

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 01 2008

DEPARTMENT OF REAL ESTATE
By *[Signature]*

* * *

In the Matter of the Accusation of)
)
WELCOME HOME REALTY, PATRICK)
EUGENE KRUSE, CRAIG WILLIAM)
RUSIN, DRAGAN BATAKOVIC, and)
WILLIAM EDWARD WURTH,)
)
Respondents.)

NO. H-3193 SD
OAH No.N-2007110425

In the Matter of the Accusation of)
)
KIELY & KRUSE, INC., dba EMERALD)
MORTGAGE AND SAPPHIRE REALTY and)
PATRICL EUGENE KRUSE,)
)
Respondents.)

NO. H-3655 SD
OAH No.N-2007110424

DECISION

The Proposed Decision dated February 20, 2008, 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 with the following corrections:

1. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 1, the caption for Case No. H-3655 SD is revised to eliminate the name "KEILY & KRUSE, INC." so as to read "KIELY & KRUSE, INC."
2. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 1, third paragraph 1, is revised to eliminate the name "KEILY & KRUSE, INC." so as to read "KIELY & KRUSE, INC."
3. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 1, footnote 1 at the bottom of the page is revised to eliminate the name "KEILY & KRUSE, INC." so as to read "KIELY & KRUSE, INC."
4. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 9, the heading above Finding #32 is revised to eliminate the name "KEILY & KRUSE, INC." so as to read "KIELY & KRUSE, INC."

5. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on pages 9 through 12, is revised to eliminate the name "KEILY & KRUSE, INC." in every sentence where it appears and replaced with the correct spelling of the name "KIELY" so as to read "KIELY & KRUSE, INC."

6. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 14, the heading above Finding #55 is revised to eliminate the name "KEILY & KRUSE" so as to read "KIELY & KRUSE, INC."

7. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on pages 14 through 16, is revised to eliminate the name "KEILY & KRUSE, INC." in every sentence where it appears and replaced with the correct spelling of the name "KIELY" so as to read "KIELY & KRUSE, INC."

8. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 18, the heading above Legal Conclusion #15 is revised to eliminate the name "KEILY & KRUSE" so as to read "KIELY & KRUSE, INC."

9. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on pages 18 through 19, is revised to eliminate the name "KEILY & KRUSE, INC." in every sentence where it appears and replaced with the correct spelling of the name "KIELY" so as to read "KIELY & KRUSE, INC."

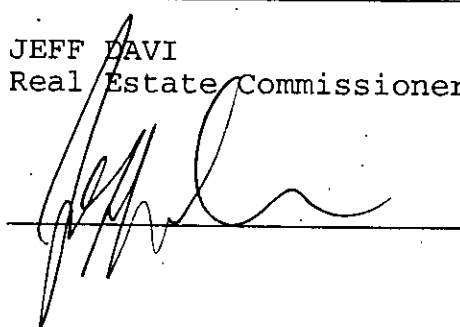
10. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on pages 19 through 22 of the ORDER, is revised to eliminate the name "KEILY & KRUSE, INC." in every sentence where it appears and replaced with the correct spelling of the name "KIELY" so as to read "KIELY & KRUSE, INC."

11. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 22 of the ORDER, the first line of Paragraph "g." is revised to eliminate the name "Patrick Eugene Keily" and replaced with the correct name so as to read "Patrick Eugene Kruse."

This Decision shall become effective at 12 o'clock noon on APR 21 2008

IT IS SO ORDERED

3-27-08
JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 01 2008

DEPARTMENT OF REAL ESTATE
By *[Signature]*

In the Matter of the Accusation of:

WELCOME HOME REALTY,
PATRICK EUGENE KRUSE,
CRAIG WILLIAM RUSIN,
DRAGAN BATAKOVIC,
and WILLIAM EDWARD WURTH,
~~KEILY~~
~~KEILY~~ & KRUSE, INC., dba EMERALD
MORTGAGE AND SAPPHIRE REALTY
and PATRICK EUGENE KRUSE,

Case Nos. H-3655 SD,
H-3193 SD

OAH Nos. L2007110424,
L2007110425

Respondents.

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on January 24, and 25, 2008.

Michael B. Rich, Counsel, represented Complainant J. Chris Graves, Deputy Real Estate Commissioner.

John M. Schau, Esq. represented Respondents Patrick Kruse and ~~Keily~~ ^{Kiely} & Kruse, Inc., dba Emerald Mortgage and Sapphire Realty.

The matters were submitted on January 25, 2008.¹

¹ Patrick Eugene Kruse is the only Respondent who appeared. He appeared in his capacity as designated officer in the Welcome Home Realty case and as the owner and designated officer of ~~Keily~~ ^{Kiely} and Kruse, Inc.

As Respondent Kruse has allegations against him in each Accusation, the parties stipulated and agreed that the cases be consolidated for hearing, and one Proposed Decision be issued. The Findings and Legal Conclusions are determined for each case individually, to wit: Welcome Home Realty and ~~Keily~~ ^{Kiely} and Kruse. The evaluation of evidence of explanation and mitigation is consolidated. One Order is issued for the respective Respondents.

FACTUAL FINDINGS

Welcome Home Realty-

1. J. Chris Graves (Complainant) filed Accusation, Case Number H-3193, dated April 19, 2005, against Welcome Home Realty (Respondent Welcome Home Realty), Patrick Eugene Kruse (Respondent Kruse), Craig William Rusin (Respondent Rusin), Dragan Batakovic (Respondent Batakovic) and William Edward Wurth (Respondent Wurth), in his official capacity as Deputy Real Estate Commissioner (Commissioner), State of California, Department of Real Estate (Department).

Pursuant to Government Code section 11509, Complainant properly served each Respondent with Notice of Hearing. With the exception of Respondent Wurth, each Respondent filed a Notice of Defense on Accusation. Respondent Wurth did not request a hearing. Prior to hearing, Complainant resolved this matter with Respondents Rusin and Batakovic respectively. There was no appearance by or on behalf of Respondent Welcome Home Realty or Respondent Wurth.

2. At all times relevant herein, Nicholas Antoniadis (Antoniades) has been the 100 percent owner of Respondent Welcome Home Realty. Though licensed as a real estate salesperson, at no time relevant herein has Antoniadis been licensed to Respondent Welcome Home Realty.

According to the Department's licensing records, as of November 6, 2003 and March 2, 2004, Respondent Welcome Home Realty had a main office located at 2425 Camino del Rio South, in San Diego, California, a branch office located at 1043 Broadway in Chula Vista, California and a fictitious business name of California Financial Loan Services. According to Department licensing records, as of November 6, 2003, Respondent Welcome Home Realty had 31 licensed employees and 28 licensed employees as of March 2, 2004.

3. Respondent Welcome Home Realty is licensed and has license rights under the Real Estate Law as a corporation real estate broker. At all times relevant herein, said license was in full force and effect and will expire on September 25, 2011, unless renewed.

Since September 11, 2006, the designated officer of Respondent Welcome Home Realty has been Victoria Blount Allen; she will remain in this capacity until September 25, 2011, unless cancelled.

Respondent Batakovic is presently licensed and has license rights under the Real Estate Law as a real estate broker. As of May 16, 2003, Respondent Batakovic was the designated officer of Respondent Welcome Home Realty, cancelled as of September 11, 2006. His broker's license will expire on February 13, 2011.

On July 21, 2003, the Department issued Respondent Wurth a conditional real estate salesperson license pursuant to Business and Professions Code section 10153.4. His employing broker was Respondent Welcome Home Realty. As of January 22, 2005,

pursuant to Business and Professions Code section 10153.4, subdivision (c), the Department conditionally suspended Respondent Wurth's license. On January 9, 2006, Respondent Wurth voluntarily surrendered his license in Case number H-3315 SD. On July 20, 2007, Respondent Wurth's license expired, without renewal. The lapsing or surrender of Respondent Wurth's license does not deprive Complainant of jurisdiction to proceed with disciplinary proceedings against Respondent Wurth.²

Respondent Rusin is presently licensed and has license rights under the Real Estate Law as a real estate broker. As of May 2, 2002, Respondent Rusin was the designated officer of Respondent Welcome Home Realty, cancelled as of May 16, 2003. His license will expire on May 15, 2010, unless renewed.

Respondent Kruse is presently licensed and has license rights under the Real Estate Law as a real estate broker. As of January 1, 2001, Respondent Kruse was the designated officer of Respondent Welcome Home Realty, cancelled as of May 2, 2002.

4. At all times relevant herein, Respondents Batakovic, Rusin and Kruse were licensed by the Department and served as the designated broker officer of Respondent Welcome Home Realty (Finding 3). In the capacity of designated broker officer of Respondent Welcome Home Realty, Respondents Batakovic, Rusin and Kruse were responsible for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent Welcome Home Realty for which a license was required.³

5. In any Finding and Legal Conclusion hereinafter, where there is reference made to an act or omission of Respondent Welcome Home Realty, such Finding or Legal Conclusion shall mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent Welcome Home Realty committed such act or omission while engaged in the furtherance of the business or operations of Respondent Welcome Home Realty and while acting within the course and scope of their corporate authority and employment.

6. Respondent Welcome Home Realty engaged in activities on behalf of others for which a real estate license was required for or in expectation of compensation:

- Sold, offered to sell, bought, offered to buy, solicited prospective sellers or purchasers of real property, negotiated the sale, purchase or exchange of real property; and/or
- Solicited borrowers and lenders, negotiated loans, collected payments and performed services for borrowers, lenders and note owners in connection with loans secured directly or collaterally by liens on real property or on business opportunities.

² Business and Professions Code section 10103.

³ Business and Professions Code section 10159.2.

7. By letter, dated November 7, 2003, the Department confirmed with Respondent Batakovic, in his capacity as designated officer of Respondent Welcome Home Realty, that a Department auditor would examine his books and records to determine whether he was in compliance with the "Real Estate Law and the Commissioner's Regulations." Among other things, the letter provides the name of the auditor, the date and location of the appointment, the audit period and the documents that should be available for review.

Jennifer Borromeo (Borromeo) performed the audit in accordance with accepted audit techniques, at the principal office of Respondent Welcome Home Realty, located on Camino del Rio South in San Diego California intermittently, between November 17, 2003 and March 24, 2004. She examined trust fund and other records related to the real estate activities of Respondent Welcome Home Realty for the period January 1, 2001 through November 13, 2003. The examination was limited to broker escrow activities.

8. During the course of activities described in Finding 6, Respondent Welcome Home Realty received and disbursed funds in trust on behalf of others. During the period covered by the audit, Respondent Welcome Home Realty deposited trust funds into one or all of the checking trust bank accounts at Commerica Bank in San Diego, California, as follows:

- a. Account number 1891629832, in the name of Welcome Home Realty Escrow Division Trust Account" (Trust Account 1);
- b. Account number 1891998625, in the name of "Welcome Home Realty Trust Account" (Trust Account 2);
- c. Account number 1891629162, in the name of "Welcome Home Realty dba California Financial Loan Services Trust Account" (Trust Account 3); the signatories on the account included Antoniades.

9. In connection with the collection and disbursement of trust funds, as required by Business and Professions Code section 10145,⁴ Respondent Welcome Home Realty failed to deposit and maintain trust funds in a trust account or neutral escrow depository, or to deliver them into the hands of the owners of the funds. As of May 31, 2003, there was a trust fund shortage in the approximate sum of \$134,659.37 in Trust Account 1, and \$3,431.24 in Trust Account 3.

Borromeo was able to determine that trust fund shortage began prior to October 2001, during the time that Respondent Kruse was the designated officer of Respondent Welcome

⁴ Business and Professions Code section 10145, subdivision (a)(1) states:

"A real estate broker who accepts funds belonging to others in connection with a transaction, subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by a broker in the bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds."

Home Realty. Losses that occurred subsequent to termination of employment by Respondent Welcome Home Realty on May 1, 2002 are not attributable to Respondent Kruse.

Complainant was unable to determine and therefore did not establish the specific amount of the trust fund shortage in Trust Account 1 and/or Trust Account 3 during the time that Respondent Kruse served as designated officer of Respondent Welcome Home Realty. However, the trust fund shortage was considerably less when Respondent Kruse terminated on May 2, 2002.

10. The written consent of each principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.⁵

Respondent Welcome Home Realty failed to obtain the prior written consents of the principals for the reduction of the aggregate balance of trust funds in Trust Account 1 and Trust Account 3 to an amount less than the existing aggregate trust fund liability to the owners of said funds.

11. In connection with the receipt and disbursement of trust funds, Respondent Welcome Home Realty:

- a. Failed to maintain a written control record of all trust funds received and disbursed containing all information required by California Code of Regulations, title 10, sections 2831, 2950, subdivisions (d) and (g) and 2951, including but not limited to recordation of all deposits, recordation of dates of receipt and recordation of accurate dates of deposit of trust funds for Trust Account 1, Trust Account 2 and Trust Account 3;
- b. Withdrew or paid out trust funds from Trust Account 1 and Trust Account 2, used as escrow accounts without written instruction of the parties paying the money into escrow;⁶
- c. Failed to keep a separate record for each beneficiary or transaction; accounting for all funds that have been deposited to the broker's trust account, containing all of the information required by California Code of Regulations, title 10, section 2831.1 and/or 2951, including but not limited

⁵ California Code of Regulations, title 10, section 2832.1.

⁶ California Code of Regulations, title 10, section 2950, subdivision (g) states:

"The following acts in the handling of an escrow by a real estate broker . . . are prohibited and may be considered grounds for disciplinary action:

. . . . (g) Withdrawing or paying out any money deposited in such trustee account or escrow account without the written instruction of the party or parties paying the money into escrow."

to accurate daily balance after posting transactions, for Trust Account 1 and Trust Account 3; and

- d. Failed to reconcile the balance of separate beneficiary or transaction records with the control records of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for Trust Account 1 and Trust Account 3, as required by California Code of Regulations, title 10, sections 2831.2 and 2951.

12. Between June 2001 and February 2003, Respondent Wurth and Teri Wurth, his wife, worked for Respondent Welcome Home Realty as escrow officers.

On February 28, 2005, in the case entitled *The People of the State of California vs. Respondent Wurth* was convicted of violation of, among other things, 13 counts of Penal Code section 187, subdivision (a), grand theft of personal property.

When he was sentenced on May 5, 2005, among other things, the Court ordered the defendants, including Respondent Wurth to repay Respondent Welcome Home Realty \$195,479.00. The defendants had joint and several liability for payment of restitution.

Given the facts in this Finding 12, Complainant established that Respondents Welcome Home Realty and Wurth converted trust funds to Respondents' personal use or benefit or for purposes not authorized by the rightful owner or owners of said funds. The exact amount of said converted trust funds is unknown to Complainant but is not less than \$138,126.61.

13. In 2003, Respondent Welcome Home Realty collected \$20.00 or \$25.00 from borrowers for credit report fees that cost \$18.00. Respondent Welcome Home Realty collected \$57.00 for credit report fees that cost \$48.00.

Respondent Welcome Home Realty permitted and/or caused to be collected trust funds to be disbursed to credit reporting companies, appraisers and county recorders on the representation that the amounts collected equaled the cost of credit reports, appraisals and recordation; in fact, the amounts collected exceeded the actual cost of such services. Respondent Welcome Home Realty did not disclose the "mark-ups" to the beneficiaries of said trust funds or obtain consent of the beneficiaries for such "mark-ups" and pocketed the difference between the amounts paid and the actual costs of the services.

14. California Code of Regulations, title 10, section 2834 states:

"(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following people, if specifically authorized in writing by the broker:

- (1) a salesperson licensed to the broker;

- (2) a person licensed as a broker who has entered into a written agreement pursuant to California Code of Regulations, title 10, section 2726 with the broker;
 - (3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.
- (b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:
- (1) an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code; or
 - (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust account.”

15. Respondent Welcome Home Realty permitted Antoniades, a person who held a California real estate salesperson license but who was not licensed to Respondent Welcome Home Realty, to be a signatory on Trust Account 1, Trust Account 2 and Trust Account 3. Respondent Welcome Home Realty permitted Kimberly Craven (Craven) to be a signatory with authority to withdraw funds on Trust Account 1 and Trust Account 2. At no time relevant herein has Craven held a real estate license. With the exception of the designated officers, the bank signatories on Respondent Welcome Home Realty’s Trust Account 1, Trust Account 2 and Trust Account 3 did not comply with the requirements of California Code of Regulations, title 10, section 2834 (Finding 14).

16. According to California Code of Regulations, title 10, section 2715, except the broker acting in the capacity of a salesperson to another broker under written agreement, every broker shall maintain on file with the Commissioner the address of his principal place of business for brokerage activities and the address of each branch business office. Whenever there is a change in the location or address of a branch office of a broker, he shall notify the Commissioner not later than the next business day following the change.

17. On June 4, 1999, the Department issued a branch office license to Respondent Welcome Home Realty, to conduct activities for which a real estate license is required, at 1043 Broadway, Chula Vista, California.

18. Complainant asserts that Respondent closed its branch office on April 1, 2002 and failed to notify the Department of the foregoing in a timely manner. The Department offered no direct evidence to establish the foregoing. Respondent Kruse testified that when he terminated his relationship with Respondent Welcome Home Realty, he believed that the branch office remained open. Given the foregoing, insufficient evidence was offered to establish that the branch office of Respondent Welcome Home Realty was closed on April 1,

2002, prior to the date that Respondent Kruse terminated his relationship with Respondent Welcome Home Realty.

19. Whenever a real estate salesperson enters the employ of a real estate broker, the broker is required to notify the Commissioner of the foregoing within five days.⁷

20. Respondent Welcome Home Realty employed Allen L. Canales (Canales), a licensed real estate salesperson, pursuant to an agreement, beginning September 2, 2003.

21. Respondent Welcome Home Realty employed Dolores H. Fey (Fey), a licensed real estate salesperson, pursuant to an agreement beginning June 16, 1998.

22. Respondent Welcome Home Realty employed Jose Antonio Garcia (Garcia), a licensed real estate salesperson, pursuant to an agreement beginning April 23, 2003.

23. Respondent Welcome Home Realty employed Brett Leigh Southern (Southern), a licensed real estate salesperson, pursuant to an agreement beginning September 23, 2003.

24. Respondent Welcome Home Realty failed to notify the Department of its employment of licensed real estate salespersons Canales, Fey, Garcia and Southern in a timely manner.

25. Whenever employment of a real estate broker is terminated, the broker is required to notify the Commissioner immediately thereof in writing.⁸

26. Respondent Welcome Home Realty failed to notify the Department of termination of licensed real estate salesperson employees Jerry Wayne Enfinger, Thomas James Hoetzlein, John Floyd James, Charles Augustus Matthews, Jennifer Marie VanDeeussen and William Edward Wurth.

27. The real estate salesperson's license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesperson leaves the employ of the broker, and the broker shall make his license and the licenses of this salesperson available for inspection by the Commissioner or his designated representative.⁹

28. On June 20, 2002, Respondent Welcome Home Realty employed Erica Lynn Boss (Boss) as a licensed real estate salesperson.

29. On June 24, 2002, Respondent Welcome Home Realty employed John Edward Scherer (Scherer) as a licensed real estate salesperson.

⁷ Business and Professions Code section 10161.8, California Code of Regulations, title 10, section 2752.

⁸ Business and Professions Code section 10161.8.

⁹ Business and Professions Code section 10160.

30. Respondent Welcome Home Realty did not possess and/or did not make available for inspection the real estate salesperson license certificates of Boss and Scherer.

31. While acting as the designated broker/officer of Respondent Welcome Home Realty, Respondents Batakovic, Rusin and Kruse, each was responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondents Batakovic, Rusin and Kruse failed to exercise reasonable supervision and control over the property management and employment activities of Respondent Welcome Home Realty. In particular, Respondents Batakovic, Rusin and Kruse permitted, ratified and/or caused the conduct (Findings 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30) to occur and failed to take reasonable steps, including but not limited, to the handling of trust funds, employment of salesperson licensees and the implementation of policies, rules, procedures and systems to ensure the compliance of Respondent Welcome Home Realty with the Real Estate Law.

Keily & Kruse, Inc.
Kiely

32. Joseph Aiu filed Accusation, Case Number H-3655, dated December 5, 2006, against *Kiely* *Keily & Kruse, Inc.*, dba Emerald Mortgage and as Sapphire Realty (Respondent *Keily & Kruse*), and Patrick Eugene Kruse (Respondent Kruse), in his official capacity as the Department's Deputy Commissioner.

Kiely
Respondents *Keily & Kruse* and Patrick Kruse filed a Notice of Defense on Accusation, requesting a hearing in this matter.

33. Immediately after termination of employment with Respondent Welcome Home Realty, Respondent Kruse established his own real estate business, Respondent *Kiely & Kruse, Inc.*, a real estate broker corporation, acting by and through Respondent Kruse as its designated broker.

Kiely
As of May 17, 2005, Respondent *Keily & Kruse* had a main office, three branch offices, two fictitious business names ("Emerald Mortgage" and "Sapphire Realty") and 110 licensed employees; Respondent Kruse was president, and Denise *Kiely* was secretary/treasurer; each held a 50 percent ownership interest in the corporation.

34. Respondent *Kiely & Kruse* is licensed and has licensing rights as a corporate real estate broker. This license will expire on October 24, 2008, unless renewed.

Since July 5, 2002, Respondent Kruse has been the designated officer of Respondent *Keily & Kruse*. His broker's license will expire on July 4, 2010, unless renewed.
Kiely

35. As designated officer of Respondent ^{Kiely} Kelly & Kruse, Respondent Kruse was responsible for supervision of the activities of the officers, agents, real estate licensees and employees of Respondent ^{Kiely} Kelly & Kruse for which a license was required.¹⁰

36. In any Finding and Legal Conclusion hereinafter, where there is reference made to an act or omission of Respondent ^{Kiely} Kelly & Kruse, such Finding or Legal Conclusion shall mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent ^{Kiely} Kelly & Kruse committed such act or omission while engaged in the furtherance of the business or operations of Respondent ^{Kiely} Kelly & Kruse and while acting within the course and scope of their corporate authority and employment.

37. Respondent ^{Kiely} Kelly & Kruse engaged in activities on behalf of others for which a real estate license was required in expectation of compensation:

- Sold, offered to sell, bought, offered to buy, solicited prospective sellers or purchasers of real property, negotiated the sale, purchase or exchange of property; and/or
- Solicited borrowers and lenders, negotiated loans, collected payments and performed services for borrowers, lenders and note owners in connection with loans secured directly or collaterally by liens on real property or on business opportunities.

38. Borromeo examined the trust fund and other records related to the real estate activities of Respondent ^{Kiely} Kelly & Kruse, for the period May 1, 2004 through April 30, 2005, to determine whether Respondent ^{Kiely} Kelly & Kruse conducted its real estate activities and handled and accounted for trust funds in accordance with Real Estate Law and the Commissioner's Regulations. Her audit was limited to broker escrow activities and was performed between May 17 and 26, 2005.

39. ^{Kiely} In so acting during the course of the activities described in Finding 37, Respondent ^{Kiely} Kelly & Kruse accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers, purchasers, sellers and others.

40. Trust funds accepted or received by Respondent ^{Kiely} Kelly & Kruse were deposited or caused to be deposited by Respondent ^{Kiely} Kelly & Kruse into a bank account maintained by Respondent ^{Kiely} Kelly & Kruse for the handling of trust funds at First National Bank, located at 1661 Rosecrans Street, San Diego, California, Account Number 220051, entitled "Sapphire Realty Escrow Division Account" (Bank Account #1).

^{Kiely} 41. In connection with the collection and disbursement of trust funds, Respondent ^{Kiely} Kelly & Kruse failed to deposit and maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into the hands of the owners of the funds as required by

¹⁰ Business and Professions Code section 10159.2.

Business and Professions Code section 10145; as of April 30, 2005, there was a trust fund shortage in the approximate amount of \$69,538.17.

42. The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

Respondent ^{Kiely} ~~Keily~~ & Kruse failed to obtain the prior written consents of the principals for the reduction of the aggregate balance of trust funds in Bank Account #1 to an amount less than the existing aggregate trust fund liability to the owners of said funds as required by California Code of Regulations, title 10, section 2832.1 (Finding 10).

^{Kiely} 43. In connection with the receipt and disbursement of trust funds, Respondent ~~Keily~~ & Kruse permitted Paula Mullins and Dana Jenkins to be signatory on Bank Account #1; neither of the foregoing individuals held a California real estate license; neither of the foregoing individuals was bonded. Respondent ^{Kiely} ~~Keily~~ & Kruse did not comply with the requirements set forth in California Code of Regulations, title 10, section 2832.1 (Finding 14).

^{Kiely} 44. In connection with the receipt and disbursement of trust funds, Respondent ~~Keily~~ & Kruse failed to:

a. Maintain a written control record of all trust funds received and disbursed containing all information required by California Code of Regulations, title 10, sections 2831, 2950, subdivision (d), 2950, subdivision (g) and 2951, including but not limited to recordation of all deposits, from whom received, amount of deposit, check numbers and dates of disbursements, recordation of dates of receipt and recordation of accurate dates of deposit of trust funds for Bank Account #1.

b. Deposit earnest money deposits into a bank account, trust account, or escrow account on or before the close of the next full working day after receipt within three business days of receipt, in violation of California Code of Regulations, title 10, section 2950, subdivision (g).

^{Kiely} c. Provide a written disclosure or advisory to all parties that Respondent ~~Keily~~ & Kruse, acting as an escrow agent had an interest as an owner of the agency holding escrow, as required by California Code of Regulations, title 10, section 2950, subdivision (h);

d. provide, upon the close of escrow, to each principal in the transaction, a written statement of all receipts and disbursements together with the name of the person to whom disbursements were made as required by California Code of Regulations, title 10, section 2951, subdivision (i);

e. disclose to parties in escrow transactions that Respondent ^{Kiely} ~~Keily~~ & Kruse received earnings credit of 2.5 percent of balances on escrow funds in Bank Account #1 in violation of Business and Professions Code section 10176, subdivision (g).

45. California Code of Regulations, title 10, section 2832, subdivision (a) provides:

“... the broker is required to place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution no later than three business days following receipt of the funds by the broker or broker’s salesperson.”

In connection with the receipt and disbursement of trust funds, Respondent ^{Kiely} ~~Keily~~ & Kruse failed to designate Bank Account #1 as a trust account in the name of the broker as trustee and to deposit client trust funds into that account following receipt of the funds by the broker or broker’s salesperson in a timely manner.

46. While acting as the designated broker/officer of Respondent ^{Kiely} ~~Keily~~ & Kruse, Respondent Kruse was responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent Kruse failed to exercise reasonable supervision and control over the escrow activities of Respondent ^{Kiely} ~~Keily~~ & Kruse. In particular, Respondent Kruse permitted, ratified and/or caused the conduct (Findings 40, 41, 42, 43, 44 and 45) to occur and failed to take reasonable steps, including but not limited, to the handling of trust funds, supervision of employees and the implementation of policies, rules, procedures and systems to ensure the compliance of Respondent ^{Kiely} ~~Keily~~ & Kruse with the Real Estate Law.

Evidence of Explanation, Mitigation and/or Rehabilitation

Respondent Welcome Home Realty

47. There was no appearance by or on behalf of Respondent Welcome Home Realty. Though funds have been transferred into the trust accounts to cover shortages and minimize losses to the beneficiaries, it is not clear from the evidence that all beneficiaries of the escrow accounts have been paid in full. Further, there is no evidence that the designated officer of Respondent Welcome Home Realty has implemented policies, procedures, rules and systems to ensure proper handling of trust funds, supervision of employees and compliance with the Real Estate Law and the Commissioner’s Regulations.

48. Respondents Batakovic and Rusin entered into a Settlement Agreement with the Commissioner prior to the hearing.

Respondents Welcome Home Realty/Wurth

49. There was no appearance by or on behalf of Respondent Wurth. Prior to his conviction, Respondent Wurth sold his home in order to pay restitution to Respondent Welcome Home Realty; he and/or his wife paid at least \$100,000.00 of the money embezzled by the them.

Respondents Welcome Home Realty/Kruse

50. With the exception of the date of closure of Respondent Welcome Home Realty's Chula Vista branch office, Respondent Kruse does not dispute his acts or omissions during his tenure as the designated officer of Respondent Welcome Home Realty but explained what occurred with the escrow division prior to termination of his relationship with Respondent Welcome Home Realty.

Antoniades was licensed by the Department. Respondent Kruse thought that Antoniades license was with Respondent Welcome Home Realty and therefore authorized to be a signatory on the trust accounts.

51. In 1992 Respondent Kruse commenced employment with Respondent Welcome Home Realty as a real estate salesperson. In 1994, he became the manager of real estate sales, hiring and training new agents. Respondent Kruse became the broker of record. Antoniades managed the mortgage business. Some time after 1995, Antoniades opened an in-house escrow department. Respondent Kruse was concerned because he had no knowledge about the operation of an escrow department.

He relied on Antoniades' promise to hire qualified escrow officers, to purchase software to provide daily reconciliations of the accounting functions and to oversee the escrow division. As a result, he delegated the duties of the escrow division to the escrow officers.

Antoniades had 100 percent ownership interest in Respondent Welcome Home Realty. Antoniades was the employer and maintained strict control over escrow accounts, computers and password. Respondent Kruse testified that he did not have access to the foregoing information.

52. In October 2001, Respondent Kruse learned that the checks from Respondent Welcome Home Realty's escrow account began "to bounce." Respondent Welcome Home Realty retained Ben Johnson (Johnson), Northwest Financial Services LLC to conduct an audit to ascertain the reason for the shortages in the trust accounts. Johnson's letter, dated November 21, 2001, sets forth his results. The audit period was August 1, 1999 through May 31, 2001. In summary, he stated:

"To sum up, there is a total of \$12,945.60 which appears to have been shorted in the Escrow Accounts through double entry, incorrect posting, duplicate payments and differences between computer entries and bank statements. We understand that Terry

is working to clear these discrepancies. We also recommend that your present Trust Account be closed on December 31, 2001 and a balance which is reconciled to the open escrows, be used to open a new trust account. The open escrows should be reconciled with the bank balance each month and a report produced showing the reconciliation. This procedure should eliminate the wrong postings and excessive voided checks in the future. . .

We would recommend that you exercise tighter controls over the staff associated with the escrow processing. Terry seems quite capable and should be complimented on her work to date.”

In reliance on Johnson’s letter, Respondent Kruse believed that the shortages were the result of an accounting error, which Terri Wurth was competent to assist with resolution of the problem.

53. Though Respondent Kruse repeatedly requested that Antoniadis obtain additional, more thorough financial analysis of the trust accounts of Respondent Welcome Home Realty; Antoniadis did not. According to Respondent Kruse, Antoniadis continually assured him that steps were being taken to cure the deficiencies, to contribute sufficient funds to cure the shortages and to ensure the problems did not recur. Several months later, it was clear to Respondent Kruse that such steps were not being taken; the escrow program had been pirated, thus not providing the ability to do account reconciliations through the software provider; and further problems and trust account shortages were developing. As a result, on May 1, 2002, Respondent Kruse terminated his relationship with Respondent Welcome Home Realty. At that time, Respondent Kruse believed the shortage was \$12,945.60 and the result of accounting errors. He had no knowledge of the illegal activity of Respondent Wurth or his wife.

54. Subsequent to termination of his relationship with Respondent Welcome Home Realty, he was served with a lawsuit filed by Antoniadis; the defendants included but were not limited to Johnson, Respondents Rusin, Batakovic and Kruse. As part of this lawsuit, Respondent Kruse learned that Johnson was not a certified public accountant, that he did not conduct an audit, that Johnson “did some illegal things in the audit”; among other things, discrepancies were concealed and “whited out.”

^{Kiely}
Respondents ~~Kelly~~ & Kruse/Kruse

55. Respondent Kruse does not dispute the allegations in the Accusation against Respondents ^{Kiely}~~Kelly~~ & Kruse/Kruse. He resolved all issues prior to completion of Borromeo’s audit. Respondent Kruse provided evidence of explanation and rehabilitation.

56. When he left Respondent Welcome Home Realty, Respondent Kruse began his real estate business, i.e., Respondent ^{Kiely}~~Kelly~~ & Kruse, with Denis ^{Kiely}~~Kelly~~ (^{Kiely}~~Kelly~~), whom he described as a silent partner. Though licensed by the Department, ^{Kiely}~~Kelly~~ had been out of the country for a year prior to the hearing in this matter. Initially, Respondent ^{Kiely}~~Kelly~~ & Kruse operated a real estate sales and mortgage business. Approximately one year later,

Respondent ^{Kiely} Kelly & Kruse opened the company's escrow division. Despite his experience at Respondent Welcome Home Realty, he had no knowledge of the legal requirements of the business and took no steps to acquire additional education or training in the area. He hired Paula Mullins (Mullins), a woman who had over 25 years experience and an excellent reputation in the escrow business. Respondent Kruse believed her to be well qualified and therefore delegated the duties of the escrow division to her.

57. Respondent ^{Kiely} Kelly & Kruse did not dispute the audit findings. Respondent Kruse described the steps that he took to resolve the discrepancies.

- Borromeo determined that there was a trust account shortage of \$73,248.89. This was caused by a wire disbursement transfer on December 22, 2004 for \$69,538.17 to the borrower; a check was disbursed for the same amount on the same date, which cleared on December 24, 2004. Respondent ^{Kiely} Kelly & Kruse disbursed the check but failed to cancel the wire disbursement. Respondent Kruse deposited \$69,538.17 into the trust account on May 20, 2005 to cover the shortage. Since the audit, Respondent Kruse has recovered the funds from the borrower. The balance of the shortage was the result of a bank error; these funds were credited to the trust account immediately.
- Borromeo determined that the record of trust funds received and disbursed (control record) for the trust account did not include a column for the dates on which trust funds were received. In addition, the deposit detail report did not include the dates on which trust funds were received. The control record and the deposit detail report have been modified to legally comply.
- The trust account was not in the name of Respondent ^{Kiely} Kelly & Kruse as trustee nor designated as a trust account. The trust account has been renamed to indicate that it is a trust account, with Respondent ^{Kiely} Kelly & ^{Kiely} Kruse as trustee.
- At the time of the audit, employees were signatories on the trust account but not licensed by the Department nor covered by a fidelity bond. The signatories on the trust account were changed to only individuals licensed by the Department.
- Funds received by Respondent ^{Kiely} Kelly & Kruse's escrow department were not deposited within the next business day. Respondent Kruse has implemented a policy that escrow funds must be deposited within one business day of receipt.
- There was no written disclosure that Respondent ^{Kiely} Kelly & Kruse had an interest in the escrow. Respondent Kruse testified that documents have been modified to disclose Respondent ^{Kiely} Kelly & Kruse has an interest in the escrow division.
- There was no evidence of documentation in the transaction files that the principals of the transactions were provided final closing statements. Respondent Kruse now maintains a copy of closing statements in the respective files.

- There was no disclosure that Respondent ^{Kiely} ~~Keily~~ & Kruse earned credits based on balances held in the trust account, from which Respondent Keily & Kruse benefited directly or indirectly. According to Respondent Kruse, Respondent ^{Kiely} ~~Keily~~ & Kruse received no benefit, directly or indirectly, from credits on the trust account in that any credits earned covered the cost of the account. Nevertheless, now he has a trust account for which he is not charged, and no credits are earned.

58. Respondent Kruse has been licensed by the Department over 15 years. There is no evidence of prior disciplinary action against him or that any member of the public has suffered as a consequence of his acts or omissions as a licensee, even in these consolidated matters.

Despite taking the trust fund handling course required by the Department, Respondent Kruse admits that he was not competent to serve as the designated officer of Respondent Welcome Home Realty and/or Respondent ^{Kiely} ~~Keily~~ & Kruse. He delegated his duties and responsibilities to the escrow officers of the respective corporations. He did not take steps to assure compliance of the trust funds accounts or provide proper supervision of the employees until brought to his attention by the Department. He now understands his legal obligations and has taken steps to assure compliance with the Real Estate Law and the Commissioner's Regulations.

LEGAL CONCLUSIONS

Welcome Home Realty

1. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under Business and Professions Code section 10145 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Finding 9.

2. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under California Code of Regulations, title 10, section 2832.1 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Finding 10.

3. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under Business and Professions Code section 10145 and California Code of Regulations, title 10, sections 2831, 2950, subdivision (d), 2950, subdivision (g) and 2951 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 9, 10 and 11a.

4. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under California Code of

Regulations, title 10, section 2950, subdivision (g) in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 9, 10 and 11b.

5. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under California Code of Regulations, title 10, sections 2831.1 and 2951 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 9, 10 and 11c.

6. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under California Code of Regulations, title 10, sections 2831.2 and 2951 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 9, 10 and 11d.

7. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondents Welcome Home Realty and Wurth under Business and Professions Code sections 10176, subdivision (i) and 10177, subdivision (j), by reason of Finding 12.

8. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under Business and Professions Code sections 10176, subdivisions (a) and (i) and 10177, subdivision (j), by reason of Finding 13.

9. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under California Code of Regulations, title 10, sections 2834 and 2951 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 14 and 15.

10. Insufficient evidence was offered to establish that the acts or omissions of Respondent Kruse constitutes grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under California Code of Regulations, title 10, section 2715 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 16, 17 and 18.

11. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under California Code of Regulations, title 10, sections 2710 and 2752 and Business and Professions Code section 10161.8 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 19, 20, 21, 22, 23 and 24.

12. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under Business and Professions Code section 10161.8 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 25 and 26.

13. The acts and/or omissions of Respondents constitute grounds to discipline the license and licensing rights of Respondent Welcome Home Realty under Business and Professions Code section 10160 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 27, 28, 29 and 30.

14. The acts and/or omissions respectively of Respondents Kruse, Rusin and Batakovic constitute cause for disciplinary action under the provisions of Business and Professions Code sections 10177, subdivisions (h) and (g) and 10159.2 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

Respondent ~~Kelly~~ and Kruse
Kiely

15. The acts and/or omissions of Respondent Kruse constitute grounds to discipline the license and licensing rights of Respondent ~~Kelly~~^{Kiely} and Kruse under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 41 and 42.

16. The acts and/or omissions of Respondent Kruse constitute grounds to discipline the license and licensing rights of Respondent ~~Kelly~~^{Kiely} and Kruse under California Code of Regulations, title 10, section 2834 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Finding 43.

17. The acts and/or omissions of Respondent Kruse constitute grounds to discipline the license and licensing rights of Respondent ~~Kelly~~^{Kiely} and Kruse under California Code of Regulations, title 10, sections 2831, 2950, subdivisions (d) and (g) and 2951 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 44a.

18. The acts and/or omissions of Respondent Kruse constitute grounds to discipline the license and licensing rights of Respondent ~~Kelly~~^{Kiely} and Kruse under California Code of Regulations, title 10, section 2832 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 45.

19. The acts and/or omissions of Respondent Kruse constitute grounds to discipline the license and licensing rights of Respondent ~~Kelly~~^{Kiely} and Kruse under California Code of Regulations, title 10, section 2950, subdivision (g) in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 44b.

20. The acts and/or omissions of Respondent Kruse constitute grounds to discipline the license and licensing rights of Respondent ~~Kelly~~^{Kiely} and Kruse under Business and Professions Code section 10176, by reason of Findings 44b.

21. The acts and/or omissions respectively of Respondent Kruse constitute cause for disciplinary action under the provisions of Business and Professions Code sections

10177, subdivisions (h) and (g) and 10159.2 in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 40, 41, 42, 43, 44, 45 and 46.

22. As stated in Business and Professions Code section 10050, the principal responsibility of the Real Estate Commissioner is to enforce all of the Department's laws ". . . in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees." Therefore, the facts (Findings 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 39, 40, 41, 42, 43, 44, 45 and 46), violations (Legal Conclusions 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21) and the evidence of explanation, mitigation and/or rehabilitation (Findings 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58) have been considered when determining the discipline appropriate to protect the public from the acts or omissions of Respondents Welcome Home Realty, Wurth, ~~Kiely~~ & Kruse and Kruse. Based upon the foregoing, the Orders set forth below are made. ^{Kiely}

ORDER

1. All license and licensing rights of Respondent Welcome Home Realty under the Real Estate Law are revoked.

2. All license and licensing rights of Respondent William Edward Wurth under the Real Estate Law are revoked.

3. All licenses and licensing rights of Respondent Kiely & Kruse, Inc., dba Emerald Mortgage and as Sapphire Realty, under the Real Estate Law are revoked; pursuant to Business and Professions Code section 10156.5, a restricted real estate broker license shall be issued to Respondent ~~Kiely~~ & Kruse, Inc., dba Emerald Mortgage and as Sapphire Realty, if an application is made therefor and the Department of Real Estate is paid the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent Kiely & Kruse, Inc., dba Emerald Mortgage and as Sapphire Realty, shall be subject to the provisions of Business and Professions Code section 10156.7 and to the limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6 set forth below.

a. The restricted license issued to Respondent Kiely & Kruse may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of his conviction or plea of nolo contendere to a crime of the designated officer that is substantially related to his/her fitness or capacity as a real estate licensee.

b. The restricted license issued to Respondent Kiely & Kruse, Inc., dba Emerald Mortgage and as Sapphire Realty, may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Real Estate Commissioner that Respondent ~~Kiely~~ & Kruse, Inc., dba Emerald Mortgage and as Sapphire Realty, has violated provisions of the Real Estate Law, the Subdivided

Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

c. Respondent Kiely & Kruse, Inc., dba Emerald Mortgage and as Sapphire Realty, 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 (3) years have elapsed from the effective date of this Decision.

d. Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, shall report to the Department of Real Estate in writing as the Real Estate Commissioner shall direct by separate written order issued while the restricted license is in effect such information concerning Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty's activities for which a real estate license is required as the Real Estate Commissioner shall deem appropriate to protect the public interest.

Such reports shall include, but shall not be limited to, periodic independent accounts of trust funds in the custody and control of Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, and periodic summaries of salient information concerning each real estate transaction in which Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, engaged during the period covered by the report.

^{Kiely} e. Pursuant to Business and Professions Code section 10148, Respondent Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, shall pay the Real Estate Commissioner's reasonable cost for: (1) The audit of Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, which led to this disciplinary action, and; (2) a subsequent audit to determine if Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, has corrected the trust fund violations (Legal Conclusions 15, 16, 17, 18, 19, 20 and 21). In calculating the amount of the Real Estate Commissioner's reasonable cost, the Real Estate Commissioner may use the estimated average hourly salary of all persons performing audits of real estate brokers and shall include an allocation for travel time to and from the auditor's place of work. Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, shall pay such cost within sixty (60) days of receiving an invoice from the Real Estate Commissioner detailing the activities performed during the audit and the amount of time spent performing the activities. The Real Estate Commissioner may suspend the restricted license issued to Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, pending a hearing held in accordance with Section 11500 *et seq.* of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, and the Real Estate Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent ^{Kiely} Kelly & Kruse, dba Emerald Mortgage and as Sapphire Realty, enters into an agreement satisfactory to the Real Estate Commissioner to provide for payment or until a

decision providing otherwise is adopted following a hearing held pursuant to this condition.

4. All licenses and licensing rights of Respondent Patrick Eugene Kruse under the Real Estate Law are revoked; pursuant to Business and Professions Code section 10156.5, a restricted real estate broker license shall be issued to Respondent Patrick Eugene Kruse if he makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent Patrick Eugene Kruse shall be subject to the provisions of Business and Professions Code section 10156.7 and to the limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6 set forth below.

a. The restricted license issued to Respondent Patrick Eugene Kruse may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of his conviction or plea of nolo contendere to a crime that is substantially related to his fitness or capacity as a real estate licensee.

b. The restricted license issued to Respondent Patrick Eugene Kruse may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Real Estate Commissioner that Respondent Patrick Eugene Kruse has violated provisions of the Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

c. Respondent Patrick Eugene Kruse 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 (3) years have elapsed from the effective date of this Decision.

d. Within nine months from the effective date of this Decision, Respondent Patrick Eugene Kruse shall present evidence satisfactory to the Real Estate Commissioner that he has 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 since the most recent issuance of a renewal real estate license. If Respondent Patrick Eugene Kruse fails to satisfy this condition, the Real Estate Commissioner may order the suspension of the restricted license until he presents such evidence. The Real Estate Commissioner shall afford Respondent Patrick Eugene Kruse the opportunity for a hearing to present such evidence pursuant to the Administrative Procedure Act.

e. No later than thirty (30) days from the effective date of this Decision, Respondent Patrick Eugene Kruse shall take and pass the Professional Responsibility Examination administered by the Department of Real Estate including the payment of the appropriate examination fee. If Respondent Patrick Eugene Kruse fails to satisfy

this condition, the Real Estate Commissioner may order suspension of Respondent Patrick Eugene Kruse's license until he passes the examination.

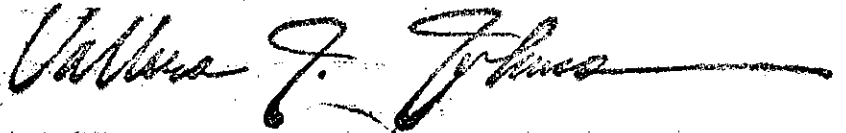
f. Prior to and as a condition of the issuance of the restricted license, Respondent Patrick Eugene Kruse shall submit proof satisfactory to the Commissioner of Real Estate that he has taken and successfully completed the continuing education course on trust fund accounting and handling specified in Business and Professions Code section 10170.5, subdivision (a). Proof of satisfaction of this requirement includes evidence that Respondent Patrick Eugene Kruse has successfully completed the trust fund account and handling continuing education course within thirty (30) days prior to the effective date of the Decision in this matter.

g. Respondent Patrick Eugene ^{Kruse} Kelly shall report to the Department of Real Estate in writing as the Real Estate Commissioner shall direct by separate written order issued while the restricted license is in effect such information concerning Respondent Patrick Eugene Kruse's activities for which a real estate license is required as the Real Estate Commissioner shall deem appropriate to protect the public interest.

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

DATED: _____

2/20/08



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 MICHAEL B. RICH, Counsel
State Bar No. 84257
2 Department of Real Estate
P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789
5
6
7

FILED
JAN 10 2007
DEPARTMENT OF REAL ESTATE
By S. Fej

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 KIELY & KRUSE, INC., dba EMERALD)
MORTGAGE and as SAPPHIRE REALTY,)
14 and PATRICK EUGENE KRUSE,)
15 Respondents.)

NO. H-3655 SD
ACCUSATION

16
17 The Complainant, JOSEPH AIU, a Deputy Real Estate
18 Commissioner of the State of California, for Causes of Accusation
19 against KIELY & KRUSE, INC., doing business under the fictitious
20 names of EMERALD MORTGAGE and SAPPHIRE MORTGAGE, and against
21 PATRICK EUGENE KRUSE, is informed and alleges as follows:

22 FIRST CAUSE OF ACTION

23 I

24 Respondents KIELY & KRUSE, INC., (hereafter referred to
25 as "Respondent KKI") and PATRICK EUGENE KRUSE (hereafter referred
26 to as "Respondent KRUSE") are presently licensed and/or have
27 ///

1 license rights under the Real Estate Law, Part 1 of Division 4 of
2 the California Business and Professions Code (hereafter "the
3 Code").

4 II

5 The Complainant, JOSEPH AIU, a Deputy Real Estate
6 Commissioner of the State of California, makes this Accusation
7 against Respondents in his official capacity and not otherwise.

8 III

9 At all times herein mentioned, Respondent KKI was and
10 is licensed by the Department of Real Estate (hereafter "the
11 Department") as a real estate broker corporation and through
12 Respondent KRUSE as its designated broker officer.

13 IV

14 At all times herein mentioned, Respondent KRUSE was
15 and is licensed by the Department as a real estate broker, and
16 individually as the designated broker officer of Respondent KKI.
17 As said designated officer/broker, Respondent KRUSE was at all
18 times mentioned herein responsible pursuant to Section 10159.2
19 of the Code for the supervision of the activities of the
20 officers, agents, real estate licensees and employees of
21 Respondent KKI for which a license is required.

22 V

23 Whenever reference is made in an allegation in this
24 Accusation to an act or omission of Respondent KKI, such
25 allegation shall be deemed to mean that the officers, directors,
26 employees, agents and real estate licensees employed by or
27 associated with Respondent KKI committed such act or omission

1 while engaged in the furtherance of the business or operations of
2 Respondent KKI and while acting within the course and scope of
3 their corporate authority and employment.

4 VI

5 At all times herein mentioned, Respondent KKI engaged
6 in the business of, acted in the capacity of, advertised, or
7 assumed to act as a real estate broker within the State of
8 California, and in so doing conducted its own escrows, within the
9 meaning of:

10 (a) Section 10131(a) of the Code, including the
11 operation and conduct of a real estate resale
12 brokerage with the public wherein, on behalf of
13 others, for compensation or in expectation of
14 compensation, Respondent sold or offered to sell,
15 bought or offered to buy, solicited prospective
16 sellers or purchases of, solicited or obtained
17 listings of, and/or negotiated the purchase or
18 sale of real property for or in expectation of
19 compensation; and,

20 (b) Section 10131(d) of the Code, including the
21 operation of and conduct of a mortgage loan
22 brokerage business with the public wherein lenders
23 and borrowers were solicited for loans secured
24 directly or collaterally by liens on real
25 property, wherein such loans were arranged,
26 negotiated, processed, and consummated on behalf
27 of others for compensation or in expectation of

1 compensation, and/or wherein such loans were
2 serviced and payments thereon were collected on
3 behalf of others.

4 VII

5 In so acting during the course of the activities
6 described in Paragraph VI, above, Respondent KKI accepted or
7 received funds in trust (hereinafter "trust funds") from or on
8 behalf of lenders or investors, borrowers, purchasers, sellers,
9 and others.

10 VIII

11 The aforesaid trust funds accepted or received by
12 Respondent KKI were deposited or caused to be deposited by
13 Respondent KKI into a bank account maintained by Respondent KKI
14 for the handling of trust funds at First National Bank, 1661
15 Rosecrans Street, San Diego California, Account Number 220051,
16 entitled "Sapphire Realty Escrow Division Account" (hereinafter
17 "Bank Account #1").

18 IX

19 Within the three year period next preceding to the
20 filing of this Accusation, in connection with the collection and
21 disbursement of trust funds, Respondent KKI failed to deposit and
22 maintain the trust funds in a trust account or neutral escrow
23 depository, or to deliver them into the hands of the owners of
24 the funds, as required by Section 10145 of the Code, in such a
25 manner that as of April 30, 2005, there was a trust fund shortage
26 in the approximate sum of \$73,538.17 in Bank Account #1. In so
27 doing, Respondent KKI failed to obtain the prior written consents

1 of the principals for the reduction of the aggregate balance of
2 trust funds in Bank Account #1 to an amount less than the
3 existing aggregate trust fund liability to the owners of said
4 funds in conformance with Section 2832.1 of Chapter 6, Title 10,
5 California Code of Regulations (hereinafter "Regulations").

6 X

7 Within the three year period next preceding the filing
8 of this Accusation, in connection with the receipt and
9 disbursement of trust funds as above alleged, Respondent KKI:

10 (a) Permitted Paula Mullins, Dana Jenkins, Suzie
11 Mendoza, and William Wurth, persons who neither
12 held a California real estate license nor were
13 bonded, to be a signatory on Bank Account #1, in
14 violation of Section 2834 of the Regulations;

15 (b) Failed to maintain a written control record of all
16 trust funds received and disbursed containing all
17 information required by Sections 2831, 2950(d),
18 2950(g), and 2951 of the Regulations, including
19 but not limited to recordation of all deposits,
20 from whom received, amount of deposit, check
21 numbers and dates of disbursements, recordation of
22 dates of receipt, and recordation of accurate
23 dates of deposit of trust funds for Bank Account
24 #1;

25 (c) Failed to designate Bank Account #1, as a trust
26 account in the name of the broker as trustee and
27

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

- deposited client trust funds into that account in violation of Section 2832 of the Regulations;
- (d) Failed to deposit earnest money deposits into a bank account, trust account, or escrow account on or before the close of the next full working day after receipt within three business days of receipt in violation of Section 2950(g) of the Regulations;
- (e) Failed to provide to a written disclosure or advisory to all parties that Respondent KKI acting as an escrow agent had an interest as an owner of the agency holding escrow in violation of Section 2950(h) of the Regulations;
- (f) Failed to provide upon the close of escrow transactions to each principal in the transactions a written statement of all receipts and disbursements together with the name of the person to whom disbursements were made in violation of Section 2951(i) of the Regulations; and,
- (g) Failed to disclose to parties in escrow transactions that Respondent KKI received earnings credit of 2.5% of balances of escrow funds in Bank Account #1 in violation of Section 10176(g) of the Code.

///
///
///

XI

The acts and/or omissions of Respondent KKI as alleged above constitute grounds for disciplinary action under the following provisions:

- (a) As to Respondent KKI as alleged in Paragraph IX, under Section 10145 of the Code and under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) As to Respondent KKI as alleged in Paragraph X(a), under Section 2834 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) As to Respondent KKI as alleged in Paragraph X(b), under Sections 2831, 2950(d), 2950(g), and 2951 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) As to Respondent KKI as alleged in Paragraph X(c), under Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) As to Respondent KKI as alleged in Paragraph X(d), under Section 2950(g) of the Regulations in conjunction with Section 10177(d) of the Code;
and,
- (f) As to Respondent KKI as alleged in Paragraph X(e), under Section 10176(g) of the Code.

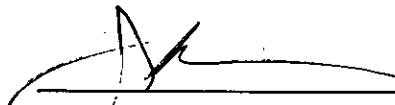
///

///

///

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

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



JOSEPH AIU
Deputy Real Estate Commissioner

Dated at San Diego,
this 5 day of December, 2006.