

1 Department of Real Estate
P. O. Box 187000
2 Sacramento, CA 95818-7000
3 Telephone: (916) 227-0789
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FILED
JAN - 8 2003

DEPARTMENT OF REAL ESTATE

By *[Signature]*

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)	No. H-3699 SAC
11 RONALD KEITH COLE,)	OAH No. N-2002090443
12 Respondent.)	<u>STIPULATION AND AGREEMENT</u>
13)	

14 It is hereby stipulated by and between RONALD KEITH
15 COLE (hereinafter "Respondent"), by and through his attorney,
16 J. Anne Rawlins; and the Complainant, acting by and through
17 David A. Peters, Counsel for the Department of Real Estate, as
18 follows for purpose of settling and disposing of the Accusation
19 filed July 2, 2002 in this matter:

20 1. All issues which were to be contested and
21 all evidence which was to be presented by Complainant and
22 Respondent at a formal hearing on the Accusation, which hearing
23 was to be held in accordance with the provisions of the
24 Administrative Procedure Act (APA) (Government Code Section 11500
25 et seq.), shall instead and in place thereof be submitted solely
26 on the basis of the provisions of this Stipulation and
27 Agreement.

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

5 3. On July 15, 2002, Respondent filed his Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 his Notice of Defense. Respondent acknowledges that by
10 withdrawing said Notice of Defense he will thereby waive his
11 right to require the Commissioner to prove the allegations in
12 the Accusation at a contested hearing held in accordance with
13 the provisions of the APA and that he will waive other rights
14 afforded to him in connection with the hearing such as the right
15 to present evidence in defense of the allegations in the
16 Accusation and the right to cross-examine witnesses.

17 4. The Stipulation is based on the factual
18 allegations contained in the Accusation. In the interests of
19 expedience and economy, Respondent chooses not to contest these
20 allegations, but to remain silent and understands that, as a
21 result thereof, these factual allegations, without being
22 admitted or denied, will serve as a prima facie basis for the
23 disciplinary action stipulated to herein. The Real Estate
24 Commissioner shall not be required to provide further evidence
25 to prove said factual allegations.

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

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

18 DETERMINATION OF ISSUES

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

23 I

24 The conduct of Respondent RONALD KEITH COLE, as
25 described in the Accusation, constitutes cause for the
26 suspension or revocation of the real estate license and license
27 rights of Respondent under the provisions of Sections 10176(a)

1 and 10176(i) of the Business and Professions Code and Section
2 10177(d) of the Business and Professions Code in conjunction
3 with Section 10148 of the Business and Professions Code.

4 ORDER

5 I

6 The real estate broker license and all license rights
7 of Respondent RONALD KEITH COLE under the Real Estate Law are
8 revoked; however, a restricted real estate broker license shall
9 be issued to Respondent pursuant to Section 10156.5 of the
10 Business and Professions Code if Respondent makes application
11 therefor and pays to the Department of Real Estate the
12 appropriate fee for the restricted license within ninety (90)
13 days from the effective date of this Decision. The restricted
14 license issued to Respondent shall be subject to all of the
15 provisions of Section 10156.7 of the Business and Professions
16 Code and to the following limitations, conditions and
17 restrictions imposed under authority of Section 10156.6 of that
18 Code:

19 A. The restricted license issued to Respondent may
20 be suspended prior to hearing by Order of the Real Estate
21 Commissioner in the event of Respondent's conviction or plea of
22 nolo contendere to a crime which is substantially related to
23 Respondent's fitness or capacity as a real estate licensee.

24 B. The restricted license issued to Respondent may
25 be suspended prior to hearing by Order of the Commissioner on
26 evidence satisfactory to the Commissioner that Respondent has
27 violated provisions of the California Real Estate Law, the

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

3 C. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions of
6 the restricted license until two (2) years have elapsed from the
7 effective date of this Decision.

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

20 E. Respondent shall, within six (6) months from the
21 effective date of this Decision, take and pass the Professional
22 Responsibility Examination administered by the Department
23 including the payment of the appropriate examination fee. If
24 Respondent fails to satisfy this condition, the Commissioner may
25 order suspension of Respondent's license until Respondent passes
26 the examination.

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F. Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of \$1,500.00 to Jenny Nicolay.

G. Any restricted real estate salesperson license issued to Respondent may be suspended or revoked for a violation by Respondent of any of the conditions attaching to the restricted license.

11/24/02
DATED

David A. Peters
DAVID A. PETERS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

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

11/15/02
DATED

Ronald Keith Cole
RONALD KEITH COLE
Respondent

1 I have reviewed the Stipulation and Agreement in as
2 to form and content and have advised my client accordingly.

3
4 November 13, 2002

DATED

J. Anne Rawlins
J. ANNE RAWLINS
Attorney for Respondent

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6 * * *

7 The foregoing Stipulation and Agreement for
8 Settlement is hereby adopted by the Real Estate Commissioner as
9 her Decision and Order and shall become effective at 12 o'clock
10 noon on JANUARY 29, 2003

11 IT IS SO ORDERED

December 13, 2002

12 PAULA REDDISH ZINNEMANN
13 Real Estate Commissioner

14 Paula Reddish Zinnemann
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FILED
SEP 30 2002

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

DEPARTMENT OF REAL ESTATE

By Laurie L. Z...

In the Matter of the Accusation of

RONALD KEITH COLE,

}
}

Case No. H-3699 SAC

OAH No. N-2002090443

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 **NOVEMBER 20&21, 2002**, 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: SEPTEMBER 30, 2002

DEPARTMENT OF REAL ESTATE

By David A. Peters
DAVID A. PETERS, Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
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FILED
JUL - 2 2002

DEPARTMENT OF REAL ESTATE
By Laurie L. Zari

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 RONALD KEITH COLE,) No. H-3699 SAC
13 Respondent.) ACCUSATION
14

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against RONALD KEITH COLE dba All American Financial
18 Escrow Div, All American Mortgage, All American Realty, Applied
19 Capital Group, and Valley Home Loans (hereinafter "Respondent"),
20 is informed and alleges as follows:

21 FIRST CAUSE OF ACCUSATION

22 I

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

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II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code"), as a real estate broker.

III

At all times herein mentioned, Respondent was performing acts requiring a real estate license for or in expectation of a compensation.

IV

On or about July 9, 1999, Jason Youngberg and Aime Youngberg (hereinafter "the Buyers") submitted an offer, by and through Respondent, to purchase certain real property commonly known as 6300 El Dorado Street, El Dorado, California (hereinafter "the Subject Property") owned by Jenny Nicolay (hereinafter "the Seller"). Said offer in the form of a Residential Purchase Agreement and Receipt for Deposit provided that a \$1,000.00 deposit was being held uncashed until acceptance and would be deposited with the escrow holder within three (3) business days after acceptance.

V

On or about July 21, 1999, the Seller made a counter offer to the Buyers through Respondent incorporating the deposit terms contained in the offer described in Paragraph IV above and adding additional terms.

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VI

On or about July 22, 1999, the Buyer accepted the counter-offer described in Paragraph V above. The \$1,000.00 deposit was a material inducement to Sellers to agree to sell the Subject Property to the Buyer.

VII

On or about July 9, 1999, Respondent, in order to induce the Seller into selling the Subject Property, falsely represented to the Seller the material fact that Respondent had received a \$1,000.00 deposit from the Buyer and that said deposit was being held by Respondent pursuant to the terms of the purchase agreement. In truth and in fact Respondent did not receive or hold said deposit.

VIII

Beginning on or about July 9, 1999 and continuing thereafter Respondent failed to disclose to the Seller the material fact well known to the Respondent, but unknown to the Seller that Respondent had not received and forwarded the \$1,000.00 deposit from the Buyer to escrow as required pursuant to the purchase contract on the Subject Property.

IX

The acts and omissions of Respondent set forth above constitute the making of substantial misrepresentations, and fraud and dishonest dealing, and are cause under Sections 10176(a), and 10176(i) of the Code in conjunction with Section 10177(d) of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate

1 Law. In the alternative, the acts and omissions of Respondent
2 set forth above constitute negligence or incompetence in
3 performing acts for which a real estate license is required, and
4 are cause under Section 10177(g) of the Code for suspension or
5 revocation of all licenses and license rights of Respondent
6 under the Real Estate Law.

7 SECOND CAUSE OF ACCUSATION

8 X

9 There is hereby incorporated into this second,
10 separate and distinct Cause of Accusation, all of the
11 allegations contained in Paragraphs I, II, and III of the First
12 Cause of Accusation with the same force and effect as if herein
13 fully set forth.

14 XI

15 On or about June 21, 2002, a representative of the
16 Real Estate Commissioner, after service of a subpoena duces
17 tecum on Respondent, required that records, papers, books,
18 accounts and documents executed or obtained in connection with
19 transactions for which a real estate license is required be made
20 available for examination and inspection. Respondent failed and
21 refused to make said records available for inspection and/or
22 failed to retain said records.

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XII

The acts and/or omissions of Respondent described above in this Second Cause of Accusation are grounds for the suspension or revocation of Respondent's license and/or license rights under Section 10177(d) of the Code in conjunction with Section 10148 of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of 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.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 2nd day of July, 2002.