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JUL 20 2007
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-7774 SF
)
ERNEST WILLIAM HENRY,)
)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On June 6, 2000, 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 August 3, 2000.

On July 19, 2004, 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
2 the evidence and arguments in support thereof. Respondent
3 has demonstrated to my satisfaction that Respondent meets
4 the requirements of law for the issuance to Respondent of
5 an unrestricted real estate broker license and that it would
6 not be against the public interest to issue said license to
7 Respondent.
8 Respondent.

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

- 14
- 15 1. Submittal of a completed application and payment
16 of the fee for a real estate broker license.
 - 17 2. Submittal of evidence of having, since the most
18 recent issuance of an original or renewal real estate license,
19 taken and successfully completed the continuing education
20 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
21 for renewal of a real estate license.
22

23 This Order shall become effective immediately.

24 DATED: 7-5-57.

25 JEFF DAVI
26 Real Estate Commissioner
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FILED
MAY 30 2001

DEPARTMENT OF REAL ESTATE

By Lucie A. Zin

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-7774 SF
)	
ERNEST WILLIAM HENRY,)	
)	
Respondent.)	
)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: ERNEST WILLIAM HENRY

On August 31, 2000, a restricted real estate broker license was issued by the Department of Real Estate to Respondent ERNEST WILLIAM HENRY (hereinafter "Respondent"), on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Order of June 6, 2000 in Case No. H-7774 SF. The Order became effective July 7, 2000. The Order of June 6, 2000 granted Respondent the right to the issuance of a restricted real estate broker license subject to the provisions of Section 10156.7 of the Business and Professions Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code.

1 Among those terms, conditions and restrictions,
2 Respondent was required, within nine (9) months after July 7,
3 2000, to present evidence satisfactory to the Real Estate
4 Commissioner that Respondent has, since the most recent issuance
5 of an original or renewal real estate license, taken and
6 successfully completed the continuing education requirements of
7 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
8 real estate license (hereinafter "the condition"). The
9 Commissioner has determined that as of May 7, 2001, Respondent
10 has failed to satisfy this condition, and therefore Respondent is
11 in violation of Section 10177(k) of the Business and Professions
12 Code.

13 NOW, THEREFORE, IT IS ORDERED under authority of
14 Section 10156.7 of the Business and Professions Code of the State
15 of California that the restricted real estate broker license
16 heretofore issued to Respondent and the exercise of any
17 privileges thereunder is hereby suspended until such time as
18 Respondent provides proof satisfactory to the Department of
19 compliance with the "condition" referred to above, or pending
20 final determination made after hearing (see "Hearing rights" set
21 forth below). Furthermore, Respondent has no right to renew
22 Respondent's restricted license if this "condition" is not
23 satisfied by the date Respondent's restricted license expires.

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1 IT IS FURTHER ORDERED that all license certificates and
2 identification cards issued by the Department of Real Estate
3 which are in the possession of Respondent be immediately
4 surrendered by personal delivery or by mailing in the enclosed
5 self-addressed, stamped envelope to:

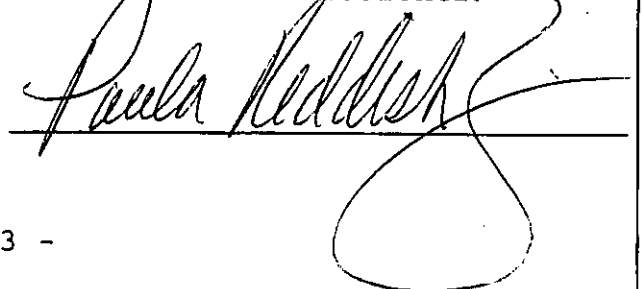
6 DEPARTMENT OF REAL ESTATE
7 Attention: Flag Section
8 P. O. Box 187000
9 Sacramento, CA 95818-7000

9 HEARING RIGHTS: Pursuant to the provisions of Section
10 10156.7 of the Business and Professions Code, Respondent has the
11 right to a hearing to contest the Commissioner's determination
12 that you are in violation of Section 10177(k). If Respondent
13 desires a hearing, Respondent must submit a written request. The
14 request may be in any form, as long as it is in writing and
15 indicates that Respondent wants a hearing. Unless a written
16 request for a hearing, signed by or on behalf of Respondent, is
17 delivered or mailed to the Department of Real Estate at 2201
18 Broadway, P. O. Box 187000, Sacramento, California 95818-7000,
19 within twenty (20) days after the date that this Order was mailed
20 to or served on you, the Department will not be obligated or
21 required to provide you with a hearing.

22 This Order shall be effective immediately.

23 DATED: May 14, 2001.

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner

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FILED

OCT 23 2000

DEPARTMENT OF REAL ESTATE

Laurie A. Z...

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-7774 SF
VICTORIA L. DOYLE,)	OAH No. N-2000020183
Respondent.)	

DECISION AFTER REJECTION

This matter came on for hearing as to Respondent VICTORIA L. DOYLE only before Cheryl R. Tompkin, Administrative Law Judge of the Office of Administrative Hearings in Oakland, California, on May 5, 2000. James L. Beaver, Counsel, represented the Complainant. Respondent VICTORIA L. DOYLE appeared in person without counsel. Evidence was received, the record was closed, and the matter was submitted.

On June 5, 2000, the Administrative Law Judge rendered a Proposed Decision ("the Proposed Decision") as to Respondent VICTORIA L. DOYLE which I declined to adopt as my Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of my

1 3. Paragraphs 5 through 12, inclusive, of the
2 Factual Findings are hereby adopted.

3 4. Doyle should have known that the Martins were
4 responsible to Estee Lauder for rent overpayments received by
5 Doyle, their agent. Under Doyle's management agreement with the
6 Martins, Doyle was accountable to the owners for her receipts
7 and disbursements relating to the property. Doyle had no
8 reasonable basis for believing otherwise. The Martins provided
9 Doyle a copy of the Estee Lauder check and accurately informed
10 her when and where it was deposited. Doyle's bank statement
11 showed that a \$2,200 deposit was posted by the bank on July 1,
12 1998. Doyle's control records contained no reference to a
13 \$2,200 receipt from any other source at the time of the deposit.
14 Between October 15, 1998 and January 15, 1999, while the Martins
15 were demanding that Doyle account for the \$2,200 June payment
16 and Doyle repeatedly denied that the payment had been deposited
17 into her account, the balance in the account dropped from
18 \$815.53 to \$229.62. Doyle presented no evidence that the \$2,200
19 was received for any purpose other than as rent on the Martins'
20 residence. Doyle never had a reasonable basis for denying she
21 received the Estee Lauder's check. The most that can be said in
22 Doyle's favor is that Doyle considered it unnecessary to
23 identify the source of the deposit because of her mistaken
24 belief that she was not accountable to the owners of property
25 managed by her, but her ignorance of her duty to account to the
26 owners cannot excuse her. Doyle's conversion of the deposit and

27 ///

1 her refusal to account for her handling of the funds constitute
2 fraud and dishonest dealing.

3 DETERMINATION OF ISSUES

4 1. The acts and omissions of Respondent Doyle
5 described in Paragraph 4, inclusive, of the Factual Findings, as
6 amended above, and Paragraphs 5 through 7, inclusive, of the
7 Factual Findings constitute cause for the suspension or
8 revocation of Respondent Doyle's license and license rights
9 pursuant to Business and Professions Code (hereinafter "the
10 Code") Section 10130 in conjunction with Section 10177(d) of the
11 Code.

12 2. The acts and omissions of Respondent Doyle
13 described in Paragraph 4 of the Factual Findings, as amended
14 above, Paragraphs 5 through 12, inclusive, of the Factual
15 Findings, and Paragraph 4, above, of the "Findings of Fact"
16 herein, constitute cause for the suspension or revocation of
17 Respondent Doyle's license and license rights pursuant to
18 Section 10176(i) of the Code.

19 3. It is determined that it would be against the
20 public interest to issue Respondent a restricted license.

21 ORDER

22 All licenses and licensing rights of Respondent
23 VICTORIA L. DOYLE under the Real Estate Law are revoked.

24 This Decision shall become effective at 12 o'clock noon
25 on November 13, 2000.

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IT IS SO ORDERED October 19, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

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FILED
JUN 30 2000

DEPARTMENT OF REAL ESTATE

Lucia L. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ERNEST WILLIAM HENRY and) No. H-7774 SF
VICTORIA L. DOYLE,)
Respondents.) N-2000020183

NOTICE

TO: Respondent VICTORIA L. DOYLE, only.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 5, 2000, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 5, 2000, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on May 5, 2000, and any written argument hereafter submitted on behalf of Respondent and Complainant.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ERNEST WILLIAM HENRY and
VICTORIA L. DOYLE

Respondents.

Case No. H-7774 SF

OAH No. N 2000020183

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter in Oakland, California on May 5, 2000.

James L. Beaver, Counsel, represented the complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California.

Respondent Victoria Doyle appeared on her own behalf. There was no appearance by or on behalf of respondent Ernest William Henry.¹

The matter was submitted on May 5, 2000.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent Victoria Doyle (Doyle) is presently licensed and/or has license rights under the Real Estate Law as a real estate salesperson. Respondent Doyle's license was in full force and effect at all times pertinent to this matter and is scheduled to expire on May 18, 2000.

3. Respondent Ernest William Henry (Henry), individually and doing business as Morgan Realty and Rent San Francisco!, is licensed and has license rights as a real estate broker under the Real Estate Law. Henry's license will expire on October 18, 2001, unless renewed.

¹ Respondent Ernest William Henry and the Department entered into a stipulated settlement prior to hearing. Thus, although respondent Henry was present at hearing as a witness, he did not appear as a party. The matter proceeded as to respondent Victoria Doyle only.

4. At hearing respondent Doyle stipulated that the factual allegations of the Accusation were true and correct. The factual allegations of the Accusation are as follows:

“II

At all times herein mentioned, Respondents HENRY and DOYLE were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter “the Code”).

III

At all times herein mentioned, Respondent HENRY was and now is licensed by the Department as a real estate broker.

IV

At all times herein mentioned, Respondent DOYLE was and now is licensed by the Department as a real estate salesperson in the employ of Respondent HENRY.

V

At all times mentioned herein, 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 within the meaning of Sections 10131(b) of the Code, including operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon and collected rents from real property or improvements thereon.

VI

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

VII

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts

(hereinafter "trust accounts") maintained by Respondents for the handling of trust funds, including but not necessarily limited to the "RENT San Francisco Trust Account", Account No. 02993-17150, maintained by Respondents at the Market – Van Ness, San Francisco, California, branch of Bank of America (hereinafter "Trust 1").

VIII

Between on or about January 1, 1997 and December 31, 1998, Respondent DOYLE operated and controlled the property management business described in Paragraph V, above, and deposited and/or withdrew trust funds or caused such deposits and/or withdrawals to be made.

IX

In acting as described in Paragraph VIII, above, Respondent DOYLE violated Section 10130 of the Code.

X

Between on or about June 30, 1998 and October 31, 1998, in connection with the collection and disbursement of said trust funds, Respondent DOYLE converted trust funds entrusted to Respondents in the sum of \$2,200.00 to Respondent DOYLE's own use or benefit or to purposes not authorized by the rightful owners of said funds.

XI

Between on or about January 1, 1997 and December 31, 1998, in the course of the real estate brokerage activities described above, Respondent HENRY failed to exercise reasonable supervision over the activities of Respondent DOYLE, a real estate salesperson then licensed under Respondent, in that Respondent HENRY caused, suffered and permitted Respondent DOYLE to act as described in Paragraphs VIII through X, above, and Respondent HENRY failed to provide reasonable review, oversight, inspection, and management of:

- (a) The handling of trust funds by said real estate salesperson;
- (b) Transactions requiring a real estate license conducted by said real estate salesperson; and
- (c) Documents which may have a material effect upon the rights or obligation of a party to such transactions.

XII

Between on or about January 1, 1997 and December 31, 1998, in connection with the collection and disbursement of said trust funds, Respondent HENRY:

(a) Failed to keep a record in columnar form of all trust funds deposited into and disbursed from Trust 1, as required by Section 2831 of the Regulations; and

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

XIII

Between on or about January 1, 1997, and on or about July 31, 1999, in connection with the collection and disbursement of said trust funds, Respondent HENRY:

(a) Failed to retain for three years copies of canceled checks and other trust records executed or obtained by Respondents in connection with transactions for which a real estate broker license is required in course of the property management business described in Paragraph V, above; and/or

(b) Failed after notice to make such canceled checks and other trust records available for examination, inspection and copying by the designated representative of the Real Estate Commissioner.”

5. On January 11, 1999 the Department of Real Estate (Department) conducted an investigative audit of respondent Henry's books and records for the period of January 1, 1997 through December 31, 1998. The audit covered the property management activities provided by Henry's sales agent Doyle at his Pacifica branch office, which also served as Doyle's residence. The audit revealed that Doyle managed six condominium units for compensation for six (6) individual owners. Doyle managed both short term and long term rental units. Collections for both the short term and long term accounts were conducted through the same trust account. Doyle collected approximately \$12,000.00 per month in rent receipts and security deposits. Doyle's management fee was based on the difference between the owner's agreed rental amount and the actual rental amount. The monthly management fee ranged from \$300.00 to \$600.00 per unit.

Although Doyle was responsible for day to day operation of the property management business, she claims she was in frequent contact with Henry by telephone and fax.

6. From approximately August 1997 to July 1998 respondent Doyle managed a property that was rented to an employee of Estee Lauder Inc. Estee Lauder Inc. paid Doyle the monthly rental payments. At the end of April 1998 the renter gave Doyle notice that she would be vacating the unit at the end of May 1998. However, Estee Lauder Inc. erroneously continued rent payments for June and July 1998. Upon discovering its error it stopped payment on both checks, but the June check had already been cashed. Bank records reflect that the June 1998 check, which was made out to "Rent San Francisco!, Attn. Victoria Doyle" for \$2,200.00, was deposited into Rent San Francisco!'s trust account on June 30, 1998. It posted on July 1, 1998. Deposit of the check was not reflected in Rent San Francisco!'s control records. In correspondence to the Department Doyle claimed she never received or cashed the June 1998 Estee Lauder Inc. check.

7. The unit rented to Estee Lauder Inc. was owned by Neal and Virginia Martin. Estee Lauder Inc. notified the Martins that it had erroneously issued a check to cover the June 1998 rental. By letter dated November 2, 1998, the Martins contacted respondent Doyle and indicated that the June 1998 payment should have been returned to Estee Lauder Inc. They requested that she write a check to Estee Lauder Inc. for \$2,200.00 within seven days.

8. In a letter dated January 11, 1999, Doyle informed the Martins that Rent San Francisco! was not responsible for the \$2,200.00 check. Doyle indicated that she had met with the Operations Manager for Bank of America and had been informed that the check had not been cashed by Rent San Francisco! Doyle also asserted that the rental contract for the Martin's unit was solely between Rent San Francisco! and Estee Lauder Inc. and that all communications regarding payments, deposits, tenancy, etc. had to be between those two parties.

9. At hearing Doyle admitted that the check for \$2,200.00 had been cashed on behalf of Rent San Francisco! However, she credibly testified that she was not aware the check had been cashed by Rent San Francisco! until very recently. She explained that in late June/early July 1998 she was in the hospital with asthma. Apparently her assistant deposited the check in her absence. After receiving the Martins' letter Doyle checked with the Operations Manager for Bank of America and was told the check had not gone through the Rent San Francisco! account. In fact the check had been processed through the Rent San Francisco! account. Doyle insists her error regarding the Estee Lauder Inc. check was the result of lack of knowledge, illness and/or negligence, not any intentional wrongdoing. As of the date of the hearing, Estee Lauder Inc. still had not been reimbursed the \$2,200.00. However, Doyle expressed a willingness to serve as a backup payee for respondent Henry, who has apparently already agreed to repay the \$2,200.00

At hearing Doyle also expressed her [mistaken] belief that she did not have any obligation to inform the Martins regarding rental payments on their vacant unit.² It was

² As a real estate salesperson Doyle had a fiduciary duty to administer the lease agreement on behalf of and for the benefit of her principals, the Martins. This would include communicating with them regarding the status of their property.

Doyle's understanding that pursuant to the lease agreement all tenants were the tenants of Rent San Francisco! and not the property owners. She also noted that the Martins had signed a net rent agreement with Rent San Francisco! pursuant to which they only received the rental amount agreed to in their contract. Rent San Francisco! received and held all other monies including security and cleaning deposits, commissions, etc. Doyle did not feel she was accountable to the Martins for money they were not entitled to receive under their contract. However, Doyle did advise the Martins of her findings regarding deposit of the \$2,200.00 June 1998 rent check.

10. The audit also revealed Doyle had failed to maintain accurate records of all trust funds received and disbursed while operating Rent San Francisco! For example, the records that were maintained did not record monthly withdrawals from the trust account through the use of ATM debits. Nor was the disbursement of commission checks to Rent San Francisco!'s business account recorded in trust fund records. In addition, Doyle failed to maintain bank records for audit (for example, she was unable to provide a signature card for the trust account or three years of trust records), failed to keep columnar records of all trust funds deposited and disbursed and failed to perform monthly reconciliation of accounts.

11. Respondent Doyle acknowledges that there were errors made with regard to record keeping and accounting, but insists that she tried to keep orderly records and that these errors were not intentional. She also admits that commissions and fees were withdrawn from the trust account but explained this was primarily in connection with short-term (30 days or less) rentals, which are not subject to the Real Estate Law.

12. Respondent Doyle represents she has been licensed as a real estate salesperson for 15 years, and that she has worked in short terms rentals for the last seven years. She has no prior history of license discipline.

LEGAL CONCLUSIONS

1. Cause for license discipline exists pursuant to Business and Professions Code section 10130 in conjunction with section 10177, subdivision (d) of the Business and Professions Code by reason of the matters set forth in Findings 4(VIII) and (IX) and 5.

2. It was not established that respondent Doyle's failure to repay a \$2,200.00 rental overpayment by Estee Lauder Inc. was the result of fraud or dishonest dealing.

3. Cause for license discipline exists pursuant to Business and Professions Code section 10177, subdivision (g) by reason of the matters set forth in Findings 4-6 and 9-10.

4. Cause for license discipline exists pursuant to Business and Professions Code section 10145 and section 2831 of Title 10, California Code of Regulations, in conjunction with section 10177, subdivision (d) of the Business and Professions Code by reason of the matters set forth in Findings 4(XII)(a) and 10.

5. Cause for license discipline exists pursuant to Business and Professions Code section 10145 and section 2831.2 of Title 10, California Code of Regulations, in conjunction with section 10177, subdivision (d) of the Business and Professions Code by reason of the matters set forth in Findings 4(XIII)(b) and 10.

6. Cause for license discipline exists pursuant to Business and Professions Code section 10148 in conjunction with section 10177, subdivision (d) of the Business and Professions Code by reason of the matters set forth in Findings 4(XIII) and 10.

7. The evidence established that respondent Doyle failed to repay a \$2,200.00 overpayment of rent by a tenant and failed to maintain the trust records for Rent San Francisco in compliance with applicable law. In mitigation, Doyle's failure to timely return the overpayment appeared to be the result of poor accounting and/or record keeping rather than theft or conversion and she readily admits her error. It must also be noted that Doyle has no prior record of discipline in her 15 years as a real estate salesperson. After considering all of the evidence, it is determined that it would not be contrary to the public interest to permit respondent to continue to hold a real estate salesperson license upon an appropriately restricted basis.

ORDER

All licenses and licensing rights of respondent Victoria Doyle under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.6 of the Business and Professions Code if respondent 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 Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

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

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

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

NOT RECAPTURED


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 which 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 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 (6) months from the issuance of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriated examination fee. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent passes the examination.

DATED: June 5, 2000


CHERYL R. TOMPKIN
Administrative Law Judge

NOT ADOPTED

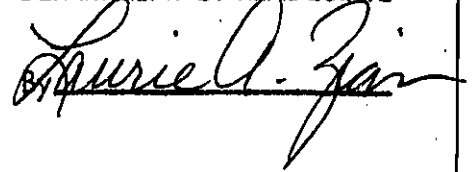
1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED

JUN 16 2000

DEPARTMENT OF REAL ESTATE



7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of) No. H-7774 SF
11 ERNEST WILLIAM HENRY,) STIPULATION AND AGREEMENT
12 Respondent.)
13 _____)

14 It is hereby stipulated by and between Respondent
15 ERNEST WILLIAM HENRY (hereinafter "HENRY" or "Respondent"),
16 individually and by and through Robert G. Holderness, Esq.,
17 attorney of record herein for Respondent, and the Complainant,
18 acting by and through James L. Beaver, Counsel for the Department
19 of Real Estate, as follows for the purpose of settling and
20 disposing of the Accusation filed on December 21, 1999 in this
21 matter ("the Accusation"):

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act (APA), shall instead and in place thereof be

27 DRE No. H-7774 SF

ERNEST WILLIAM HENRY

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

3 2. Respondent has received, read and understands the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. On May 2, 2000, Respondent filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that Respondent
12 understands that by withdrawing said Notice of Defense Respondent
13 will thereby waive Respondent's right to require the Commissioner
14 to prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA and that
16 Respondent will waive other rights afforded to Respondent in
17 connection with the hearing such as the right to present evidence
18 in defense of the allegations in the Accusation and the right to
19 cross-examine witnesses.

20 4. Respondent, pursuant to the limitations set forth
21 below, hereby admits that the factual allegations in the
22 Accusation are true and correct and stipulates and agrees that
23 the Real Estate Commissioner shall not be required to provide
24 further evidence of such allegations.

25 5. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement as
27 her decision in this matter, thereby imposing the penalty and

1 sanctions on Respondent's real estate license and license rights
2 as set forth in the "Order" below. In the event that the
3 Commissioner in her discretion does not adopt the Stipulation and
4 Agreement, it shall be void and of no effect, and Respondent
5 shall retain the right to a hearing and proceeding on the
6 Accusation under all the provisions of the APA and shall not be
7 bound by any admission or waiver made herein.

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

13 7. Respondent understands that by agreeing to this
14 Stipulation and Agreement in Settlement, the findings set forth
15 below in the Determination Of Issues become final, and that the
16 Commissioner may charge Respondent for the costs of any audit
17 conducted pursuant to Section 10148 of the Business and
18 Professions Code to determine if the violations have been
19 corrected. The maximum costs of said audit shall not exceed
20 \$3,201.00.

21 DETERMINATION OF ISSUES

22 By reason of the foregoing stipulations, admissions and
23 waivers and solely for the purpose of settlement of the pending
24 Accusation without hearing, it is stipulated and agreed that the
25 following Determination of Issues shall be made:

26 ///

I

1
2 The acts and omissions of Respondent described in the
3 Accusation are grounds for the suspension or revocation of the
4 licenses and license rights of Respondent under the following
5 provisions of the California Business and Professions Code
6 ("Code") and/or Chapter 6, Title 10, California Code of
7 Regulations ("Regulations"):

8 (a) As to Paragraph XI under Section 10177(g) of the
9 Code;

10 (b) As to Paragraph XII(a) under Section 10145 of the
11 Code and Section 2831 of the Regulations in conjunction with
12 Section 10177(d) of the Code;

13 (c) As to Paragraph XII(b) under Section 10145 of the
14 Code and Section 2831.2 of the Regulations in conjunction with
15 Section 10177(d) of the Code; and

16 (d) As to Paragraph XIII under Section 10148 of the
17 Code in conjunction with Section 10177(d) of the Code.

18 ORDER

19 I

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

26 ///

27 DRE No. H-7774 SF

ERNEST WILLIAM HENRY

1 (a) provides proof satisfactory to the Real Estate
2 Commissioner that Respondent HENRY has paid restitution in the sum
3 of \$2,950.00 to Neal and Virginia Martin; and

4 (b) makes application for the restricted license and pays
5 to the Department of Real Estate the appropriate fee therefor.

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

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

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

22 3. Respondent shall not be eligible to apply for the
23 issuance of an unrestricted real estate license nor for the
24 removal of any of the conditions, limitations or restrictions of
25 a restricted license until one (1) year has elapsed from the
26 effective date of this Decision.

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

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

20 6. Pursuant to Section 10148 of the Business and
21 Professions Code, Respondent shall pay the Commissioner's
22 reasonable cost, not to exceed \$3,201.00, for an audit to
23 determine if Respondent has corrected the trust fund violation(s)
24 found in paragraph I of the Determination of Issues. In
25 calculating the amount of the Commissioner's reasonable cost, the
26 Commissioner may use the estimated average hourly salary for all
27 persons performing audits of real estate brokers, and shall

1 include an allocation for travel time to and from the auditor's
2 place of work. Respondent shall pay such cost within 45 days of
3 receiving an invoice from the Commissioner detailing the
4 activities performed during the audit and the amount of time
5 spent performing those activities. The Commissioner may suspend
6 the restricted license issued to respondent pending a hearing
7 held in accordance with Section 11500, et seq., of the Government
8 Code, if payment is not timely made as provided for herein, or as
9 provided for in a subsequent agreement between the Respondent and
10 the Commissioner. The suspension shall remain in effect until
11 payment is made in full or until Respondent enters into an
12 agreement satisfactory to the Commissioner to provide for
13 payment, or until a decision providing otherwise is adopted
14 following a hearing held pursuant to this condition.

15 May 4, 2000 
16 DATED JAMES L. BEAVER, Counsel
17 Department of Real Estate

17 * * *

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

1 cross-examine witnesses against me and to present evidence in
2 defense and mitigation of the charges.

3 5-4-00
4 DATED

Ernest William Henry
5 ERNEST WILLIAM HENRY
6 Respondent

7 * * *

8 I have reviewed the Stipulation and Agreement as to
9 form and content and have advised my clients accordingly.

10 5/4/00
11 DATED

Robert G. Holderness
12 ROBERT G. HOLDERNESS
13 Attorney for Respondents

14 * * *

15 The foregoing Stipulation and Agreement is hereby
16 adopted by as my Decision in this matter as to Respondent
17 and shall become effective at 12 o'clock noon on
18 July 7, 2000.

19 IT IS SO ORDERED 6-6, 2000.

20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner
22 Paula Reddish Zinnemann

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 21 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ERNEST WILLIAM HENRY and
VICTORIA L. DOYLE,

}

Case No. H-7774 SF

OAH No. N-2000020183

By *Muriel G. Zari*

Respondent

FIRST AMENDED
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, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Friday, May 5, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

Dated: March 21, 2000

DEPARTMENT OF REAL ESTATE

By *James L. Beaver*
JAMES L. BEAVER Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 22 2000

DEPARTMENT OF REAL ESTATE

Laurie A. Zia

In the Matter of the Accusation of

ERNEST WILLIAM HENRY and
VICTORIA L. DOYLE,

Case No. H-7774 SF

OAH No. N-2000020183

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, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Thursday, April 27, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

Dated: February 22, 2000

DEPARTMENT OF REAL ESTATE

By *James L. Beaver*
JAMES L. BEAVER Counsel

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II

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

III

At all times herein mentioned, Respondent HENRY was and now is licensed by the Department as a real estate broker.

IV

At all times herein mentioned, Respondent DOYLE was and now is licensed by the Department as a real estate salesperson in the employ of Respondent HENRY.

V

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

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VI

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

VII

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (hereinafter "trust fund accounts") maintained by Respondents for the handling of trust funds, including but not necessarily limited to the "RENT San Francisco Trust Account", Account No. 02993-17150, maintained by Respondents at the Market - Van Ness, San Francisco, California, branch of Bank of America (hereinafter "Trust 1").

VIII

Between on or about January 1, 1997 and December 31, 1998, Respondent DOYLE operated and controlled the property management business described in Paragraph V, above, and deposited and/or withdrew trust funds or caused such deposits and/or withdrawals to be made.

IX

In acting as described in Paragraph VIII, above, Respondent DOYLE violated Section 10130 of the Code.

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X

Between on or about June 30, 1998 and October 31, 1998, in connection with the collection and disbursement of said trust funds, Respondent DOYLE converted trust funds entrusted to Respondents in the sum of \$2,200.00 to Respondent DOYLE's own use or benefit or to purposes not authorized by the rightful owners of said funds.

XI

Between on or about January 1, 1997 and December 31, 1998, in the course of the real estate brokerage activities described above, Respondent HENRY failed to exercise reasonable supervision over the activities of Respondent DOYLE, a real estate salesperson then licensed under Respondent, in that Respondent HENRY caused, suffered and permitted Respondent DOYLE to act as described in Paragraphs VIII through X, above, and Respondent HENRY failed to provide reasonable review, oversight, inspection, and management of:

- (a) The handling of trust funds by said real estate salesperson;
- (b) Transactions requiring a real estate license conducted by said real estate salesperson; and
- (c) Documents which may have a material effect upon the rights or obligations of a party to such transactions.

XII

Between on or about January 1, 1997 and December 31, 1998, in connection with the collection and disbursement of said trust funds, Respondent HENRY:

1
2 (a) Failed to keep a record in columnar form of all
3 trust funds deposited into and disbursed from Trust 1, as
4 required by Section 2831 of the Regulations; and

5 (b) Failed to reconcile, at least once a month, the
6 balance of all separate beneficiary or transaction records with
7 the record of all trust funds received into and disbursed from
8 Trust 1.

9 XIII

10 Between on or about January 1, 1997, and on or about
11 July 31, 1999, in connection with the collection and
12 disbursement of said trust funds, Respondent HENRY:

13 (a) Failed to retain for three years copies of
14 canceled checks and other trust records executed or obtained by
15 Respondents in connection with transactions for which a real
16 estate broker license is required in course of the property
17 management business described in Paragraph V, above; and/or

18 (b) Failed after notice to make such canceled checks
19 and other trust records available for examination, inspection
20 and copying by the designated representative of the Real Estate
21 Commissioner.

22 XIV

23 The facts alleged in Paragraphs VIII and IX, above,
24 are grounds for the suspension or revocation of the licenses and
25 license rights of Respondent DOYLE under the provisions of
26 Section 10130 of the Code in conjunction with Section 10177(d)
27 of the Code.

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- 5 -

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

9
10 
11 LES R. BETTENCOURT
12 Deputy Real Estate Commissioner

13 Dated at Oakland, California,
14 this 8th day of December, 1999.
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