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FILED

MAY 19 2011

DEPARTMENT OF REAL ESTATE

By *L. Faust*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MILLER PROPERTY MANAGEMENT,
INC. and MURRAY LEE MILLER,

Respondents.

No. H-4837 SAC

ORDER GRANTING REINSTATEMENT OF LICENSES

On July 1, 2008, in Case No. H-4837 SAC, a Decision was rendered revoking the real estate broker and real estate corporation licenses of Respondents effective July 29, 2008, but granting Respondents the right to the issuance of a restricted real estate broker license and a restricted real estate corporation license. An individual restricted real estate broker license was not issued to Respondent Murray Lee Miller; however, a restricted real estate corporation license was issued to Respondent Miller Property Management, Inc. with Respondent Murray Lee Miller as the designated broker officer on July 29, 2008, and Respondent Miller Property Management, Inc. has operated as a restricted corporate licensee with Respondent Murray Lee Miller as the restricted broker officer since that time.

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On August 12, 2010, Respondents petitioned for the removal of restrictions attaching to Respondents' real estate broker and real estate corporation licenses, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondents' petition and the evidence and arguments in support thereof. Respondents have demonstrated to my satisfaction that Respondents meets the requirements of law for the issuance to Respondents of an unrestricted real estate broker license and an unrestricted real estate corporation license, and that it would not be against the public interest to issue said licenses to Respondents.

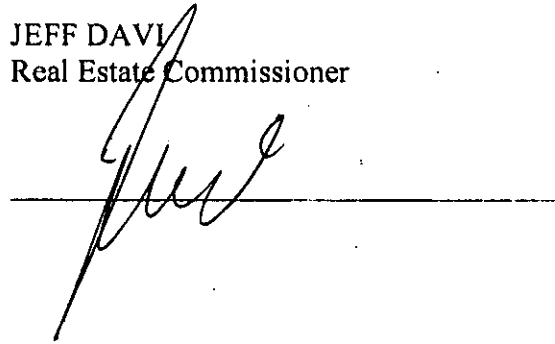
NOW, THEREFORE, IT IS ORDERED that Respondents' petition for reinstatement is granted and that real estate broker and real estate corporation licenses be issued to Respondents if Respondents satisfy the following requirements:

1. Submit a completed application and pay the fee for a real estate broker license and a real estate corporation license within the 12 month period following the date of this Order; and
2. Submit proof that Respondent Murray Lee Miller has completed the continuing education requirements for renewal of the license sought. The continuing education courses must be completed either (i) within the 12 month period preceding the filing of the completed application, or (ii) within the 12 month period following the date of this Order.

This Order shall become effective immediately.

DATED: 8-29-2010

JEFF DAVIS
Real Estate Commissioner



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

FILED

JUL - 9 2008

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

9 * * *

10 In the Matter of the Accusation of)
11)
12 MILLER PROPERTY MANAGEMENT, INC.,) NO. H-4837 SAC
13 a Corporation, and)
14 MURRAY LEE MILLER,) STIPULATION AND AGREEMENT
15 Respondents.) IN SETTLEMENT
16) AND ORDER

15 It is hereby stipulated by and between Respondents
16 MILLER PROPERTY MANAGEMENT, INC. (herein "MPM"), and MURRAY LEE
17 MILLER (herein "MILLER") (herein jointly "Respondents"),
18 individually and jointly by and through C. Breck Jones, attorney
19 of record herein for Respondents, and the Complainant, acting by
20 and through Mary F. Clarke, Counsel for the Department of Real
21 Estate (herein "the Department"), as follows for the purpose of
22 settling and disposing of the Accusation filed on July 26, 2007
23 in this matter (herein "the Accusation"):

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

1 hearing was to be held in accordance with the provisions of the
2 Administrative Procedures 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 Accusation, the Statement to Respondent, and the Discovery
7 Provisions of the APA filed by the Department of Real Estate in
8 this proceeding.

9 3. On July 30, 2007, Respondents filed their Notices
10 of Defense pursuant to Section 11505 of the Government Code for
11 the purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notices of Defense. Respondents acknowledge that they
14 understand that by withdrawing said Notices of Defense they will
15 each thereby waive their rights to require the Commissioner to
16 prove the allegations in the Accusation at a contested hearing
17 held in accordance with the provisions of the APA, and that they
18 will waive other rights afforded to them in connection with the
19 hearing such as the right to present evidence in defense of the
20 allegations in the Accusation and the right to cross-examine
21 witnesses.

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

27

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

12 6. The Order or any subsequent order of the Real
13 Estate Commissioner made pursuant to this Stipulation and
14 Agreement shall not constitute an estoppel, merger or bar to any
15 further administrative or civil proceedings by the Department of
16 Real Estate with respect to any matters which were not
17 specifically alleged to be causes for accusation in this
18 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 (herein "Code"), the cost of the
23 audit which resulted in the determination that Respondents
24 committed the trust fund violation(s) found in Paragraph I,
25 below, of the Determination of Issues. The amount of said costs
26 is \$5,126.73.

27 8. Respondents further understand that by agreeing to

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 Code to determine if the trust fund
6 violation(s) found in Paragraph I, below, of the Determination of
7 Issues have been corrected. The maximum costs of said audit shall
8 not exceed \$5,126.73.

9 DETERMINATION OF ISSUES

10 The acts and omissions of Respondents as described in
11 the Accusation are grounds for the suspension or revocation of
12 the licenses and license rights of Respondents under the
13 following provisions of the California Business and Professions
14 Code (herein "the Code") and/or Chapter 6, Title 10, California
15 Code of Regulations (herein "the Regulations"):

16 (a) as to Paragraph IX(a) and Respondent MPM under
17 Section 10145 of the Code and Section 2831.2 of the Regulations
18 in conjunction with Section 10177(d) of the Code;

19 (b) as to subparagraph IX(b) and Respondent MPM under
20 Section 10145 of the Code and Section 2832.1 of the Regulations
21 in conjunction with Section 10177(d) of the Code;

22 (c) as to subparagraph IX(c) and Respondent MPM under
23 Section 10148 of the Code in conjunction with Section 10177(d) of
24 the Code; and

25 (d) as to Paragraph X and Respondent MILLER under
26 Sections 10177(g), 10177(h), and 10159.2, of the Code in
27 conjunction with Section, and 10177(d) of the Code.

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ORDER

I

All licenses and licensing rights of Respondent MPM
under the Real Estate Law are revoked; provided, however, a
restricted corporate real estate broker license shall be issued
to said Respondent pursuant to Section 10156.5 of the Business
and Professions Code if, within 90 days from the effective date
of the Decision entered pursuant to this Order, the Respondent
makes application for the restricted license and pays to the
Department of Real Estate the appropriate fee therefore.

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

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

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

1 license.

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

7 4. Pursuant to Section 10148 of the Business and
8 Professions Code, Respondent shall, jointly and severally with
9 Respondent MILLER, pay the sum of \$5,126.73 as and for the
10 Commissioner's cost of the audit which led to this disciplinary
11 action. Respondent shall pay such cost within 60 days of
12 receiving an invoice therefor from the Commissioner. The
13 Commissioner may suspend the restricted license issued to
14 respondent pending a hearing held in accordance with Section
15 11500, et seq., of the Government Code, if payment is not
16 timely made as provided for herein, or as provided for in a
17 subsequent agreement between the Respondent and the
18 Commissioner. The suspension shall remain in effect until
19 payment is made in full or until Respondent enters into an
20 agreement satisfactory to the Commissioner to provide for
21 payment, or until a decision providing otherwise is adopted
22 following a hearing held pursuant to this condition.

23 5. Pursuant to Section 10148 of the Business and
24 Professions Code, Respondent shall, jointly and severally with
25 Respondent MILLER, pay the Commissioner's reasonable cost, not
26 to exceed \$5,126.73, for an audit to determine if Respondent
27 has corrected the trust fund violation(s) found in Paragraph I

1 of the Determination of Issues. In calculating the amount of
2 the Commissioner's reasonable cost, the Commissioner may use
3 the estimated average hourly salary for all persons performing
4 audits of real estate brokers, and shall include an allocation
5 for travel time to and from the auditor's place of work.
6 Respondent shall pay such cost within 60 days of receiving an
7 invoice therefor from the Commissioner detailing the activities
8 performed during the audit and the amount of time spent
9 performing those activities. The Commissioner may suspend the
10 restricted license issued to respondent pending a hearing held
11 in accordance with Section 11500, et seq., of the Government
12 Code, if payment is not timely made as provided for herein, or
13 as provided for in a subsequent agreement between the
14 Respondent and the Commissioner. The suspension shall remain
15 in effect until payment is made in full or until Respondent
16 enters into an agreement satisfactory to the Commissioner to
17 provide for payment, or until a decision providing otherwise is
18 adopted following a hearing held pursuant to this condition.

19 II

20 All licenses and licensing rights of Respondent
21 MILLER under the Real Estate Law are revoked; provided,
22 however, a restricted real estate broker license shall be
23 issued to such Respondent pursuant to Section 10156.5 of the
24 Business and Professions Code if, within 90 days from the
25 effective date of the Decision entered pursuant to this Order,
26 the Respondent, prior to and as a condition of the issuance of
27 said restricted license:

1 (a) makes application for the restricted license and
2 pays to the Department of Real Estate the appropriate fee
3 therefor;

4 (b) submits proof satisfactory to the Commissioner
5 of having taken and completed at an accredited institution the
6 continuing education course on trust fund accounting and
7 handling specified in Paragraph (3) of subdivision (a) of
8 Section 10170.5 of the Business and Professions Code. Said
9 course must have been completed within 120 days prior to the
10 issuance of the restricted license. Credit against the
11 continuing education condition set forth in Paragraph "6" below
12 will be given for completion of this trust fund accounting and
13 handling course during the 120 days prior to the issuance of
14 the restricted license.

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

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

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

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 MPM, pay the sum of \$5,126.73 as and for the
14 Commissioner's cost of the audit which led to this disciplinary
15 action. Respondent shall pay such cost within 60 days of
16 receiving an invoice therefor from the Commissioner. The
17 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 5. Pursuant to Section 10148 of the Business and

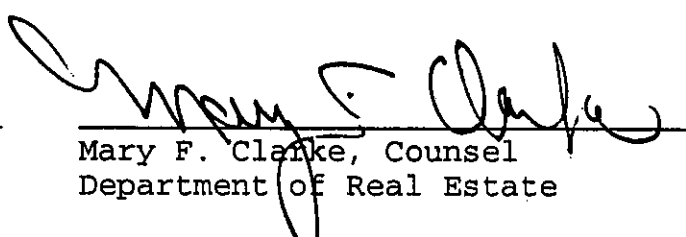
1 Professions Code, Respondent shall, jointly and severally with
2 Respondent MPM, pay the Commissioner's reasonable cost, not to
3 exceed \$5,126.73, for an audit to determine if Respondent has
4 corrected the trust fund violation(s) found in Paragraph I of
5 the Determination of Issues. In calculating the amount of the
6 Commissioner's reasonable cost, the Commissioner may use the
7 estimated average hourly salary for all persons performing
8 audits of real estate brokers, and shall include an allocation
9 for travel time to and from the auditor's place of work.
10 Respondent shall pay such cost within 60 days of receiving an
11 invoice therefor from the Commissioner detailing the activities
12 performed during the audit and the amount of time spent
13 performing those activities. The Commissioner may suspend the
14 restricted license issued to respondent pending a hearing held
15 in accordance with Section 11500, et seq., of the Government
16 Code, if payment is not timely made as provided for herein, or
17 as provided for in a subsequent agreement between the
18 Respondent and the Commissioner. The suspension shall remain
19 in effect until payment is made in full or until Respondent
20 enters into an agreement satisfactory to the Commissioner to
21 provide for payment, or until a decision providing otherwise is
22 adopted following a hearing held pursuant to this condition.

23 6. Respondent shall, within nine months from the
24 effective date of the Decision, present evidence satisfactory
25 to the Commissioner that Respondent has, since the most recent
26 issuance of an original or renewal real estate license, taken
27 and successfully completed the continuing education

1 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
2 for renewal of a real estate license. If Respondent fails to
3 satisfy this condition, the Commissioner may order the
4 suspension of the restricted license until the Respondent
5 presents such evidence. The Commissioner shall afford
6 Respondent the opportunity for a hearing pursuant to the
7 Administrative Procedure Act to present such evidence.

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

15
16 11-16-07
17 DATED


18 Mary F. Clarke, Counsel
19 Department of Real Estate

20 * * *

21 I have read the Stipulation and Agreement and have
22 discussed it with my attorney and its terms are understood by me
23 and are agreeable and acceptable to me. I understand that I am
24 waiving rights given to me by the California Administrative
25 Procedure Act (including but not limited to Sections 11506,
26 11508, 11509, and 11513 of the Government Code), and I willingly,
27 intelligently, and voluntarily waive those rights, including the
right of requiring the Commissioner to prove the allegations in

1 the Accusation at a hearing at which I would have the right to
2 cross-examine witnesses against me and to present evidence in
3 defense and mitigation of the charges.

4 1-14-08
5 DATED MILLER PROPERTY MANAGEMENT, INC.
Respondent

6 By Murray Lee Miller
7 MURRAY LEE MILLER
8 Designated Officer - Broker

9 1-14-08
10 DATED MURRAY LEE MILLER
Respondent

11 * * *

12
13 I have reviewed the Stipulation and Agreement as to
14 form and content and have advised my client accordingly.

15 1-15-08
16 DATED C. Breck Jones
17 C. Breck Jones
Attorney for Respondent

18 * * *

19 The foregoing Stipulation and Agreement is hereby
20 adopted by me as my Decision in this matter and shall become
21 effective at 12 o'clock noon on July 29, 2008

22 IT IS SO ORDERED 7-1-08

23
24 JEFF DAVI
Real Estate Commissioner

25 Jeff Davi
26
27

1 MARY F. CLARKE, Real Estate Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
5 -or- (916) 227-0780 (Direct)

FILED
JUL 26 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 MILLER PROPERTY MANAGEMENT,)
14 INC., A Corporation, and,)
15 MURRAY LEE MILLER,)
Respondents.)

NO. H-4837 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 MILLER PROPERTY MANAGEMENT, INC. (herein
19 "MPM") and MURRAY LEE MILLER (herein "MILLER"), is informed and
20 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 II

26 At all times herein mentioned, Respondents MPM and
27 MILLER (herein "Respondents") were and now are licensed and/or

1 have license rights under the Real Estate Law (Part 1 of Division
2 4 of the Business and Professions Code) (herein "the Code").

3 III

4 At all times herein mentioned, MPM was and now is
5 licensed by the Department of Real Estate of the State of
6 California (herein "the Department") as a corporate real estate
7 broker by and through MILLER as designated officer-broker of MPM
8 to qualify said corporation and to act for said corporation as a
9 real estate broker.

10 IV

11 At all times herein mentioned, MILLER was and now is
12 licensed by the Department as a real estate broker, individually
13 and as designated officer-broker of MPM. As said designated
14 officer-broker, MILLER was at all times mentioned herein
15 responsible pursuant to Section 10159.2 of the Code for the
16 supervision of the activities of the officers, agents, real
17 estate licensees, and employees of MPM for which a license is
18 required.

19 V

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

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VI

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

VII

In so acting as real estate brokers, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of owners, tenants, and others in connection with the leasing, renting, and collection of rents on real property or improvements thereon, and thereafter from time to time made disbursements of said funds.

VIII

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund accounts") maintained by Respondents for the handling of trust funds, including but not necessarily limited to the "Miller Property Management, Inc. Trust Account," account number

1 0010301214 ("Trust #1"), maintained by Respondents at the
2 Placerville, California branch of El Dorado Savings Bank.

3 IX

4 Between on or about January 1, 2006 and December 31,
5 2006, in connection with the collection and disbursement of said
6 trust funds, Respondent MPM:

7 (a) failed to reconcile, at least once a month, the
8 balance of all separate beneficiary or transaction
9 records with Trust #1, as required by Section
10 2831.2 of the California Code of Regulations
11 (herein the "Regulations");

12 (b) caused, suffered, or permitted the balance of
13 funds in Trust #1 to be reduced to an amount that,
14 as of November 30, 2006, was \$46,474.84 less than
15 the liability of Respondent to all owners of such
16 funds without first obtaining the written consent
17 of each and every owner of such funds in violation
18 of 2832.1 of the Regulations; and,

19 (c) failed to retain for three years originals or
20 copies of invoices for repairs and maintenance
21 services performed by outside vendors, maintenance
22 companies, etc., in connection with transactions
23 for which a real estate license is required in
24 violation of 10148 of the Code.

25 X

26 At all times mentioned herein, Respondent MILLER failed
27 to exercise reasonable supervision over the acts of Respondent

1 MPM and its agents and employees in such a manner as to allow the
2 acts and omissions on the part of MPM, described above, to occur.

3 PRIOR DISCIPLINE

4 XI

5 Effective August 28, 1984, in Case No. H-1972 SAC, the
6 Real Estate Commissioner suspended, with a 15-day stay, the real
7 estate salesperson license of MILLER for a violation of Section
8 10177(g) of the Code.

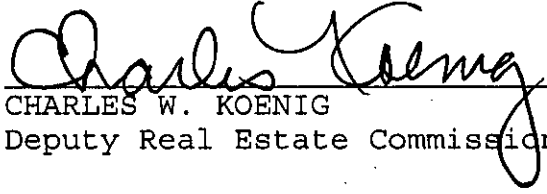
9 XII

10 The facts alleged above are grounds for the suspension
11 or revocation of the licenses and license rights of Respondents
12 under the following provisions of the Code and/or the Regulations:

- 13 (a) as to paragraph IX(a) and Respondent MPM under
14 Section 10145 of the Code and Section 2831.2 of
15 the Regulations in conjunction with Section
16 10177(d) of the Code;
- 17 (b) as to subparagraph IX(b) and Respondent MPM under
18 Section 10145 of the Code and Section 2832.1 of
19 the Regulations in conjunction with Section
20 10177(d) of the Code;
- 21 (c) as to subparagraph IX(c) and Respondent MPM under
22 Section 10148 of the Code in conjunction with
23 Section 10177(d) of the Code; and,
- 24 (d) as to Paragraph X and Respondent MILLER under
25 Section 10159.2 of the Code in conjunction with
26 Sections 10177(g), 10177(h), and 10177(d) of the
27 Code.

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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 Respondents 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 applicable provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 26th day of July, 2007.