

PLAG

FILED

JAN 29 2010

DEPARTMENT OF REAL ESTATE
By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
MARK SCOTT CUNNINGHAM,
Respondent.

No. H-7905 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 25, 2001, in Case No. H-7905 SF, a Decision was rendered revoking the real estate broker license of Respondent effective October 25, 2001, 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 December 1, 2001, and Respondent has operated as a restricted licensee since that time.

On May 27, 2009, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker license, and the Attorney General of the State of California has been given notice of the filing of the petition.

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

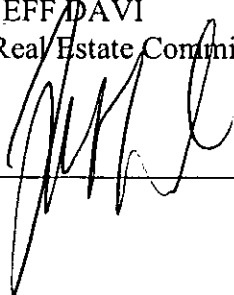
1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement is granted and that a real estate broker license be issued to Respondent if
3 Respondent satisfies the following conditions within twelve (12) months from the date of this
4 order:

- 5 1. Submittal of a completed application and payment of the fee for a real
6 estate broker license.
- 7 2. Submittal of evidence of having taken and successfully completed the
8 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
9 of a real estate license.

10 This Order shall become effective immediately.

11 DATED: 1-21-10

12 JEFF DAVI
13 Real Estate Commissioner

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FILED
OCT 31 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-7905 SF
)	
)	OAH NO. N-2001020443
MARK S. CUNNINGHAM,	)
)	
Respondent.	)
)	

DECISION AFTER REMAND

On June 6, 2001 the Commissioner adopted the Decision in this case to become effective July 2, 2001. Following the June 28, 2001 request for reconsideration by Respondent, the Commissioner denied reconsideration on August 6, 2001. Respondent filed his petition for writ of mandate in Alameda County Superior Court, Case No. 2001-21159, on or about August 22, 2001. By stipulation of the parties for dismissal of the writ of mandate in the Alameda County Superior Court, Case No. 2001-21159 this Decision after Remand is made as set forth herein:

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///

1 Administrative Law Judge Melissa G. Crowell, State of
2 California, Office of Administrative Hearings, heard this matter
3 in Oakland, California on April 9, 2001.

4 David B. Seals, Counsel, represented complainant Les R.
5 Bettencourt, Deputy Real Estate Commissioner.

6 Thomas J. Losavio, Attorney at Law, represented
7 respondent Mark S. Cunningham, who was present.

8 The record was left open for the parties to submit
9 post-hearing briefs. On April 18, 2001, complainant submitted a
10 brief that was marked as Exhibit 4 for identification. On
11 April 26, 2001, respondent submitted a brief that was marked as
12 Exhibit A for identification. The record was closed and the
13 matter was submitted on April 26 , 2001.

14 FACTUAL FINDINGS

15 1. Les R. Bettencourt made and filed the accusation in
16 his official capacity as a Deputy Real Estate Commissioner,
17 Department of Real Estate (Department), State of California.

18 2. Respondent Mark S. Cunningham is licensed and/or has
19 license rights under the Real Estate Law, Part 1 of Division 4 of
20 the Business and Professions Code, as a real estate broker. At
21 all times relevant to this proceeding, respondent was licensed as
22 a real estate broker dba Commercial Realty Group.

23 3. Respondent represented Riley Bower, Inc., an entity
24 interested in purchasing an apartment complex located at 4740
25 Appian Way in El Sobrante. On or about February 17, 1999,
26 respondent prepared a document entitled, Purchase Agreement and
27 Escrow Instructions (hereafter Purchase Agreement). Respondent

1 delivered the Purchase Agreement and Escrow Instructions to Brad
2 Pennington, the agent for the seller of the real property, Edward
3 Dowd, Trustee for the Edward M. Dowd 1977 Trust (seller). On
4 March 12, 1999, the seller accepted the buyer's offer subject to
5 its counteroffer.

6 4. The Purchase Agreement provided for an earnest
7 money deposit of \$25,000. The offer made the following
8 representations with respect to the earnest money deposit:

9 Agent has received from Buyer an earnest money deposit
10 in the amount of twenty-five thousand and no/100
11 Dollars (\$25,000) as a deposit (the "Deposit"),
12 evidenced by a check, to be applied against the
13 purchase price and deposited into escrow. The
effective or acceptance date shall be the date both
Buyer and Seller execute this document.

14 This was not true. When respondent delivered the offer to the
15 seller's agent, his client had not given him a deposit check for
16 \$25,000. Respondent did not tell either the seller or the
17 seller's agent that his client had not given him a deposit check.

18 5. The seller's agent delivered the offer to the
19 seller. Both the seller's agent and the seller assumed that
20 respondent had in his possession an earnest money deposit check
21 for \$25,000. Neither of them confirmed the matter, though.

22 6. The deposit was an important element of the buyer's
23 offer in the eyes of the seller. Respondent's misrepresentation
24 regarding the deposit was substantial.

25 7. Respondent admits that he did not collect the
26 deposit check from his client before he delivered the offer to
27 the seller's agent. Respondent testified that he did not

1 understand that the contract obligated him to do so. In his mind
2 the term "agent" is ambiguous, and it could refer to either the
3 buyer's agent or the seller's agent. There is nothing ambiguous
4 about the contract respondent drafted. The term agent is used
5 only to refer to the buyer's agent.
6

7 8. Respondent alternatively argues that his client did
8 not have an obligation to deliver the deposit until 3 days
9 following acceptance. In this regard he makes reference to an
10 escrow provision which reads:

11 Within three (3) business days following the
12 Acceptance Date, Buyer shall open an Escrow account. .
13 . and shall forthwith deposit therein (i) the Deposit,
14 and (ii) a copy of the fully executed Agreement
15 therein. . .

16 The buyer's obligation to place the deposit in escrow was a
17 separate and distinct obligation from respondent's obligation to
18 hold the earnest money deposit check during the negotiations.
19

20 9. Respondent has been licensed as a real estate broker
21 since 1995. He was licensed as a real estate salesperson from
22 1988 to 1995. There is no record of any prior disciplinary
23 action.
24

25 10. Respondent presented no evidence of rehabilitation
26 or evidence regarding a change in business practices.
27

LEGAL CONCLUSIONS

28 1. Under subdivision (a) of Business and Professions
29 Code section 10176 the Commissioner may suspend or revoke a real
30 estate license where a real estate licensee, in performing or
31 attempting to perform any of the acts within the scope of the
32 Real Estate Law, has been guilty of making a substantial

1 misrepresentation. By reason of the matters set forth in Findings
2 4-8, respondent made a substantial misrepresentation when he
3 represented to the seller at the time of the delivery of the
4 offer that he had the buyer's deposit check in hand when in fact
5 he did not. Cause for license discipline exists pursuant to
6 Business and Professions Code section 10176, subdivision (a).
7

8 2. Respondent's testimony that he did not understand
9 the terms of the offer he drafted is disturbing. It is difficult
10 to believe that respondent did not appreciate the obligation the
11 offer imposed on him to collect the earnest money deposit check
12 from his client. But giving respondent the benefit of the doubt
13 and crediting his testimony, it is even more difficult to
14 understand why respondent does not presently acknowledge that his
15 conduct did not comply with his contractual obligation to hold
16 the buyer's earnest money check.

17 Taking the record as a whole and in that this is
18 respondent's first disciplinary action, the public interest will
19 be adequately protected if respondent is allowed to obtain a
20 restricted real estate broker license.

21 ORDER

22 1. All licenses and licensing rights of Respondent
23 Mark S. Cunningham under the Real Estate Law are revoked;
24 provided, however, a restricted real estate broker license shall
25 be issued to Respondent pursuant to Section 10156.5 of the
26 Business and Professions Code, if Respondent makes application
27 therefore and pays to the Department of Real Estate the
appropriate fee for the restricted license within ninety (90)

1 days from the effective date of the Decision. The restricted
2 license issued to Respondent shall be subject to all of the
3 provisions of Section 10156.7 of the Business and Professions
4 Code and to the following limitations, conditions and
5 restrictions imposed under authority of Section 10156.6 of said
6 Code:

7 A. The restricted license issued to Respondent MARK
8 S. CUNNINGHAM may be suspended prior to hearing by Order of the
9 Real Estate Commissioner in the event of Respondent MARK S.
10 CUNNINGHAM's conviction or plea of nolo contendere to a crime
11 which is substantially related to Respondent MARK S. CUNNINGHAM's
12 fitness or capacity as a real estate licensee.

13 B. The restricted license issued to Respondent MARK
14 S. CUNNINGHAM may be suspended prior to hearing by Order of the
15 Real Estate Commissioner on evidence satisfactory to the
16 Commissioner that Respondent MARK S. CUNNINGHAM has violated
17 provisions of the California Real Estate Law, the Subdivided
18 Lands Law, Regulations of the Real Estate Commissioner or
19 conditions attaching to the restricted license.

20 C. Respondent MARK S. CUNNINGHAM shall not be
21 eligible to apply for the issuance of an unrestricted real estate
22 license nor for the removal of any of the conditions, limitations
23 or restrictions of a restricted license until two (2) years has
24 elapsed from the effective date of this Decision.

25 D. Respondent MARK S. CUNNINGHAM shall, within nine
26 months from the effective date of this Decision, present evidence
27 satisfactory to the Real Estate Commissioner that Respondent MARK

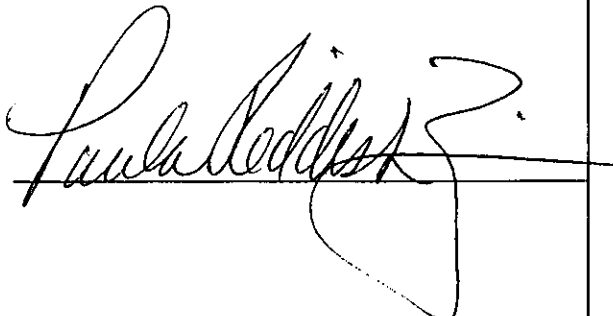
1 S. CUNNINGHAM has, since the most recent issuance of an original
2 or renewal real estate license, taken and successfully completed
3 the continuing education requirements of Article 2.5 of Chapter 3
4 of the Real Estate Law for renewal of a real estate license. If
5 Respondent MARK S. CUNNINGHAM fails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

11 E. Respondent MARK S. CUNNINGHAM shall, within six
12 months from the effective date of this Decision, take and pass
13 the Professional Responsibility Examination administered by the
14 Department including the payment of the appropriate examination
15 fee. If Respondent MARK S. CUNNINGHAM fails to satisfy this
16 condition, the Commissioner may order suspension of Respondent
17 MARK S. CUNNINGHAM's license until Respondent MARK S. CUNNINGHAM
18 passes the examination.

19 This Order shall become effective immediately.

20 DATED: October 25, 2001.

21 PAULA REDDISH ZINNEBANN
22 Real Estate Commissioner

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FILED
AUG 08 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

MARK S. CUNNINGHAM,)

Respondent.)

NO. H-7905 SF

OAH No. N-2001020443

ORDER DENYING RECONSIDERATION

On June 6, 2001, a Decision was rendered in the above-entitled matter. The Decision is to become effective August 1, 2001.

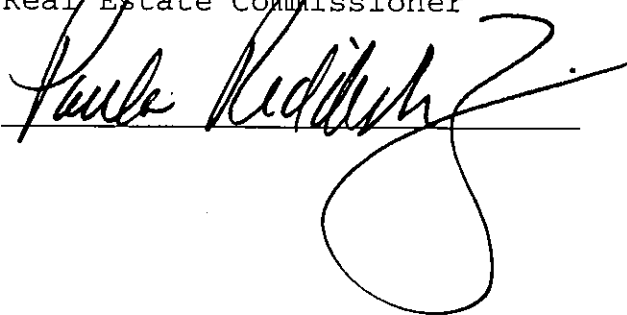
On June 28, 2001, Respondent petitioned for reconsideration of the Decision of June 6, 2001.

On July 25, 2001 I received and read a fax transmission from Respondent's counsel. Included in that transmission was a Declaration from Frank Bower of Riley Bower, Inc., with exhibits consisting of: (1) a letter of intent and associated cover letter dated 2/17/99; (2) a letter from James S. Riley dated March 29, 1999; (3) a letter dated

1 April 12, 1999 from Frank Bower with a fax cover letter dated
2 4/12/99; (4) an April 21, 1999 cover letter from Carol L. Weir
3 with an attached receipt; (5) an April 30, 1999 letter from
4 Carol L. Weir; and (6) an Award of Arbitrator dated 11/18/99.
5 I have viewed those documents but have determined that there
6 has been no showing that Mr. Bower was unavailable to testify
7 at the hearing in this matter nor was there a showing that the
8 exhibits to his declaration were not available to be
9 introduced at the hearing. Furthermore, none of the documents
10 address the overriding issues in this case. Therefore,
11 pursuant to Section 11521 of the Government Code, I have
12 declined to consider those documents in this Petition for
13 Reconsideration, and they shall not be made a part of the
14 record in this matter.

15 I have given due consideration to the petition of
16 Respondent. I find no good cause to reconsider the Decision
17 of June 6, 2001, and reconsideration is hereby denied.

18 IT IS HEREBY ORDERED August 6, 2001.

19 PAULA REDDISH ZINNEMANN
20 Real Estate Commissioner
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FILED
JUL 31 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-7905 SF
MARK S. CUNNINGHAM,	)	
	)	OAH NO. N-2001020443
Respondent.	)	

ORDER FURTHER STAYING EFFECTIVE DATE

On June 6, 2001, a Decision was rendered in the above-entitled matter to become effective July 2, 2001. On June 28, 2001, Respondent petitioned for reconsideration of the Decision of June 6, 2001, and the effective date was stayed to August 1, 2001.

Additional time is needed to evaluate the petition, which was timely filed, and therefore I am granting a further stay of the effective date of the June 6, 2001, Decision solely for the purpose of considering the petition.

IT IS HEREBY ORDERED that the effective date of the Decision of the Commissioner of June 6, 2001, is stayed for an additional ten (10) days.

1 The Decision of the Commissioner of June 6, 2001, shall
2 become effective at 12 o'clock noon on August 13, 2001.

3
4 DATED: July 31, 2001

5 PAULA REDDISH ZINNEMANN
6 Real Estate Commissioner

7
8 By:


9 JOHN R. LIBERATOR
10 Chief Deputy Commissioner

FILED

JUN 28 2001

DEPARTMENT OF REAL ESTATE

By Shelly Elzy

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARK S. CUNNINGHAM,) No. H-7905 SF
Respondent.)

ORDER STAYING EFFECTIVE DATE

On June 6, 2001, a Decision was rendered in the above-entitled matter to become effective July 2, 2001.

On June 28, 2001, Respondent petitioned for reconsideration of the Decision of June 6, 2001.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of June 6, 2001, shall become effective at 12 o'clock noon on August 1, 2001.

DATED: June 28, 2001

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 12 2001

DEPARTMENT OF REAL ESTATE

By Shelly Elzy

* * *

In the Matter of the Accusation of)
MARK S. CUNNINGHAM,) NO. H-7905 SF
Respondent.) OAH NO. N 2001020443

DECISION

The Proposed Decision dated May 22, 2001, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on July 2, 2001.

DATED: June 6, 2001.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MARK S. CUNNINGHAM,

Respondent.

Case No. H-7905 SF

OAH No. N2001020443

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on April 9, 2001.

David B. Seals, Counsel, represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner.

Thomas J. Losavio, Attorney at Law, represented respondent Mark S. Cunningham, who was present.

The record was left open for the parties to submit post-hearing briefs. On April 18, 2001, complainant submitted a brief that was marked as Exhibit 4 for identification. On April 26, 2001, respondent submitted a brief that was marked as Exhibit A for identification. The record was closed and the matter was submitted on April 26, 2001.

FACTUAL FINDINGS

1. Les R. Bettencourt made and filed the accusation in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.
2. Respondent Mark S. Cunningham is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker. At all times relevant to this proceeding, respondent was licensed as a real estate broker dba Commercial Realty Group.
3. Respondent represented Riley Bower, Inc., an entity interested in purchasing an apartment complex located at 4740 Appian Way in El Sobrante. On or about February 17, 1999, respondent prepared a document entitled, Purchase Agreement and Escrow

Instructions (hereafter Purchase Agreement). Respondent delivered the Purchase Agreement and Escrow Instructions to Brad Pennington, the agent for the seller of the real property, Edward Dowd, Trustee for the Edward M. Dowd 1977 Trust (seller). On March 12, 1999, the seller accepted the buyer's offer subject to its counteroffer.

4. The Purchase Agreement provided for an earnest money deposit of \$25,000. The offer made the following representations with respect to the earnest money deposit:

Agent has received from Buyer an earnest money deposit in the amount of twenty-five thousand and no/100 Dollars (\$25,000) as a deposit (the "Deposit"), evidenced by a check, to be applied against the purchase price and deposited into escrow. The effective or acceptance date shall be the date both Buyer and Seller execute this document.

This was not true. When respondent delivered the offer to the seller's agent, his client had not given him a deposit check for \$25,000. Respondent did not tell either the seller or the seller's agent that his client had not given him a deposit check.

5. The seller's agent delivered the offer to the seller. Both the seller's agent and the seller assumed that respondent had in his possession an earnest money deposit check for \$25,000. Neither of them confirmed the matter, though.

6. The deposit was an important element of the buyer's offer in the eyes of the seller. Respondent's misrepresentation regarding the deposit was substantial.

7. Respondent admits that he did not collect the deposit check from his client before he delivered the offer to the seller's agent. Respondent testified that he did not understand that the contract obligated him to do so. In his mind the term "agent" is ambiguous, and it could refer to either the buyer's agent or the seller's agent. There is nothing ambiguous about the contract respondent drafted. The term agent is used only to refer to the buyer's agent.

8. Respondent alternatively argues that his client did not have an obligation to deliver the deposit until 3 days following acceptance. In this regard he makes reference to an escrow provision which reads:

Within three (3) business days following the Acceptance Date, Buyer shall open an Escrow account . . . and shall forthwith deposit therein (i) the Deposit, and (ii) a copy of the fully executed Agreement therein. . . .

The buyer's obligation to place the deposit in escrow was a separate and distinct obligation from respondent's obligation to hold the earnest money deposit check during the negotiations.

9. Respondent has been licensed as a real estate broker since 1995. He was licensed as a real estate salesperson from 1988 to 1995. There is no record of any prior disciplinary action.

10. Respondent presented no evidence of rehabilitation or evidence regarding a change in business practices.

LEGAL CONCLUSIONS

1. Under subdivision (a) of Business and Professions Code section 10176 the Commissioner may suspend or revoke a real estate license where a real estate licensee, in performing or attempting to perform any of the acts within the scope of the Real Estate Law, has been guilty of making a substantial misrepresentation. By reason of the matters set forth in Findings 4-8, respondent made a substantial misrepresentation when he represented to the seller at the time of the delivery of the offer that he had the buyer's deposit check in hand when in fact he did not. Cause for license discipline exists pursuant to Business and Professions Code section 10176, subdivision (a).

2. Respondent's testimony that he did not understand the terms of the offer he drafted is disturbing. It is difficult to believe that respondent did not appreciate the obligation the offer imposed on him to collect the earnest money deposit check from his client. But giving respondent the benefit of the doubt and crediting his testimony, it is even more difficult to understand why respondent does not presently acknowledge that his conduct did not comply with his contractual obligation to hold the buyer's earnest money check.

In addition to failing to demonstrate an understanding of what he did wrong, respondent has not shown that he will conduct himself differently in the future. In the absence evidence of rehabilitation, it cannot be said that the public will be adequately protected by continued licensure as a real estate broker on a restricted basis or otherwise. But in that this is respondent's first disciplinary action, the public interest will be adequately protected if respondent is allowed to obtain a restricted salesperson license.

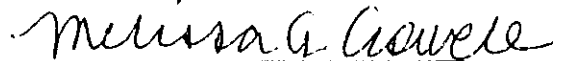
ORDER

All licenses and licensing rights of Respondent Mark S. Cunningham 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 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 that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license not for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.
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 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 including the payment of 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.

DATED: May 22, 2001


MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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

FILED
MAR 06 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

MARK S. CUNNINGHAM

By Shelly Ely

Case No. H-7905 SF

OAH No. N2001020443

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, CALIFORNIA 94612 on MONDAY--APRIL 9, 2001, at the hour of 9:00 A.M., 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 6, 2001

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

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
DEC 19 2000

DEPARTMENT OF REAL ESTATE

By Shelly El

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MARK S. CUNNINGHAM,) No. H-7905 SF
13) ACCUSATION
14 Respondent.)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against MARK S. CUNNINGHAM (hereinafter Respondent),
18 is informed and alleges as follows:

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.

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III

At all times mentioned herein Respondent was licensed as real estate broker dba Commercial Realty Group.

IV

On or about February 17, 1999, Respondent prepared a document entitled Commercial Realty Group, Inc. PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS, on behalf of Riley Bower, Inc. (hereinafter the "Buyer") for purchase of the real property located at 4740 Appian Way, El Sobrante (hereinafter the "Property").

V

On or about March 12, 1999, Edward Dowd, trustee (hereinafter the "Seller"), accepted the purchase agreement referred to in Paragraph IV, subject to a counteroffer.

VI

The purchase agreement provided, in pertinent part, that Respondent had received from Buyer an earnest money deposit in the amount of \$25,000 as a deposit "..., evidenced by a check, to be applied against the Purchase Price and deposited into escrow." However, Respondent had not received nor did he ever receive a deposit from the Buyer in any amount.

VII

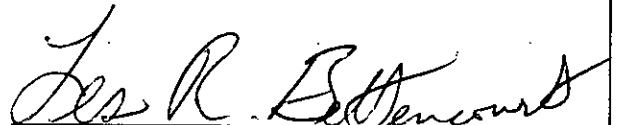
Respondent failed to inform Seller or his agent, Brad Pennington of Marcus & Millichap that no deposit had been received.

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VIII

The acts and/or omissions of Respondent described above are grounds for the revocation or suspension of all Respondent's licenses under Sections 10176(a) and/or 10177(g) of the Code.

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


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 28th day of November, 2000.