

FILED
AUG 25 1995

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LERoy POCZIK,)
Respondent.)

No. H-6116 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On December 8, 1989, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to the issuance of a restricted real
estate broker license. A restricted real estate broker license
was issued to Respondent on January 2, 1990, and Respondent has
operated as a restricted licensee without cause for disciplinary
action against Respondent since that time.

On May 24, 1994, Respondent petitioned for reinstatement
of said real estate broker license, and the Attorney General of
the State of California has been given notice of the filing of
said petition.

///

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
9 for reinstatement is granted and that a real estate broker license
10 be issued to Respondent if Respondent satisfies the following
11 conditions within six months from the date of this Order:

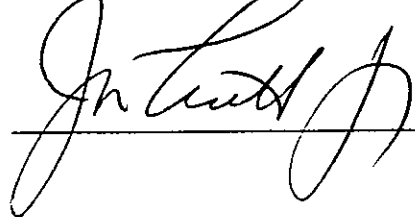
12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

14 2. Submittal of evidence of having, since the most
15 recent issuance of an original or renewal real estate license,
16 taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
18 for renewal of a real estate license.

19 This Order shall be effective immediately.

20 DATED: 8/22/95

21 JIM ANTT, JR.
22 Real Estate Commissioner

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25
26
27

COPY

FILED
DEC - 8 1989

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Emily J. J. J.

In the Matter of the Accusation of)
)
TRANSCENTURY REALTY MASTERS, INC.,)
LERoy POCZIK,)
JENNIFER MONICA SCOTT, and)
L. J. CANTY aka LEN CANTY,)
)
Respondents.)

No. H-6116 SF

OAH No. N 33445

DECISION

The Proposed Decision dated November 7, 1989 of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on January 2, 1990.

IT IS SO ORDERED December 8, 1989.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

by: John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
TRANSCENTURY REALTY MASTERS, INC.,)	Case No. H-6116 SF
LEROI POCZIK,)	
JENNIFER MONICA SCOTT, and)	N 33445
L. J. CANTY aka LEN CANTY,)	
Respondent.)	
_____)	

PROPOSED DECISION

This matter was heard before Ruth S. Astle, Administrative Law Judge of the Office of Administrative Hearings, State of California on August 9 and 23, 1989 in San Francisco, California.

Complainant was represented by Vera Winter Lee, Staff Counsel.

Respondent Poczik was present and represented himself and Transcentury Realty Masters, Inc.; Respondent Scott was present and represented herself; Respondent Canty was present and represented by G. William Hunter, Attorney at Law, 1901 Harrison Street, Suite 901, Oakland, California 94612.

Submission of the matter was deferred for receipt of additional documentation which was received and marked for the record as Exhibit XI. The matter was deemed submitted on October 10, 1989.

FINDINGS OF FACT

I

Edward V. Chiolo made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California and not otherwise.

II

All named respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code (Code)).

III

At all times mentioned below, respondent Transcentury Realty Masters, Inc. (Transcentury) was licensed as a real estate corporation acting by and through respondent Leroy Poczik (Poczik) as its designated broker/officer, and its license expired on July 12, 1989.

IV

At all times mentioned below, respondent Poczik was licensed as a real estate broker and as the broker/officer of Transcentury. His individual broker license is in full force and effect. His designated officer license expired July 12, 1989.

V

At all times mentioned below, respondent Jennifer Monica Scott (Scott) was licensed as a real estate broker and her license will expire May 15, 1990 unless otherwise renewed.

VI

Respondent L. J. Canty aka Len Canty (Canty) was licensed as a real estate salesperson through March 6, 1986 when his license expired. He renewed his real estate salesperson license late effective January 25, 1988 and it will expire on January 24, 1992.

VII

On March 1, 1985 Transcentury became Canty's employing broker and through Poczik entered into an agreement with Canty that Canty would manage a branch office to Transcentury in Oakland, California, under the name Canty and Associates. Canty continued to operate pursuant to that agreement through September 15, 1986, although Canty's license had expired March 6, 1986. On September 15, 1986, Scott entered into an agreement with Canty which was almost identical to the agreement with Transcentury and Scott and Canty have continued to operate pursuant to that agreement. Scott failed to notify the Department of Real Estate (Department) that she had become Canty's employing broker.

VIII

At the times mentioned above, respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation.

IX

From April 4, 1988, an investigative audit was made by the Department of the records of respondents as those records relate to their activities as mortgage loan brokers.

X

It was ascertained by the audit that from June 1, 1986 through September 15, 1986, Transcentury and Canty and from September 15, 1986 through February 12, 1988, Scott and Canty accepted or received funds in trust from or on behalf of lenders and borrowers and thereafter made disbursement of those funds.

XI

It was ascertained by the audit that, during the time periods set out in Finding X, respondents deposited or caused to be deposited trust funds received into their general business bank account instead of maintaining the trust funds in a trust fund account maintained in a bank or recognized depository or placing the trust funds in a neutral escrow depository or into the hands of the principals on whose behalf the trust funds were received, and that respondents commingled the trust funds with their general funds.

XII

It was ascertained by the audit that the branch operation by Canty for first Transcentury and later Scott (Canty branch) has maintained two bank accounts purportedly to be used for appraisal and credit report fees collected from borrowers. One non-trust account is maintained at Great Western bank on Mountain Boulevard, Oakland, California. This is an interest bearing account. The second account is a trust account maintained at Wells Fargo bank on Santa Clara Avenue, Oakland, California.

XIII

It was also ascertained by the audit that, on August 27, 1986, in the bank accounts of the Canty branch as described in Finding XII (Canty bank accounts), the adjusted balance was \$157.79.

XIV

It was also ascertained by the audit that the liability of the Canty bank accounts, for funds received from lenders and borrowers as of August 27, 1986, was a minimum of \$8,475 and that as of August 27, 1986 the minimum trust fund shortage in the Canty bank accounts was \$8,317.21.

XV

It was also ascertained by the audit that the adjusted balance in the Canty bank accounts as of February 12, 1988, was approximately \$928.99.

XVI

It was also ascertained by the audit that the trust liability in the Canty bank accounts for funds received from lenders and borrowers, as of February 12, 1988, was a minimum of \$2,240 and that, as of February 12, 1988, the minimum trust fund shortage in the Canty bank accounts was \$1,311.01.

XVII

It was ascertained by the audit that at least during the time periods set out in Finding X, respondents failed to maintain separate records for each beneficiary or transaction accounting for all trust funds received, deposited, and disbursed, as required by law.

XVIII

It was ascertained by the audit that at least during the time periods set forth in Finding X, respondents failed to keep a full and accurate record of all trust funds received by respondents as provided by law.

XIX

During the period when Canty was not licensed, first Transcentury through Poczik and then Scott caused to be made withdrawals from the Canty bank accounts on the single signature of Canty who was neither an officer through whom Transcentury was licensed or a licensed real estate salesperson or an employee who has fidelity bond coverage.

XX

Transcentury, Poczik and Scott, during the required time periods, have failed to retain copies of all documents executed in connection with transactions at the Canty branch for a period of three years and failed, after notice from the Department, to produce such records for examination and inspection by the Commissioner's designated representative.

XXI

From March 6, 1986 through January 25, 1988, Canty solicited prospective borrowers and entered into negotiations with them to obtain for them a loan to be secured by a lien on real property, in expectation of compensation.

XXII

In performing the acts referred to in Finding XXI, Canty engaged in business and acted in the capacity of a real estate licensee while he did not possess a real estate license issued by the Department.

SECOND CAUSE OF ACTION

XXIII

Transcentury's, Poczik's and Scott's acts and omissions set forth in Findings VII through XXII violate the Code and Regulations. By agreeing to arrange for Canty's acts as set out in Finding XXI, Transcentury, Poczik and later Scott violated the law.

XXIV

Respondent Scott's failure to advise the Department of her employment of Respondent Canty is a violation of the law. Respondent further failed to advise the Department that she was conducting activity for which a license was required under a fictitious name.

THIRD CAUSE OF ACTION

XXV

From September 15, 1986 through the August 23, 1989, Scott has failed to exercise reasonable supervision and control of the activities of salesperson Canty and was negligent or incompetent in performing acts for which a real estate broker license is required in that she knew or should have known all of the facts set forth in Findings VI through XXII.

XXVI

From March 5, 1985 through September 15, 1986, respondent Poczik, as the designated broker/officer of Transcentury, was responsible for the supervision and control of the activities conducted on behalf of Transcentury by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of salespersons licensed to Transcentury in the performance of acts for which a real estate license is required.

XXVII

From March 5, 1985 through September 15, 1986, Poczik failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required and was negligent or incompetent in performing acts for which a real estate license is required, in that he knew or should have known all of the facts set forth in Findings VI through XXII.

OTHER MATTERS TO BE CONSIDERED

XXVIII

Respondent Poczik has been licensed by the Department since November of 1969 and has been licensed as a broker since 1973. Respondent had been in charge of Transcentury for many years. It was a substantial operation. Poczik had closed all his commercial offices when he learned that Canty was looking for a broker. He agreed to act as the broker on the condition that Canty arrange loans through institutional lenders only. Poczik recognizes that he should have kept tighter control on things and that he had a responsibility to oversee the trust fund. He never had any problems when he was in business in substantial part because he has a daughter who is a good accountant and who handled all those matters for him. He became aware that things were not being handled correctly and after repeatedly asking for them to be taken care of, he found that there was always an excuse. In September of 1986, Poczik decided he no longer wished to be involved with Canty and required Canty to get another broker. Respondent Poczik has had other professional licenses such as insurance and securities with no disciplinary action. He has changed his business practices and would not be likely to allow his broker's license to be used in this way again.

XXIX

Respondent Transcentury Realty Masters, Inc. is no longer in business. Respondent Poczik is semi-retired and works out of his home. Poczik no longer acts as the designated officer for Transcentury.

XXX

Respondent Scott was not qualified and knew she was not qualified to act as the broker overseeing the operation of Canty and Associates. It was her responsibility to see to it that the laws and rules and regulations were adhered to and she did not know the rules nor did she have the ability to see to it that the rules were followed. She simply rented her license to Canty to use.

XXXI

Respondent Canty has been licensed as a real estate salesperson since before 1984. In 1985 he went into business as Canty and Associates. He needed a broker to comply with the requirements of the law and recruited Respondent Poczik. Respondent Canty was not qualified either under the law or by his knowledge to run such a business. Most of his financial problems and trust fund shortages are a result of tax problems. Because the trust accounts were not properly set up, the Internal Revenue Service was able to lien accounts that contained trust funds. Although respondent Canty was cooperative with the Department, it took several tries and a great deal of time for Respondent Canty

to set up the proper trust account procedure to insure that the trust accounts cannot be liened by anyone. Respondent Canty has changed his business practices and now is in compliance with the law and rules and regulations.

XXXII

Respondent Canty has made full restitution for all trust fund shortages. He did not use any of the trust funds for his own benefit. The problems did not arise due to any dishonest or fraudulent behavior on the part of Respondent Canty.

XXXIII

Respondent Canty has a wife and three sons. He has a stable family life. He did have some family problems during the time of the trust fund shortages with a brother who had been seriously injured.

XXXIV

Respondent Canty is in the process of studying for his broker's examination. He still needs to take a few classes before he qualifies to take the examination. Respondent recognizes that his strengths are in servicing his clients and not in administration. Respondent is very good at helping the members of his community with loan problems and has an excellent reputation with his clients and colleagues. Respondent has a new broker, Ann Moody, who is willing to supervise the operation.

DETERMINATION OF ISSUES

FIRST CAUSE OF ACTION

I

By reason of the matters set forth in Findings XXI and XXII, cause for disciplinary action against Canty exists pursuant to sections 10130 and 10177(d) of the Code.

II

By reason of the matters set forth in Findings VII through XVIII, cause for disciplinary action exists against Canty pursuant to sections 10145 and 10177(d) of the Code.

SECOND CAUSE OF ACTION

III

By reason of the matters set forth in Findings VII - XVI, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to sections 10145 and 10177(d) of the Business and Professions Code and sections 2830 and 2832 of the Regulations.

IV

By reason of the matters set forth in Finding XI, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to section 10176(e) of the Code.

V

By reason of the matters set forth in Finding XII, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to section 10145 of the Regulations and section 10177(d) of the Code.

VI

By reason of the matters set forth in Finding XVIII, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to section 2831 of the Regulations and section 10177(d) of the Code.

VII

By reason of the matters set forth in Finding XVII, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to section 2831.1 of the Regulations and 10177(d) of the Code.

VIII

By reason of the matters set forth in Finding XIX, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to section 2834 of the Regulations and 10177(d) of the Code.

IX

By reason of the matters set forth in Finding XX, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to sections 10148 and 10177(d) of the Code.

X

By reason of the matters set forth in Findings VII and XXI, cause for disciplinary action exists against Transcentury, Poczik and Scott pursuant to section 10137 of the Code.

XI

By reason of the matters set forth in Finding XXIV, cause for disciplinary action exists against Scott pursuant to sections 2731 and 2752 of the Regulations and sections 10161.8 and 10177(d) of the Code.

THIRD CAUSE OF ACTION

XII

By reason of the matters set forth in Finding XXV, cause for disciplinary action against Scott exists pursuant to sections 10177(g) and (h) of the Code.

XIII

By reason of the matters set forth in Findings XXVI and XXVII, cause for disciplinary action exists against Poczik pursuant to sections 10177 (g) and (h) of the Code.

OTHER MATTERS

XIV

The matters in mitigation, rehabilitation and extenuation set forth in Finding XXVIII as to Poczik has been considered in making the following order.

XV

The matters set forth in Finding XXIX concerning Transcentury and Poczik's designated officer's license have been considered in making the following order.

XVI

The matters set forth in Finding XXX concerning Scott has been considered in making the following order.

XVII

The matters in mitigation, rehabilitation and extenuation as set forth in Findings XXXI through XXXIV as to Canty have been considered in making the following order.

ORDER

Re: TRANSCENTURY

The license and licensing rights issued to Transcentury Realty Masters, Inc. are hereby revoked.

Re: Poczik

1. The license and license rights of Leroy Poczik as designated officer are revoked. The license and license rights of Leroy Poczik as an individual are revoked, however:

2. A restricted individual real estate broker license shall be issued to respondent under Business and Professions Code

section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fees for said license within ninety (90) days of the Decision.

3. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following conditions:

A. Said restricted license 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.

B. Said restricted license may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, Regulations of the Real Estate Commissioner and conditions attaching to the restricted license.

C. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.

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

E. Respondent shall, within nine (9) months from the effective date of his restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until respondent passes the examination.

Re: Scott

1. The license and license rights of Jennifer Monica Scott as a real estate broker are hereby revoked.

2. A restricted real estate salesperson license shall be issued to Scott under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fees for said license within ninety (90) days of the Decision.

3. The restricted license issued to Scott shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following conditions:

A. Said restricted license 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.

B. Said restricted license may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, Regulations of the Real Estate Commissioner and conditions attaching to the restricted license.

C. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.

D. Respondent shall within 6 months from the effective date of this Decision, present evidence satisfactory to the Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

E. Respondent shall, within six months from the effective date of the restricted license, take and pass

the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition the Commissioner may order suspension of the restricted license until respondent passes the examination.

F. Respondent shall submit with her application for transfer to a new employing broker, a statement signed by the prospective employing broker which shall certify:

(i) That he/she read the Decision of the Commissioner which granted the right to a restricted license; and

(ii) The he/she will exercise close supervision over the performance by the restricted licensee of the activities for which a real estate license is required.

Re: Canty

1. The license and license rights of L. J. Canty aka Len Canty are revoked.

2. A restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fees for said license within ninety (90) days of the Decision.

3. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following conditions:

A. An actual suspension of 30 days to begin upon the effective date of the decision.

B. Said restricted license 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.

C. Said restricted license may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, Regulations of the Real Estate Commissioner and conditions attaching to the restricted license.

D. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.

E. Respondent shall within 9 months from the effective date of this Decision, present evidence satisfactory to the Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

F. Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until respondent passes the examination.

G. Respondent shall submit with his application for transfer to a new employing broker, a statement signed by the prospective employing broker which shall certify:

(i) That he/she read the Decision of the Commissioner which granted the right to a restricted license; and

(ii) The he/she will exercise close supervision over the performance by the restricted licensee of the activities for which a real estate license is required.

DATED: November 7, 1981

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge

COPY

FILED
JUN 08 1989

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

DEPARTMENT OF REAL ESTATE

By C. Westbrook
C. Westbrook

In the Matter of the Accusation of

TRANSCENTURY REALTY MASTERS, INC., LEROY
POCZIK, JENNIFER MONICA SCOTT, and
L. J. CANTY aka LEN CANTY,

Case No. H-6116 SF

OAH No. N 33445

Respondent(s)

CORRECTED

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 Office of
Administrative Hearings, State Bldg., Rm 2248, 455 Golden Gate Ave., San Francisco, CA 94
9th and (1-1/2 day hearing)
on the 10th day of August, 1989, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: June 8, 1989

By VERA WINTER LEE
VERA WINTER LEE, Counsel

COPY

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JUN 06 1989

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By C Westbrook
C. Westbrook

In the Matter of the Accusation of
TRANSCENTURY REALTY MASTERS, INC.,
LEROY POCZIK,
JENNIFER MONICA SCOTT, and
L. J. CANTY aka LEN CANTY

Case No. H-6116 SF

OAH No. N 33445

Respondent(s)

CONTINUED
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 Office of
Administrative Hearings, State Bldg., Rm 2248, 455 Golden Gate Ave., San Francisco, CA 94102
8th and (1-1/2 day hearing)
on the 9th day of August, 19 89, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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.

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DEPARTMENT OF REAL ESTATE

Dated: June 6, 1989

By Vera Winter Lee
VERA WINTER LEE, Counsel

COPY

FILED
APR 24 1989

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

By C. Westbrook
C. Westbrook

In the Matter of the Accusation of

TRANSCENTURY REALTY MASTERS, INC., LEROY
POCZIK, JENNIFER MONICA SCOTT, and
L. J. CANTY aka LEN CANTY,

Case No. H-6116 SF
OAH No. N 33445

Respondent(s)

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 Office of
Administrative Hearings, State Bldg., Rm 2248, 455 Golden Gate Ave., San Francisco, CA 94102
14th and (1-1/2 day hearing)
on the 15th day of June, 19 89, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: April 24, 1989

By Vera Winter Lee
VERA WINTER LEE, Counsel

COPY

FILED
MAR 01 1989

1 VERA WINTER LEE, Counsel
2 Department of Real Estate
185 Berry Street, Room 5816
San Francisco, California 94107-1770

3 Telephone: (415) 557-3220

DEPARTMENT OF REAL ESTATE

By C. Westbrook
C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation of)

12 TRANSCENTURY REALTY MASTERS, INC.,)
13 LEROY POCZIK,)
JENNIFER MONICA SCOTT, and)
14 L. J. CANTY aka LEN CANTY,)

Respondents.)

No. H-6116 SF

ACCUSATION

16 The Complainant, EDWARD V. CHIOLO, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 accusation against TRANSCENTURY REALTY MASTERS, INC., LEROY
19 POCZIK, JENNIFER MONICA SCOTT and L. J. CANTY aka LEN CANTY
20 (Respondents) is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

I

23 The Complainant, EDWARD V. CHIOLO, a Deputy Real
24 Estate Commissioner of the State of California, makes this
25 accusation in his official capacity.

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11

1 All named respondents are presently licensed and/or
2 have license rights under the Real Estate Law (Part 1 of
3 Division 4 of the Business and Professions Code) (Code).
4

III

5
6 At all times mentioned below, respondent TRANSCENTURY
7 REALTY MASTERS, INC. (Transcentury) was licensed as a real
8 estate corporation acting by and through respondent LEROY POCZIK
9 as its designated broker/officer, and its license expires
10 July 12, 1989.

IV

11
12 At all times mentioned below, respondent LEROY POCZIK
13 (Poczik) was licensed as a real estate broker and as the
14 broker/officer of Transcentury. His individual broker license
15 expires May 1, 1989 and his designated officer license expires
16 July 12, 1989.

V

17
18 At all times mentioned below, respondent JENNIFER
19 MONICA SCOTT (Scott) was licensed as a real estate broker and
20 her license will expire May 15, 1990.

VI

21
22 Respondent L. J. CANTY aka LEN CANTY (Canty) was
23 licensed as a real estate salesperson through May 6, 1986 when
24 his license expired. He renewed his real estate salesperson
25 license late effective January 25, 1988 and it will expire on
26 January 24, 1992.

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VII

1 On or about March 1, 1985 Transcentury became Canty's
2 employing broker and through Poczik entered into an agreement
3 with Canty that Canty would manage a branch office of
4 Transcentury in Oakland, California, under the name Canty and
5 Associates. Canty continued to operate pursuant to that
6 agreement through on or about September 15, 1986, although
7 Canty's license had expired March 6, 1986. On or about
8 September 15, 1986, Scott entered into an agreement with Canty
9 which was almost identical to the agreement with Transcentury
10 and Scott and Canty have continued to operate pursuant to that
11 agreement. Scott failed to notify the Department of Real Estate
12 (Department) that she had become Canty's employing broker.
13

VIII

14 At the times mentioned above, respondents engaged in
15 the business of, acted in the capacity of, advertised, or
16 assumed to act as real estate brokers within the State of
17 California, including the operation and conduct of a mortgage
18 loan brokerage business with the public wherein lenders and
19 borrowers were solicited for loans secured directly or
20 collaterally by liens on real property, wherein such loans were
21 arranged, negotiated, processed, and consummated on behalf of
22 others for compensation or in expectation of compensation.
23

IX

24 From April 4, 1988 through July 25, 1988, an
25 investigative audit was made by the Department of the records of
26 respondents as those records related to their activities as
27

1 mortgage loan brokers.

2 X

3 It was ascertained by the audit that from June 1, 1986
4 through September 15, 1986, Transcentury and Canty and from
5 September 15, 1986 through February 12, 1988, Scott and Canty
6 accepted or received funds in trust from or on behalf of lenders
7 and borrowers and thereafter made disbursement of those funds.

8 XI

9 It was ascertained by the audit that, during the time
10 periods set out in Paragraph X, respondents deposited or caused
11 to be deposited trust funds received into their general business
12 bank account instead of maintaining the trust funds in a trust
13 fund account maintained in a bank or recognized depository or
14 placing the trust funds in a neutral escrow depository or into
15 the hands of the principals on whose behalf the trust funds were
16 received, and that respondents commingled the trust funds with
17 their general funds.

18 XII

19 It was ascertained by the audit that the branch
20 operation by Canty for first Transcentury and later Scott (Canty
21 branch) has maintained two bank accounts purportedly to be used
22 for appraisal and credit report fees collected from borrowers.
23 One non-trust account is maintained at Great Western bank on
24 Mountain Boulevard, Oakland, California. This is an interest
25 bearing account. The second account is a trust account
26 maintained at Wells Fargo bank on Santa Clara Avenue, Oakland,
27 California.

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XIII

It was also ascertained by the audit that, on or about August 27, 1986, in the bank accounts of the Canty branch as described in Paragraph XII (Canty bank accounts), the adjusted balance was \$157.79.

XIV

It was also ascertained by the audit that the liability of the Canty bank accounts, for funds received from lenders and borrowers, as of August 27, 1986, was a minimum of \$8,475 and that, as of August 27, 1986, the minimum trust fund shortage in the Canty bank accounts was \$8,317.21.

XV

It was also ascertained by the audit that the adjusted balance in the Canty bank accounts as of February 12, 1988, was approximately \$928.99.

XVI

It was also ascertained by the audit that the trust liability in the Canty bank accounts for funds received from lenders and borrowers, as of February 12, 1988, was a minimum of \$2,240 and that, as of February 12, 1988, the minimum trust fund shortage in the Canty bank accounts was \$1,311.01.

XVII

It was ascertained by the audit that at least during the time periods set out in Paragraph X, respondents failed to maintain separate records for each beneficiary or transaction accounting for all trust funds received, deposited, and

/ / / / /

1 disbursed, as required by Section 2831.1 of Title 10 of the
2 California Code of Regulations (Regulations).

3 XVIII

4 It was ascertained by the audit that at least during
5 the time periods set out in Paragraph X, respondents failed to
6 keep a full and accurate record of all trust funds received by
7 respondents as provided in Section 2831 of the Regulations.

8 XIX

9 During the period when Canty was not licensed, first
10 Transcentury through Poczick and then Scott caused to be made
11 withdrawals from the Canty bank accounts on the single signature
12 of Canty who was neither an officer through whom Transcentury
13 was licensed or a licensed real estate salesperson or an
14 employee who has fidelity bond coverage, thus violating Section
15 2834 of the Regulations...

16 XX

17 Transcentury, Poczick and Scott, during the
18 required time periods, have failed to retain copies of all
19 documents executed in connection with transactions at the Canty
20 branch for a period of three years and failed, after notice from
21 the Department, to produce such records for examination and
22 inspection by the Commissioner's designated representative
23 pursuant to Section 10148 of the Code.

24 XXI

25 From on or about March 6, 1986 through on or about
26 January 25, 1988, Canty solicited prospective borrowers and
27 entered into negotiations with them to obtain for them a loan to

1 be secured by a lien on real property, in expectation of
2 compensation pursuant to Section 10131(d) of the Code.

3 XXII

4 In performing the acts referred to in Paragraph XXI,
5 Canty engaged in the business and acted in the capacity of a
6 real estate licensee while he did not possess a real estate
7 license issued by the Department, thus violating Section 10130
8 of the Code.

9 XXIII

10 The facts alleged above in Paragraphs XXI and XXII,
11 constitute cause for discipline of all licenses and license
12 rights of Canty pursuant to Section 10177(d) of the Code.

13 XXIV

14 Respondent Canty's acts and omissions as set out above
15 in Paragraphs VII through XIX violate Section 10145 of the Code
16 and constitute grounds for discipline of all Canty's license and
17 license rights pursuant to Section 10177(d) of the Code.

18 SECOND CAUSE OF ACCUSATION

19 XXV

20 There is hereby incorporated in this second, separate
21 and distinct cause of Accusation, all of the allegations
22 contained in Paragraphs I through XXII of the First Cause of
23 Accusation with the same force and effect as if herein fully set
24 forth.

25 XXVI

26 Transcentury's, Poczik's and Scott's acts and
27 omissions alleged above in Paragraphs VII through XVII violate

1 Sections 10145 of the Code and 2830 and 2832 of the Regulations.

2 XXVII

3 Transcentury's, Poczik's and Scott's acts and
4 omissions alleged above in Paragraph XI constitute grounds for
5 discipline pursuant to Section 10176(e).

6 XXVIII

7 Transcentury's, Poczik's and Scott's acts and
8 omissions, as alleged above in Paragraph XII, violate Section
9 2830.1 of the Regulations and 10145 of the Code and are grounds
10 for discipline pursuant to Section 10177(d) of the Code.

11 XXIX

12 Transcentury's, Poczik's and Scott's acts and
13 omissions, alleged above in Paragraph XVIII, violate Section
14 2831 of the Regulations and are grounds for discipline under
15 Section 10177(d) of the Code.

16 XXX

17 Transcentury's, Poczik's, and Scott's acts and
18 omissions alleged above in Paragraph XVII violate Section 2831.1
19 of the Regulations and constitute grounds for discipline
20 pursuant to the provisions of Section 10177(d) of the Code.

21 XXXI

22 Transcentury's, Poczik's, and Scott's acts and
23 omissions alleged above in Paragraph XIX violate Section 2834 of
24 the Regulations and constitute grounds for discipline pursuant
25 to the provisions of Section 10177(d) of the Code.

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1 XXXII

2 Transcentury's, Poczik's, and Scott's acts and
3 omissions alleged above in Paragraph XX violate Section 10148
4 of the Code and are grounds for discipline under the provisions
5 of Section 10177(d) of the Code.

6 XXXIII

7 By agreeing to and arranging for Canty's acts as set
8 out in Paragraph XXI, Transcentury, Poczik, and later Scott,
9 violated Section 10137 of the Code and their acts and omissions
10 constitute grounds for discipline pursuant to Section 10137 of
11 the Code.

12 XXXIV

13 Respondent Scott's failure to advise the Department of
14 her employment of respondent Canty violates Section 10161.8 of
15 the Code and Section 2752 of the Regulations and is grounds for
16 discipline under the provisions of Section 10177(d) of the Code.

17 XXXV

18 Respondent Scott failed to advise the Department that
19 she was conducting activity for which a license was required
20 under a fictitious name, thus violating Section 2731 of the
21 Regulations. Her omissions constitute grounds for discipline
22 pursuant to Section 10177(d) of the Code.

23 THIRD CAUSE OF ACCUSATION

24 XXXVI

25 There is hereby incorporated in this third, separate
26 and distinct cause of Accusation, all of the allegations
27 contained in Paragraphs I through XXII of the First Cause of

1 Accusation and Paragraphs XXXIII and XXXV of the Second Cause of
2 Accusation with the same force and effect as if herein fully set
3 forth.

4 XXXVII

5 From September 15, 1986 through the present time,
6 Scott has failed to exercise reasonable supervision and control
7 of the activities of salesperson Canty and was negligent or
8 incompetent in performing acts for which a real estate broker
9 license is required, in that she knew or should have known all
10 of the facts set forth in the allegations in all of the Causes
11 of Accusation incorporated in Paragraph XXXVI above.

12 XXXVIII

13 Scott's acts and omissions alleged above constitute
14 grounds for disciplinary action under the provisions of Sections
15 10177(g) and (h) of the Code.

16 XXXIX

17 From on or about March 5, 1985 through on or about
18 September 15, 1986, respondent Poczik, as the designated
19 broker/officer of Transcentury, was responsible for the
20 supervision and control of the activities conducted on behalf of
21 Transcentury by its officers and employees as necessary to
22 secure full compliance with the provisions of the Real Estate
23 Law including the supervision of salespersons licensed to
24 Transcentury in the performance of acts for which a real estate
25 license is required, as provided by Section 10159.2 of the Code.

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XL

From on or about March 5, 1985 through on or about September 15, 1986, Poczik failed to exercise reasonable supervision and control of the activities of the corporation for which a real-estate license is required and was negligent or incompetent in performing acts for which a real estate license is required, in that he knew or should have known all of the facts set forth in Paragraphs VII through XIV and XVII through XXII above.

XLI

The acts and/or omissions of respondent Poczik, as alleged in Paragraph XL above are grounds for discipline under the provisions of Sections 10177(g) and 10177(h) 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 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.

Edward V. Chio
EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated in San Francisco, California,
this 28th day of February, 1989.