

**FILED**

JAN 31 2006

DEPARTMENT OF REAL ESTATE

By L. Frost

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H-7915 SF
TROTTER-VOGEL REALTY, INC., )	
Respondent. )	

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 14, 2001, in Case No. H-7915 SF, a Decision was rendered revoking the corporate real estate broker license of Respondent effective June 20, 2001, but granting Respondent the right to the issuance of a restricted corporate real estate broker license. A restricted corporate real estate broker license was issued to Respondent on June 20, 2001, and Respondent has operated as a restricted licensee since that time.

On September 8, 2004, Respondent petitioned for reinstatement of said corporate real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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

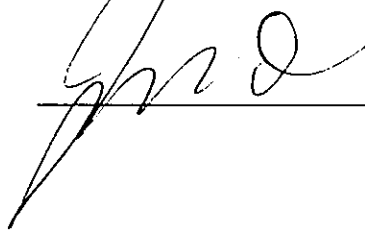
8 NOW, THEREFORE, IT IS ORDERED that Respondent's  
9 petition for reinstatement is granted and that a corporate real  
10 estate broker license be issued to Respondent if Respondent  
11 satisfies the following conditions within nine (9) months from  
12 the date of this Order:

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

15 This Order shall be effective immediately.

16 DATED: 1-20-06

17 JEFF DAVI  
18 Real Estate Commissioner

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

FILED

MAY 31 2001

DEPARTMENT OF REAL ESTATE

By *Lucie A. Z...*

10 BEFORE THE DEPARTMENT OF REAL ESTATE  
11 STATE OF CALIFORNIA

12 \* \* \*

13 In the Matter of the Accusation of ) DRE No. H-7915 SF  
14 TROTTER-VOGEL REALTY, INC., ) STIPULATION AND AGREEMENT  
15 Respondent. )  
16

17 It is hereby stipulated by and between Respondent  
18 TROTTER-VOGEL REALTY, INC. (hereinafter "Respondent")  
19 individually and by and through Stephen W. Thomas, Esq., attorney  
20 of record herein for Respondent, and the Complainant, acting by  
21 and through James L. Beaver, Counsel for the Department of Real  
22 Estate (herein "the Department"), as follows for the purpose of  
23 settling and disposing of the Accusation filed on February 5,  
24 2001 in this matter (herein "the Accusation"):

25 1. All issues which were to be contested and all  
26 evidence which was to be presented by Complainant and Respondent

27 DRE No. H-7915 SF

TROTTER-VOGEL REALTY, INC.

1 at a formal hearing on the Accusation, which hearing was to be  
2 held in accordance with the provisions of the Administrative  
3 Procedure Act (APA), shall instead and in place thereof be  
4 submitted solely on the basis of the provisions of this  
5 Stipulation and Agreement.

6 2. Respondent has received, read and understands the  
7 Statement to Respondent, the Discovery Provisions of the APA and  
8 the Accusation filed by the Department in this proceeding.

9 3. On February 13, 2001, Respondent filed a Notice of  
10 Defense pursuant to Section 11505 of the Government Code for the  
11 purpose of requesting a hearing on the allegations in the  
12 Accusation. Respondent hereby freely and voluntarily withdraws  
13 said Notice of Defense. Respondent acknowledges that Respondent  
14 understands that by withdrawing said Notice of Defense Respondent  
15 will thereby waive Respondent's right to require the Real Estate  
16 Commissioner (herein "the Commissioner") to prove the allegations  
17 in the Accusation at a contested hearing held in accordance with  
18 the provisions of the APA and that Respondent will waive other  
19 rights afforded to Respondent in connection with the hearing such  
20 as the right to present evidence in defense of the allegations in  
21 the Accusation and the right to cross-examine witnesses.

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

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5. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement as her decision in this matter, thereby imposing the penalty and sanctions on Respondent's real estate license and license rights as set forth in the "Order" below. In the event that the Commissioner in her discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

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

7. Respondent understands that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the Determination Of Issues become final, and that the Commissioner may charge Respondent for the costs of any audit conducted pursuant to Section 10148 of the California Business and Professions Code to determine if the violation has been corrected. The maximum costs of said audit shall not exceed \$2,027.52

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending

1 Accusation without hearing, it is stipulated and agreed that the  
2 following Determination of Issues shall be made:

3 I

4 The acts and omissions of Respondent described in the  
5 Accusation are grounds for the suspension or revocation of the  
6 licenses and license rights of Respondent under the provisions of  
7 Section 10145 of the California Business and Professions Code  
8 (herein "the Code") and Section 2832.1 of Chapter 6, Title 10,  
9 California Code of Regulations (herein "the Regulations") in  
10 conjunction with Section 10177(d) of the Code.

11 ORDER

12 I

13 All licenses and licensing rights of Respondent TROTTER-VOGEL  
14 REALTY, INC. under the Real Estate Law are revoked; provided,  
15 however, a restricted corporate real estate broker license shall be  
16 issued to Respondent pursuant to Section 10156.5 of the Business  
17 and Professions Code if Respondent makes application therefor and  
18 pays to the Department of Real Estate the appropriate fee for the  
19 restricted license within 90 days from the effective date of this  
20 Decision. The restricted license issued to Respondent shall be  
21 subject to all of the provisions of Section 10156.7 of the Code and  
22 to the following limitations, conditions and restrictions imposed  
23 under authority of Section 10156.6 of that Code:

24 1. The restricted license issued to Respondent may be  
25 suspended prior to hearing by Order of the Real Estate Commissioner  
26 in the event of Respondent's conviction or plea of nolo contendere

1 to a crime which is substantially related to Respondent's fitness  
2 or capacity as a real estate licensee.

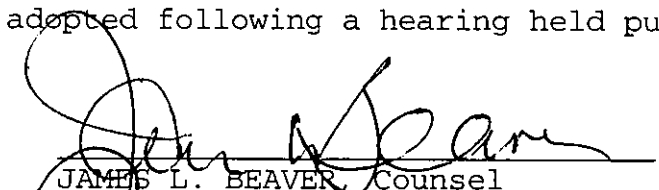
3 2. The restricted license issued to Respondent may be  
4 suspended prior to hearing by Order of the Real Estate Commissioner  
5 on evidence satisfactory to the Commissioner that Respondent has  
6 violated provisions of the California Real Estate Law, the  
7 Subdivided Lands Law, Regulations of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

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

14 4. Pursuant to Section 10148 of the Code, Respondent  
15 shall pay the Commissioner's reasonable cost, not to exceed  
16 \$2,027.52, for an audit to determine if Respondent has corrected  
17 the trust fund violation(s) found in Paragraph I of the  
18 Determination of Issues. In calculating the amount of the  
19 Commissioner's reasonable cost, the Commissioner may use the  
20 estimated average hourly salary for all persons performing audits  
21 of real estate brokers, and shall include an allocation for  
22 travel time to and from the auditor's place of work. Respondent  
23 shall pay such cost within 45 days of receiving an invoice from  
24 the Commissioner detailing the activities performed during the  
25 audit and the amount of time spent performing those activities.  
26 The Commissioner may suspend the restricted license issued to  
27 respondent pending a hearing held in accordance with Section

1 11500, et seq., of the Government Code, if payment is not timely  
2 made as provided for herein, or as provided for in a subsequent  
3 agreement between the Respondent and the Commissioner. The  
4 suspension shall remain in effect until payment is made in full  
5 or until Respondent enters into an agreement satisfactory to the  
6 Commissioner to provide for payment, or until a decision  
7 providing otherwise is adopted following a hearing held pursuant  
8 to this condition.

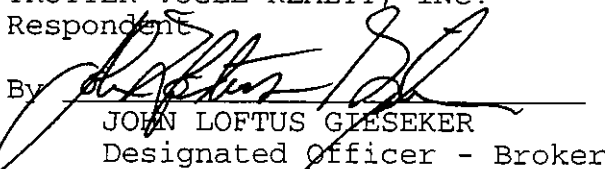
9 April 2, 2001  
DATED

  
JAMES L. BEAVER, Counsel  
Department of Real Estate

\* \* \*

11 I have read the Stipulation and Agreement and have  
12 discussed its terms with my attorney and its terms are understood  
13 by me and are agreeable and acceptable to me. I understand that I  
14 am waiving rights given to me by the California Administrative  
15 Procedure Act (including but not limited to Sections 11506,  
16 11508, 11509, and 11513 of the Government Code), and I willingly,  
17 intelligently, and voluntarily waive those rights, including the  
18 right of requiring the Commissioner to prove the allegations in  
19 the Accusation at a hearing at which I would have the right to  
20 cross-examine witnesses against me and to present evidence in  
21 defense and mitigation of the charges.

22 3/29/01  
23 DATED

TROTTER-VOGEL REALTY, INC.  
Respondent  
By   
JOHN LOFTUS GIESEKER  
Designated Officer - Broker

\* \* \*



1 I have reviewed the Stipulation and Agreement as to  
2 form and content and have advised my client accordingly.

3 3/27/01

4 DATED

SW. Th

5 STEPHEN W. THOMAS  
6 Attorney for Respondent

\* \* \*

7 The foregoing Stipulation and Agreement is hereby  
8 adopted by as my Decision in this matter and shall become  
9 effective at 12 o'clock noon on June 20, 2001.

10 IT IS SO ORDERED May 14, 2001.

11 PAULA REDDISH ZINNEMANN  
12 Real Estate Commissioner

13 Paula Reddish  
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FILED  
FEB 26 2001

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By *Lauriel J. Zai*

In the Matter of the Accusation of

TROTTER-VOGEL REALTY, INC.,

}  
}

Case No. H-7915 SF

OAH No. N-2001020315

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 FRIDAY, APRIL 6, 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: FEBRUARY 22, 2001

DEPARTMENT OF REAL ESTATE  
By *James L. Beaver*  
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 DEPARTMENT OF REAL ESTATE  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000  
5 Telephone: (916) 227-0789  
6 (916) 227-0788 (Direct)

FILED  
FEB - 5 2001

DEPARTMENT OF REAL ESTATE

By *Laurie L. Zorn*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No.: H-7915 SF  
12 TROTTER-VOGEL REALTY, INC., ) ACCUSATION  
13 Respondent. )  
14 \_\_\_\_\_ )

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against TROTTER-VOGEL REALTY, INC. (hereinafter  
18 "TVR"), 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 At all times herein mentioned, Respondent TVR was and  
25 now is and licensed and/or has license rights under the Real  
26 Estate Law (Part 1 of Division 4 of the Business and Professions  
27 Code) (hereinafter "the Code").

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III

At all times herein mentioned, Respondent TVR was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker.

IV

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

V

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 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, Respondent 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 a real estate broker, as described in Paragraph V above, Respondent 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 Respondent were deposited or caused to be deposited by Respondent into one or more bank accounts (hereinafter "trust fund accounts") maintained by Respondent for the handling of trust funds, including but not necessarily limited to:

(a) The "Trotter - Vogel Realty, Inc. dba Prudential California Realty, Trust Account", Account Number 145009705, maintained by Respondent at the San Mateo, California branch of Union Bank of California (hereinafter "Trust Account #1"); and

(b) The "Trotter - Vogel Realty, Inc. dba Prudential California Realty, Trust Account", Account Number 01233-06010, maintained by Respondent at the San Bruno, California, branch of Bank of America (hereinafter "Trust Account #2").

VIII

Between on or about January 1, 2000 and on or about September 30, 2000, in connection with the collection and disbursement of said trust funds, Respondent TVR caused, suffered or permitted the balance of funds in Trust Account #1

1 and Trust Account #2 to be reduced to an amount which, as of  
2 September 29, 2000, was approximately \$2,885.78 less than the  
3 aggregate liability of Respondent TVR to all owners of such  
4 funds, without the prior written consent of the owners of such  
5 funds.

6  
7 PRIOR DISCIPLINARY PROCEEDINGS

8 Effective March 31, 2000, in Case No. H-7738 SF, a  
9 Decision ("the Decision") was issued by the Real Estate  
10 Commissioner determining that cause existed for the suspension  
11 or revocation of the licenses and license rights of Respondent  
12 TVR under the provisions of Sections 2831.2, 2832(a), and 2832.1  
13 of the Regulations and Section 10145 of the Code in conjunction  
14 with Section 10177(d) of the Code, ordering all license and  
15 license rights of Respondent TVR to be suspended for a period of  
16 forty (40) days from the effective date of the Decision, but  
17 further ordering that the suspension be stayed upon the  
18 condition, among other things, that no further cause for  
19 disciplinary action against the real estate license of  
20 Respondent TVR occurs within two (2) years from the effective  
21 date of the Decision.

22 IX

23 The facts alleged above constitute cause for the  
24 suspension or revocation of the licenses and license rights of  
25 Respondent TVR under the provisions of Section 10145 of the Code  
26 and 2832.1 of the Regulations in conjunction with Section  
27 10177(d) of the Code.

///

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 Respondent  
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

11 Dated at Oakland, California,  
12 this 24<sup>th</sup> day of January, 2001.  
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