

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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FILED
OCT 10 2002

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 KEITH EDWARD CARROLL and)
13 DAVID AVRON RATOOSH,)
14 Respondents.)

NO. H-8055 SF
STIPULATION AND AGREEMENT

15
16 It is hereby stipulated by and between KEITH EDWARD
17 CARROLL and DAVID AVRON RATOOSH (hereafter Respondents),
18 represented by Thomas C. Lasken, Attorney at Law, and the
19 Complainant, acting by and through Deidre L. Johnson, Counsel
20 for the Department of Real Estate, as follows for the purpose
21 of settling and disposing the Accusation filed on February 28,
22 2002 in this matter:

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

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

3 2. Respondents have each received, read and understand
4 the Statement to Respondent, and the Discovery Provisions of the
5 APA filed by the Department of Real Estate in this proceeding.

6 3. On March 19 and March 21, 2002, Respondents filed
7 their respective Notices of Defense pursuant to Section 11505 of
8 the Government Code for the purpose of requesting a hearing on
9 the allegations in the Accusation. Respondents hereby freely and
10 voluntarily withdraw said Notices of Defense. Respondents
11 acknowledge that they each understand that by withdrawing said
12 Notices of Defense they each will thereby waive their rights to
13 require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA, and that they will waive other rights
16 afforded to them in connection with the hearing such as the right
17 to present evidence in defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.

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

25 5. Without admitting the truth of the allegations
26 contained in the rest of the Accusation as to each Respondent,
27 Respondents each stipulate that they will not interpose a defense

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

10 6. Respondents have received, read and understand the
11 "Notice Concerning Costs of Audits." Respondents KEITH EDWARD
12 CARROLL and DAVID AVRON RATOOSH understand, by agreeing to this
13 Stipulation and Agreement, and after the findings set forth below
14 in the "Determination of Issues" become final, that the
15 Commissioner may charge Respondents KEITH EDWARD CARROLL and
16 DAVID AVRON RATOOSH, jointly and severally, for the costs of the
17 following audits that have been and may be conducted pursuant to
18 Section 10148 of the Business and Professions Code:

- 19 (a) Audit #OK-010047 dated October 9, 2001:
20 Not more than \$1,551.25;
- 21 (b) Future follow-up audit: Not more than
22 \$1,900.00.

23 7. It is understood by the parties that the Real
24 Estate Commissioner may adopt the Stipulation and Agreement as
25 her decision in this matter thereby imposing the penalty and
26 sanctions on the real estate licenses and license rights of
27 Respondents as set forth in the below "Order". In the event that

1 the Commissioner in her discretion does not adopt the Stipulation
2 and Agreement, it shall be void and of no effect, and Respondents
3 shall each retain the right to a hearing and proceeding on the
4 Accusation under all the provisions of the APA and shall not be
5 bound by any admission or waiver made herein.

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

12 * * *

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations and waivers and
15 solely for the purpose of settlement of the pending Accusation
16 without a hearing, it is stipulated and agreed that the following
17 determination of issues shall be made:

18 I

19 The acts and/or omissions of Respondent KEITH EDWARD
20 CARROLL as stipulated above violate Section 10145 of the
21 California Business and Professions Code (hereafter the Code),
22 and Sections 2831.2, 2832, and 2832.1 of Title 10, California
23 Code of Regulations, and constitute grounds for disciplinary
24 action under the provisions of Section 10177(d) of the Code.

25 II

26 The acts and/or omissions of Respondent DAVID AVRON
27 RATOOSH as stipulated above violate Section 10145 of the Code,

1 and constitute grounds for disciplinary action under the
2 provisions of Section 10177(d) of the Code.

3 * * *

4 ORDER

5 I

6 (AS TO KEITH EDWARD CARROLL)

7
8 A. All real estate license(s) and license rights of Respondent
9 KEITH EDWARD CARROLL are revoked.

10 B. A restricted real estate broker license shall be issued to
11 Respondent pursuant to Section 10156.6 of the Code if he
12 makes application therefor and pays to the Department the
13 appropriate fee for said license within ninety (90) days of
14 the effective date of the Order.

15 C. The restricted license issued to Respondent shall be subject
16 to all of the provisions of Section 10156.7 of the Business
17 and Professions Code and to the following conditions and
18 limitations imposed under authority of Section 10156.6 of
19 said Code:

- 20 1) Respondent shall, prior to and as a condition of the
21 issuance of said restricted license, submit proof
22 satisfactory to the Commissioner of having taken and
23 completed the continuing education course on trust fund
24 accounting and handling specified in paragraph (3) of
25 subdivision (a) of Section 10170.5 of the Business and
26 Professions Code from an approved continuing education
27 course provider. Said course may have been completed

1 within one hundred and twenty (120) days prior to the
2 effective date of the order herein.

3 2) The restricted license issued to Respondent may be
4 suspended prior to hearing by order of the Real Estate
5 Commissioner in the event of Respondent's conviction or
6 plea of nolo contendere to a crime which bears a
7 substantial relationship to Respondent's fitness or
8 capacity as a real estate licensee.

9 3) The restricted license may be suspended prior to hearing
10 by Order of the Real Estate Commissioner on evidence
11 satisfactory to the Commissioner that Respondent has
12 violated provisions of the California Real Estate Law,
13 the Subdivided Lands Law, Regulations of the Real Estate
14 Commissioner or conditions attaching to the restricted
15 license.

16 4) Respondent shall not be eligible to apply for the
17 issuance of an unrestricted real estate license, nor the
18 removal of any of the conditions of the restricted
19 license, until two (2) years have elapsed from the
20 effective date of this Order.

21 5) Pursuant to Section 10148 of the Business and Professions
22 Code, Respondent KEITH EDWARD CARROLL, jointly and
23 severally with DAVID AVRON RATOOSH, shall pay the
24 Commissioner's reasonable cost for the following audits
25 as a result of the above found violations:

26 (a) Audit #OK-010047 dated October 9, 2001:
27 Not more than \$1,551.25;

1 (b) Future follow-up audit: Not more than
2 \$1,900.00.

3 In calculating the amount of the Commissioner's
4 reasonable costs for each audit, the Commissioner may use
5 the estimated average hourly salary for all Department
6 Audit Section personnel performing audits of real estate
7 brokers, and shall include an allocation for travel time
8 to and from the auditor's place of work. Respondent
9 KEITH EDWARD CARROLL, jointly and severally with DAVID
10 AVRON RATOOSH, shall pay such costs within sixty (60)
11 days of receiving an invoice from the Commissioner
12 detailing the activities performed during each audit and
13 the amount of time spent performing those activities.
14 The Commissioner may suspend the restricted license
15 issued to Respondent pending a hearing held in accordance
16 with Section 11500, et seq., of the Government Code, if
17 payment is not timely made as provided for therein, or as
18 provided for in a subsequent agreement between Respondent
19 and the Commissioner. The suspension shall remain in
20 effect until payment is made in full for each audit or
21 until Respondent enters into an agreement satisfactory to
22 the Commissioner to provide for payment, or until a
23 decision providing otherwise is adopted following a
24 hearing held pursuant to this condition.

25 6) Respondent shall, within nine (9) months from the
26 effective date of this Order, present evidence
27 satisfactory to the Real Estate Commissioner that

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

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

20 II

21 (AS TO DAVID AVRON RATOOSH)

- 22 A. All real estate license(s) and license rights of Respondent
23 DAVID AVRON RATOOSH under the Real Estate Law shall be
24 suspended for a period of thirty (30) days from the effective
25 date of the Decision.
- 26 B. Said suspension shall be stayed for a period of two (2) years
27 upon the following terms and conditions:

- 1) Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California;
- 2) Pursuant to Section 10148 of the Business and Professions Code, Respondent DAVID AVRON RATOOSH, jointly and severally with KEITH EDWARD CARROLL, shall pay the Commissioner's reasonable cost for the following audits as a result of the above found violations:

(a) Audit #OK-010047 dated October 9, 2001:
Not more than \$1,551.25;

(b) Future follow-up audit: Not more than
\$1,900.00.

In calculating the amount of the Commissioner's reasonable costs for each audit, the Commissioner may use the estimated average hourly salary for all Department Audit Section personnel performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent DAVID AVRON RATOOSH, jointly and severally with KEITH EDWARD CARROLL, shall pay such costs within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during each audit and the amount of time spent performing those activities; and

- 3) That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be

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made, the Commissioner may, in her discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

July 19, 2002
DATED

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for 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.

7/15/02
DATED

Keith Edward Carroll
KEITH EDWARD CARROLL
Respondent

7-15-02
DATED

David Avron Ratoosh
DAVID AVRON RATOOSH
Respondent

1 APPROVED AS TO FORM:

2
3 July 12, 2002
4 DATED

Thomas C. Lasken
5 THOMAS C. LASKEN
6 Attorney for Respondents

7 * * *

8 The foregoing Stipulation and Agreement is hereby
9 adopted as my Decision and shall become effective at 12 o'clock
10 noon on October 30, 2002.

11 IT IS SO ORDERED August 5, 2002.

12 PAULA REDDISH ZINNEMANN
13 Real Estate Commissioner

14 Paula Reddish
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FILED
MAY - 9 2002

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

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

In the Matter of the Accusation of

KEITH EDWARD CARROLL, and
DAVID AVRON RATOOSH,

}

Case No. H-8055 SF

OAH No. N-2002050080

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

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 11, 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: MAY 9, 2002

By *Deidre L. Johnson*
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
FEB 28 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 KEITH EDWARD CARROLL and) NO. H-8055 SF
13 DAVID AVRON RATOOSH,)
14 Respondents.) ACCUSATION

15
16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against KEITH EDWARD CARROLL and DAVID AVRON RATOOSH,
19 is informed and alleges as follows:

20 I

21 Respondents KEITH EDWARD CARROLL and DAVID AVRON
22 RATOOSH are presently licensed and/or have license rights under
23 the Real Estate Law, Part 1 of Division 4 of the California
24 Business and Professions Code (hereafter the Code).

25 II

26 The Complainant, Les R. Bettencourt, a Deputy Real
27 Estate Commissioner of the State of California, makes this

1 Accusation against Respondents in his official capacity and not
2 otherwise.

3 III

4 At all times herein mentioned, Respondents KEITH EDWARD
5 CARROLL and DAVID AVRON RATOOSH (hereafter Respondents) were
6 and are licensed by the Department as real estate brokers,
7 individually, and doing business as partners under the fictitious
8 business name of CASTLE ROCK REALTY.

9 IV

10 At least within the last three years, Respondents
11 engaged in activities on behalf of others for which a real
12 estate license is required under Section 10131(b) of the Code,
13 for or in expectation of compensation, and leased or rented,
14 offered to lease or rent, solicited prospective tenants,
15 collected rents on, and/or managed certain real properties in
16 California.

17 V

18 Beginning in September of 2001, the Department
19 conducted an audit of the above business activities of
20 Respondents for the time period of January 1, 2001, through
21 August 17, 2001 (hereafter the Audit Period). During the course
22 of the activities described in Paragraph IV above, Respondents
23 received and disbursed funds in trust on behalf of others.

24 VI

25 Within the last three years, Respondents deposited the
26 trust funds into the following bank accounts at Wells Fargo Bank
27 in Berkeley, California:

1 (a) Account number 092-6037870, in the name of "Castle
2 Rock Realty Trust Account," (hereafter the Main
3 Trust Account); and,

4 (b) Account number 004-7350640, in the name of "Castle
5 Rock Realty Trust Account," (hereafter the Prior
6 Trust Account), which was inactive as of about
7 June of 2001.

8 VII

9 In connection with the collection and disbursement of
10 trust funds, Respondents failed to deposit and maintain the trust
11 funds in a trust account or neutral escrow depository, or to
12 deliver them into the hands of the owners of the funds as
13 required by Section 10145 of the Code, in such a manner that as
14 of July 31, 2001, there was a trust fund shortage as to both the
15 Main Trust Account and the Prior Trust Account, combined, in the
16 approximate sum of \$29,063.48.

17 VIII

18 In connection with the receipt and disbursement of
19 trust funds as above alleged, Respondents:

20 (a) Failed to reconcile the balance of separate
21 beneficiary or transaction records with the
22 control records of trust funds received and
23 disbursed at least once a month, and/or failed
24 to maintain a record of such reconciliations as
25 to each trust account in conformance with
26 Section 2831.2 of Title 10, California Code of
27 Regulations (hereafter the Regulations);

- 1 (b) Failed to deposit trust funds into either trust
2 account not later than three business days
3 following receipt of the funds by the company as
4 required by Section 2832 of the Regulations; and
5 (c) Failed to obtain the prior written consent of the
6 principals for the reduction of the aggregate
7 balance of trust funds in either trust account to
8 an amount less than the existing aggregate trust
9 fund liability to the owners of said funds, in
10 conformance with Section 2832.1 of the
11 Regulations.

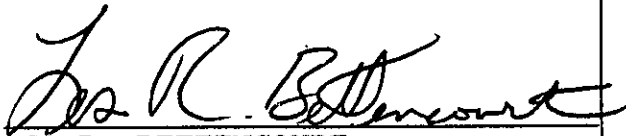
12 IX

13 The acts and/or omissions of Respondents as alleged
14 above constitute grounds for disciplinary action under the
15 following provisions:

- 16 (a) As to Paragraph VII, under Section 10145 of the
17 Code, in conjunction with Section 10177(d) of the
18 Code;
19 (b) As to Paragraph VIII(a), under Section 2831.2 of
20 the Regulations in conjunction with Section
21 10177(d) of the Code;
22 (c) As to Paragraph VIII(b), under Section 2832 of the
23 Regulations in conjunction with Section 10177(d)
24 of the Code; and
25 (d) As to Paragraph VIII(c), under Section 2832.1
26 of the Regulations in conjunction with Section
27 10177(d) 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 license(s) 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 16th day of January, 2002