

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

FILED
OCT 28 2002

DEPARTMENT OF REAL ESTATE

By Juan Antonio

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 REYNOLDS & BROWN and) NO. H-8039 SF
14 MICHAEL SCOTT HURD,) STIPULATION AND AGREEMENT
15 Respondents.)

17 It is hereby stipulated by and between REYNOLDS &
18 BROWN and MICHAEL SCOTT HURD (hereafter Respondents)
19 represented by Eugene H. Miller, Miller, Starr & Regalia,
20 Attorneys at Law, and by Dana G. Parry, Attorney at Law, and
21 the Complainant, acting by and through Deidre L. Johnson,
22 Counsel for the Department of Real Estate, as follows for the
23 purpose of settling and disposing the Accusation filed on
24 January 23, 2002, in this matter:

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

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedures 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. Respondents have received, read and understand the
7 Statement to Respondent, and the Discovery Provisions of the APA
8 filed by the Department of Real Estate in this proceeding.

9 3. On February 7, 2000, Respondents filed their
10 Notices of Defense pursuant to Section 11505 of the Government
11 Code for the purpose of requesting a hearing on the allegations
12 in the Accusation. Respondents hereby freely and voluntarily
13 withdraw said Notices of Defense. Respondents acknowledge that
14 they understand that by withdrawing said Notices of Defense they
15 will each thereby waive their rights to require the Commissioner
16 to prove the allegations in the Accusation at a contested hearing
17 held in accordance with the provisions of the APA, and that they
18 will each waive other rights afforded to them in connection with
19 the hearing, such as the right to present evidence in defense of
20 the allegations in the Accusation and the right to cross-examine
21 witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby admit that the factual allegations pertaining to
24 them in Paragraphs I through VI of the Accusation filed in this
25 proceeding are true and correct and the Real Estate Commissioner
26 shall not be required to provide further evidence of such
27 allegations.

1 5. Without admitting the truth of the allegations
2 pertaining to them contained in the remaining paragraphs of the
3 Accusation, Respondents stipulate that they will not interpose a
4 defense thereto. This Stipulation is based on the factual
5 allegations as to Respondents contained in the Accusation. In
6 the interests of expedience and economy, Respondents choose not
7 to contest these allegations, but to remain silent and understand
8 that, as a result thereof, these factual allegations, without
9 being admitted or denied, will serve as the basis for the
10 disciplinary action stipulated to herein. The Real Estate
11 Commissioner shall not be required to provide further evidence to
12 prove said factual allegations.

13 6. It is understood by the parties that the Real
14 Estate Commissioner may adopt the Stipulation and Agreement as
15 the decision in this matter thereby imposing the penalties and
16 sanctions on the real estate licenses and license rights of
17 Respondents, and each of them, as set forth in the below "Order".
18 In the event that the Commissioner in her discretion does not
19 adopt the Stipulation and Agreement, it shall be void and of no
20 effect, and Respondents shall retain the rights to a hearing and
21 proceeding on the Accusation under all the provisions of the APA
22 and shall not be bound by any admission or waiver made herein.

23 7. Respondents have received, read and understand the
24 ``Notice Concerning Costs of Audits.'' Respondents understand,
25 by agreeing to this Stipulation and Agreement, and after the
26 findings set forth below in the ``Determination of Issues''

27 become final, that the Commissioner may charge Respondents for

1 the costs of the following audits that have been and may be
2 conducted pursuant to Section 10148 of the Business and
3 Professions Code:

4 (a) Audit #OK99-0084 dated March 16, 2001:
5 Not more than \$4,357.90;

6 (b) Future follow-up audit: Not more than
7 \$5,500.00.

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

15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations, admissions and
17 waivers and solely for the purpose of settlement of the pending
18 Accusation as to Respondents REYNOLDS & BROWN and MICHAEL SCOTT
19 HURD without a hearing, it is stipulated and agreed that the
20 following determination of issues shall be made by the
21 Commissioner:

22 I

23 The acts and/or omissions of Respondent REYNOLDS &
24 BROWN violate Section 10145 of the California Business and
25 Professions Code (hereafter the Code), and Sections 2832 and
26 2832.1 of Title 10, California Code of Regulations, and
27 constitute grounds for disciplinary action against the real

1 estate license(s) and license rights of Respondent under the
2 provisions of Sections 10176(e) and 10177(d) of the Code.

3 II

4 The acts and/or omissions of Respondent MICHAEL SCOTT
5 HURD, as stipulated above, constitute grounds for disciplinary
6 action against the real estate license and license rights of
7 Respondent under the provisions of Section 10177(h) of the Code.

8 ORDER

9 A. All real estate licenses and license rights of
10 Respondents REYNOLDS & BROWN and MICHAEL SCOTT HURD shall be
11 suspended for a period of one hundred and eighty (180) days from
12 the effective date of this Order.

13 B. The first eighty (80) days of said suspension as to
14 each Respondent are stayed for a period of two (2) years upon the
15 following terms and conditions:

- 16 (1) Respondents shall each obey all laws, rules and
17 regulations governing the rights, duties and
18 responsibilities of a real estate licensee in the
19 State of California; and,
- 20 (2) The Commissioner may, if a final subsequent
21 determination is made, after hearing or upon
22 stipulation, that cause for disciplinary action
23 against the licenses of Respondents, or either of
24 them, has occurred within two (2) years from the
25 effective date of this Order, vacate and set aside
26 the stay order and reimpose all or a portion of
27 the stayed suspension as to that Respondent.

1 Should no order vacating the stay be made pursuant
2 to this condition or condition C below, the stay
3 imposed herein as to each Respondent shall become
4 permanent.

5 (3) Pursuant to Section 10148 of the Business and
6 Professions Code, Respondents REYNOLDS & BROWN and
7 MICHAEL SCOTT HURD, jointly and severally, shall
8 pay the Commissioner's reasonable costs for the
9 following audits as a result of the above found
10 violations:

- 11 (a) Audit #OK99-0084 dated March 16, 2001:
12 Not more than \$4,357.90;
- 13 (b) Future follow-up audit: Not more than
14 \$5,500.00.

15 In calculating the amount of the Commissioner's
16 reasonable costs for each audit, the Commissioner
17 may use the estimated average hourly salary for
18 all Department Audit Section personnel performing
19 audits of real estate brokers, and shall include
20 an allocation for travel time to and from the
21 auditor's place of work. Respondents shall pay
22 such costs within 60 days of receiving an invoice
23 from the Commissioner detailing the activities
24 performed during each audit and the amount of time
25 spent performing those activities. The
26 Commissioner may suspend the license(s) of either
27 or both Respondents pending a hearing held in
accordance with Section 11500, et seq., of the

1 Government Code, if payment is not timely made as
2 provided for therein, or as provided for in a
3 subsequent agreement between the Respondents and
4 the Commissioner. The suspension(s) shall remain
5 in effect until payment is made in full for each
6 audit or until Respondents enter into an agreement
7 satisfactory to the Commissioner to provide for
8 payment, or until a decision providing otherwise
9 is adopted following a hearing held pursuant to
10 this condition.

11 (6) Respondent MICHAEL SCOTT HURD shall, within
12 nine (9) months from the effective date of this
13 Order, present evidence satisfactory to the Real
14 Estate Commissioner that Respondent has, since the
15 most recent issuance of an original or renewal
16 real estate license, taken and successfully
17 completed the continuing education requirements of
18 Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license, including
20 but not limited to the continuing education course
21 on trust fund accounting and handling specified in
22 Business and Professions Code Section
23 10170.5(a)(3). If Respondent fails to satisfy
24 this condition, the Commissioner may order the
25 suspension of Respondent's license until the
26 Respondent presents such evidence. The
27 Commissioner shall afford Respondent the

1 opportunity for hearing pursuant to the
2 Administrative Procedure Act to present such
3 evidence.

4 (7) Respondent MICHAEL SCOTT HURD shall, within
5 six (6) months from the effective date of this
6 Order, take and pass the Professional
7 Responsibility Examination administered by the
8 Department including the payment of the
9 appropriate examination fee. If Respondent fails
10 to satisfy this condition, the Commissioner may
11 order suspension of Respondent's license until
12 Respondent passes the examination.

13 C. If Respondents REYNOLDS & BROWN and MICHAEL SCOTT
14 HURD, or either of them, petition the Department in writing
15 pursuant to Section 10175.2 of the Code prior to the effective
16 date of this Order, the remaining one hundred (100) days of said
17 suspension as to that Respondent shall be stayed upon condition
18 that:

19 (1) Each petitioning Respondent shall pay a monetary
20 penalty pursuant to Section 10175.2 of the Code at
21 the rate of \$100.00 for each day of suspension for
22 a total monetary penalty of \$10,000.00 as to each
23 Respondent, or \$20,000.00 for both.

24 (2) Said payment(s) shall be in the form of a
25 cashier's check(s) or certified check made payable
26 to the Recovery Account of the Real Estate Fund.

27 Said check(s) must be actually received by the

1 Department prior to the effective date of the
2 Order in this matter.

3 (3) No further cause for disciplinary action against
4 the real estate license of the petitioning
5 Respondent(s) occurs within two (2) years from the
6 effective date of this Order.

7 (4) If the petitioning Respondent(s) fails to pay the
8 monetary penalty in accordance with the terms and
9 conditions of this Order, the Commissioner may,
10 without a hearing, order the immediate execution
11 of all or any part of the stayed suspension, in
12 which event, such Respondent shall not be entitled
13 to any repayment nor credit, prorated or
14 otherwise, for money paid to the Department under
15 the terms of this Order.

16 (5) If the Real Estate Commissioner determines that
17 further cause for disciplinary action against the
18 respective license has occurred within two (2)
19 years from the effective date of this Order, the
20 stay of suspension hereby granted to that
21 Respondent, or such portion of the stay as the
22 Real Estate Commissioner shall deem appropriate,
23 shall be vacated.

24 (6) If the petitioning Respondent(s) pay the monetary
25 penalty and if no further cause for disciplinary
26 action against the real estate license of such
27 Respondent(s) occurs within two (2) years from the

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effective date of this Order, the stay hereby granted in this condition and in condition B above to such Respondent(s) shall become permanent.

July 10, 2002
DATED

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for the Complainant

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

REYNOLDS & BROWN
Respondent


July 3, 2002
DATED

By Michael S. Hurd
MICHAEL SCOTT HURD
President

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July 3, 2002

DATED

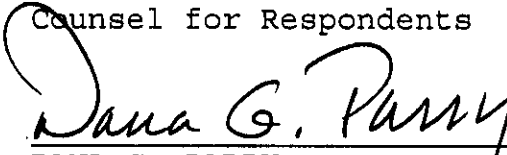

MICHAEL SCOTT HURD
Respondent

APPROVED AS TO FORM:

July 3, 2002
DATED


EUGENE H. MILLER
Counsel for Respondents

July 3, 2002
DATED

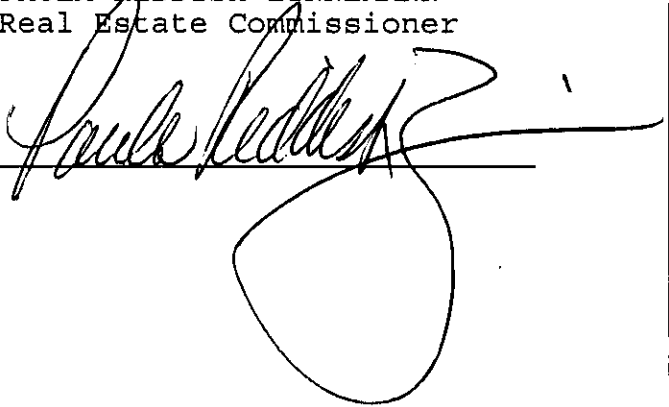

DANA G. PARRY
Counsel for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and the above Order shall become effective
at 12 o'clock noon on November 18, 2002.

IT IS SO ORDERED September 30, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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

FILED
JUN - 7 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

REYNOLDS & BROWN, and
MICHAEL SCOTT HURD,

} Case No. H-8039 SF

} OAH No. N-2002050079

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, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **JULY 16, 2002; JULY 17, 2002; and JULY 18, 2002**, 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.

DEPARTMENT OF REAL ESTATE

Dated: JUNE 7, 2002

By 
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
JAN 23 2002

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 REYNOLDS & BROWN and) NO. H-8039 SF
14 MICHAEL SCOTT HURD,)
15 Respondents.) ACCUSATION

16
17 The Complainant, Les R. Bettencourt, a Deputy Real
18 Estate Commissioner of the State of California, for causes of
19 Accusation against REYNOLDS & BROWN and MICHAEL SCOTT HURD, is
20 informed and alleges as follows:

21 PRELIMINARY ALLEGATIONS

22
23 I

24 The Complainant, Les R. Bettencourt, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation against Respondents in his official capacity and not
27 otherwise.

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II

Respondents REYNOLDS & BROWN and MICHAEL SCOTT HURD are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code).

III

At all times herein mentioned, REYNOLDS & BROWN (hereafter R&B) was and is licensed as a real estate broker corporation.

IV

At all times herein mentioned, Respondent MICHAEL SCOTT HURD (hereafter HURD) was and is licensed by the Department as an individual real estate broker, and as the designated broker officer of REYNOLDS & BROWN.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with R&B and/or HURD, committed such act or omission while engaged in the furtherance of the businesses or operations of Respondents and while acting within the course and scope of their authority and employment.

VI

At all times herein mentioned, Respondent R&B engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker on behalf of others within

1 the State of California, for or in expectation of compensation,
2 including but not limited to the operation and conduct of a
3 property management company pursuant to Section 10131(b) of the
4 Code, and leased or rented, offered to lease or rent, solicited
5 prospective tenants, collected rents on, and/or managed certain
6 real properties in California.

7
8 FIRST CAUSE OF ACTION

9 VII

10 Beginning in or about February of 2001, the Department
11 conducted an audit of the books and records of Respondent R&B.
12 At least during the past three years, R&B managed the real
13 property and cash assets of approximately 45 individual
14 partnerships, joint ventures, and limited liability companies
15 (hereafter the Owners), including but not limited to
16 approximately 60 commercial and industrial buildings, with about
17 10 projects in the construction phase. In acting as a property
18 management broker as alleged above, Respondents R&B and HURD
19 accepted or received funds in trust on behalf of the Owners,
20 including but not limited to rents, lease payments, and security
21 deposits, and disbursed trust funds on behalf the Owners for
22 property management purposes, including but not limited to
23 advertising, maintenance expenses, repairs, and mortgage
24 payments.

25 VIII

26 The trust funds accepted or received by Respondents
27 were deposited or caused to be deposited into three bank accounts

1 maintained by them at Wells Fargo Bank in San Francisco,
2 California as follows:

- 3 (a) Bank Account No. 458-5059512, a general checking
4 account in the name of REYNOLDS & BROWN
5 MANAGEMENT, hereafter referred to as **Receipt**
6 **Account #1**, and generally used for (1) the initial
7 receipt and deposit of trust funds, (2) deposit
8 of "sweep interest" from Account #3 below, and
9 (3) disbursements by transfers to Account #2 and
10 Account #3 below.
- 11 (b) Bank Account No. 475-9602741, a general checking
12 account in the name of REYNOLDS & BROWN, hereafter
13 referred to as **Clearing Account #2**, and generally
14 used for (1) deposits from Account #1,
15 (2) disbursements on behalf of the Owners for
16 property management purposes such as advertising,
17 maintenance expenses, repairs, and mortgage
18 payments, (3) Respondents' management fees,
19 (4) loans to Owners, (5) proceeds to Owners, and
20 (6) Respondent R&B's general operating
21 expenditures.
- 22 (c) Bank Account No. DDA-458-5059512, an uninsured
23 interest-bearing "sweep" account in the name of
24 REYNOLDS & BROWN, hereafter referred to as **Sweep**
25 **Account #3**, and generally used for (1) deposits
26 from Account #1, (2) investments of Owners'
27 funds as more particularly described below, and

1 (3) disbursements of "sweep interest" from
2 investments back to Account #1.

3 IX

4 In connection with the collection and disbursement of
5 the above trust funds, R&B failed to deposit and maintain the
6 trust funds in a trust account, or in a neutral escrow
7 depository, or to deliver them into the hands of the owners of
8 the funds as required by Section 10145 of the Code, in such a
9 manner that as of January 20, 2001, there was a combined trust
10 fund shortage as to all accounts and all Owners in the
11 approximate sum of \$8,888,564.64.

12 X

13 The above trust shortage was caused in whole or in part
14 by negative balances for the accounts of certain Owners,
15 including R&B, due to over-disbursements of funds on their behalf
16 by Respondent R&B at times when those Owners did not have
17 sufficient funds on deposit, including but not limited to
18 disbursements for construction projects.

19 XI

20 Within the past three years, in connection with the
21 collection and disbursement of the above trust funds, R&B
22 operated pursuant to a "Cash Management Agreement" entered into
23 with each of the Owners, whereby Owners agreed to a "Money
24 System" operated and maintained by R&B, in which Owners carrying
25 positive cash balances as a result of their deposits agreed to
26 and permitted R&B to unilaterally "loan" their monies to Owners
27 carrying negative cash balances as a result of their "borrowings"

1 on an on-going basis, including loans to R&B for its principal
2 operational expenses, and for the payment of interest thereon
3 pursuant to a specified formula.

4 XII

5 In connection with the above Money System, R&B failed
6 to obtain the prior written consent of every principal owner of
7 the funds, prior to each disbursement, when such disbursement
8 would reduce the aggregate balance of trust funds in the bank
9 accounts to an amount less than the existing aggregate trust fund
10 liability to all of the owners of said funds, in conformance with
11 Section 2832.1, Title 10, California Code of Regulations
12 (hereafter the Regulations).

13 XIII

14 Within the past three years, in connection with the
15 collection and disbursement of the above trust funds, R&B
16 deposited trust funds belonging to multiple Owners into Sweep
17 Account #3, an interest-bearing account, and:

- 18 (a) Failed to deposit said trust funds into an account
19 insured by the Federal Deposit Insurance
20 Corporation or other agency of the United States;
- 21 (b) Failed to keep the funds of each Owner separate,
22 distinct, and apart in a separate account from
23 funds belong either to Respondents or to any other
24 person for whom Respondents held funds in trust;
25 and,
- 26 (c) Disbursed interest earned on an Owner's funds in
27 the account not just to that Owner only, but to

1 other Owners of trust funds based on a "weighted
2 average" formula.

3 XIV

4 Within the past three years, in connection with the
5 collection and disbursement of the above trust funds, R&B failed
6 to deposit trust funds into a trust fund account(s) in the name
7 of the broker as trustee at a bank or other financial
8 institution, in conformance with Section 10145 of the Code and
9 Section 2832 of the Regulations.

10 XV

11 On or about February 20, 2001, R&B had a positive cash
12 balance in the bank accounts of approximately \$1,032,000.00, and
13 commingled general funds of the company with trust funds
14 belonging to others.

15 XVI

16 The acts and/or omissions alleged above are grounds for
17 the suspension or revocation of the licenses and license rights
18 of Respondent R&B under the following provisions:

- 19 (1) As to Paragraph VIII and XIV, under Section 10145
20 of the Code and Section 2832 of the Regulations in
21 conjunction with Section 10177(d) of the Code.
- 22 (2) As to Paragraphs IX and X, under Section 10145 of
23 the Code in conjunction with Section 10177(d) of
24 the Code.
- 25 (3) As to Paragraphs XI and XII, under Section 2832.1
26 of the Regulations in conjunction with Section
27 10177(d) of the Code.

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(4) As to Paragraph XIII, under Section 10145(d) of the Code in conjunction with Section 10177(d) of the Code.

(5) As to Paragraph XV, under Section 10176(e) of the Code.

SECOND CAUSE OF ACTION

XVII

At all times above mentioned, HURD was responsible, as the designated real estate broker officer, for the supervision and control of the activities conducted on behalf of the company by its officers, agents, and employees, and failed to so exercise reasonable supervision and control. In particular, HURD permitted, ratified and/or caused some or all of the conduct alleged above to occur, and/or failed to take reasonable steps to oversee the daily operations of R&B, including but not limited to the establishment and maintenance of trust accounts and proper trust fund handling, and the implementation of policies, rules, procedures, and systems to review, oversee, inspect and manage the business to ensure compliance by the company with the Real Estate Law.


XVIII

The acts and/or omissions of HURD as alleged above constitute grounds for disciplinary action under the provisions of Section 10177(h) of the Code.

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


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 17th day of January, 2002.