

FILED
APR 27 2007

DEPARTMENT OF REAL ESTATE

By *James L. ...*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-7401 SF
)
ROBERT JAMES ASBRA,)
)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On September 11, 1997, a Decision After Rejection was rendered herein revoking the real estate broker license of Respondent effective October 9, 1997.

On June 28, 2006, 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.

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the

1 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
2 395).

3 I have considered Respondent's petition and the
4 evidence and arguments in support thereof. Respondent has failed
5 to demonstrate to my satisfaction that Respondent has undergone
6 sufficient rehabilitation to warrant the reinstatement of
7 Respondent's unrestricted real estate broker license.

8 The Decision After Rejection in this matter found cause
9 to revoke Respondent's real estate broker license pursuant to the
10 provisions of Sections 10137, 10145, 10148, and 10177(d) of the
11 Code in conjunction with Sections 2831 and 2831.1 of the
12 Regulations on the grounds that in course of Respondent's
13 property management and trust fund handling activities Respondent
14 employed and compensated an unlicensed person to perform acts
15 requiring a license, and failed to account properly for property
16 management trust funds.

17 Given the violation found and the fact that Respondent
18 has not engaged as a broker in the operation of a real estate
19 brokerage business or otherwise acted in a fiduciary capacity,
20 Respondent has not established that he has complied with Section
21 2911(k), Title 10, California Code of Regulations. Consequently,
22 I am not satisfied that Respondent is sufficiently rehabilitated
23 to receive an unrestricted real estate broker license.
24 Additional time and evidence of correction as a restricted real
25 estate broker is necessary to establish that Respondent is
26 rehabilitated.

27 ///

1 Notwithstanding the above, I am satisfied that it will
2 not be against the public interest to issue a restricted real
3 estate broker license to Respondent.

4 NOW, THEREFORE, IT IS ORDERED that Respondent's
5 petition for reinstatement of Respondent's real estate broker
6 license is denied. However, a restricted real estate broker
7 license shall be issued to Respondent pursuant to Section 10156.5
8 of the Business and Professions Code, if Respondent satisfies the
9 following conditions prior to and as a condition of obtaining a
10 restricted real estate broker license within nine (9) months from
11 the date of this Order:

12 1. Respondent shall take and pass the real estate
13 broker license examination.

14 2. Submittal of a completed application and payment of
15 the fee for a real estate broker license.

16 The restricted license issued to Respondent shall be
17 subject to all of the provisions of Section 10156.7 of the
18 Business and Professions Code and to the following limitations,
19 conditions and restrictions imposed under authority of Section
20 10156.6 of that Code:

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

26 ///

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

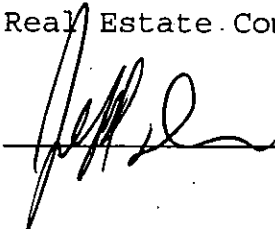
7 C. Respondent shall not be eligible to apply for the
8 issuance of an unrestricted real estate license nor the removal
9 of any of the limitations, conditions or restrictions of a
10 restricted license until two (2) years have elapsed from the date
11 of the issuance of the restricted license to Respondent.

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

19 This Order shall become effective at 12 o'clock
20 noon on MAY 18 2007, 2007.

21 DATED: 4-24, 2007.

22 JEFF DAVI
23 Real Estate Commissioner

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FILED
SEP 19 1997
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ROBERT JAMES ASBRA,)
Respondent.)

NO. H-7401 SF
OAH NO. N-9611123

DECISION AFTER REJECTION

The matter was heard before Robert Walker,
Administrative Law Judge, Office of Administrative Hearings, State
of California, on April 14, 1997, at Oakland, California.
David B. Seals, Counsel, represented the Complainant.
The Respondent, ROBERT JAMES ASBRA (hereinafter
Respondent), appeared in propria persona
On May 12, 1997, the Administrative Law Judge submitted
a Proposed Decision which I declined to adopt as my Decision
herein. Pursuant to Section 11517(c) of the Government Code of
the State of California, Respondent was served with notice of my
determination not to adopt the Proposed Decision of the
Administrative Law Judge along with a copy of said Proposed

1 Decision. Respondent was notified that the case would be decided
2 by me upon the record, the transcript of proceedings held on
3 April 14, 1997, and upon written argument offered by Respondent.

4 Written argument was submitted by Respondent ROBERT
5 JAMES ASBRA.

6 I have given careful consideration to the record in this
7 case including the transcript of proceedings of April 14, 1997.

8 The following shall constitute the Decision of the Real
9 Estate Commissioner in this proceeding:

10 FINDINGS OF FACT

11 I

12 The Complainant filed the Accusation in his official
13 capacity as a Deputy Real Estate Commissioner of the State of
14 California.

15 II

16 The Respondent stipulated to the factual allegations
17 contained in paragraphs II through XV of the Accusation. Those
18 allegations are as follows:

19 "II

20 *Respondent is licensed and/or has license rights*
21 *under the Real Estate Law, Part 1 of Division 4 of the*
22 *California Business and Professions Code (hereinafter*
23 *"Code") as a real estate broker dba Monarch Realty and*
24 *Sterling Monarch Management.*

25 III

26 *That at all times herein mentioned, Respondent*
27 *engaged in the business of, acted in the capacity*



1 of, advertised, or assumed to act as a real estate
2 broker in the State of California within the meaning of
3 Section 10131 of the Code for or in expectation of
4 compensation.

5 IV

6 Beginning on or about November 12, 1993 and at
7 various times thereafter through the present, MARIAN ADELE
8 LUDLOW, in her capacity with Sterling Monarch Management
9 or Monarch Realty, for or in expectation of compensation,
10 discussed rental terms with potential renters; took
11 applications and security deposit checks from potential
12 renters; collected rents from tenants; and performed other
13 activities for which a real estate license is required
14 for, but not limited to, the following individuals: John
15 and Terri House, Blake Peterson, and Isaac and Doreen
16 Fluss.

17 V

18 MARIAN ADELE LUDLOW was compensated by Respondent
19 for performing the activities described in Paragraph IV.
20 However, MARIAN ADELE LUDLOW was not licensed by the
21 Department as a real estate salesperson or broker at any
22 time herein mentioned.

23 VI

24 The acts and/or omissions of Respondent as
25 described above are grounds for the revocation or
26 suspension of Respondent's licenses under Section 10137
27 of the Code.



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VII

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

VIII

From on or about February 20 to June 7, 1996, an investigative audit was made by the Department of the records and bank records of Respondent for the period from February 20, 1993 to March 31, 1996, as said records related to his activities as a real estate broker.

IX

It was ascertained by said audit that four trust accounts were used for activities for which a real estate license is required, as follows:

Trust Accounts #1 and 4 at National Bank of the Redwoods, 111 Santa Rosa Ave., Santa Rosa, CA 95402, in the name of Sterling Monarch Management, and designated as account numbers 2706422 and 2408244, respectively, with Respondent and MARIAN ADELE LUDLOW as signatories.

Trust Accounts #2 and 3 at West America Bank, 2498 Guerneville Road, Santa Rosa, CA 95401, both in the name of Sterling Monarch Management, and designated as account numbers 404-05103-9 and 405-05271-3, respectively, but the signatories could not be ascertained.



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X

There was a minimum shortage of \$26,206.02 in Trust Accounts 1 through 3, of which \$21,478.40 was caused by unauthorized ATM withdrawals from Trust Account #2, \$6,532.55 caused by negative balances on the Separate Record for Management Fees and Security Deposits kept by Respondent, and a \$1,804.93 unidentified overage. An accountability could not be determined for Trust Account #4 because of Respondent's failure to provide records in violation of Section 10148 of the Code.

XI

MARIAN ADELE LUDLOW was a signatory on Trust Account #1. However, MARIAN ADELE LUDLOW was not licensed by the Department nor was there fidelity bond coverage at least equal to the minimum amount of trust funds to which she had access at the time, in violation of Section 2834, Title 10, California Code of Regulations (hereinafter the "Regulations").

XII

Trust Account #1 was not in the name of the broker, Respondent, as trustee as required by Section 10145 of the Code.

XIII

In Trust Account #1, Respondent failed to maintain an adequate record of all trust funds received and paid out, in violation of Section 2831, by failing to

1 include a daily balance and the date trust funds were
2 received.

3 XIV

4 In Trust Account #1, Respondent failed to keep
5 adequate separate beneficiary or transaction records, in
6 violation of Section 2831.1, in that separate beneficiary
7 records do not include a balance after posting
8 transactions on any date nor are they maintained with
9 regard to security deposits retained in the trust
10 accounts.

11 XV

12 The acts and/or omissions of Respondent as
13 described in Paragraphs VII through XIV above are
14 grounds for the revocation or suspension of Respondent's
15 licenses and license rights under Section 10177(d) of
16 the Code in conjunction with Sections 10145 and 10148 of
17 the Code, and Sections 2831 and 2831.1 of the
18 Regulations."

19 III

20 Respondent met Ms. Ludlow in 1993. She had been working
21 with another broker in operating a property management company in
22 Santa Rosa, California. The company contracted with property
23 owners to collect rents, deal with maintenance problems, deal with
24 tenants, and rent out units when they became vacant. Ms. Ludlow
25 was not licensed by the Department of Real Estate (Department) and
26 Respondent knew that. In fact, she told him that she had been
27 licensed at one time but that her license had been revoked.



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IV

In November of 1993, after Ms. Ludlow and the former broker parted ways, Respondent and Ms. Ludlow entered into a contract pursuant to which Respondent would be the broker for the business. Respondent contends that, at the time he entered into that contract, he understood that he would be in charge of the business and the trust accounts associated with it and that Ms. Ludlow would function as his "Girl Friday." However, after only one month, Respondent realized that he had made a mistake. Ms. Ludlow was very strong willed and insisted on performing functions that required a license. She showed property and negotiated terms with tenants. Worse than that, she had complete control over the trust accounts. Respondent failed to discharge his responsibility for handling and maintaining records of funds. Regarding all funds and all records of funds, he simply trusted Ms. Ludlow. Respondent continued to allow Ms. Ludlow to work under the authority of his license until August of 1996. Ms. Ludlow was compensated for her work through the profits she earned from the business. In spite of the fact that he knew that he had no control over either Ms. Ludlow or the trust accounts, Respondent permitted his broker license to be used for her business for over two and one-half years. In fact, it was not until the Department did an audit of the trust accounts and found major discrepancies that Respondent withdrew his license.

V

Respondent indicated that he continued to allow his real estate broker license to be used by Ms. Ludlow, in spite of the

1 fact that he had no control over her or the trust funds because he
2 was having a difficult time financially and he needed the money
3 she was paying him.

4 VI

5 Respondent has been licensed as either a salesperson or
6 broker for over 20 years. In those 20 years, there have been no
7 other known complaints or disciplinary proceedings against him.
8 He claims that, except for this failure to discharge his
9 responsibility as a broker, he has always been conscientious. He
10 claims, further, that he has a good reputation for honesty and
11 that he values that reputation.

12 VII

13 There was no evidence presented at the hearing that the
14 \$26,206.02 shortage had been cured.

15 DETERMINATION OF ISSUES

16 I

17 By reason of the matters set forth in Findings II
18 through IV, it is determined that Respondent, a licensed broker,
19 indirectly compensated Ms. Ludlow, whom he knew to be unlicensed,
20 for performing acts that required a license. Therefore, cause to
21 suspend or revoke his license exists pursuant to Code section
22 10137.

23 II

24 By reason of the matters set forth in Findings II and IV
25 it is determined that Respondent, a licensed broker, willfully
26 disregarded the real estate laws and the rules and regulations of
27 the Commissioner in that he permitted funds belonging to others

1 and for which he was responsible to be deposited in accounts that
2 he did not maintain and in that he failed to maintain records of
3 the receipt and distribution of funds belonging to others and for
4 which he was responsible. Therefore, cause to suspend or revoke
5 his license exists pursuant to Code section 10177(d) in
6 conjunction with Code sections 10145 and 10148 and in conjunction
7 with Title 10, California Code of Regulations, sections 2831 and
8 2831.1.

9 III

10 By reason of the matters set forth in Findings II
11 through VII, it is determined that it would not be in the interest
12 of the public for Respondent to continue to hold a real estate
13 license.

14 IV

15 Respondent's failure to perform his duties as a real
16 estate broker reflect a blatant disregard for the Real Estate Law.
17 He knew at the time he was hired as the broker, that Ms. Ludlow
18 had her real estate license revoked but took no steps to assure
19 that the clients of the company, the public, were protected. His
20 failure to review and reconcile the trust accounts allowed the
21 misuse of those funds to go on without his knowledge. Respondent
22 also allowed Ms. Ludlow to perform activities requiring a real
23 estate license, and paying her for such activities, knowing full
24 well that her license was revoked.

25 ORDER

26 All licenses and licensing rights of respondent ROBERT
27 JAMES ASBRA under the Real Estate Law are revoked.

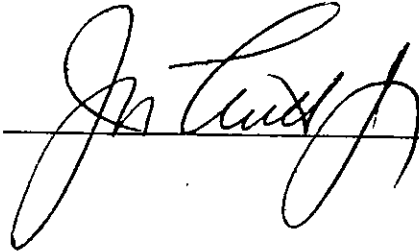


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This Decision shall become effective at 12 o'clock noon
on October 9, 1997.

IT IS SO ORDERED 9/11, 1997.

JIM ANTT, JR.
Real Estate Commissioner



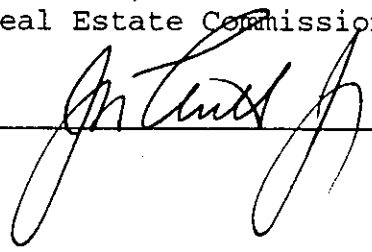
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Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of April 14, 1997, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of complainant to be considered by me must be submitted within 15 days after receipt of the argument of respondent at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 6/3/97

JIM ANTT, JR.
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. H-7401 SF
ROBERT JAMES ASBRA,)	
)	OAH No. N 9611123
Respondent.)	
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PROPOSED DECISION

This matter was heard before Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 14, 1997, at Oakland, California.

David B. Seals, Counsel, represented the complainant, Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California (Complainant).

The respondent, Robert James Asbra (Respondent), appeared in propria persona.

FINDINGS OF FACT

1. The Complainant filed the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. The Respondent stipulated to the factual allegations contained in paragraphs II through XV of the accusation. Those allegations are as follows:

II

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

III

That at all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of Section 10131 of the Code for or in expectation of compensation.

IV

Beginning on or about November 12, 1993, and at various times thereafter through the present, MARIAN ADELE LUDLOW, in her capacity with Sterling Monarch Management or Monarch Realty, for or in expectation of compensation, discussed rental terms with potential renters; took applications and security deposit checks from potential renters; collected rents from tenants; and performed other activities for which a real estate license is required for, but not limited to, the following individuals: John and Terri House, Blake Peterson, and Isaac and Doreen Fluss.

V

MARIAN ADELE LUDLOW was compensated by Respondent for performing the activities described in Paragraph IV. However, MARIAN ADELE LUDLOW was not licensed by the Department as a real estate salesperson or broker at any time herein mentioned.

VI

The acts and/or omissions of Respondent as described above are grounds for the revocation or suspension of Respondent's licenses under Section 10137 of the Code.

VII

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

VIII

From on or about February 20 to June 7, 1996, an investigative audit was made by the Department of the records and bank records of Respondent for the period from February 20, 1993 to March 31, 1996, as said records related to his activities as a real estate broker.

IX

It was ascertained by said audit that four trust accounts were used for activities for which a real estate license is required, as follows:

Trust Accounts #1 and 4 at National Bank of the Redwoods, 111 Santa Rosa Ave., Santa Rosa, CA 95402, in the name of Sterling Monarch Management, and designated as account numbers 2706422 and 2408244, respectively, with Respondent and MARIAN ADELE LUDLOW as signatories.

Trust Accounts #2 and 3 at West America Bank, 2498 Guerneville Road, Santa Rosa, CA 95401, both in the name of Sterling Monarch Management, and designated as account numbers 404-05103-9 and 405-05271-3, respectively, but the signatories could not be ascertained.

X

There was a minimum shortage of \$26,206.02 in Trust Accounts 1 through 3, of which \$21,478.40 was caused by unauthorized ATM withdrawals from Trust Account #2, \$6,532.55 caused by negative balances on the Separate Record for Management Fees and Security Deposits kept by Respondent, and a \$1,804.93 unidentified overage. An accountability could not be determined for Trust Account #4 because of Respondent's failure to provide records in violation of Section 10148 of the Code.

XI

MARIAN ADELE LUDLOW was a signatory on Trust Account #1. However, MARIAN ADELE LUDLOW was not licensed by the Department nor was there fidelity bond coverage at least equal to the minimum amount of trust funds to which she had access at the time, in violation of Section 2834, Title 10, California Code of Regulations (hereinafter the "Regulations").

XII

Trust Account #1 was not in the name of the broker, Respondent, as trustee as required by Section 10145 of the Code.

XIII

In Trust Account #1, Respondent failed to maintain an adequate record of all trust funds received and paid out, in violation of Section 2831, by failing to include a daily balance and the date trust funds were received.

XIV

In Trust Account #1, Respondent failed to keep adequate separate beneficiary or transaction records, in violation of Section 2831.1, in that separate beneficiary records do not include a balance after posting transactions on any date nor are they maintained with regard to security deposits retained in the trust accounts.

XV

The acts and/or omissions of Respondent as described in Paragraphs VII through XIV above are grounds for the revocation or suspension of respondent's licenses and license rights under Section 10177(d) of the Code in conjunction with Sections 10145 and 10148 of the Code, and Sections 2831 and 2831.1 of the Regulations.

3. Respondent met Ms. Ludlow in 1993. She had been working with another broker in operating a property management company in Santa Rosa, California. The company contracted with

property owners to collect rents, deal with maintenance problems, deal with tenants, and rent out units when they became vacant. Ms. Ludlow was not licensed by the Department of Real Estate (Department) and Respondent knew that. In fact, she told him that she had been licensed at one time but that her license had been revoked.

4. In November of 1993, after Ms. Ludlow and the former broker parted ways, Respondent and Ms. Ludlow entered into a contract pursuant to which Respondent would be the broker for the business. Respondent contends that, at the time he entered into that contract, he understood that he would be in charge of the business and the trust accounts associated with it and that Ms. Ludlow would function as his "Girl Friday." However, after only one month, Respondent realized that he had made a mistake. Ms. Ludlow was very strong willed and insisted on performing functions that required a license. She showed property and negotiated terms with tenants. Worse than that, she had complete control over the trust accounts. Respondent failed to discharge his responsibility for handling and maintaining records of funds. Regarding all funds and all records of funds, he simply trusted Ms. Ludlow. Respondent continued to allow Ms. Ludlow to work under the authority of his license until August of 1996. Ms. Ludlow was compensated for her work through the profits she earned from the business. In spite of the fact that he knew that he had no control over either Ms. Ludlow or the trust accounts, Respondent permitted his broker license to be used for her business for over two and one-half years. In fact, it was not until the Department did an audit of the trust accounts and found major discrepancies that Respondent withdrew his license.

5. Why did Respondent continue to allow his broker license to be used in connection with Ms. Ludlow's business in spite of the fact that he had no control over her or the funds? He was having a difficult time financially and needed the money she was paying him.

6. When Ms. Ludlow told Respondent that the Department was going to do an audit, she told him, also, that one of her relatives had made unauthorized withdrawals from the trust funds totaling approximately \$21,000. Respondent filed a police report.

7. Between February and June of 1996 the Department did conduct an audit and discovered a shortage of over \$26,000 in Ms. Ludlow's trust accounts. Approximately \$21,000 of that shortage resulted from a relative having made unauthorized withdrawals from one of those accounts without her knowledge.

8. Respondent has been licensed as either a salesperson or broker for over 20 years. In those 20 years there have been no other known complaints or disciplinary

proceedings against him. He claims that, in the event Ms. Ludlow and her relative fail to make the tenants and property owners whole, he will compensate them to prevent them from suffering any loss. Respondent is extremely contrite about having allowed Ms. Ludlow to use his broker license. He claims that, except for this failure to discharge his responsibility as a broker, he has always been conscientious. He claims, further, that he has a good reputation for honesty and that he values that reputation. In fact, there was no evidence that Respondent was dishonest with regard to the present matter-- except that a kind of dishonesty is involved in failing to discharge the responsibilities of a broker while purporting to function as one.

DETERMINATION OF ISSUES

1. By reason of the matters set forth in Findings 2 through 4 it is determined that Respondent, a licensed broker, indirectly compensated Ms. Ludlow, whom he knew to be unlicensed, for performing acts that required a license. Therefore, cause to suspend or revoke his license exists pursuant to Code section 10137.¹

2. By reason of the matters set forth in Findings 2 and 4 it is determined that Respondent, a licensed broker, wilfully disregarded the real estate laws and the rules and regulations of the Commissioner in that he permitted funds belonging to others and for which he was responsible to be deposited in accounts that he did not maintain and in that he failed to maintain records of the receipt and distribution of funds belonging to others and for which he was responsible. Therefore, cause to suspend or revoke his license exists pursuant to Code section 10177(d) in conjunction with Code sections 10145 and 10148 and in conjunction with Title 10, California Code of Regulations, sections 2831 and 2831.1.

3. By reason of the matters set forth in Findings 2 through 5 and Finding 7 it is determined that it would not be in the interest of the public for Respondent to continue to hold a broker license.

4. It is true that renting out a broker license and purporting to act as a broker while ignoring the responsibilities of one suggests a kind of dishonesty. Nevertheless, it is significant that there is no evidence that Respondent, otherwise, engaged in any dishonest conduct. Respondent has been licensed for over 20 years. In those 20 years there have been no other known complaints or disciplinary proceedings against him. In the event Ms. Ludlow and her relative fail to make

¹ All references to the Code are to the Business and Professions Code.

the tenants and property owners whole, Respondent intends to compensate them to prevent them from suffering any loss. Respondent is extremely contrite about having rented out his broker license. He recognizes the importance of being conscientious. He recognizes the importance of maintaining a reputation for honesty. Also to his credit, when he learned that funds were missing, he filed a police report. For all these reasons it is determined that it would not be contrary to the interest of the public for Respondent to hold a restricted salesperson license if he is properly supervised by a licensed broker.

ORDER

By reason of Determination of Issues numbers 1 through 3 all licenses and licensing rights of Respondent, Robert James Asbra, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Code if he makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of the 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 that 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 license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this decision.

Not Adopted

NOT RECORDED

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate, which shall certify:
 - a. That the employing broker has read the decision of the Commissioner that granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate 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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Respondent shall, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the Department and shall pay the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.
7. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for two years from the date of issuance of said restricted license provided, however, that the suspension shall be stayed on the following terms and conditions: Pursuant to section 10148 of the Code, Respondent shall pay the Commissioner's reasonable cost for an audit to determine if Respondent is commingling any

Not Adopted

funds or is committing any other trust fund violation. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein or as provided for in a subsequent agreement between the respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued the stay imposed herein shall become permanent.

DATED:

May 12, 1997

Robert Walker

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

FILED
MAR 18 1997

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Centenas

In the Matter of the Accusation of

ROBERT JAMES ASBRA,

Case No. H-7401 SF

OAH No. N-9611123

Respondent

SECOND 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 _____

The Office of Administrative Hearings, World Savings Tower,

1970 Broadway, Second Floor, Oakland, California 94612

on Monday -- April 14, 1997, at the hour of 1:30 PM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge 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 Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: March 17, 1997

By

David B. Seals
DAVID B. SEALS

Counsel

TO: FLAG SECTION

FROM: SACTO. LEGAL

FILED
DEC 30 1996

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

ROBERT JAMES ASBRA,

}
}

Case No. H-7401 SF
OAH No. N-9611123

Respondent

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 _____
The Office of Administrative Hearings, World Savings Tower,
1970 Broadway, Second Floor, Oakland, California 94612

on Monday -- February 24, 1997, at the hour of 10:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge 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 Administrative Law Judge directs otherwise.

Dated: December 30, 1996

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS *Counsel*

TO: FLAG SECTION
FROM: SACTO. LEGAL

FILED
DEC - 6 1996

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

ROBERT JAMES ASBRA,

Case No. H-7401 SF

OAH No. N-9611123

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, World Savings Tower,

1970 Broadway, Second Floor, Oakland, California 94612

on Friday -- January 3, 1997, at the hour of 10:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge 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 Administrative Law Judge directs otherwise.

Dated: December 6, 1996

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS Counsel

TO: FLAG SECTION
FROM: SACTO. LEGAL

1 DAVID B. SEALS, Counsel
Department of Real Estate
2 P. O. Box 187000
Sacramento, CA 95818-7000
3
4 Telephone: (916) 227-0789
5

FILED
OCT 22 1996
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ROBERT JAMES ASBRA,) NO. H-7401 SF
13 _____ Respondent.) ACCUSATION

14 The Complainant, Les R. Bettencourt, a Deputy Real
15 Estate Commissioner of the State of California for cause of
16 Accusation against ROBERT JAMES ASBRA (hereinafter "Respondent"),
17 is informed and alleges as follows:

18 FIRST CAUSE OF ACCUSATION

19 I

20 The Complainant, Les R. Bettencourt, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

23 II

24 Respondent is licensed and/or has license rights under
25 the Real Estate Law, Part 1 of Division 4 of the California
26 Business and Professions Code (hereinafter "Code") as a real
27 estate broker dba Monarch Realty and Sterling Monarch Management.

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III

That at all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of Section 10131 of the Code for or in expectation of compensation.

IV

Beginning on or about November 12, 1993, and at various times thereafter through the present, MARIAN ADELE LUDLOW, in her capacity with Sterling Monarch Management or Monarch Realty, for or in expectation of compensation, discussed rental terms with potential renters; took applications and security deposit checks from potential renters; collected rents from tenants; and performed other activities for which a real estate license is required for, but not limited to, the following individuals: John and Terri House, Blake Peterson, and Isaac and Doreen Fluss.

V

MARIAN ADELE LUDLOW was compensated by Respondent for performing the activities described in Paragraph IV. However, MARIAN ADELE LUDLOW was not licensed by the Department as a real estate salesperson or broker at any time herein mentioned.

VI

The acts and/or omissions of Respondent as described above are grounds for the revocation or suspension of Respondent's licenses under Section 10137 of the Code.

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///



1 SECOND CAUSE OF ACCUSATION

2 VII

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

8 VIII

9 From on or about February 20 to June 7, 1996, an
10 investigative audit was made by the Department of the records and
11 bank records of Respondent for the period from February 20, 1993
12 to March 31, 1996, as said records related to his activities as a
13 real estate broker.

14 IX

15 It was ascertained by said audit that four trust
16 accounts were used for activities for which a real estate license
17 is required, as follows:

18 Trust Accounts #1 and 4 at National Bank of the
19 Redwoods, 111 Santa Rosa Ave., Santa Rosa, CA 95402, in the name
20 of Sterling Monarch Management, and designated as account numbers
21 2706422 and 2408244, respectively, with Respondent and MARIAN
22 ADELE LUDLOW as signatories.

23 Trust Accounts #2 and 3 at West America Bank,
24 2498 Guerneville Road, Santa Rosa, CA 95401, both in the name of
25 Sterling Monarch Management, and designated as account numbers
26 404-05103-9 and 405-05271-3, respectively, but the signatories
27 could not be ascertained.



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X

There was a minimum shortage of \$26,206.02 in Trust Accounts 1 through 3, of which \$21,478.40 was caused by unauthorized ATM withdrawals from Trust Account #2, \$6,532.55 caused by negative balances on the Separate Record for Management Fees and Security Deposits kept by Respondent, and a \$1,804.93 unidentified overage. An accountability could not be determined for Trust Account #4 because of Respondent's failure to provide records in violation of Section 10148 of the Code.

XI

MARIAN ADELE LUDLOW was a signatory on Trust Account #1. However, MARIAN ADELE LUDLOW was not licensed by the Department nor was there fidelity bond coverage at least equal to the minimum amount of trust funds to which she had access at the time, in violation of Section 2834, Title 10, California Code of Regulations (hereinafter the "Regulations").

XII

Trust Account #1 was not in the name of the broker, Respondent, as trustee as required by Section 10145 of the Code.

XIII

In Trust Account #1, Respondent failed to maintain an adequate record of all trust funds received and paid out, in violation of Section 2831, by failing to include a daily balance and the date trust funds were received.

XIV

In Trust Account #1, Respondent failed to keep adequate separate beneficiary or transaction records, in violation of




1 Section 2831.1, in that separate beneficiary records do not
2 include a balance after posting transactions on any date nor are
3 they maintained with regard to security deposits retained in the
4 trust accounts.

5 XV

6 The acts and/or omissions of Respondent as described in
7 Paragraphs VII through XIV above are grounds for the revocation or
8 suspension of Respondent's licenses and license rights under
9 Section 10177(d) of the Code in conjunction with Sections 10145
10 and 10148 of the Code, and Sections 2831 and 2831.1 of the
11 Regulations.

12 WHEREFORE, Complainant prays that a hearing be conducted
13 on the allegations of this Accusation and that upon proof thereof,
14 a decision be rendered imposing disciplinary action against all
15 licenses and license rights of Respondent under the Real Estate
16 Law (Part 1 of Division 4 of the Business and Professions Code)
17 and for such other and further relief as may be proper under other
18 provisions of law.

19
20
21 
22 LES R. BETTENCOURT
23 Deputy Real Estate Commissioner
24

25 Dated at San Francisco, California,
26 this 8th day of October, 1996.
27

