

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

FILED
APR 07 2006

DEPARTMENT OF REAL ESTATE

By Anne Shauer

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-3231 SD
12 DON PERRY AND ASSOCIATES.) STIPULATION AND AGREEMENT
13 a California Corporation,)
14 DONALD WALTER PERRY, AND)
15 KENNETH DEE SKELTON)
Respondents.)

16 It is hereby stipulated by and between Respondent
17 DONALD WALTER PERRY (hereinafter "Respondent"), individually and
18 by and through Frank M. Buda, attorney of record herein for
19 Respondent, and the Complainant, acting by and through Truly
20 Sughrue, Counsel for the Department of Real Estate (herein "the
21 Department"), as follows for the purpose of settling and
22 disposing of the Accusation filed on July 1, 2005 in this matter
23 (herein "the Accusation"):

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27

DRE No. H-3231 SD

DONALD WALTER PERRY

1 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 and Agreement.

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

8 3. On July 14, 2005, Respondent filed Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that Respondent
13 understands that by withdrawing said Notice of Defense Respondent
14 will thereby waive Respondent's right to require the Real Estate
15 Commissioner (herein "the Commissioner") to prove the allegations
16 in the Accusation at a contested hearing held in accordance with
17 the provisions of the APA and that Respondent will waive other
18 rights afforded to Respondent in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interests of
23 expediency and economy, Respondent choose not to contest these
24 allegations, but to remain silent and understand that, as a
25 result thereof, these factual allegations, without being admitted
26 or denied, will serve as a prima facie basis for the disciplinary
27

DRE No. H-3231 SD

DONALD WALTER PERRY

1 action stipulated to herein. The Real Estate Commissioner shall
2 not be required to provide further evidence to prove said factual
3 allegations.

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

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

19 7. Pursuant to the Decision in Case No. H-2871 SD,
20 Respondent has previously agreed to pay and been ordered to pay,
21 pursuant to Section 10148 of the California Business and
22 Professions Code, costs in the sum of \$3,038.68 of the audit
23 which resulted in the determination that Respondent committed the
24 trust fund violation(s) found in paragraph I, below, of the
25 Determination of Issues. Respondent agrees to pay said costs or
26 provide proof of such payment prior to the effective date of the

27 DRE No. H-3231 SD

DONALD WALTER PERRY

1 Decision herein.

2 8. Respondent further understands that by agreeing to
3 this Stipulation and Agreement, Respondent agrees to pay,
4 pursuant to Section 10148 of the California Business and
5 Professions Code, the additional cost of the audit which resulted
6 in the determination that Respondent committed the trust fund
7 violation(s) found in paragraph I, below, of the Determination of
8 Issues. The amount of said costs is \$5,145.82.

9 9. Respondent further understands that by agreeing to
10 this Stipulation and Agreement in Settlement, the findings set
11 forth below in the Determination Of Issues become final, and that
12 the Commissioner may charge said Respondent, for the costs of any
13 audit conducted pursuant to Section 10148 of the California
14 Business and Professions Code to determine if the trust fund
15 violation(s) found in paragraph I, below, of the Determination of
16 Issues have been corrected. The maximum costs of said audit shall
17 not exceed \$8,182.50.

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 hearing, it is stipulated and agreed that the
22 following Determination of Issues shall be made:

23 I

24 The facts alleged above are grounds for the suspension
25 or revocation of Respondent DONALD WALTER PERRY licenses and
26

27 DRE No. H-3231 SD

DONALD WALTER PERRY

1 license rights under the following sections of the Code and
2 Regulations:

3 (a) As to Paragraphs XI(a) and XI(b), under Section
4 10145 of the Code in conjunction with Section 10177(d) of the
5 Code; and

6 (b) As to Paragraph XI(c), under Section 10145 and
7 Section 2832.1 of the Regulations in conjunction with Section
8 10177(d) of the Code.

9 ORDER

10 II

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

17 (a) Pays or provides proof of such payment, the sum of
18 \$3,038.68 to the Department as and for the cost of the audit
19 which resulted in the determination that Respondents committed
20 the trust fund violation(s) found in paragraph I of the
21 Determination of Issues;

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

24 The restricted license issued to Respondent shall be
25 subject to all of the provisions of Section 10156.7 of the Code
26 and to the following limitations, conditions and restrictions

1 imposed under authority of Section 10156.6 of the Code:

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

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

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

20 4. Pursuant to Section 10148 of the Business and
21 Professions Code, Respondent shall pay the additional sum of
22 \$5,145.82 for the Commissioner's cost of the audit which led to
23 this disciplinary action. Respondent shall pay such cost within
24 forty-five (45) days of receiving an invoice therefor from the
25 Commissioner. The Commissioner may suspend the restricted
26 license issued to Respondent pending a hearing held in accordance
27

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

9 5. Pursuant to Section 10148 of the Code, Respondent
10 shall pay the Commissioner's reasonable cost, not to exceed
11 \$8,152.82, for an audit to determine if Respondents have
12 corrected the trust fund violation(s) found in Paragraph I of the
13 Determination of Issues. In calculating the amount of the
14 Commissioner's reasonable cost, the Commissioner may use the
15 estimated average hourly salary for all persons performing audits
16 of real estate brokers, and shall include an allocation for
17 travel time to and from the auditor's place of work. Respondent
18 shall pay such cost within 45 days of receiving an invoice from
19 the Commissioner detailing the activities performed during the
20 audit and the amount of time spent performing those activities.
21 The Commissioner may suspend the restricted license issued to
22 respondent pending a hearing held in accordance with Section
23 11500, et seq., of the Government Code, if payment is not timely
24 made as provided for herein, or as provided for in a subsequent
25 agreement between the Respondent and the Commissioner. The
26 suspension shall remain in effect until payment is made in full

1 or until Respondent enters into an agreement satisfactory to the
2 Commissioner to provide for payment, or until a decision
3 providing otherwise is adopted following a hearing held pursuant
4 to this condition.

5 6. Respondent shall, within nine months from the
6 effective date of the Decision, present evidence satisfactory to
7 the Commissioner that Respondent has, since the most recent
8 issuance of an original or renewal real estate license, taken and
9 successfully completed the continuing education requirements of
10 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
11 real estate license. If Respondent fails to satisfy this
12 condition, the Commissioner may order the suspension of the
13 restricted license until the Respondent presents such evidence.
14 The Commissioner shall afford Respondent the opportunity for a
15 hearing pursuant to the Administrative Procedure Act to present
16 such evidence.

17 7. Respondent shall submit with any application for
18 license under an employing broker, or any application for
19 transfer to a new employing broker, a statement signed by the
20 prospective employing real estate broker on a form approved by
21 the Department of Real Estate which shall certify:

22 a. That the employing broker has read the Decision of
23 the Commissioner which granted the right to a restricted license;
24 and

25 b. That the employing broker will exercise close
26 supervision over the performance by the restricted licensee

1 relating to activities for which a real estate license is
2 required.

3 14-Feb-06
4 DATED

[Signature]
5 TRULY SUGHRUE, Counsel
6 Department of Real Estate

7 * * *

8 I have read the Stipulation and Agreement and have
9 discussed its terms with my attorney and its terms are understood
10 by me and are agreeable and acceptable to me. I understand that I
11 am waiving rights given to me by the California Administrative
12 Procedure Act (including but not limited to Sections 11506,
13 11508, 11509, and 11513 of the Government Code), and I willingly,
14 intelligently, and voluntarily waive those rights, including the
15 right of requiring the Commissioner to prove the allegations in
16 the Accusation at a hearing at which I would have the right to
17 cross-examine witnesses against me and to present evidence in
18 defense and mitigation of the charges.

19 2-3-06
20 DATED

[Signature]
21 DONALD WALTER PERRY
22 Respondent

23 * * *

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

26 2-6-06
27 DATED

[Signature]
FRANK M. BUDA
Attorney for Respondents

* * *

DRE No. H-3231 SD

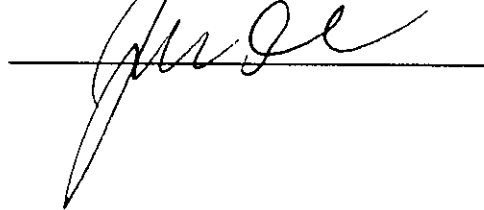
DONALD WALTER PERRY

1 The foregoing Stipulation and Agreement is hereby
2 adopted by me as my Decision in this matter and shall become
3 effective at 12 o'clock noon on APR 28 2006

4 IT IS SO ORDERED 4-5, 2006.

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6 JEFF DAVE
7 Real Estate Commissioner

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

FILED
AUG 10 2006

DEPARTMENT OF REAL ESTATE

By *Anne Maurer*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-3231 SD
12)
13 DON PERRY AND ASSOCIATES.) STIPULATION AND AGREEMENT
14 a California Corporation,)
15 DONALD WALTER PERRY, AND)
16 KENNETH DEE SKELTON)
17 Respondents.)

16 It is hereby stipulated by and between Respondent
17 KENNETH DEE SKELTON (hereinafter "Respondent"), individually and
18 by and through Eric Ginder, attorney of record herein for
19 Respondent, and the Complainant, acting by and through Truly
20 Sughrue, Counsel for the Department of Real Estate (herein "the
21 Department"), as follows for the purpose of settling and
22 disposing of the Accusation filed on July 1, 2005 in this matter
23 (herein "the Accusation"):

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27

DRE No. H-3231 SD

KENNETH DEE SKELTON

1 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 and Agreement.

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

8 3. On July 14, 2005, Respondent filed Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that Respondent
13 understands that by withdrawing said Notice of Defense Respondent
14 will thereby waive Respondent's right to require the Real Estate
15 Commissioner (herein "the Commissioner") to prove the allegations
16 in the Accusation at a contested hearing held in accordance with
17 the provisions of the APA and that Respondent will waive other
18 rights afforded to Respondent in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interests of
23 expediency and economy, Respondent choose not to contest these
24 allegations, but to remain silent and understand that, as a
25 result thereof, these factual allegations, without being admitted
26 or denied, will serve as a prima facie basis for the disciplinary
27

1 action stipulated to herein. The Real Estate Commissioner shall
2 not be required to provide further evidence to prove said factual
3 allegations.

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

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

19 DETERMINATION OF ISSUES

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

24 I

25 The facts alleged in the accusation are grounds for
26 the suspension or revocation of Respondent KENNETH DEE SKELTON

27 DRE No. H-3231 SD

KENNETH DEE SKELTON

1 licenses and license rights under the following sections of the
2 Code and Regulations:

3 (a) As to Paragraphs XI(a) and XI(b), under Section
4 10145 of the Code in conjunction with Section 10177(d) of the
5 Code; and

6 (b) As to Paragraph XI(c), under Section 10145 and
7 Section 2832.1 of the Regulations in conjunction with Section
8 10177(d) of the Code.

9 II

10 The facts alleged in the accusation in Paragraphs XII
11 and XIII, are grounds from the suspension or revocation of the
12 licenses and license rights of Respondent KENNETH DEE SKELTON
13 under Sections 10177(g) and/or 10177(h) of the Code, and Section
14 10177(d) of the Code in conjunction with Section 10159.2 of the
15 Code.

16 ORDER

17 I

18 All licenses and licensing rights of Respondent KENNETH DEE
19 SKELTON under the Real Estate Law are suspended for a period of
20 one hundred and thirty (130) days from the effective date of this
21 Order; provided, however, that:

22 1) Thirty (30) days of said suspension shall be stayed, upon the
23 condition that Respondent petition pursuant to Section
24 10175.2 of the Business and Professions Code and pays a
25 monetary penalty pursuant to Section 10175.2 of the Business
26

1 and Professions Code at a rate of \$150 for each day of the
2 suspension for a total monetary penalty of \$4,500.

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

8 b) No further cause for disciplinary action against the Real
9 Estate licenses of said Respondent occurs within two (2)
10 years from the effective date of the decision in this
11 matter.

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

20 d) If Respondent pays the monetary penalty and any other moneys
21 due under this Stipulation and Agreement and if no further
22 cause for disciplinary action against the real estate
23 license of said Respondent occurs within two (2) years from
24 the effective date of this Order, the entire stay hereby
25 granted under Paragraph I of this Order, as to said
26 Respondent only, shall become permanent.

1 2) The remaining one hundred (100) days of said suspension shall
2 be stayed for two (2) years upon the following terms and
3 conditions:

4 a) Respondent shall obey all laws, rules and regulations
5 governing the rights, duties and responsibilities of a real
6 estate licensee in the State of California; and,

7 b) That no final subsequent determination be made, after
8 hearing or upon stipulation, that cause for disciplinary
9 action occurred within two (2) years from the effective date
10 of this Order. Should such a determination be made, the
11 Commissioner may, in his discretion, vacate and set aside
12 the stay order and reimpose all or a portion of the stayed
13 suspension. Should no such determination be made, the stay
14 imposed herein shall become permanent.

15 3) Respondent shall, within six (6) months from the effective
16 date of this decision, take and pass the Professional
17 Responsibility Examination administered by the Department
18 including the payment of the appropriate examination fee.

19 If SKELTON fails to satisfy this condition, the Commissioner
20 may order suspension of the license until Respondent passes
21 the examination.

22 4) Respondent shall, prior to the effective date of this
23 Decision, submit proof satisfactory to the Commissioner of
24 having taken and successfully completed the continuing
25 education course on trust fund accounting and handling
26 specified in subdivision (a) of Section 10170.5 of the
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Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until Respondent presents proof that he has successfully completed the trust fund course.

21-June-06
DATED

Truly Sugerue
TRULY SUGERUE, Counsel
Department of Real Estate

* * *

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

FEB. 6, 2006
DATED

Kenneth D. Skelton
KENNETH DEE SKELTON
Respondent

DRE No. H-3231 SD


KENNETH DEE SKELTON

* * *

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

2-6-06

DATED

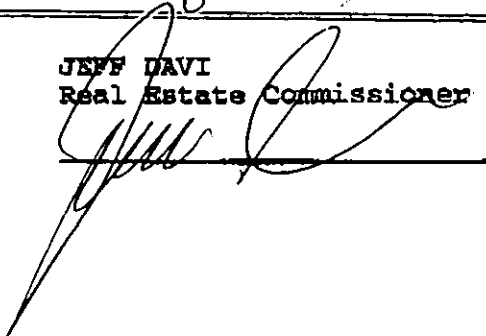

ERIC GINDER
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter and shall become
effective at 12 o'clock noon on _____, 2006.

IT IS SO ORDERED 8-8-06, 2006.

JEFF DAVI
Real Estate Commissioner



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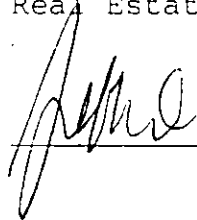
1 Respondent's license certificate and pocket card shall
2 be sent to the below-listed address so that they reach the
3 Department on or before the effective date of this Order:

4 DEPARTMENT OF REAL ESTATE
5 Attention: Licensing Flag Section
6 P. O. Box 187000
7 Sacramento, CA 95818-7000

8 This Order shall become effective at 12 o'clock
9 noon on APR 26 2000.

10 DATED: 4-5-00

11 JEFF DAVI
12 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

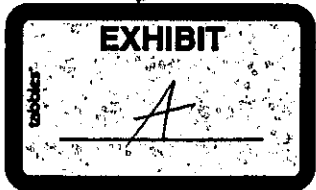
In the Matter of the Accusation of)	No. H-3231 SD
DON PERRY, DON PERRY &)	
ASSOCIATES, a California)	
Corporation, and KENNETH DEE)	
SKELTON,)	
Respondents.)	

DECLARATION

Respondent is DON PERRY & ASSOCIATES and is currently licensed as a restricted real estate broker corporation. Frank M. Buda is representing DON PERRY & ASSOCIATES in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedures Act (Sections 11400 et seq., of the Business and Professions Code) DON PERRY & ASSOCIATES wish to voluntarily surrender the real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

DON PERRY & ASSOCIATES understands that by so voluntarily surrendering the license, that it can only be



1 reinstated in accordance with the provisions of Section 11522 of
2 the Government Code. DON PERRY & ASSOCIATES also understands that
3 by so voluntarily surrendering my license(s), I agree to the
4 following:

5 The filing of this Declaration shall be deemed as DON
6 PERRY & ASSOCIATES petition for voluntary surrender. It shall
7 also be deemed to be an understanding and agreement by DON PERRY
8 & ASSOCIATES that, DON PERRY & ASSOCIATES waives all rights it
9 has to require the Commissioner to prove the allegations
10 contained in the Accusation filed in this matter at a hearing
11 held in accordance with the provisions of the Administrative
12 Procedures Act (Government Code Sections 11400 et seq.), and that
13 DON PERRY & ASSOCIATES also waives other rights afforded to me in
14 connection with the hearing such as the right to discovery, the
15 right to present evidence in defense of the allegations in the
16 Accusation and the right to cross examine witnesses. DON PERRY &
17 ASSOCIATES further agrees that upon acceptance by the
18 Commissioner, as evidenced by an appropriate order, all
19 affidavits and all relevant evidence obtained by the Department
20 in this matter prior to the Commissioner's acceptance, and all
21 allegations contained in the Accusation filed in the Department
22 Case No. H-3231 SD, may be considered by the Department to be
23 true and correct for the purpose of deciding whether or not to
24 grant reinstatement of DON PERRY & ASSOCIATES license pursuant to
25 Government Code Section 11522.

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DON PERRY & ASSOCIATES declares under penalty of perjury under the laws of the State of California that the above is true and correct and that it freely and voluntarily surrender its license and all license rights attached thereto.

2-3-06

DATED

DON PERRY AND ASSOCIATES
Respondent

By Donald Walter Perry
DONALD WALTER PERRY
President

* * *

I have reviewed the Declaration as to form and content and have advised my client accordingly.

2-6-06

DATED

Frank M. Buda

FRANK M. BUDA
Attorney for Respondent

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

FILED
JUL 01 2005

DEPARTMENT OF REAL ESTATE

By Jean Dumont

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12) No. H- 3231 SD
13 DON PERRY, DON PERRY &)
14 ASSOCIATES, a California) ACCUSATION
15 Corporation, and KENNETH DEE)
16 SKELTON,)
17 Respondents.)

16 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
17 Commissioner DON PERRY, DON PERRY & ASSOCIATES, a California
18 Corporation, and KENNETH DEE SKELTON (Respondents), is informed
19 and alleges as follows:

I

21 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation in
23 his official capacity.

II

24 Respondents are presently licensed and/or have license
25 rights under the Real Estate Law (Part 1 of Division 4 of the
26
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Business and Professions Code) (the Code).

III

At all times herein mentioned, Respondent DON PERRY & ASSOCIATES, a California Corporation, (DPA) was and is licensed by the State of California Department of Real Estate (Department) as a restricted corporate real estate broker.

IV

At all times herein mentioned, Respondent DON PERRY, (PERRY) was and is licensed by the Department as a restricted real estate salesperson.

V

At all times herein mentioned, Respondent KENNETH DEE SKELTON, (SKELTON) was and is licensed by the Department as a real estate broker. SKELTON was the designated broker officer of DPA since or on January 21, 2004.

VI

As said designated officer-broker, SKELTON was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of DPA for which a license is required.

VII

Whenever reference is made in an allegation in this Accusation to an act or omission of DPA, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with

1 DPA committed such act or omission while engaged in the
2 furtherance of the business or operations of DPA and while
3 acting within the course and scope of their corporate authority
4 and employment.

VIII

5
6 At all times herein mentioned, Respondents engaged in
7 activities on behalf of others for which a real estate license is
8 required under Section 10131(b) of the Code, for or in
9 expectation of compensation. Respondents leased or rented,
10 offered to lease or rent, solicited prospective tenants,
11 collected rents on, and/or managed certain real properties in
12 California.

IX

13
14 In acting as real estate brokers, as described in
15 Paragraph VIII, Respondents accepted or received funds in trust
16 (trust funds) from or on behalf of owners and tenants in
17 connection with the leasing, renting, and collection of rents on
18 real property or improvements thereon, as alleged herein, and
19 thereafter from time to time made disbursements of said trust
20 funds.

X

21
22 The aforesaid trust funds accepted or received by
23 Respondents were deposited or caused to be deposited by
24 Respondents into one or more bank accounts (trust funds accounts)
25 maintained by Respondents for the handling of trust funds,
26 including but not limited to the following:
27

TITLE AND ACCOUNT NUMBERS

BANK

1 Don Perry & Associates Inc. Composite
2 Trust Account
3 Account No. 7476638163
(Trust #1)

Wells Fargo Bank
P.O. Box 6695
Portland, OR 97228-
6995

4 McGinty, Perry & Associates
5 Account No. 100-2147138
(Trust #2)

Wells Fargo Bank
P.O. Box 6695
Portland, OR 97228-
6995

6
7 XI

8 Between on or about January 21, 2004 through August
9 31, 2004, in connection with the collection and disbursement of
10 said trust funds DPA and PERRY:

11 (a) Failed to deposit and maintain trust funds in
12 Trust #1 in such manner that as of August 31, 2004, there was a
13 shortage of \$18,750.79 of trust funds.

14 (b) Failed to deposit and maintain trust funds in
15 Trust #2 in such manner that as of August 31, 2004, there was a
16 shortage of \$881.85 of trust funds.

17 (c) Failed to obtain prior written consent from each
18 of the principals for the reduction of the aggregate balance of
19 trust funds in Trust #1 and #2 to an amount less than the
20 existing aggregate trust fund liability to the owners of said
21 funds in violation of Section 2832.1 of the Regulations.

22 (d) Failed to deposit trust funds from rents and
23 security deposits within three business working days as required
24 by Section 2832 of the Regulations.

25 (e) Failed to maintain a written control record of all
26 trust funds received and disbursed containing all information
27 required by Section 2831.

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XII

SKELTON failed to exercise reasonable supervision over the acts of DPA in such a manner as to allow the acts and events described above to occur.

XIII

The acts and/or omissions of SKELTON described in paragraph XII, constitutes failure on the part of SKELTON, as designated broker-officer for DPA, to exercise reasonable supervision and control over the licensed activities of DPA required by Section 10159.2 of the Code.

PRIOR DISCIPLINE

XIV

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

XV

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

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

11 XVI

12 Effective January 21, 2004, in case No. H-2871 SD, the
13 Real Estate Commissioner revoked the real estate broker license
14 of DPA and PERRY for violation of Sections 10145, and 10177(d) of
15 the Code and Sections 2832.1, 2831.2 of the Regulations, and for
16 additional violations by PERRY of Sections 10159.2, 10177(d),
17 10177(g), and 10177(h) of the Code. The Real Estate Commissioner
18 revoked the real estate broker license of DPA and PERRY, but
19 granted DPA the right to the issuance of a restricted corporate
20 real estate broker license, and granted PERRY the right to the
21 issuance of a restricted salesperson license, subject to terms,
22 conditions and restrictions pursuant to Section 10156.6 and
23 10156.7 of the Code.

24 XVII

25 The facts alleged above are grounds for the suspension
26 or revocation of Respondents licenses and license rights under
27 the following sections of the Code and Regulations:

1 (a) As to Paragraphs XI(a) and XI(b), under Section
2 10145 of the Code in conjunction with Section 10177(d) of the
3 Code;

4 (b) As to Paragraph XI(c), under Section 10145 and
5 Section 2832.1 of the Regulations in conjunction with Section
6 10177(d) of the Code;

7 (c) As to Paragraph XI(d), under Section 10145 and
8 Section 2832 of the Regulations in conjunction with Section
9 10177(d) of the Code;

10 (d) As to Paragraph XI(e), under Section 10145 and
11 Section 2831 of the Regulations in conjunction with Section
12 10177(d) of the Code.

13 XVIII

14 The facts alleged in Paragraphs XII and XIII, are
15 grounds from the suspension or revocation of the licenses and
16 license rights of Respondent SKELTON under Sections 10177(g)
17 and/or 10177(h) of the Code, and Section 10177(d) of the Code in
18 conjunction with Section 10159.2 of the Code.

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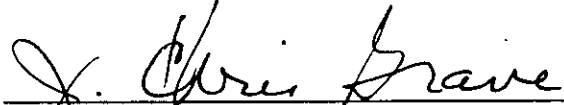
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents,
5 under 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
 Deputy Real Estate Commissioner

11 Dated at San Diego, California,
12 this 22nd day of June, 2005