding any continuing education or other efforts he has made to protect against such an event.

Mr. Smith was not licensed at the time of the Oak Terrace Associates I project. However, he was very active as a principal subdivider in many aspects of the subdivision, particularly managing the units and in working with the realtor the partnership retained to market the units. Although Mr. Scribner was the broker and the general partner that appeared in charge, Mr. Smith actively participated in subdividing, selling and maintaining the units. Mr. Smith was particularly active in retaining a bookkeeper to pay the bills and make collections of dues for common area maintenance, and in overseeing that aspect of the project. Mr. Smith was primarily responsible for assuring that the bills got paid and dues collections were made.

Since this project, Mr. Smith has obtained a real estate broker's license. There was no evidence of any subsequent violation of the Real Estate Law by Mr. Smith. Mr. Smith was every bit as vague as Mr. Scribner regarding his current activities for which a real estate license is required, and equally silent regarding any efforts he has made in the area of rehabilitation.

X

Culpability and responsibility are not evenly divided among the respondents in this matter because, as the licensed broker during almost all of the relevant period, Mr. Scribner was primarily responsible for the oversight and supervision of his unlicensed partner. It is primarily upon Mr. Scribner that the responsibility falls for failure to insure that the Final Subdivision Public Report was current, amended and renewed as appropriate. Mr. Scribner was the broker that submitted the

application and obtained the issuance of the Final Subdivision Public Report from the Department. It is Mr. Scribner's name that appears as principal of Oak Terrace Associates I on documents in the creation and marketing of the subdivision, and upon him the responsibility for the subdivision's compliance with the Final Subdivision Public Report's budgets and other provisions ultimately rests.

Although Mr. Smith was not a licensee during most of the relevant period, he nevertheless was very active in the organization, marketing and operation of the subdivision. He became licensed as a broker after the sales of the units occurred without a current Final Subdivision Public Report. He apparently remains a general partner of Oak Terrace Associates I, which still owns a few units in the subdivision. Mr. Smith was familiar with the provisions of the Final Subdivision Public Report budgets that required the collection of long-term reserves dues, and actively participated in the decision of the partnership not to collect those dues. He was well aware that deferred maintenance obligations were accumulating, and that significant assessments against the ownership interests of later unit purchasers would be required in order to compensate for their self-serving approach to deferred long-term maintenance items. He actively participated in the decisions that permitted the partnership to escape periodic dues assessments for long-term reserves for its majority of units owned, shifting those obligations to later purchasers from the partnership.

DETERMINATION OF ISSUES

I

Business and Professions Code section 11018.2 states, in pertinent part, "No person shall sell or lease, or offer for sale in this state any lots or parcels in a subdivision without first obtaining a public report from the Real Estate Commissioner..." Business and Professions Code section 10177(d) states, in pertinent part, "The commissioner may suspend or revoke the license of any real estate licensee, or may deny the issuance of a license to an applicant, who has done ... any of the following ... (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2."

It was not disputed, as set forth in the Findings, that both Mr. Scribner and Mr. Smith each violated Business and Professions Code section 11018.2 by permitting sales of units of the Oak Terrace development after the Final Subdivision Public

Report on the subdivision had expired. Such a violation constitutes a cause for the denial, suspension or revocation of a real estate license pursuant to Business and Professions Code section 10177(d), for a violation of section 11018.2 constitutes a violation of the Real Estate Law within the meaning of section 10177(d).

There is little question regarding the imposition of discipline against Mr. Scribner, as he was the responsible licensee at the time, and bore responsibility for seeing to it that the partnership complied with the Subdivided Lands Act. This he failed to do.

With respect to Mr. Smith, at the time the acts found a violation of the Real Estate Law occurred, he was not a licensee and was subject to the oversight and supervision of Mr. Scribner. These facts are taken into consideration in the determination of an appropriate penalty. Even though Mr. Smith was not licensed at the time of the acts determined to have been a violation, those acts could have constituted cause to deny or limit the issuance of a real estate license to Mr. Smith, had they been known to the Department at the time the license was applied for by Mr. Smith and issued. Liability for those same acts may not be escaped due to the fortuitous circumstance that the Department issued the license before it was aware of a factual basis to limit or deny the issuance of the license.

Business and Professions Code section 10177(d) may serve as the basis for the imposition of discipline against a licensee whose license issues after the acts or omissions that form the basis of the action, even though those actions occurred before licensure. However, the duty placed on those that are licensed at the time such acts or omissions constituting violations occur is higher than that upon those unlicensed at the time that later become licensed. These varying levels of duties and responsibilities are taken into account in setting penalties appropriate to relative culpability and responsibility.

II

Factors in aggravation outweigh factors in mitigation, justification and rehabilitation, as set forth in the Findings. Harm was indirectly caused to the five purchasers of units named in the Accusation that purchased after the expiration of the Final Subdivision Public Report. The damages caused to the later unit owners were not the proximate result of the violations determined herein. The indirect relationship between the damages caused to later unit owners by respondents' failures to collect long-term dues and the violations determined is considered in the setting of the discipline to be imposed. Respondents have denied that their acts damaged the later unit purchasers, and have not offered or made restitution to the association for their proportionate share of long-term dues that were never collected.

ORDER

I

All licenses and licensing rights of respondent Richard Clayton Scribner under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Mr. Scribner pursuant to section 10156.5 of the Business and Professions Code if Mr. Scribner makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Mr. Scribner shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. Any restricted real estate license issued to Mr. Scribner pursuant to this Decision shall be suspended for a period of one hundred thirty (130) days from the date of the issuance of the restricted real estate license.
2. The restricted license issued to Mr. Scribner may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
3. The restricted license issued to Mr. Scribner may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Mr. Scribner has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
4. Mr. Scribner shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until a period of two (2) years has elapsed from the effective date of this Decision.
5. (Mr. Scribner shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Mr. Scribner has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing

WMA
Adopted

#5 modified - See
Decision after
Rejection

Adopted

education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. At least three clock hours of this required continuing education shall be in course work regarding compliance with the Subdivided Lands Act. Mr. Scribner shall submit information regarding the Subdivided Lands Act course to the Commissioner or his delegate for approval, such approval not to be unreasonably withheld. The approval of the Commissioner or his delegate need not be received prior to Mr. Scribner taking the course, but if Mr. Scribner elects to take the course before the Commissioner has approved the course in satisfaction of this requirement, Mr. Scribner bears that risk and may be required to take another course. Mr. Scribner shall not have completed the continuing education requirement until such time as the Commissioner has approved the course and Mr. Scribner has successfully completed it. If Mr. Scribner fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Mr. Scribner presents such evidence. The Commissioner shall afford Mr. Scribner the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Modified

6. Mr. Scribner shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Mr. Scribner fails to satisfy this condition, the Commissioner may order suspension of Mr. Scribner's license until Mr. Scribner passes the examination.
7. Mr. Scribner may liquidate a portion of the actual suspension set forth in Term 1 of this Order by paying a monetary penalty pursuant to Business and Professions Code section 10175.2 at the rate of \$250 per day for each day of actual suspension, for up to forty (40) days of the actual suspension, for a total monetary penalty of up to \$10,000 to liquidate actual suspension of not to exceed forty (40) days. If Mr. Scribner elects to liquidate up to forty days of the suspension, the 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. The check must be delivered to the Department before the effective date of this Decision. If Mr. Scribner

fails to pay the monetary penalty in accordance with the terms and conditions of this Decision, the Commissioner may, without a hearing, order the immediate execution of all or part of the stayed suspension not liquidated by Mr. Scribner by payment in accordance with the terms and conditions set forth here. In the event Mr. Scribner liquidates all or a portion of the forty days of suspension available for liquidation as set forth here, upon the Department's receipt of the check and its successful negotiation, the stayed portion of the suspension actually liquidated shall become permanent.

II

All licenses and licensing rights of respondent Jay Miller Smith under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Mr. Smith pursuant to section 10156.5 of the Business and Professions Code if Mr. Smith makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Mr. Smith shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

- With
Adopted*
1. Any restricted real estate license issued to Mr. Smith pursuant to this Decision shall be suspended for a period of ninety (90) days from the date of the issuance of the restricted real estate license.
 2. The restricted license issued to Mr. Smith may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Mr. Smith's conviction or plea of nolo contendere to a crime which is substantially related to Mr. Smith's fitness or capacity as a real estate licensee.
 3. The restricted license issued to Mr. Smith may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Mr. Smith has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
 4. Mr. Smith shall not be eligible to apply for the issuance of an unrestricted real estate license

nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.

- #5
Modified-See
Decision after
Rejection
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. At least three clock hours of this required continuing education shall be in course work regarding compliance with the Subdivided Lands Act. Mr. Smith shall submit information regarding the Subdivided Lands Act course to the Commissioner or his delegate for approval, such approval not to be unreasonably withheld. The approval of the Commissioner or his delegate need not be received prior to Mr. Smith taking the course, but if Mr. Smith elects to take the course before the Commissioner has approved the course in satisfaction of this requirement, Mr. Smith bears that risk and may be required to take another course. Mr. Smith shall not have completed the continuing education requirement until such time as the Commissioner has approved the course and Mr. Smith has successfully completed it. If Mr. Smith fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Mr. Smith presents such evidence. The Commissioner shall afford Mr. Smith the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Mr. Smith shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Mr. Smith fails to satisfy this condition, the Commissioner may order suspension of Mr. Smith's license until Mr. Smith passes the examination.
7. Mr. Smith may liquidate a portion of the actual suspension set forth in Term 1 of this Order by paying a monetary penalty pursuant to Business and Professions Code section 10175.2 at the rate of \$250 per day for each day of actual suspension, for up to forty (40) days of the actual
- AAA
Adopted

*with
Adapted*

suspension, for a total monetary penalty of up to \$10,000 to liquidate actual suspension of not to exceed forty (40) days. If Mr. Smith elects to liquidate up to forty days of the suspension, the 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. The check must be delivered to the Department before the effective date of this Decision. If Mr. Smith fails to pay the monetary penalty in accordance with the terms and conditions of this Decision, the Commissioner may, without a hearing, order the immediate execution of all or part of the stayed suspension not liquidated by Mr. Smith by payment in accordance with the terms and conditions set forth here. In the event Mr. Smith liquidates all or a portion of the forty days of suspension available for liquidation as set forth here, upon the Department's receipt of the check and its successful negotiation, the stayed portion of the suspension actually liquidated shall become permanent.

Dated: _____

January 25 1994

Stephen J. Smith

STEPHEN J. SMITH

Presiding Administrative Law Judge
Office of Administrative Hearings

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

FILED
JUN 23 1993
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JAY MILLER SMITH,
RICHARD CLAYTON SCRIBNER,
DAVID KAZIMIERZ JUREWICZ,
COLEEN KAY JUREWICZ,

Respondent

By Kathleen Contreras
Case No. H-2873 SAC

OAH No. N-43267

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, 501 J Street, Suite 220,

Second Floor Hearing Rooms, Sacramento, California 95814

on Monday, November 22, 1993 and Tuesday, November 23, 1993, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: June 22, 1993

By Susan Y. Bennett
SUSAN Y. BENNETT Counsel

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

FILED
FEB 25 1994
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JAY MILLER SMITH,)
RICHARD CLAYTON SCRIBNER,)
DAVID KAZIMIERZ JUREWICZ,)
COLEEN KAY JUREWICZ,)
Respondents.)

NO. H-2873 SAC
STIPULATION AND
AGREEMENT IN SETTLEMENT
AND ORDER

It is hereby stipulated by and between DAVID KAZIMIERZ JUREWICZ and COLEEN KAY JUREWICZ (sometimes referred to as Respondents), their attorney of record, David I. Brown, 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 Amended Accusation filed on May 13, 1993, with respect to Respondents DAVID KAZIMIERZ JUREWICZ and COLEEN KAY JUREWICZ:

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 Amended Accusation, which hearing was

FILE NO. H-2873 SAC

- 1 -

JAY MILLER SMITH
RICHARD CLAYTON SCRIBNER
DAVID KAZIMIERZ JUREWICZ
COLEEN KAY JUREWICZ

1 to be held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation.

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

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

23 4. Respondents, pursuant to the limitations set forth
24 below, hereby admit that the factual allegations in Paragraphs 2
25 through 5 of the Amended Accusation filed in this proceeding are
26 true and correct and the Real Estate Commissioner shall not be
27 required to provide further evidence to prove such allegations.

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- 2 -

JAY MILLER SMITH
RICHARD CLAYTON SCRIBNER
DAVID KAZIMIERZ JUREWICZ
COLEEN KAY JUREWICZ

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

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

18 DETERMINATION OF ISSUES

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

23 I

24 The conduct of Respondents DAVID KAZIMIERZ JUREWICZ and
25 COLEEN KAY JUREWICZ in the transaction described in the Amended
26 Accusation as admitted above is grounds for the imposition of
27 discipline on all of the real estate licenses and license rights

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- 3 -

JAY MILLER SMITH
RICHARD CLAYTON SCRIBNER
DAVID KAZIMIERZ JUREWICZ
COLEEN KAY JUREWICZ

1 of Respondents DAVID KAZIMIERZ JUREWICZ and COLEEN KAY JUREWICZ,
2 under the provisions of Section 11018.2 of the Business and
3 Professions Code (Code) in conjunction with Section 10177(d) of
4 the Code.

5 ORDER

6 All licenses and licensing rights of Respondent DAVID
7 KAZIMIERZ JUREWICZ and COLEEN KAY JUREWICZ under the Real Estate
8 Law are suspended for a period of ninety days (90) days from the
9 effective date of this Order; provided, however, that ninety (90)
10 days of said suspension shall be stayed for one (1) year upon the
11 following terms and conditions:

- 12 a. Respondents DAVID KAZIMIERZ JUREWICZ and COLEEN KAY
13 JUREWICZ shall obey all laws, rules and regulations
14 governing the rights, duties and responsibilities of
15 a real estate licensee in the State of California;
- 16 b. That no final subsequent determination be made,
17 after hearing or upon stipulation, that cause for
18 disciplinary action occurred within one (1) year of
19 the effective date of this Order. Should such a
20 determination be made, the Commissioner may, in his
21 discretion, vacate and set aside the stay order and
22 reimpose all or a portion of the stayed suspension.
23 Should no such determination be made, the stay
24 imposed herein shall become permanent;
- 25 c. Respondents DAVID KAZIMIERZ JUREWICZ and COLEEN KAY
26 JUREWICZ shall submit proof satisfactory to the
27 Commissioner of payment of restitution in the amount

1 of \$10,000.00 to Oak Terrace Homeowners Association
2 in the following manner:

- 3 (1) \$5,000.00 of said \$10,000.00 restitution shall be
4 paid prior to the effective date of the Order herein
5 to the Oak Terrace Homeowners Association; and,
6 (2) \$5,000.00 of said \$10,000.00 restitution shall be
7 paid on or before April 15, 1994 to the Oak Terrace
8 Homeowners Association.

9 The provisions of this paragraph may be satisfied by
10 proof of restitution as described herein to Oak
11 Terrace Homeowners Association by either Respondent
12 DAVID KAZIMIERZ JUREWICZ and/or Respondent COLEEN
13 KAY JUREWICZ;

- 14 d. If Respondent DAVID KAZIMIERZ JUREWICZ and/or
15 Respondent COLEEN KAY JUREWICZ fail to pay the
16 restitution in accordance with the terms of this
17 Order, the Commissioner may, without a hearing,
18 order the immediate execution of all or any part of
19 the ninety (90) days stayed suspension, in which
20 event Respondent DAVID KAZIMIERZ JUREWICZ and/or
21 Respondent COLEEN KAY JUREWICZ shall not be entitled
22 to any repayment nor credit, prorated or otherwise,
23 for money paid to the Oak Terrace Homeowners
24 Association under the terms of this Order; and,
25 e. If Respondent DAVID KAZIMIERZ JUREWICZ and/or
26 Respondent COLEEN KAY JUREWICZ (1) pay the
27 restitution as provided for herein, and, (2) if no

1 further cause for disciplinary action against the
2 real estate license of Respondent DAVID KAZIMIERZ
3 JUREWICZ and/or Respondent COLEEN KAY JUREWICZ
4 occurs within one (1) year from the effective date
5 of this Order, the ninety (90) days stay granted
6 pursuant to this paragraph shall become permanent.
7

8 December 3, 1993

9 DATED

10 Susan Y. Bennett
11 SUSAN Y. BENNETT
12 Counsel for Complainant

13 * * *

14 I have read the Stipulation and Agreement, and its terms
15 are understood by me and are agreeable and acceptable to me. I
16 understand that I am waiving rights given to me by the California
17 Administrative Procedure Act (including but not limited to
18 Sections 11506, 11508, 11509, and 11513 of the Government Code),
19 and I willingly, intelligently, and voluntarily waive those
20 rights, including the right of requiring the Commissioner to prove
21 the allegations in the Accusation at a hearing at which I would
22 have the right to cross-examine witnesses against me and to
23 present evidence in defense and mitigation of the charges.
24

25 December 17, 1993

26 DATED

27 David Kazimierz Jurewicz
DAVID KAZIMIERZ JUREWICZ
Respondent

Dec 20, 1993

DATED

Coleen Kay Jurewicz
COLEEN KAY JUREWICZ
Respondent

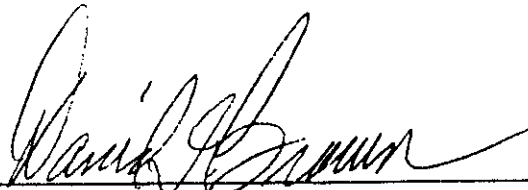
FILE NO. H-2873 SAC

- 6 -

JAY MILLER SMITH
RICHARD CLAYTON SCRIBNER
DAVID KAZIMIERZ JUREWICZ
COLEEN KAY JUREWICZ

1 Approved as to form:

2
3 1/6/94
4 DATED


5 DAVID I. BROWN
6 Attorney for Respondents
7 DAVID KAZIMIERZ JUREWICZ
8 and COLEEN KAY JUREWICZ

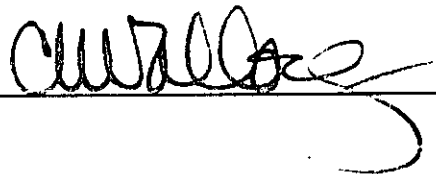
9 * * *

10 The foregoing Stipulation and Agreement for Settlement
11 is hereby adopted by the Real Estate Commissioner as his Decision
12 and Order and shall become effective at 12 o'clock noon on
13 March 17, 1994.

14 IT IS SO ORDERED

2/11, 1994.

15 CLARK WALLACE
16 Real Estate Commissioner


17
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27

FILE NO. H-2873 SAC

- 7 -

JAY MILLER SMITH
RICHARD CLAYTON SCRIBNER
DAVID KAZIMIERZ JUREWICZ
COLEEN KAY JUREWICZ

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
MAY 13 1993
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

6
7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 JAY MILLER SMITH,)
14 RICHARD CLAYTON SCRIBNER,)
15 DAVID KAZIMIERZ JUREWICZ,)
16 COLEEN KAY JUREWICZ,)
Respondents.)

NO. H- 2873 SAC

AMENDED ACCUSATION

17 The Complainant, Charles W. Koenig, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against JAY MILLER SMITH (hereinafter "Respondent SMITH");
20 RICHARD CLAYTON SCRIBNER (hereinafter "Respondent SCRIBNER");
21 DAVID KAZIMIERZ JUREWICZ (hereinafter "Respondent DK
22 JUREWICZ"); and, COLEEN KAY JUREWICZ (hereinafter "Respondent
23 CK JUREWICZ"), is 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.

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 **SMITH** as a real estate broker;
- (b) Respondent **SCRIBNER** as a real estate broker;
- (c) Respondent **DK JUREWICZ** as a real estate broker; and,
- (d) Respondent **CK JUREWICZ** as a real estate salesperson in the employ of Respondent **DK JUREWICZ**.

III

At all times mentioned herein, Oak Terrace Associates I, a California Limited Partnership (hereinafter "Oak Terrace Associates"), acting by and through its General Partners, Respondents **SMITH** and **SCRIBNER**, was the owners of certain subdivided real property as defined in Sections 11000 and 11004.5 of the Code, or had the right to acquire lots, units, or parcels in said subdivided real property. Said subdivided lands are known as or commonly called **OAK TERRACE CONDOMINIUM** (hereinafter "said subdivision") and are located in or near Sacramento, County of Sacramento, State of California.

IV

At all times mentioned herein Respondents **DK JUREWICZ** and **CK JUREWICZ**, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker and a real estate salesperson in the State of California within the meaning of Section 10131(a) of the Code, including the operation of a real estate sale business with the public on behalf

1 of others, including but not limited to Oak Terrace Associates,
2 for compensation or in expectation of compensation. Respondents
3 DK JUREWICZ and CK JUREWICZ sold or offered to sell, bought or
4 offered to buy, solicited prospective sellers or purchasers of,
5 solicited or obtained listings of, or negotiated the purchase,
6 sale or exchange of real property.

7 V

8 Beginning on or before June 5, 1990, Respondents DK
9 JUREWICZ and CK JUREWICZ, acting on behalf of Oak Terrace
10 Associates and Respondents SMITH and SCRIBNER, sold or offered
11 for sale lots, units or parcels in said subdivision without having
12 a valid Final Subdivision Public Report, and without having filed
13 with the Department a Notice of Intention and completed
14 questionnaire as required by Section 11010 of the Code, including
15 but not limited to the following parcels:

<u>Purchaser</u>	<u>Unit</u>	<u>Recording Date</u> <u>On or about:</u>
Nellie E. Shepherd	3	June 5, 1990
A. Coskun Samli	10	July 6, 1990
Tony M. Yuke, Jerry Yuke, and Trudy N. H. Yuke	9	July 12, 1990
Shirley Renne Smith, John Ballinger, and Shirley Ballinger	18	August 28, 1990
Janis Kay Taylor, Frank E. Taylor, and Marshall L. Taylor	7	September 21, 1990

VI

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents SCRIBNER, DK JUREWICZ, and CK JUREWICZ under Section 11018.2 in conjunction with Section 10177(d) of the Code.

VII

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondent SMITH under Section 11018.2 of the Code in conjunction with Section 10177(f) of the Code.

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 licenses and license rights of Respondents SMITH, SCRIBNER, DK JUREWICZ, and CK JUREWICZ, 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.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 12th day of May, 1993

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
APR 28 1993
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

6
7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 JAY MILLER SMITH,)
14 RICHARD CLAYTON SCRIBNER,)
15 DAVID KAZIMIERZ JUREWICZ,)
16 COLEEN KAY JUREWICZ,)
Respondents.)

NO. H-2873 SAC

ACCUSATION

17 The Complainant, Charles W. Koenig, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against JAY MILLER SMITH (hereinafter "Respondent SMITH");
20 RICHARD CLAYTON SCRIBNER (hereinafter "Respondent SCRIBNER");
21 DAVID KAZIMIERZ JUREWICZ (hereinafter "Respondent DK
22 JUREWICZ"); and, COLEEN KAY JUREWICZ (hereinafter "Respondent
23 CK JUREWICZ"), is 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.

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 **SMITH** as a real estate broker;
- (b) Respondent **SCRIBNER** as a real estate broker;
- (c) Respondent **DK JUREWICZ** as a real estate broker; and,
- (d) Respondent **CK JUREWICZ** as a real estate salesperson in the employ of Respondent **DK JUREWICZ**.

III

At all times mentioned herein, Oak Terrace Associates I, a California Limited Partnership (hereinafter "Oak Terrace Associates"), acting by and through its General Partners, Respondents **SMITH** and **SCRIBNER**, was the owners of certain subdivided real property as defined in Sections 11000 and 11004.5 of the Code, or had the right to acquire lots, units, or parcels in said subdivided real property. Said subdivided lands are known as or commonly called **OAK TERRACE CONDOMINIUM** (hereinafter "said subdivision") and are located in or near Sacramento, County of Sacramento, State of California.

IV

At all times mentioned herein Respondents **DK JUREWICZ** and **CK JUREWICZ**, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker and a real estate salesperson in the State of California within the meaning of Section 10131(a) of the Code, including the operation of a real estate sale business with the public on behalf

1 of others, including but not limited to Oak Terrace Associates,
2 for compensation or in expectation of compensation. Respondents
3 **DK JUREWICZ** and **CK JUREWICZ** sold or offered to sell, bought or
4 offered to buy, solicited prospective sellers or purchasers of,
5 solicited or obtained listings of, or negotiated the purchase,
6 sale or exchange of real property.

7 V

8 Beginning on or before June 5, 1990, Respondents **DK**
9 **JUREWICZ** and **CK JUREWICZ**, acting on behalf of Oak Terrace
10 Associates and Respondents **SMITH** and **SCRIBNER**, sold or offered
11 for sale lots, units or parcels in said subdivision without having
12 a valid Final Subdivision Public Report, and without having filed
13 with the Department a Notice of Intention and completed
14 questionnaire as required by Section 11010 of the Code, including
15 but not limited to the following parcels:

<u>Purchaser</u>	<u>Unit</u>	<u>Recording Date</u> <u>On or about:</u>
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Janis Kay Taylor, Frank E. Taylor, and Marshall L. Taylor	7	September 21, 1990

VI

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents SMITH, SCRIBNER, DK JUREWICZ, and CK JUREWICZ under Section 11018.2 in conjunction with Section 10177(d) of the Code.

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 licenses and license rights of Respondents SMITH, SCRIBNER, DK JUREWICZ, and CK JUREWICZ, 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.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 14th day of April, 1993