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- 1 -

III

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(b) of the Code, wherein Respondents for or in expectation of a compensation solicited prospective tenants for, negotiated rental agreements for and collected rents from real properties owned by another or others and otherwise managed real properties located in or near Carlsbad, California.

IV

During the course of the property management activities described in Paragraph III above, Respondents received and disbursed funds held in trust on behalf of another or others.

V

Within the three-year period immediately preceding the filing of the Accusation and continuing thereafter, Respondent DPMS maintained the following trust fund account:

<u>ACCOUNT NAME & NO.</u>	<u>BANK</u>
Desert Pacific Management Services, Inc. Account Number: 7884019592 (hereinafter "Trust Account")	California Federal Bank Carlsbad, California

VI

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondent failed to adequately maintain and perform a reconciliation with the records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations, at least once per month, in conformance with Section 2831.2 of Title 10, California Code of Regulations (hereinafter "the Regulations").

VII

On or about December 19, 2001, a representative of the Real Estate Commissioner, after service of a subpoena duces tecum on Respondent, required that records, papers, books, accounts and documents executed or obtained in connection with transactions for which a real estate license is required be made available for examination and inspection. Respondent failed and refused to make said records available for inspection and/or failed to retain said records.

DETERMINATION OF ISSUES

I

The acts and/or omissions of Respondent described above are grounds for the suspension or revocation of Respondent's licenses and/or license rights under Section 10148 of the Code 10177(d) of the Code in conjunction with Section 10148 of the Code and Sections 2831.1 and 2831.2 of the Regulations.

II

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

ORDER

All licenses and licensing rights of Respondent, DESERT-PACIFIC MANAGEMENT SERVICES, INC., under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on
NOV - 6 2007

DATED: 10/3/07, 2007.

JEFF DAVIS
Real Estate Commissioner

1
2 Department of Real Estate
3 P.O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0792
6

FILED
SEP 24 2007

DEPARTMENT OF REAL ESTATE

By Anne Shawyer

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)

No. H-2935 SD

11 DESERT-PACIFIC MANAGEMENT)
12 SERVICES, INC.,)

DEFAULT ORDER

13 Respondent.)
14

15 Respondent, DESERT-PACIFIC MANAGEMENT SERVICES, INC., having
16 failed to file a Notice of Defense within the time required by
17 Section 11506 of the Government Code, is now in default. It is,
18 therefore, ordered that a default be entered on the record in
19 this matter.
20

21 IT IS SO ORDERED September 20, 2007.

22 JEFF DAVI

23 Real Estate Commissioner

24
25 By: Dolores Weeks

26 DOLORES WEEKS

27 Regional Manager

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED
MAY 19 2004

DEPARTMENT OF REAL ESTATE

By Laurie P. Z...

5
6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-2935 SD
12)
13 DESERT-PACIFIC MANAGEMENT) STIPULATION AND AGREEMENT
14 SERVICES INC. AND) IN SETTLEMENT AND ORDER
15 CLARENCE A. WINETROUT III,) AS TO
Respondents.) CLARENCE A. WINETROUT III
ONLY

16 It is hereby stipulated by and between CLARENCE A.
17 WINETROUT III (hereinafter Respondent "WINETROUT") and the
18 Complainant, acting by and through David B. Seals, Counsel for
19 the Department of Real Estate, as follows for the purpose of
20 settling and disposing of the Accusation filed on December 31,
21 2003, in this matter:

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

27 ///

1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

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

7 3. A Notice of Defense was filed on January 16, 2004
8 by Respondent WINETROUT, pursuant to Section 11505 of the
9 Government Code for the purpose of requesting a hearing on the
10 allegations in the Accusation. Respondent WINETROUT hereby
11 freely and voluntarily withdraws said Notice of Defense.
12 Respondent WINETROUT acknowledges that he understands that by
13 withdrawing said Notice of Defense he will thereby waive his
14 right to require the Acting Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that he will waive
17 other rights afforded to him in connection with the hearing such
18 as the right to present evidence in defense of the allegations
19 in the Accusation and the right to cross-examine witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondent WINETROUT chooses not to
23 contest these allegations, but to remain silent and understands
24 that, as a result thereof, these factual allegations, without
25 being admitted or denied, will serve as a prima facie basis for
26 the disciplinary action stipulated to herein. The Acting Real
27 ///

1 Estate Commissioner shall not be required to provide further
2 evidence to prove said factual allegations.

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

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

21 DETERMINATION OF ISSUES

22 I

23 By reason of the foregoing stipulations, admissions
24 and waivers and solely for the purpose of settlement of the
25 pending Accusation without a hearing, it is stipulated and
26 agreed that the facts alleged above are grounds for the
27 suspension or revocation of the licenses and license rights of

1 Respondent CLARENCE A. WINETROUT III under Section 10177(h) of
2 the Code.

3 ORDER

4 I

5 All licenses and licensing rights of Respondent
6 CLARENCE A. WINETROUT III under the Real Estate Law are
7 suspended for a period of sixty (60) days from the effective
8 date of this Order; provided, however, that:

9 1. Thirty (30) days of said suspension shall be stayed
10 for one (1) year upon the following terms and conditions:

11 A. Respondent WINETROUT shall obey all laws,
12 rules and regulations governing the rights, duties and
13 responsibilities of a real estate licensee in the
14 State of California; and,

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

24 2. The remaining thirty (30) days of said 60-day
25 suspension shall be stayed upon the condition that Respondent
26 WINETROUT petition pursuant to Section 10175.2 of the Business
27 and Professions Code and pays a monetary penalty pursuant to

1 Section 10175.2 of the Business and Professions Code at a rate
2 of \$150 for each day of the suspension for a total monetary
3 penalty of \$4,500:

4 A. Said payment shall be in the form of a
5 cashier's check or certified check made payable to the
6 Recovery Account of the Real Estate Fund. Said check
7 must be delivered to the Department prior to the
8 effective date of the Order in this matter.

9 B. No further cause for disciplinary action
10 against the Real Estate licenses of said Respondent
11 occurs within one (1) year from the effective date of
12 the decision in this matter.

13 C. If Respondent WINETROUT fails to pay the
14 monetary penalty as provided above prior to the
15 effective date of this Order, the stay of the
16 suspension shall be vacated as to Respondent WINETROUT
17 and the order of suspension shall be immediately
18 executed, under this Paragraph 2 of this Order, in
19 which event Respondent WINETROUT shall not be entitled
20 to any repayment nor credit, prorated or otherwise,
21 for the money paid to the Department under the terms
22 of this Order.

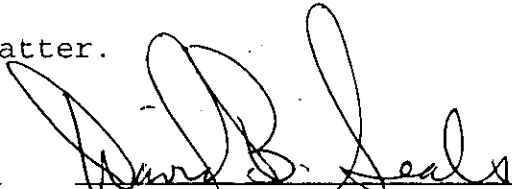
23 D. If Respondent WINETROUT pays the monetary
24 penalty and any other moneys due under this
25 Stipulation and Agreement and if no further cause for
26 disciplinary action against the real estate licenses
27 of Respondent WINETROUT occurs within one (1) year

1 from the effective date of this Order, the entire stay
2 hereby granted under Paragraphs 1 and 2 of this Order,
3 as to Respondent WINETROUT only, shall become
4 permanent.

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

13 F. Respondent WINETROUT shall, prior to the
14 date this Stipulation becomes effective, submit proof
15 satisfactory to the Commissioner of having taken and
16 successfully completed the continuing education course
17 on trust fund accounting and handling specified in
18 subdivision (a) of Section 10170.5 of the Business and
19 Professions Code. Proof of satisfaction of this
20 requirement includes evidence that Respondent
21 WINETROUT has successfully completed the trust fund
22 account and handling continuing education course
23 within 120 days prior to the effective date of the
24 Stipulation in this matter.

25
26 DATED: April 27, 2004


27 DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

1 * * *

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

13
14 DATED:

April 23, 2004

Clarence A. Winetrout III
CLARENCE A. WINETROUT III
Respondent

15 * * *

16
17 The foregoing Stipulation and Agreement in Settlement
18 is hereby adopted by the Acting Real Estate Commissioner as his
19 Decision and Order and shall become effective at 12 o'clock noon
20 on JUNE 9, 2004.

21 IT IS SO ORDERED

May 10

, 2004.

22 JOHN R. LIBERATOR
23 Acting Real Estate Commissioner

24 John R. Liberator
25
26
27

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

FILED
APR 12 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DESERT-PACIFIC MANAGEMENT
SERVICES INC. AND
CLARENCE A. WINETROUT III,

Case No. H-2935 SD

OAH No. L-2004010562

Respondents

**FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, SUITE 6022, SAN DIEGO, CA 92101** on **TUESDAY, MAY 4, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: APRIL 12, 2004

By David B. Seals
DAVID B. SEALS, Counsel

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

FILED
FEB 02 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DESERT-PACIFIC MANAGEMENT SERVICES,
INC. and CLARENCE A WINETROUT, III

Case No. H-2935 SD

OAH No. L2004010562

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, ROOM 6022, SAN DIEGO, CALIFORNIA 92101** on **FRIDAY--MARCH 12, 2004**, at the hour of **1:00 PM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: FEBRUARY 2, 2004

By David B. Seals
DAVID B. SEALS, Counsel D.E.

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)

FILED
DEC 31 2003

DEPARTMENT OF REAL ESTATE

By Laurel B. Zari

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
12 DESERT-PACIFIC MANAGEMENT)	No. H- 2935 SD
13 SERVICES INC., and)	<u>ACCUSATION</u>
14 CLARENCE A. WINETROUT III,)	
15 Respondents.)	

16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California, for cause of accusation
18 against DESERT-PACIFIC MANAGEMENT SERVICES INC. dba Desert-
19 Pacific Real Estate (hereinafter "Respondent DESERT-PACIFIC")
20 and CLARENCE A. WINETROUT III (hereinafter "Respondent
21 WINETROUT") is informed and alleges as follows:

22 I

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

26 ///

27 ///

1 II

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

5 DESERT-PACIFIC MANAGEMENT SERVICES INC. - as a real
6 estate broker corporation.

7 CLARENCE A. WINETROUT III - as a real estate broker
8 and as designated broker-officer for Respondent DESERT-PACIFIC.

9 III

10 Whenever reference is made in an allegation in this
11 Accusation to an act or omission of "Respondents", such
12 allegation shall be deemed to mean the act or omission of each
13 of the Respondents named in the caption hereof, acting
14 individually, jointly, and severally.

15 IV

16 At all times herein mentioned, Respondents engaged in
17 the business of, acted in the capacity of, advertised or assumed
18 to act as a real estate broker in the State of California,
19 within the meaning of Section 10131(b) of the Code, wherein
20 Respondents for or in expectation of a compensation solicited
21 prospective tenants for, negotiated rental agreements for and
22 collected rents from real properties owned by another or others
23 and otherwise managed real properties located in or near
24 Carlsbad, California.

25 ///

26 ///

27 ///

1 V

2 During the course of the property management
3 activities described in Paragraph IV above, Respondents DESERT-
4 PACIFIC and WINETROUT received and disbursed funds held in trust
5 on behalf of another or others.

6 VI

7 Within the three-year period immediately preceding the
8 filing of this Accusation and continuing thereafter, Respondents
9 DESERT-PACIFIC and WINETROUT maintained the following trust fund
10 account:

11	<u>ACCOUNT NAME & NO.</u>	<u>BANK</u>
12	Desert Pacific Management	California Federal Bank
13	Services Inc.	Carlsbad, California
14	Account Number: 7884019592	
	(hereinafter "Trust Account")	

15 VII

16 In connection with the receipt and disbursement of
17 trust funds described in Paragraph V above, Respondents DESERT-
18 PACIFIC and WINETROUT failed to adequately maintain and perform
19 a reconciliation with the records of all trust funds received
20 and disbursed as required by Section 2831.1 of the Regulations,
21 at least once per month, in conformance with Section 2831.2 of
22 Title 10, California Code of Regulations (hereinafter "the
23 Regulations").

24 ///

25 ///

26 ///

27 ///

VIII

On or about December 19, 2001, a representative of the Real Estate Commissioner, after service of a subpoena duces tecum on Respondents DESERT-PACIFIC and WINETROUT, required that records, papers, books, accounts and documents executed or obtained in connection with transactions for which a real estate license is required be made available for examination and inspection. Respondents DESERT-PACIFIC and WINETROUT failed and refused to make said records available for inspection and/or failed to retain said records.

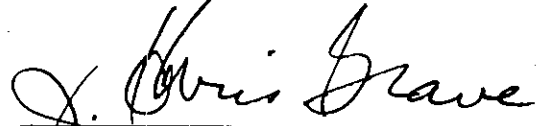
IX

The acts and/or omissions of Respondents described above are grounds for the suspension or revocation of Respondents' licenses and/or license rights under Section 10148 of the Code 10177(d) of the Code in conjunction with Section 10148 of the Code and Sections 2831.1 and 2831.2 of the Regulations.

In the alternative the acts and omissions of Respondent WINETROUT described above, constitute failure on the part of Respondent WINETROUT, as the designated broker-officer for Respondent DESERT-PACIFIC, to exercise reasonable supervision and control over the licensed activities of Respondent DESERT-PACIFIC required by Section 10159.2 of the Code, and is cause for the suspension or revocation of Respondent WINETROUT's license and or license rights under Section 10177(h) of the Code and Section 10177(d) of the Code in conjunction with Section 2725 of the Regulations.

9

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

8
9 

10 J. CHRIS GRAVES
11 Deputy Real Estate Commissioner

12 Dated at San Diego, California,
13 this 10th day of December, 2003.

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