

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

FILED
APR - 3 2003

DEPARTMENT OF REAL ESTATE

By Marie G. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-3732 SAC
12)
12 McNEILL, INC.,) OAH No. N-2002120280
13 a Corporation, and)
13 JOSEPH ALEXANDER McNEILL, III,) STIPULATION AND AGREEMENT
14)
14 Respondents.)

15
16 It is hereby stipulated by and between Respondents
17 McNEILL, INC., a corporation, and JOSEPH ALEXANDER McNEILL,
18 III (hereinafter "Respondents"), and the Complainant, acting by
19 and through James L. Beaver, Counsel for the Department of Real
20 Estate (herein "the Department"), as follows for the purpose of
21 settling and disposing of the Accusation filed on October 23,
22 2002 in this matter (herein "the Accusation"):

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondents
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 Procedure Act (APA), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement.

4 2. Respondents have received, read and understand the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department in this proceeding.

7 3. On November 1, 2002, Respondents filed Notices of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents each hereby freely and voluntarily
11 withdraw said Notice of Defense. Respondents acknowledge that
12 Respondents understand that by withdrawing said Notice of Defense
13 Respondents will thereby waive Respondents' right to require the
14 Real Estate Commissioner (herein "the Commissioner") to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that Respondents
17 will waive other rights afforded to Respondents in connection
18 with the hearing such as the right to present evidence in defense
19 of the allegations in the Accusation and the right to cross-
20 examine witnesses.

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

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

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

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

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

19 7. Respondents understand that by agreeing to this
20 Stipulation and Agreement, Respondents jointly and severally
21 agree to pay, pursuant to Section 10148 of the California
22 Business and Professions Code, the cost of the audit which
23 resulted in the determination that Respondents committed the
24 trust fund violation(s) found in paragraph I, below, of the
25 Determination of Issues. The amount of said costs is \$6,935.13.

26 8. Respondents further understand that by agreeing to

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 this Stipulation and Agreement in Settlement, the findings set
2 forth below in the Determination Of Issues become final, and that
3 the Commissioner may charge said Respondents, jointly and
4 severally, for the costs of any audit conducted pursuant to
5 Section 10148 of the California Business and Professions Code to
6 determine if the trust fund violation(s) found in paragraph I,
7 below, of the Determination of Issues have been corrected. The
8 maximum costs of said audit shall not exceed \$8,858.60.

9 DETERMINATION OF ISSUES

10 By reason of the foregoing stipulations, admissions and
11 waivers and solely for the purpose of settlement of the pending
12 Accusation without hearing, it is stipulated and agreed that the
13 following Determination of Issues shall be made:

14 I

15 The acts and omissions of Respondent McNEILL, INC. as
16 described in the Accusation are grounds for the suspension or
17 revocation of the licenses and license rights of Respondent
18 McNEILL, INC. under the following provisions of the California
19 Business and Professions Code (herein "the Code"):

20 (a) As to Paragraph IX(a) under Section 10145 of the
21 Code and Section 2832.1 of the Regulations in conjunction with
22 Section 10177(d) of the Code;

23 (b) As to Paragraph IX(b) under Section 2831.2 of the
24 Regulations in conjunction with Section 10177(d) of the Code;

25 (c) As to Paragraphs IX(c) and IX(d) under Section
26 10145 of the Code and 2832.1 of the Regulations in conjunction

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 with Section 10177(d) of the Code; and

2 (d) As to Paragraph X under Section 10145 of the Code
3 and 2831 of the Regulations in conjunction with Section 10177(d)
4 of the Code.

5 II

6 The acts and omissions of Respondent JOSEPH ALEXANDER
7 McNEILL, III as described in Paragraph XI of the Accusation are
8 grounds for the suspension or revocation of the licenses and
9 license rights of Respondent JOSEPH ALEXANDER McNEILL, III under
10 Sections 10177(g) and 10177(h) of the Code and Section 10159.2 of
11 the Code in conjunction with Section 10177(d) of the Code.

12 ORDER

13 I

14 All licenses and licensing rights of Respondent
15 McNEILL, INC. under the Real Estate Law are revoked; provided,
16 however, a restricted corporate real estate broker license
17 shall be issued to said Respondent pursuant to Section 10156.5
18 of the Business and Professions Code if, within 90 days from
19 the effective date of the Decision entered pursuant to this
20 Order, the Respondent, prior to and as a condition of the
21 issuance of said restricted license:

22 (a) makes application for the restricted license and
23 pays to the Department of Real Estate the appropriate fee
24 therefor; and

25 (b) submits proof satisfactory to the Commissioner
26 that the balance of funds held by Respondent McNEILL, INC. in

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 trust equals the aggregate liability of Respondent McNEILL,
2 INC. to all owners of such funds.

3 The restricted license issued to Respondent shall be
4 subject to all of the provisions of Section 10156.7 of the
5 Business and Professions Code and to the following limitations,
6 conditions and restrictions imposed under authority of Section
7 10156.6 of that Code:

8 1. The restricted license issued to Respondent may
9 be suspended prior to hearing by Order of the Real Estate
10 Commissioner in the event of Respondent's conviction or plea of
11 nolo contendere to a crime which is substantially related to
12 Respondent's fitness or capacity as a real estate licensee.

13 2. The restricted license issued to Respondent may
14 be suspended prior to hearing by Order of the Real Estate
15 Commissioner on evidence satisfactory to the Commissioner that
16 Respondent has violated provisions of the California Real
17 Estate Law, the Subdivided Lands Law, Regulations of the Real
18 Estate Commissioner or conditions attaching to the restricted
19 license.

20 3. Respondent shall not be eligible to apply for the
21 issuance of an unrestricted real estate license nor for the
22 removal of any of the conditions, limitations or restrictions
23 of a restricted license until two (2) years have elapsed from
24 the effective date of this Decision.

25 4. Pursuant to Section 10148 of the Business and
26 Professions Code, Respondent shall, jointly and severally with

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

Respondent JOSEPH ALEXANDER McNEILL, III, pay the sum of \$6,935.13 as and for the Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such cost within 45 days of receiving an invoice therefor from the Commissioner. The Commissioner may suspend the restricted license issued to respondent 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 the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall, jointly and severally with Respondent JOSEPH ALEXANDER McNEILL, III, pay the Commissioner's reasonable cost, not to exceed \$8,858.60, for an audit to determine if Respondent has corrected the trust fund violation(s) found in paragraph I of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for 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 shall pay such cost within 45 days of receiving an invoice therefor from the

DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 Commissioner detailing the activities performed during the
2 audit and the amount of time spent performing those activities.
3 The Commissioner may suspend the restricted license issued to
4 respondent pending a hearing held in accordance with Section
5 11500, et seq., of the Government Code, if payment is not
6 timely made as provided for herein, or as provided for in a
7 subsequent agreement between the Respondent and the
8 Commissioner. The suspension shall remain in effect until
9 payment is made in full or until Respondent enters into an
10 agreement satisfactory to the Commissioner to provide for
11 payment, or until a decision providing otherwise is adopted
12 following a hearing held pursuant to this condition.

13 II

14 All licenses and licensing rights of Respondent
15 JOSEPH ALEXANDER McNEILL, III under the Real Estate Law are
16 revoked; provided, however, a restricted real estate broker
17 license shall be issued to such Respondent pursuant to Section
18 10156.5 of the Business and Professions Code if, within 90 days
19 from the effective date of the Decision entered pursuant to
20 this Order, the Respondent, prior to and as a condition of the
21 issuance of said restricted license;

22 (a) makes application for the restricted license and
23 pays to the Department of Real Estate the appropriate fee
24 therefor;

25 (b) submits proof satisfactory to the Commissioner
26 of having taken and completed at an accredited institution the

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 continuing education course on trust fund accounting and
2 handling specified in paragraph (3) of subdivision (a) of
3 Section 10170.5 of the Business and Professions Code. Said
4 course must have been completed within 120 days prior to the
5 issuance of the restricted license. Credit against the
6 continuing education condition set forth in Paragraph "6" below
7 will be given for completion of this trust fund accounting and
8 handling course during the 120 days prior to the issuance of
9 the restricted license; and

10 (c) submits proof satisfactory to the Commissioner
11 that the balance of funds held by Respondent McNEILL, INC. in
12 trust equals the aggregate liability of Respondent McNEILL,
13 INC. to all owners of such funds.

14 The restricted license issued to such Respondent
15 shall be subject to all of the provisions of Section 10156.7 of
16 the Business and Professions Code and to the following
17 limitations, conditions and restrictions imposed under
18 authority of Section 10156.6 of that Code:

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

25 2. The restricted license issued to such Respondent
26 may be suspended prior to hearing by Order of the Real Estate

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 Commissioner on evidence satisfactory to the Commissioner that
2 the Respondent has violated provisions of the California Real
3 Estate Law, the Subdivided Lands Law, Regulations of the Real
4 Estate Commissioner or conditions attaching to the restricted
5 license.

6 3. Respondent shall not be eligible to apply for the
7 issuance of an unrestricted real estate license or for the
8 removal of any of the conditions, limitations or restrictions
9 of a restricted license until two (2) years have elapsed from
10 the effective date of this Decision.

11 4. Pursuant to Section 10148 of the Business and
12 Professions Code, Respondent shall, jointly and severally with
13 Respondent McNEILL, INC., pay the sum of \$6,935.13 as and for
14 the Commissioner's cost of the audit which led to this
15 disciplinary action. Respondent shall pay such cost within 45
16 days of receiving an invoice therefor from the Commissioner.
17 The Commissioner may suspend the restricted license issued to
18 respondent pending a hearing held in accordance with Section
19 11500, et seq., of the Government Code, if payment is not
20 timely made as provided for herein, or as provided for in a
21 subsequent agreement between the Respondent and the
22 Commissioner. The suspension shall remain in effect until
23 payment is made in full or until Respondent enters into an
24 agreement satisfactory to the Commissioner to provide for
25 payment, or until a decision providing otherwise is adopted
26 following a hearing held pursuant to this condition.

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 5. Pursuant to Section 10148 of the Business and
2 Professions Code, Respondent shall, jointly and severally with
3 Respondent McNEILL, INC., pay the Commissioner's reasonable
4 cost, not to exceed \$8,858.60, for an audit to determine if
5 Respondent has corrected the trust fund violation(s) found in
6 paragraph I of the Determination of Issues. In calculating the
7 amount of the Commissioner's reasonable cost, the Commissioner
8 may use the estimated average hourly salary for all persons
9 performing audits of real estate brokers, and shall include an
10 allocation for travel time to and from the auditor's place of
11 work. Respondent shall pay such cost within 45 days of
12 receiving an invoice therefor from the Commissioner detailing
13 the activities performed during the audit and the amount of
14 time spent performing those activities. The Commissioner may
15 suspend the restricted license issued to respondent pending a
16 hearing held in accordance with Section 11500, et seq., of the
17 Government Code, if payment is not timely made as provided for
18 herein, or as provided for in a subsequent agreement between
19 the Respondent and the Commissioner. The suspension shall
20 remain in effect until payment is made in full or until
21 Respondent enters into an agreement satisfactory to the
22 Commissioner to provide for payment, or until a decision
23 providing otherwise is adopted following a hearing held
24 pursuant to this condition.

25 6. Respondent shall, within nine months from the
26 effective date of the Decision, present evidence satisfactory

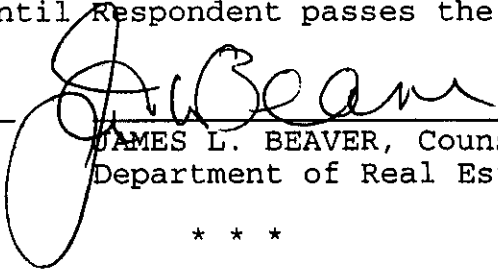
27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 to the Commissioner that Respondent has, since the most recent
2 issuance of an original or renewal real estate license, taken
3 and successfully completed the continuing education
4 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
5 for renewal of a real estate license. If Respondent fails to
6 satisfy this condition, the Commissioner may order the
7 suspension of the restricted license until the Respondent
8 presents such evidence. The Commissioner shall afford
9 Respondent the opportunity for a hearing pursuant to the
10 Administrative Procedure Act to present such evidence.

11 7. Respondent shall, within six (6) months from the
12 issuance of the restricted license, take and pass the
13 Professional Responsibility Examination administered by the
14 Department, including the payment of the appropriate
15 examination fee. If Respondent fails to satisfy this
16 condition, the Commissioner may order the suspension of the
17 restricted license until Respondent passes the examination.

18 March 17, 2003
19 DATED


JAMES L. BEAVER, Counsel
Department of Real Estate

20 * * *

21 I have read the Stipulation and Agreement and its terms
22 are understood by me and are agreeable and acceptable to me. I
23 understand that I am waiving rights given to me by the California
24 Administrative Procedure Act (including but not limited to
25 Sections 11506, 11508, 11509, and 11513 of the Government Code),
26

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

1 and I willingly, intelligently, and voluntarily waive those
2 rights, including the right of requiring the Commissioner to
3 prove the allegations in the Accusation at a hearing at which I
4 would have the right to cross-examine witnesses against me and to
5 present evidence in defense and mitigation of the charges.

6 11 March 2003

DATED

McNEILL, INC.

Respondent

7
8 By

JOSEPH ALEXANDER McNEILL, III
Designated Officer - Broker

9
10 11 March 2003

DATED

JOSEPH ALEXANDER McNEILL, III
Respondent

12 * * *

13 The foregoing Stipulation and Agreement is hereby
14 adopted by me as my Decision in this matter and shall become
15 effective at 12 o'clock noon on APRIL 24, 2003.

16 IT IS SO ORDERED March 24, 2003.

17
18 PAULA REDDISH ZINNEBANN
Real Estate Commissioner

19 Paula Reddish Zinnemann
20
21

22
23 BY: John R. Liberator
Chief Deputy Commissioner
24
25
26

27 DRE No. H-3732 SAC

McNEILL, INC. and and
JOSEPH ALEXANDER McNEILL, III

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

FILED
DEC 31 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

McNEILL, INC., a Corporation, and
JOSEPH ALEXANDER McNEILL, III,

Case No. H-3732 SAC

OAH No. N-2002120280

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITE 340/360, SACRAMENTO, CA 95814** on **THURSDAY, MARCH 20, 2003**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: DECEMBER 31, 2002

By James L. Beaver
JAMES L. BEAVER, Counsel

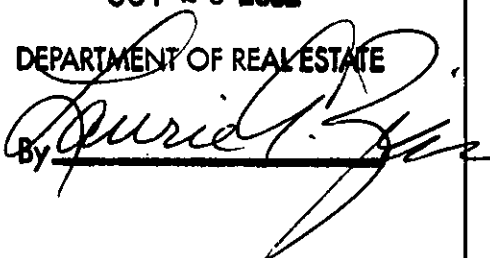
1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)
7

FILED

OCT 23 2002

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 McNEILL, INC.,)
13 a Corporation, and)
14 JOSEPH ALEXANDER McNEILL, III,)
15 Respondents.)

No. H-3732 SAC

ACCUSATION

16 The Complainant, Charles W. Koenig, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against McNEILL, INC., a corporation, and JOSEPH
19 ALEXANDER McNEILL, III (hereinafter "JOSEPH McNEILL"), is
20 informed and alleges as follows:

21 I

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

25 ///

26 ///

27 ///

1 II

2 At all times herein mentioned, Respondents McNEILL,
3 INC. and JOSEPH McNEILL were and now are licensed and/or have
4 license rights under the Real Estate Law (Part 1 of Division 4
5 of the Business and Professions Code) (hereinafter "the Code").

6 III

7 At all times herein mentioned, Respondent McNEILL,
8 INC. was and now is licensed by the Department of Real Estate of
9 the State of California (hereinafter "the Department") as a
10 corporate real estate broker by and through Respondent JOSEPH
11 McNEILL as designated officer-broker of Respondent McNEILL, INC.
12 to qualify said corporation and to act for said corporation as a
13 real estate broker.

14 IV

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

24 V

25 Whenever reference is made in an allegation in this
26 Accusation to an act or omission of Respondent McNEILL, INC.,
27 such allegation shall be deemed to mean that the officers,

1 directors, employees, agents and real estate licensees employed
2 by or associated with Respondent McNEILL, INC. committed such
3 act or omission while engaged in the furtherance of the business
4 or operations of Respondent McNEILL, INC. and while acting
5 within the course and scope of their corporate authority and
6 employment.

7 VI

8 At all times herein mentioned, Respondents engaged in
9 the business of, acted in the capacity of, advertised, or
10 assumed to act as real estate brokers within the State of
11 California within the meaning of Sections 10131(a) and 10131(b)
12 of the Code, including:

13 (a) The operation and conduct of a real estate resale
14 brokerage with the public wherein, on behalf of others, for
15 compensation or in expectation of compensation, Respondents sold
16 and offered to sell, bought and offered to buy, solicited
17 prospective sellers and purchasers of, solicited and obtained
18 listings of, and negotiated the purchase and sale of real
19 property; and

20 (b) The operation and conduct of a property
21 management business with the public wherein, on behalf of
22 others, for compensation or in expectation of compensation,
23 Respondents leased or rented and offered to lease or rent, and
24 placed for rent, and solicited listings of places for rent, and
25 solicited for prospective tenants of real property or
26 improvements thereon.

27 ///

1 VII

2 In so acting as real estate brokers, as described in
3 Paragraph VI above, Respondents accepted or received funds in
4 trust (hereinafter "trust funds") from or on behalf of buyers
5 and sellers and owners and tenants in connection with
6 Respondents' property management and real estate resale
7 brokerage activities described in Paragraph VI, above, and
8 thereafter from time to time made disbursements of said funds.

9 VIII

10 Some but not necessarily all of the aforesaid trust
11 funds accepted or received by Respondents were deposited or
12 caused to be deposited by Respondents into one or more bank
13 accounts (hereinafter "trust fund accounts") maintained by
14 Respondents for the handling of trust funds, including but not
15 necessarily limited to the "McNeill, Inc." account, account
16 number 6029533, maintained by Respondents at the Vacaville,
17 California, branch of First Northern Bank (hereinafter
18 "Trust 1").

19 IX

20 Within the three-year period immediately preceding the
21 filing of this Accusation, in connection with the collection and
22 disbursement of said trust funds, Respondents:

23 (a) Failed to keep a separate record for each
24 beneficiary or transaction, accounting therein for all funds
25 which have been deposited into Trust 1, containing all
26 information required by Section 2831.1 of Title 10, California
27 Code of Regulations (hereinafter "the Regulations");

1 (b) Failed to reconcile, at least once a month, the
2 balance of all separate beneficiary or transaction records with
3 the record of all trust funds received into and disbursed from
4 Trust 1;

5 (c) Caused, suffered or permitted the balance of
6 funds in Trust 1 to be reduced to an amount which, as of
7 August 31, 2001, was approximately \$32,506.75 less than the
8 aggregate liability of Respondent McNEILL, INC. to all owners of
9 such funds, without the prior written consent of the owners of
10 such funds; and

11 (d) Caused, suffered or permitted the balance of
12 funds in Trust 1 to be reduced to an amount which, as of
13 September 28, 2001, was approximately \$36,068.61 less than the
14 aggregate liability of Respondent McNEILL, INC. to all owners of
15 such funds, without the prior written consent of the owners of
16 such funds.

17 X

18 Within the three-year period immediately preceding the
19 filing of this Accusation, in connection with the collection and
20 disbursement of said trust funds, Respondents failed to keep a
21 columnar record in chronological sequence of all trust funds
22 received and not deposited into any trust bank account, as
23 required by Section 2831 of the Regulations.

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XI

Respondent JOSEPH McNEILL failed to exercise reasonable supervision over the acts of Respondent McNEILL, INC. in such a manner as to allow the acts and events described in Paragraphs IX and X, above, to occur.

XII

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents McNEILL, INC. and JOSEPH McNEILL under the following provisions of the Code and/or the Regulations:

(a) As to Paragraph IX(a), under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;

(b) As to Paragraph IX(b), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

(c) As to Paragraphs IX(c) and IX(d), under Section 10145 of the Code and 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code; and

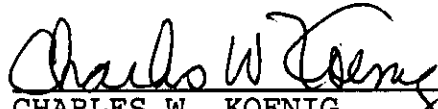
(d) As to Paragraph X, under Section 10145 of the Code and 2831 of the Regulations in conjunction with Section 10177(d) of the Code.

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1 XIII

2 The facts alleged in Paragraph XI, above, are grounds
3 for the suspension or revocation of the licenses and license
4 rights of Respondent JOSEPH McNEILL under Section 10177(g)
5 and/or Section 10177(h) of the Code and Section 10159.2 of the
6 Code in conjunction with Section 10177(d) of the Code.

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
Deputy Real Estate Commissioner

17 Dated at Sacramento, California,
18 this 23rd day of September, 2002.