

FILED
JUN 12 2007

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

DEPARTMENT OF REAL ESTATE

By Anne Shaver

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-4618 SAC
13 ACADIAN PROPERTIES, INC., and) STIPULATION AND AGREEMENT
14 TRINIE ANN MONTIJO,)
15 Respondents.)

16 It is hereby stipulated by and between Respondent
17 ACADIAN PROPERTIES, INC., a corporation (hereinafter
18 "Respondent ACADIAN"), and TRINIE ANN MONTIJO (hereinafter
19 "Respondent MONTIJO") by and through James J. Kaufman, counsel
20 for Respondents, and the Complainant, acting by and through
21 Michael B. Rich, Counsel for the Department of Real Estate, as
22 follows for the purpose of settling and disposing of the
23 Accusation filed on December 13, 2006, in this matter
24 (hereinafter "the Accusation"):

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

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ACADIAN PROPERTIES, INC.
TRINIE ANN MONTIJO

1 hearing was to be held in accordance with the provisions of the
2 Administrative Procedure Act (APA), shall instead and in place
3 thereof be submitted solely on the basis of the provisions of
4 this Stipulation and Agreement.

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

9 3. On December 22, 2006, each Respondent filed a
10 Notice of Defense pursuant to Section 11505 of the Government
11 Code for the purpose of requesting a hearing on the allegations
12 in the Accusation. Respondents hereby freely and voluntarily
13 withdraw their respective Notices of Defense. Respondents
14 acknowledge that Respondents understand that by withdrawing
15 said Notices of Defense Respondents will thereby waive
16 Respondents' right to require the Commissioner to prove the
17 allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that Respondents
19 will waive other rights afforded to Respondents in connection
20 with the hearing such as the right to present evidence in
21 defense of the allegations in the Accusation and the right to
22 cross-examine witnesses.

23 4. Respondents, pursuant to the limitations set forth
24 below, hereby admit that the factual allegations in the
25 Accusation pertaining to Respondents are true and correct and
26 stipulates and agrees that the Real Estate Commissioner shall
27 not be required to provide further evidence of such

1 allegations.

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

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

18 7. Respondents understand that by agreeing to this
19 Stipulation and Agreement in Settlement, Respondents jointly and
20 severally agree to pay, pursuant to Section 10148 of the
21 Business and Professions Code (hereinafter "the Code"), the cost
22 of the audit that led to this disciplinary action. The amount
23 of said costs is \$4,980.70.

24 8. Respondents have received, read, and understand
25 the "Notice Concerning Costs of Audits". Respondents further
26 understand that by agreeing to this Stipulation and Agreement in
27 Settlement, the findings set forth below in the DETERMINATION OF

1 ISSUES become final, and that the Commissioner may charge
2 Respondent for the costs of a subsequent audit conducted
3 pursuant to Section 10148 of the Code. The maximum costs of
4 said audit will not exceed \$4,980.70.

5 DETERMINATION OF ISSUES

6 By reason of the foregoing stipulations, admissions
7 and waivers and solely for the purpose of settlement of the
8 pending Accusation without hearing, it is stipulated and agreed
9 that the following Determination of Issues shall be made:

10 I

11 The acts and omissions of Respondent ACADIAN
12 PROPERTIES, INC., and Respondent TRINIE ANN MONTIJO described in
13 the First Cause of Action of the Accusation are grounds for the
14 suspension or revocation of the licenses and license rights of
15 Respondents under the provisions of Sections 2832.1 and 2834 of
16 Chapter 6, Title 10, California Code of Regulations (hereinafter
17 "Regulations") and Section 10145 of the Code in conjunction with
18 Section 10177(d) of the Code.

19 II

20 The acts and omissions of Respondent MONTIJO described
21 in the Second Cause of Action of the Accusation are grounds for
22 the suspension or revocation of the licenses and license rights
23 of Respondent under Section 10159.2 of the Code in conjunction
24 with Section 10177(d) of the Code and under Section 10177(h) of
25 the Code.

26 ORDER

27 I

1 A. All licenses and licensing rights of Respondent
2 ACADIAN PROPERTIES, INC., under the Real Estate Law are
3 suspended for a period of sixty (60) days from the effective
4 date of the Decision herein; provided, however:

5 1. Sixty (60) days of said sixty (60) day suspension
6 shall be stayed for two (2) years upon the following terms and
7 conditions;

8 (a) Respondent ACADIAN shall obey all laws, rules and
9 regulations governing the rights, duties and responsibilities of
10 a real estate licensee of the State of California; and,

11 (b) That no final subsequent determination be made,
12 after hearing or upon stipulation, that cause for disciplinary
13 action against Respondent ACADIAN occurred within two (2) years
14 of the effective date of the Decision herein.

15 (c) Should such a determination be made, the
16 Commissioner may, in his discretion, vacate and set aside the
17 stay order, and reimpose all or a portion of the stayed
18 suspension.

19 (d) If no order vacating the stay is issued, and if no
20 further cause for disciplinary action against the real estate
21 license of Respondent ACADIAN occurs within two (2) years from
22 the effective date of the Decision, then the stay hereby granted
23 shall become permanent.

24 B. Respondent ACADIAN shall, jointly and severally
25 with Respondent MONTIJO, within sixty (60) days of receiving an
26 invoice therefor from the Commissioner, pay the Commissioner's
27 costs in the amount of \$4,980.70 of the audit conducted pursuant

1 to Section 10148 of the Business and Professions Code that
2 resulted in the determination that Respondent committed the
3 violations described in Paragraph I of the Determination of
4 Issues, above. If Respondent fails to pay such cost within the
5 sixty (60) days, the Commissioner may in his discretion suspend
6 all license and licensing rights of Respondent under the Real
7 Estate Law until payment is made in full or until Respondent
8 enters into an agreement satisfactory to the Commissioner to
9 provide for payment. Upon payment in full, any suspension
10 provided in this paragraph shall be stayed.

11 C. Respondent ACADIAN shall, jointly and severally
12 with Respondent MONTIJO, pay the Commissioner's costs, not to
13 exceed \$4,980.70 of a subsequent audit conducted pursuant to
14 Section 10148 of the Business and Professions Code. In
15 calculating the amount of the Commissioner's reasonable cost,
16 the Commissioner may use the estimated average hourly salary for
17 all persons performing audits of real estate brokers, and shall
18 include an allocation for travel time to and from the auditor's
19 place of work. Respondent shall pay such cost within sixty (60)
20 days of receiving an invoice therefor from the Commissioner
21 detailing the activities performed during the audit and the
22 amount of time spent performing those activities. If Respondent
23 fails to pay such cost within the sixty (60) days of receiving
24 an invoice therefor from the Commissioner, the Commissioner may
25 in his discretion suspend all license and licensing rights of
26 Respondent under the Real Estate Law until payment is made in
27 full or until Respondent enters into an agreement satisfactory

1 to the Commissioner to provide for payment. Upon payment in
2 full, the suspension provided in this paragraph shall be stayed.

3 II

4 A. All licenses and licensing rights of Respondent
5 TRINIE ANN MONTIJO under the Real Estate Law are suspended until
6 such time as Respondent provides proof satisfactory to the
7 Commissioner that Respondent has, within one hundred twenty
8 (120) days prior to the effective date of the Decision herein or
9 any date after said effective date, taken and successfully
10 completed the trust fund accounting and handling course
11 specified in paragraph (3), subdivision (a) of Section 10170.5
12 of the Business and Professions Code. Upon satisfaction of this
13 condition, the suspension provided in this paragraph shall be
14 stayed.

15 B. All licenses and licensing rights of Respondent
16 TRINIE ANN MONTIJO, under the Real Estate Law are suspended for
17 a period of sixty (60) days from the effective date of the
18 Decision herein; provided, however:

19 1. Sixty (60) days of said sixty (60) day suspension
20 shall be stayed for two (2) years upon the following terms and
21 conditions;

22 (a) Respondent MONTIJO shall obey all laws, rules and
23 regulations governing the rights, duties and responsibilities of
24 a real estate licensee of the State of California; and,

25 (b) That no final subsequent determination be made,
26 after hearing or upon stipulation, that cause for disciplinary
27 action against Respondent MONTIJO occurred within two (2) years

1 of the effective date of the Decision herein.

2 (c) Should such a determination be made, the
3 Commissioner may, in his discretion, vacate and set aside the
4 stay order, and reimpose all or a portion of the stayed
5 suspension.

6 (d) If no order vacating the stay is issued, and if no
7 further cause for disciplinary action against the real estate
8 license of Respondent MONTIJO occurs within two (2) years from
9 the effective date of the Decision, then the stay hereby granted
10 shall become permanent.

11 C. Respondent MONTIJO shall, jointly and severally
12 with Respondent ACADIAN, within sixty (60) days of receiving an
13 invoice therefor from the Commissioner, pay the Commissioner's
14 costs in the amount of \$4,980.70 of the audit conducted pursuant
15 to Section 10148 of the Business and Professions Code that
16 resulted in the determination that Respondent committed the
17 violations described in Paragraph I of the Determination of
18 Issues, above. If Respondent fails to pay such cost within the
19 sixty (60) days, the Commissioner may in his discretion suspend
20 all license and licensing rights of Respondent under the Real
21 Estate Law until payment is made in full or until Respondent
22 enters into an agreement satisfactory to the Commissioner to
23 provide for payment. Upon payment in full, any suspension
24 provided in this paragraph shall be stayed.

25 D. Respondent MONTIJO shall, jointly and severally
26 with Respondent ACADIAN, pay the Commissioner's costs, not to
27 exceed \$4,980.70 of a subsequent audit conducted pursuant to

1 Section 10148 of the Business and Professions Code. In
2 calculating the amount of the Commissioner's reasonable cost,
3 the Commissioner may use the estimated average hourly salary for
4 all persons performing audits of real estate brokers, and shall
5 include an allocation for travel time to and from the auditor's
6 place of work. Respondent shall pay such cost within sixty (60)
7 days of receiving an invoice therefor from the Commissioner
8 detailing the activities performed during the audit and the
9 amount of time spent performing those activities. If Respondent
10 fails to pay such cost within the sixty (60) days of receiving
11 an invoice therefor from the Commissioner, the Commissioner may
12 in his discretion suspend all license and licensing rights of
13 Respondent under the Real Estate Law until payment is made in
14 full or until Respondent enters into an agreement satisfactory
15 to the Commissioner to provide for payment. Upon payment in
16 full, the suspension provided in this paragraph shall be stayed.

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May 29, 2007
DATED

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Michael B. Rich
MICHAEL B. RICH, Counsel
Department of Real Estate

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* * *

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I have read the Stipulation and Agreement 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

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ACADIAN PROPERTIES, INC.
TRINIE ANN MONTIJO

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

6 ACADIAN PROPERTIES, INC.
Respondent

8 5/22/07
9 DATED

By: Trinie Ann Montijo
TRINIE ANN MONTIJO
Designated Broker/Officer

11 5/22/07
12 DATED

Trinie Ann Montijo
TRINIE ANN MONTIJO
Respondent

14 Approved as to form and content by counsel for
15 Respondent ACADIAN PROPERTIES, INC., and Respondent TRINIE ANN
16 MONTIJO.

17 5/23/07
18 DATED

James J. Kaufman
JAMES J. KAUFMAN
Attorney for Respondents

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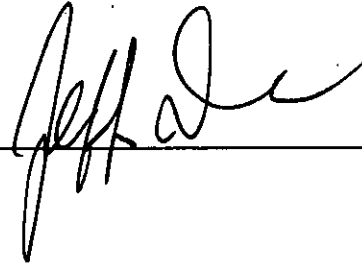
* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter as to Respondent
ACADIAN PROPERTIES, INC., and Respondent TRINIE ANN MONTIJO, and
shall become effective at 12 o'clock noon on

JUL 02 2007

IT IS SO ORDERED 6-18, 2007.

JEFF DAVI
Real Estate Commissioner



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

FILED
DEC 13 2006
DEPARTMENT OF REAL ESTATE
By S. Rich

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ACADIAN PROPERTIES, INC., and) NO. H-4618 SAC
13 TRINIE ANN MONTIJO,) ACCUSATION
14 Respondents.)

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for Causes of
17 Accusation against ACADIAN PROPERTIES, INC., and TRINIE ANN
18 MONTIJO, is informed and alleges as follows:

19 FIRST CAUSE OF ACCUSATION

20 I

21 Respondents ACADIAN PROPERTIES, INC., (hereinafter
22 referred to as "Respondent ACADIAN") and TRINIE ANN MONTIJO
23 (hereinafter referred to as "Respondent MONTIJO") are presently
24 licensed and/or have license rights under the Real Estate Law,
25 Part 1 of Division 4 of the California Business and Professions
26 Code (hereafter the "Code").

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1 II

2 The Complainant, CHARLES W. KOENIG, a Deputy Real
3 Estate Commissioner of the State of California, makes this
4 Accusation against Respondent in his official capacity and not
5 otherwise.

6 III

7 At all times herein mentioned, Respondent ACADIAN was
8 and is licensed by the Department as a real estate broker
9 corporation acting by and through Respondent MONTIJO as its
10 designated broker officer.

11 IV

12 At all times herein mentioned, Respondent MONTIJO was
13 and is licensed by the Department as a real estate broker, and as
14 the designated broker officer of Respondent ACADIAN.

15 V

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

24 VI

25 At all times herein mentioned, Respondents engaged in
26 the business of, acted in the capacity of, advertised, or assumed
27 to act as real estate brokers within the State of California,

1 within the meaning of Section 10131(b) of the Code, including the
2 operation and conduct of a property management business with the
3 public wherein, on behalf of others, for compensation or in
4 expectation of compensation, Respondents leased or rented and
5 offered to lease or rent and placed for rent, and solicited
6 listings of places for rent, and solicited listings of places for
7 rent, and solicited for prospective tenants of real property or
8 improvements thereon, and collected rents from real property or
9 improvements thereon.

10 VII

11 In so acting as a real estate broker as described in
12 Paragraph VI, above, Respondent ACADIAN accepted or received
13 funds in trust (hereinafter "trust funds") from or on behalf of
14 owners, tenants and/or others in connection with the property
15 management activities.

16 VIII

17 The aforesaid trust funds accepted or received by
18 Respondent ACADIAN were deposited or caused to be deposited by
19 Respondent ACADIAN into bank accounts maintained by Respondent
20 ACADIAN for the handling of trust funds at:

- 21 (a) First Northern Bank of Dixon, 11 West Court
22 Street, Woodland, California, in Account No.
23 8019654, entitled "Acadian Properties Inc Trust
24 Account" (hereinafter "Trust Account #1"); and,
25 (b) Yolo Community Bank, NVB Business Bank, 630 Main
26 Street, Woodland, California, in Account No.

1 102008257, entitled "Acadian Properties Inc Trust
2 Account" (hereinafter "Trust Account #2").

3 IX

4 Within the three year period next preceding to the
5 filing of this Accusation, in connection with the collection and
6 disbursement of trust funds, Respondent ACADIAN failed to deposit
7 and maintain the trust funds in a trust account or neutral escrow
8 depository, or to deliver said funds into the hands of the owners
9 of the funds, as required by Section 10145 of the Code, in such a
10 manner that as of September 30, 2005, there was a combined trust
11 fund shortage in the approximate sum of \$31,429.26 in Trust
12 Account #1 and Trust Account #2.

13 X

14 Within the three year period next preceding to the
15 filing of this Accusation, in connection with the collection and
16 disbursement of trust funds, as alleged above, Respondent ACADIAN
17 failed to obtain the prior written consents of the principals for
18 the reduction of the aggregate balance of trust funds in Trust
19 Account #1 and Trust Account #2 to an amount less than the
20 existing aggregate trust fund liability to the owners of said
21 funds in conformance with Chapter 6, Title 10, California Code of
22 Regulations; Section 2832.1 (hereinafter "Regulations").

23 XI

24 Within the three year period next preceding the filing
25 of this Accusation, in connection with the receipt and
26 disbursement of trust funds as above alleged, Respondent ACADIAN:

27 (a) Permitted Lisha Shaw, a person who neither held a

1 California real estate license nor was bonded, to
2 be a signatory on Trust Account #1 in violation of
3 Section 2834 of the Regulations; and,

4 (b) Permitted Donald Hay, Mae Hay, and Kenneth Hubert,
5 persons who, respectively, held a California real
6 estate license, but who were no longer employed by
7 Respondent ACADIAN, to be a signatories on Trust
8 Account #2 in violation of Section 2834 of the
9 Regulations.

10 XII

11 The acts and/or omissions of Respondents as alleged
12 above constitute grounds for disciplinary action under the
13 following provisions:

- 14 (a) As alleged in Paragraph IX, under Section 10145 of
15 the Code in conjunction with Section 10177(d)
16 of the Code;
- 17 (b) As alleged in Paragraph X, under Section 2832.1
18 of the Regulations in conjunction with Section
19 10177(d) of the Code;
- 20 (c) As alleged in Paragraph XI(a), under Section 2834
21 of the Regulations in conjunction with Section
22 10177(d) of the Code; and
- 23 (d) As alleged in Paragraph XI(b), under Section 2834
24 of the Regulations in conjunction with Section
25 10177(d) of the Code.

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SECOND CAUSE OF ACCUSATION

XIII

There is hereby incorporated in this Second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs I through XII, inclusive, of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIV

At all times above mentioned, Respondent MONTIJO was responsible, as the designated broker/officer of Respondent ACADIAN, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent MONTIJO failed to exercise reasonable supervision and control over the property management and employment activities of Respondent ACADIAN. In particular, Respondent MONTIJO permitted, ratified and/or caused the conduct described in the First Cause of Accusation above to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, maintaining of trust account records, and the implementation of policies, rules, procedures, and systems to ensure the compliance of Respondent ACADIAN with the Real Estate Law.

XV

The above acts and/or omissions of Respondent MONTIJO constitute grounds for suspension or revocation of her real estate broker license under the provisions of Section 10177(h)

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1 of the Code and/or Section 10159.2(a) of the Code in conjunction
2 with Section 10177(d) of the Code.

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

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11 
12 CHARLES W. KOENIG
13 Deputy Real Estate Commissioner
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15 Dated at Sacramento,
16 this 29th day of November, 2006.
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