

FILED
NOV - 8 2001

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Paula Reddish Zinnemann

* * *

In the Matter of the Accusation of)
)
KLAMATH RIVER DEVELOPMENT CO.,) NO. H-3563 SAC
a California corporation, and) OAH NO. N-2001020316
PHILIP JOHN CICALA,)
)
Respondent.)

DECISION

The Proposed Decision dated October 5, 2001, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on NOVEMBER 29, 2001.

IT IS SO ORDERED October 22, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

KLAMATH RIVER DEVELOPMENT CO.,
a California corporation, and
PHILIP JOHN CICALA

Respondents.

Case No. H-3563 SAC

OAH No. N2001020316

PROPOSED DECISION

On July 23, 2001, in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Staff Counsel, represented the complainant.

Anthony Ciasuli, Attorney at Law, represented respondents Klamath River Development Co. and Phillip John Cicala.

Evidence was received and the record remained open for the receipt of written closing arguments. Complainant's initial written closing argument was received on July 30, 2001, and was marked for identification as Complainant's Exhibit 16. Respondent's written closing argument was received on August 24, 2001, and was marked for identification as Respondent's Exhibit N. Complainant's final written closing argument was received on September 4, 2001, and was marked for identification as Complainant's Exhibit 17. The record was closed and the matter was submitted on September 5, 2001.

FACTUAL FINDINGS

1. Charles W. Koenig (Koenig), Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Accusation against respondents. Koenig acted in his official capacity.

2. Respondent Philip John Cicala (Cicala) is licensed as a Real Estate Broker in the State of California with license number 00158478. The license has been in full force and effect at all times since issued and will expire on September 9, 2003, unless renewed.

Cicala is also licensed as the officer broker of the Klamath River Development Co. The license expired on December 18, 2000 and was reissued on December 19, 2000. The license will expire on December 18, 2004, unless renewed.

3. Respondent Klamath River Development Co. (KRDC) is licensed as a Corporate Real Estate Broker in the State of California with license number 01147718. Cicala has been the designated officer since December 19, 1992. The license and designated officer expired on December 18, 1996 and were renewed on December 19, 1996. The license and designated officer expired on December 18, 2000 and were renewed on December 19, 2000. The license and designated officer will expire on December 18, 2004, unless renewed.

4. Klamath River Country Estates (Country Estates) is planned unit development real estate subdivision located in Siskiyou County, California at the intersection of Hornbrook-Copco Road and Hornbrook-Ager Road, approximately 2 miles northeast of Hornbrook, California. It is divided into approximately 2,000 lots in Units 1 to 5. It was originally subdivided in about 1967 by Boise Cascade Properties, Inc., and passed through the hands of a number of successor developers before KRDC became the owner and subdivider of the development.

5. In late 1992, KRDC through Cicala applied to the Department for the issuance of a public report for the Country Estates subdivision. The public report was issued on December 30, 1992.

In about December of 1993, KRDC through Cicala applied for the issuance of an amended and renewed final public report for the Country Estates subdivision. The public report was issued on March 7, 1994 and authorized KRDC through Cicala to sell or lease or offer to sell or lease lots in Country Estates.

6. The Klamath River Owners Association (Association) is the community association serving Country Estates. The Association assesses regular annual assessments for maintenance and operation of the common areas and facilities against each lot in the Country Estates subdivision.

In connection with its application for the public report of March 1994, KRDC through Cicala represented to the Department that it would pay to the Association the regular annual assessments for each lot it owned in the subdivision.

7. In late 1997 or early 1998, KRDC through Cicala applied to the Department for and, on February 17, 1998, caused the Department to issue an amended and renewed final public report authorizing KRDC to sell or lease and to offer to sell or lease lots in the Country Estates subdivision.

8. In connection with its application for the public report of February 1998, KRDC through Cicala represented to the Department that it would pay to the Association the regular annual assessments for each lot owned by KRDC in the subdivision.

9. At all times relevant to this matter, KRDC through Cicala offered for sale, negotiated the sale of and sold lots in Country Estates.

10. In 1987, Vernal L. Davidson and Frieda B. Davidson, husband and wife, and Harold H. Bunnell and Nellie J. Bunnell, husband and wife, purchased 24 lots in the Country Estates subdivision and received special warranty deeds from the then owner and subdivider Leisure Industries. The Bunnells and the Davidsons borrowed the money to buy the lots.

Nellie J. Bunnell died on April 30, 1993.

11. In approximately October of 1997, Harold H. Bunnell, acting for himself and for Vernal L. Davidson and Frieda B. Davidson, discussed with Cicala the deeding over to KRDC of the Bunnells' and Davidsons' interests in the 24 lots in the Country Estates subdivision. They wanted to dispose of the lots in order to divest themselves of the burden of paying the mortgages and associations fees to protect their credit ratings.

Cicala, acting for KRDC, agreed to acquire the lots and assume the mortgage liability in exchange for title to the lots, with the intention of reselling the lots. Cicala was aware that Nellie J. Bunnell was dead but believed that Harold H. Bunnell was her heir and had taken those steps necessary to convey good title to the property.

Cicala drafted a grant deed to convey the 24 lots from Vernal L. Davidson, Frieda B. Davidson, and Harold H. Bunnell and the estate of Nellie J. Bunnell to KRDC. Cicala mailed the grant deed to Harold H. Bunnell for their signatures. He received the signed grant deed by return mail with the signatures of the Davidsons, Harold H. Bunnell and the ostensible signature of Nellie J. Bunnell. Cicala lined out the ostensible signature of Nellie J. Bunnell and the words "and Estate of Nellie J. Bunnell, Deceased", then recorded the deed in the official records of Siskiyou County, California on December 3, 1997.

Cicala's agreement with Harold H. Bunnell was for clear title to the 24 lots, free of any claim by the estate of Nellie J. Bunnell, and subject only to the deeds of trust. Unfortunately, Harold H. Bunnell and his deceased wife Nellie J. Bunnell owned their shares of the 24 lots as tenants in common and he did not make any further effort to clear title to her share. Nor has Cicala, acting for KRDC taken any legal action to secure clear title, leaving KRDC with a 75% interest in the 24 lots.

However, once Cicala, acting for KRDC, voluntarily recorded the deed to the 24 lots, KRDC and Cicala were responsible for paying the assessments on those lots, which KRDC acquired to resell.

12. KRDC did not pay the association the assessments on the 24 lots and did not notify the Real Estate Commissioner of its failure:

a. As of June of 2000, the assessments on the 24 lots were over two years in arrears. KRDC and Cicala's failure to timely pay the assessments constitutes a material change in the subdivision and the offering of interests in the subdivision.

The Association sued KRDC in small claims court and won judgment for the overdue assessments, plus late charges and interest. The judgment was sustained by the superior court on appeal. KRDC did not appeal that judgment and has paid the Association the amount of the award. (Although small claims court judgments, even when sustained on appeal by a superior court, cannot be cited as the basis for collateral estoppel or res judicata pursuant to the decision in Rosse v. DeSoto Cab Co. (1995) 34 C.A.4 1047, that does not mean they cannot be used as evidence for other purposes.)

b. As of December 13, 2000, KRDC and Cicala had not informed the Department of its acquisition of the interest in 24 lots or of its failure to pay the assessments.

Unfortunately from the point of view of KRDC and Cicala, KRDC is the subdivider of this property pursuant to Title 10, California Code of Regulations, section 2801.5. And pursuant to Title 10, California Code of Regulations, section 2800(p)(2), KRDC, as subdivider, and Cicala, as agent and broker of KRDC, were required to report in writing to the Real Estate Commissioner the failure to pay the assessments for these 24 lots in a timely manner.

13. On or about May 6, 2000, Siskiyou County sold 19 of the 24 lots at a public auction due to KRDC's failure to pay delinquent real estate taxes and KRDC redeemed the other 5 lots. Of the above 19 lots sold at the tax sale, Siskiyou County sold 6 lots to Realvest.

The Siskiyou County tax sale was a sale or conveyance of 5 or more lots to one purchaser which required Cicala on behalf of KRDC to send written notice to the Real Estate Commissioner as required by Title 10, California Code of Regulations, section 2800(a). Written notice was required because title to the property was conveyed to the purchaser, including KRDC's interest in the property.

KRDC and Cicala did not inform the Department of this sale of 6 lots to Realvest prior to September 13, 2000, even though they were clearly aware of the tax sale and should have been aware of the purchaser. As extenuation, Cicala said that he and KRDC first learned in September 2000 when he read the audit report of the sale of 6 lots to Realvest at the tax sale. Thus in September, he and KRDC had actual notice of the purchase by Realvest, but even then he did not send the required written notice.

14. On or about June 8, 1999, Cicala acting for KRDC conveyed 7 lots in Unit 1 of the Country Estates subdivision to Francisco J. and Gladys M. Rivas.

This was a sale of 5 or more lots to one purchaser, which required Cicala on behalf of KRDC to send written notice of the sale to the Real Estate Commissioner as required by Title 10, California Code of Regulations, section 2800(a). Section 2800(a) does not require that the 5 or more lots be purchased for resale, instead it requires written notice when 5 or more lots are sold to any one purchaser, whether for resale or not.

KRDC and Cicala did not inform the Department of this sale of 7 lots to the Rivas in a timely manner. In extenuation, Cicala stated that they failed to report this sale due to an oversight. He testified that his salesman told him the Rivas bought the property for their and their children's use, not for resale, and since they still own the lots, Cicala felt there was no injury to the public due to the failure to report.

After the audit when the Department reminded Cicala of the reporting requirement regarding these lots, he finally sent in written notice.

15. Cicala has been licensed as a real estate salesperson or broker since 1955. There has been no prior discipline of his real estate licenses. He is the president, secretary, chief financial officer and only director of KRDC. KRDC acquired ownership of Country Estates on August 3, 1992. Since then, the only assessments it has not paid in a timely manner were those on the 24 lots mentioned above. It did not pay those assessments because it did not have clear title.

LEGAL CONCLUSIONS

1. KRDC is a subdivider pursuant to the terms of Business and Professions Code section 11010, et seq., and to Title 10, California Code of Regulations, section

2801.5. As such KRDC and Cicala, as its agent and broker, are subject to the provisions of Title 10, California Code of Regulations, section 2800(a) and (p)(2), which provide:

The owner of a subdivision which is the subject of an outstanding public report shall immediately report in writing to the Real Estate Commissioner relevant details concerning any material change in the subdivision itself or in the program for marketing the subdivision interests. A material change in the subdivision or in the offering shall include, but shall not be limited to the following:

(a) The sale, conveyance, including a transfer of title in trust, or the granting of an option to another to acquire, five or more subdivision interests in a subdivision other than a time-share project or twelve or more time-share estates or time-share uses in a time-share project.

...

(p) Failure by the subdivider as an owner of interests in a common interest subdivision to pay regular assessments where:

(2) Assessments are not payable on a monthly basis and the subdivider has failed to pay such assessments within three months after such assessments become due and payable.

2. Cause for discipline of respondent's license was established for violation of Title 10, California Code of Regulations, section 2800(p)(2), as found in Findings 4 through 12.

3. Cause for discipline of respondent's license was established for violation of Title 10, California Code of Regulations, section 2800(a), as found in Findings 13 and 14.

3. Cause for discipline of respondent's license was established for violation of Business and Professions Code section 11012, as found in Findings 4 through 14.

4. Cause for discipline of respondent's license was established for violation of Business and Professions Code sections 10177(d) and 11012 in conjunction with Title 10, California Code of Regulations, section 2800(a) and (p)(2), as found in Findings 4 through 14.

5. However, respondent Cicala presented significant evidence in mitigation and extenuation, as found in Findings 4 through 15, which justify granting him a restricted license. Since KRDC can only act by and through him, that evidence applies to it also.

ORDER

1. All licenses and licensing rights of Respondent Philip John Cicala under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application thereof 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 Respondent 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:

a. The restricted license issued to Respondent 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.

b. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent 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.

c. Respondent 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 three years have elapsed from the effective date of this Decision.

d. 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. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

e. Respondent 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 Respondent fails to satisfy this condition, the

Commissioner may order suspension of Respondent's license until Respondent passes the examination.

f. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

2. All licenses and licensing rights of Respondent Klamath River Development Co. under the Real Estate Law are revoked; provided, however, a restricted corporate real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application thereof 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 Respondent 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:

a. The restricted license issued to Respondent 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.


b. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent 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.

c. Respondent 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 three years have elapsed from the effective date of this Decision.

d. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

Dated: October 5, 2001


LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY - 2 2001

DEPARTMENT OF REAL ESTATE

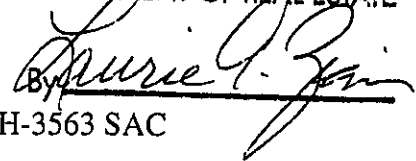
In the Matter of the Accusation of

KLAMATH RIVER DEVELOPMENT CO.,
a California corporation, and
PHILIP JOHN CICALA,

}

Case No. H-3563 SAC

OAH No. N-2001020316

By 

Respondent

SECOND AMENDED
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, 560 J STREET, SUITE 340/360, SACRAMENTO, CA 95814 on MONDAY, JULY 23, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

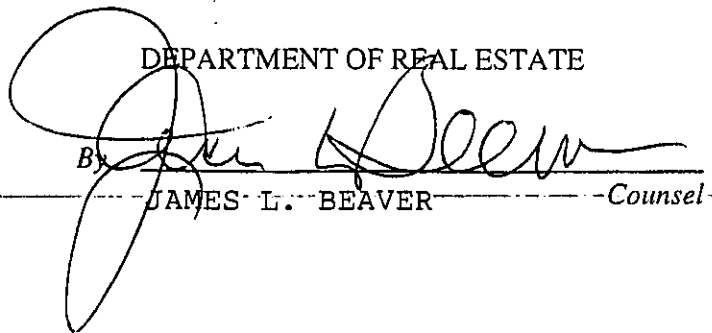
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented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

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

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

Dated: MAY 2, 2001

DEPARTMENT OF REAL ESTATE

By 
JAMES L. BEAVER - Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 12 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

KLAMATH RIVER DEVELOPMENT CO.,
a California corporation, and
PHILIP JOHN CICALA,

Case No. H-3563 SAC

OAH No. N-2001020316

Respondent

FIRST AMENDED
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, 560 J STREET, SUITE 340/360, SACRAMENTO, CA 95814 on THURSDAY, MAY 3, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

Dated: MARCH 12, 2001

DEPARTMENT OF REAL ESTATE

By

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 26 2001

DEPARTMENT OF REAL ESTATE

Muriel G. Zan

In the Matter of the Accusation of

KLAMATH RIVER DEVELOPMENT CO.,
a California corporation, and
PHILIP JOHN CICALA,

}

Case No. H-3563 SAC

OAH No. N-2001020316

Respondent

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, 560 J STREET, SUITE 340/360, SACRAMENTO, CA 95814 on FRIDAY, APRIL 13, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

Dated: FEBRUARY 22, 2001

DEPARTMENT OF REAL ESTATE
James L. Beaver
By _____
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 DEPARTMENT OF REAL ESTATE
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 (916) 227-0788 (Direct)

FILED

JAN 30 2001

DEPARTMENT OF REAL ESTATE

Laurie A. Z...

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-3563 SAC
12 KLAMATH RIVER DEVELOPMENT CO.,) ACCUSATION
13 a California corporation, and)
14 PHILIP JOHN CICALA,)
15 Respondents.)

16 The Complainant, Charles W. Koenig, a Deputy Real Estate
17 Commissioner, for cause of Accusation against KLAMATH RIVER
18 DEVELOPMENT CO., a California corporation, and PHILIP JOHN CICALA
19 (hereinafter "Respondents"), is informed and alleges as follows:

20 I

21 Respondents are presently licensed and/or have license
22 rights under the Real Estate Law, Part 1 of Division 4 of the
23 Business and Professions Code (hereinafter "Code").

24 II

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

III

At all times herein mentioned, Respondent KLAMATH RIVER DEVELOPMENT CO. (hereinafter "KRDC") was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent PHILIP JOHN CICALA, (hereinafter "CICALA") as designated officer-broker of Respondent KRDC to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, Respondent CICALA was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondent KRDC.

V

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

///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

VI

At all times mentioned herein Respondents were the owners or subdividers or agents of the owners or subdividers of subdivided lands as defined in Sections 11000, 11003, and 11004.5 of the Code.

VII

Said subdivided lands are known as or commonly called KLAMATH RIVER COUNTRY ESTATES UNIT NO. 1, UNIT NO. 2, UNIT NO. 3, UNIT NO. 4 and UNIT NO. 5, and are located in Siskiyou County, State of California, at Hornbrook - Copco Road and Hornbrook - Ager Road approximately 2 miles northeast of Hornbrook (hereinafter "said Subdivision"), and are identified in the records of the Department under Subdivision File Numbers 008143 SA, 008184 SA, 008478 SA, 008639 SA, and 008865 SA.

VIII

Between December 17, 1993, and March 17, 1994, in the Department's files identified in Paragraph VII, above, Respondents applied to the Department for, and, on March 17, 1994, caused the Department to issue, an amended and renewed final public report authorizing Respondents to sell or lease and offer to sell or lease lots in the Subdivision.

IX

In connection with Respondents application, referred to in Paragraph VIII, above, for the amended and renewed final public report issued March 17, 1994, Respondents represented to the Department that Respondents would pay to the Klamath River Country Estates Owners Association, the community association

1 (hereinafter the Association") serving the Subdivision, the
2 regular annual assessments levied by the Association for
3 maintenance and operation of the common areas and facilities for
4 each lot owned by Respondents in the Subdivision.

5 X

6 Between December 23, 1998, and February 17, 1998, in
7 the Department's files identified in Paragraph VII, above,
8 Respondents applied to the Department for, and, on February 17,
9 1998, caused the Department to issue, an amended and renewed
10 final public report authorizing Respondents to sell or lease and
11 offer to sell or lots in the Subdivision.

12 XI

13 In connection with Respondents application, referred
14 to in Paragraph X, above, for the amended and renewed final
15 public report issued February 17, 1998, Respondents represented
16 to the Department that Respondents would pay to the Association
17 the regular annual assessments levied by the Association for
18 maintenance and operation of the common areas and facilities for
19 each lot owned by Respondents in the Subdivision.

20 XII

21 At all times mentioned herein, Respondents offered for
22 sale, negotiated for sale, and sold lots in the Subdivision.

23 XIII

24 In addition to such other lots that may have been or
25 now are owned by Respondents, at all times mentioned herein from
26 on or about October 9, 1997, Respondents owned Lots 81, 84, 137,
27 138, 139, and 141 in Unit 5 in the Subdivision, and at all times

1 mentioned herein between on or about October 9, 1997 and on or
2 about May 6, 2000, Respondents owned Lots 275, 276 and 277 in
3 Unit 1, Lots 73, 78, 79, 106 and 107 in Unit 3, Lots 494, 505,
4 506, 507 and 517, in Unit 4, and Lots 83, 85, 138, 140 and 142
5 in Unit 5 in the Subdivision.

6
7 XIV

8 At all times mentioned herein, Respondents failed to
9 pay or cause to be paid assessments described in Paragraphs IX
10 and XI, above, on the lots identified in Paragraph XIII, above,
11 so that, as of June 30, 2000, Respondents were in arrears in the
12 payment of such assessments in the amount of approximately
13 \$7,093.80.

14 XV

15 Respondents' failure, described in Paragraph XIV,
16 above, to pay assessments on lots owned by Respondents in the
17 Subdivision, constitutes a material change in the setup of the
18 Subdivision and/or the offering of interests in the Subdivision
19 within the meaning of subsection (p)(2) of Section 2800 of the
20 Regulations.

21 XVI

22 At no time mentioned herein have Respondents informed
23 the Department of the facts described in Paragraph XIV, above.

24 XVII

25 On or about June 8, 1999, Respondents conveyed Lots
26 114, 137, 138, 139, 140, 141, and 142 in Unit 1 in the
27 Subdivision to Francisco J. and Gladys M. Rivas.

///
- 5 -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XVIII

On or about May 6, 2000, Respondents caused, suffered or permitted Lots 505, 506 and 507 in Unit 4, and Lots 138, 140 and 142 in Unit 5 in the Subdivision to be conveyed to Realvest, Inc.

XIX

The conveyance of five or more lots in the Subdivision to Francisco J. and Gladys M. Rivas, as described in Paragraph XVII, above, and the conveyance of five or more lots in the Subdivision to Realvest, Inc., as described in Paragraph XVIII, above, each constitutes a material change in the setup of the Subdivision and/or the offering of interests in the Subdivision within the meaning of subsection (a) of Section 2800 of the Regulations.

XX

At no time mentioned herein prior to September 13, 2000, have Respondents informed the Department of the facts described in Paragraph XVII, above, and at no time mentioned herein have Respondents informed the Department of the facts described in Paragraph XVIII, above.

XXI

In acting as described in Paragraphs IX through XVI, above, and in acting as described in Paragraphs XVII through XX, above, Respondents violated Section 11012 of the Code.

XXII

The acts and omissions of Respondent described in Paragraphs IX through XV, above, and the acts and omissions of

1 Respondent described in Paragraphs XVI through XIX, above,
2 constitute cause for the suspension or revocation of the
3 licenses and license rights of Respondent under Section 10177(d)
4 of the Code in conjunction with Section 11012 of the Code and
5 Sections subsections (a) and (p)(2) of Section 2800(a) of the
6 Regulations.

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against all licenses and license rights of Respondents
11 under the Real Estate Law (Part 1 of Division 4 of the Business
12 and Professions Code), and for such other and further relief as
13 may be proper under other provisions of law.
14

15 
16 CHARLES W. KOENIG
17 Deputy Real Estate Commissioner

18 Dated at Sacramento, California,
19 this 29th day of January, 2001.
20
21
22
23
24
25
26
27