

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
FEB 22 2003

DEPARTMENT OF REAL ESTATE

By *Terrel J. Mason*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
12 BAK-MAR CORPORATION,)	No. H-8114 SF
13 and JON A. MARCHANT)	OAH No. N-2002070065
14 Respondents.)	<u>STIPULATION AND AGREEMENT</u>

15 It is hereby stipulated by and between BAK-MAR
16 CORPORATION (hereinafter "Respondent BAK-MAR") and JON A.
17 MARCHANT (hereinafter "Respondent MARCHANT") and their attorney
18 of record Terrel J. Mason, and Complainant, acting by and
19 through David A. Peters, Counsel for the Department of Real
20 Estate, as follows for the purpose of settling and disposing of
21 the Accusation filed May 8, 2002 in this matter.

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and
24 Respondents at a formal hearing on the Accusation, which hearing
25 was to be held in accordance with the provisions of this
26 Administrative Procedure Act (APA) (Government Code Section 1500
27 et seq.), shall instead and in place thereof be submitted solely

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

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

7 3. On May 22, 2002, Respondents filed their Notice
8 of Defense pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents hereby freely and voluntarily withdraw
11 their Notice of Defense. Respondents acknowledge that by
12 withdrawing said Notice of Defense they will thereby waive their
13 right to require the Commissioner to prove the allegations in
14 the Accusation at a contested hearing held in accordance with
15 the provisions of the APA and that they will waive other rights
16 afforded to them in connection with the hearing such as the
17 right to present evidence in defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interests of
21 expedience and economy, Respondents choose not to contest these
22 allegations, but to remain silent and understand that, as a
23 result thereof, these factual allegations, without being
24 admitted or denied, will serve as a prima facia basis for the
25 disciplinary action stipulated to herein. The Real Estate
26 Commissioner shall not be required to provide further evidence
27 to prove said factual allegations.

1 5. It is understood by he parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement as
3 her Decision in this matter, thereby imposing the penalty and
4 sanctions on Respondents' real estate licenses and license
5 rights as set forth in the below "Order". In the event that the
6 Commissioner in her discretion does not adopt the Stipulation
7 and Agreement, it shall be void and of no effect, and
8 Respondents shall retain the right to a hearing and proceeding
9 on the Accusation under all the provisions of the APA and shall
10 not be bound by any admission or waiver made herein.

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

18 7. Respondents understand that by agreeing to this
19 Stipulation and Agreement in Settlement, Respondents agree to
20 pay, pursuant to Section 10148 of the Business and Professions
21 Code, the cost of the audit which led to this disciplinary
22 action. The amount of said costs is \$10,349.99.

23 8. Respondents have received, read, and understand
24 the "Notice Concerning Costs of Subsequent Audit". Respondents
25 further understand that by agreeing to this Stipulation and
26 Agreement in Settlement, the findings set forth below in the
27 DETERMINATION OF ISSUES become final, and that the Commissioner

1 may charge Respondents for the costs of any subsequent audit
2 conducted pursuant to Section 10148 of the Business and
3 Professions Code to determine if the violations have been
4 corrected. The maximum costs of said audit will not exceed
5 \$12,356.39.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, admissions
8 and waivers, and solely for the purpose of settlement of the
9 pending Accusation without a hearing, it is stipulated and
10 agreed that the following determination of issues shall be made:

11 I

12 The conduct of Respondent BAK-MAR, as described in the
13 Accusation, constitutes cause for the suspension or revocation
14 of real estate license and license rights of Respondent BAK-MAR
15 under the provisions of Business and Professions Code Section
16 10176(i) of the Business and Professions Code and Section
17 10177(d) of the Code in conjunction Section 10145 of the
18 Business and Professions Code and Sections 2832, 2832.1, 2834,
19 2831.2, 2831.1, and 2831 of Title 10, California Code of
20 Regulations.

21 II

22 The conduct of Respondent MARCHANT, as described in
23 the Accusation, constitutes cause for the suspension or
24 revocation of the real estate license and license rights of
25 Respondent MARCHANT under the provisions of Business and
26 Professions Code Section 10177(h).

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

6 4. Pursuant to Section 10148 of the Business and
7 Professions Code, Respondent BAK-MAR or MARCHANT shall pay the
8 Commissioner's reasonable cost for: a) the audit which led to
9 this disciplinary action and, b) a subsequent audit to
10 determine if Respondents have corrected the trust fund
11 violations found in Paragraph I of the Determination of Issues.
12 In calculating the amount of the Commissioner's reasonable cost,
13 the Commissioner may use the estimated average hourly salary for
14 all persons performing audits of real estate brokers, and shall
15 include an allocation for travel costs, including mileage, time
16 to and from the auditor's place of work and per diem.

17 Respondent BAK-MAR or MARCHANT shall pay such cost within sixty
18 (60) days of receiving an invoice from the Commissioner
19 detailing the activities performed during the audit and the
20 amount of time spent performing those activities. The
21 Commissioner may suspend the restricted license issued to
22 Respondent pending a hearing held in accordance with Section
23 11500, et seq., of the Government Code, if payment is not timely
24 made as provided for herein, or as provided for in a subsequent
25 agreement between the Respondent and the Commissioner. The
26 suspension shall remain in effect until payment is made in full
27 or until the Respondent enters into an agreement satisfactory to

1 the Commissioner to provide for payment, or until a decision
2 providing otherwise is adopted following a hearing held pursuant
3 to this condition.

4 5. Respondent shall prior to the effective date of
5 the Decision provide evidence satisfactory to the Commissioner
6 that the Respondents have cured the trust fund shortage alleged
7 in the Accusation.

8 6. Any restricted real estate broker license issued
9 to Respondent may be suspended or revoked for a violation by
10 Respondent of any of the conditions attaching to the restricted
11 license.

12 7. Any restricted license and licensing rights of
13 Respondent under the Real Estate Law are suspended for a period
14 of ninety (90) days from the effective date of this Decision;
15 provided, however, that if Respondent petitions, said suspension
16 shall be stayed upon condition that:

17 a) Respondent pays a monetary penalty pursuant to
18 Section 10175.2 of the Business and Professions Code at a rate
19 of \$100.00 for each day of suspension for a total monetary
20 penalty of \$9,000.00.

21 b) Said payment shall be in the form of a cashier's
22 check or certified check made payable to the Recovery Account of
23 the Real Estate Fund. Said check must be received by the
24 Department prior to the effective date of the Decision in this
25 matter.

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c) No further cause for disciplinary action against
the real estate license of Respondent occurs within two (2)
years from the effective date of the Decision in this matter.

d) If Respondent fails to pay the monetary penalty
in accordance with the terms and conditions of the Decision, the
Commissioner may, without a hearing, order the immediate
suspension of all or any part of the stayed suspension in which
event the Respondent shall not be entitled to any repayment nor
credit, prorated or otherwise, for money paid to the Department
under the terms of this Decision.

e) If Respondent pays the monetary penalty and if no
further cause for disciplinary action against the real estate
license of Respondent occurs within two (2) years from the
effective date of the Decision, the stay hereby granted shall
become permanent.

II

A. The real estate broker license and all license rights of Respondent JON A. MARCHANT under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 ninety (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

1 and restrictions imposed under authority of Section 10156.6 of
2 the Code:

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

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

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

19 4. Respondent shall, within nine (9) months from the
20 effective date of this Decision, present evidence satisfactory
21 to the Real Estate Commissioner that Respondent has, since the
22 most recent issuance of an original or renewal real estate
23 license, taken and successfully completed the continuing
24 education requirements of Article 2.5 of Chapter 3 of the Real
25 Estate Law for renewal of a real estate license. If Respondent
26 fails to satisfy the condition, the Commissioner may order the
27 suspension of the restricted license until the Respondent

1 presents such evidence. The Commissioner shall afford
2 Respondent the opportunity for a hearing pursuant to the
3 Administrative Procedure Act to present such evidence.

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

11 6. Pursuant to Section 10148 of the Business and
12 Professions Code, Respondent MARCHANT or BAK-MAR shall pay the
13 Commissioner's reasonable cost for: a) the audit which led to
14 this disciplinary action and, b) a subsequent audit to
15 determine if Respondents have corrected the trust fund
16 violations found in Paragraph I of the Determination of Issues.
17 In calculating the amount of the Commissioner's reasonable cost,
18 the Commissioner may use the estimated average hourly salary for
19 all persons performing audits of real estate brokers, and shall
20 include an allocation for travel costs, including mileage, time
21 to and from the auditor's place of work and per diem.
22 Respondents MARCHANT or BAK-MAR shall pay such cost within sixty
23 (60) days of receiving an invoice from the Commissioner
24 detailing the activities performed during the audit and the
25 amount of time spent performing those activities. The
26 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 Respondents and the Commissioner. The
4 suspension shall remain in effect until payment is made in full
5 or until the Respondent enters into an agreement satisfactory to
6 the Commissioner to provide payment, or until a decision
7 providing otherwise is adopted following a hearing held pursuant
8 to this condition.

9 7. Respondent shall prior to the effective date of
10 the Decision provide evidence satisfactory to the Commissioner
11 that Respondents have cured the trust fund shortage alleged in
12 the Accusation.

13 8. Respondent shall, prior to and as a condition of
14 the issuance of the restricted license, submit proof
15 satisfactory to the Commissioner of having taken and
16 successfully completed the continuing education course on trust
17 fund accounting and handling specified in subdivision (a) of
18 Section 10170.5 of the Business and Professions Code. Proof of
19 satisfaction of this requirement includes evidence that
20 Respondent has successfully completed the trust fund account and
21 handling continuing education course within 120 days prior to
22 the effective date of the Decision in this matter.

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1 9. Any restricted real estate broker license issued
2 to Respondent may be suspended or revoked for a violation by
3 Respondent of any of the conditions attaching to the restricted
4 license.

5 1/13/03
6 _____
7 DATED

David A. Peters
 DAVID A. PETERS, Counsel
 DEPARTMENT OF REAL ESTATE

8 * * *

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

20
21 1/13/03
22 _____
23 DATED

Jon A. Marchant
 BAK-MAR CORPORATION
 By: Jon A. Marchant, D.O.
 Respondent

24 1/13/03
25 _____
26 DATED

Jon A. Marchant
 JON A. MARCHANT
 Respondent

27 ///

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

3
4 January 3, 2003
5 DATED

Terrel J. Mason
6 TERREL J. MASON
7 Attorney for Respondents

8 * * *

9 The foregoing Stipulation and Agreement for
10 Settlement is hereby adopted by the Real Estate Commissioner as
11 her Decision and Order and shall become effective at 12 o'clock
12 noon on MARCH 14, 2003.

13 IT IS SO ORDERED

January 27, 2003
14 PAULA REDDISH ZINNEMANN
15 Real Estate Commissioner

16 Paula Reddish
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FILED
SEP 27 2002

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

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BAK-MAR CORPORATION,
and JON A. MARCHANT,

} Case No. H-8114 SF

} OAH No. N-2002070065

Respondents

**FIRST AMENDED
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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **TUESDAY, DECEMBER 3, 2002**, 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.

DEPARTMENT OF REAL ESTATE

Dated: SEPTEMBER 27, 2002

By

David A. Peters
DAVID A. PETERS, Counsel

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

FILED
JUL 26 2002

DEPARTMENT OF REAL ESTATE

Lucie A. Z...

In the Matter of the Accusation of

BAK-MAR CORPORATION,
and JON A. MARCHANT,

Case No. H-8114 SF

OAH No. N-2002070065

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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **THURSDAY, OCTOBER 10, 2002**, 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.

DEPARTMENT OF REAL ESTATE

Dated: JULY 26, 2002

By *David A. Peters*
DAVID A. PETERS, Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)

FILED

MAY - 8 2002

DEPARTMENT OF REAL ESTATE

By Muriel A. Zari

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BAK-MAR CORPORATION,) No. H-8114 SF
13 and JON A. MARCHANT,) ACCUSATION
14 Respondent.)

15 The Complainant, Janice Waddell, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against BAK-MAR CORPORATION aka Marchant Associates Realtors,
18 Marchant Chapman Realtors and MCR Loans (hereinafter "Respondent
19 BAK-MAR") and JON A. MARCHANT (hereinafter "Respondent
20 MARCHANT") is informed and alleges as follows:

21 I

22 The Complainant, Janice Waddell, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 in her official capacity.

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1 II

2 Respondents are licensed and/or have license rights
3 under the Real Estate Law (Part 1 of Division 4 of the Business
4 and Professions Code) (hereinafter "the Code") as follows:

5 BAK-MAR CORPORATION - as a real estate broker
6 corporation.

7 JON A. MARCHANT - as a real estate broker and as
8 designated broker-officer for Respondent BAK-MAR.

9 III

10 Whenever reference is made in an allegation in this
11 Accusation to an act or omission of "Respondents", such
12 allegation shall be deemed to mean the act or omission of each
13 of the Respondents named in the caption hereof, acting
14 individually, jointly, and severally.

15 IV

16 At all times herein mentioned, Respondents engaged in
17 the business of, acted in the capacity of, advertised or assumed
18 to act as a real estate broker in the State of California,
19 within the meaning of Section 10131(b) of the Code, wherein
20 Respondents for or in expectation of a compensation solicited
21 prospective tenants for, negotiated rental agreements for and
22 collected rents from real properties owned by another or others
23 and otherwise managed real properties located in or near San
24 Rafael, California.

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1 V

2 Beginning on or about October 10, 2001, the Department
3 conducted an audit of Respondents' property management
4 activities for the time period of January 1, 1998 to August 31,
5 2001 as set forth in Audit No. OK 010101 dated January 16, 2002.
6 During the course of the property management activities
7 described in Paragraph IV above, Respondents received and
8 disbursed funds held in trust on behalf of another or others.

9 VI

10 Beginning on or before January 1, 1998 through on or
11 after August 31, 2001, Respondents maintained the following
12 trust fund accounts:

13	<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
14	M. Chapman Realtors Prop. Mgmt Trust	Bank of Marin
15	Account No. 0002300333	San Rafael, California
	(hereinafter "Account #1")	
16	Money Market Account	Bank of Marin
17	Account No. 0002515278	San Rafael, California
	(hereinafter "Account #2")	
18	Money Market Account	Bank of Marin
19	Account No. 0002518504	San Rafael, California
	(hereinafter "Account #3")	
20	Money Market Account	Bank of Marin
21	Account No. 0002218843	San Rafael, California
	(hereinafter "Account #4")	

22 VII

23 In connection with the receipt and disbursement of
24 trust funds described in Paragraph V above, Respondents failed
25 to maintain Account #2, Account #3, and Account #4 in the name
26 of Respondent BAK-MAR, or a fictitious name in which Respondent
27 BAK-MAR was licensed by the Department, as trustee at a bank or

1 other financial institution in violation of Section 10145 of the
2 Code and Section 2832 of Title 10, California Code of
3 Regulations (hereinafter "Regulations").

4 VIII

5 In connection with the receipt and disbursement of
6 trust funds described in Paragraph V above, Respondents failed
7 to deposit and maintain trust funds in Account #1 in such manner
8 that as of August 31, 2001, there was a shortage of \$119,089.67
9 of trust funds.

10 IX

11 In connection with the receipt and disbursement of
12 trust funds described in Paragraph V above, Respondents failed
13 to deposit and maintain trust funds in Account #1, Account #2,
14 Account #3, and Account #4 in such manner that as of July 20,
15 1999, there was a shortage of \$83,947.41 of trust funds.

16 X

17 Respondents failed to obtain the prior written consent
18 from each of the principals for the reduction of the aggregate
19 balance of trust funds in said accounts to an amount less than
20 the existing aggregate trust fund liability to the owners of
21 said funds as required by Section 2832.1 of the Regulations.

22 XI

23 In connection with the receipt and disbursement of
24 trust funds described in Paragraph V above, Respondents
25 permitted withdrawals to be made from Account #1, Account #2,
26 Account #3, and Account #4, by someone other than a corporate
27 officer, or a salesperson licensed to Respondent BAK-MAR and

1 authorized in writing by Respondents to withdraw said funds, or
2 an authorized unlicensed employee covered by a fidelity bond
3 indemnifying Respondent BAK-MAR against loss in an amount
4 sufficient to cover the maximum amount of funds to which the
5 employee had access at any time, as required by Section 2834 of
6 the Regulations.

7 XII

8 In connection with the receipt and disbursement of
9 trust funds described in Paragraph V above, Respondents failed
10 as to Account #1, Account #2, Account #3 and Account #4, to
11 adequately maintain and perform a reconciliation with the
12 records of all trust funds received and disbursed as required by
13 Section 2831.1 of the Regulations at least once per month, in
14 conformance with Section 2831.2 of the Regulations.

15 XIII

16 In connection with the receipt and disbursement of
17 trust funds described in Paragraph V above, Respondents failed,
18 as to Account #1, Account #2, Account #3, and Account #4, to
19 adequately maintain a separate record for each beneficiary or
20 transaction accounting therein for all said trust funds
21 received, deposited, and disbursed in the manner required by
22 Section 2831.1 of the Regulations.

23 XIV

24 In connection with the receipt and disbursement of
25 trust funds described in Paragraph V above, Respondents failed,
26 as to Account #1, Account #2, Account #3, and Account #4, to
27 maintain adequate columnar records of all trust funds received

1 and disbursed in the manner required by Section 2831 of the
2 Regulations.

3 XV

4 In connection with the receipt and disbursement of
5 trust funds described in Paragraph V above, Respondents
6 converted trust funds to their own use or uses or purposes not
7 authorized by the rightful owners of said funds. The exact
8 amount of said converted trust funds is unknown to Complainant,
9 but well known to Respondent.

10 XVI

11 The facts alleged above, are grounds for the
12 suspension or revocation of Respondents' licenses and/or license
13 rights under the following sections of the Code and Regulations:

14 (1) As to Paragraph VII, under Section 10177(d) of
15 the Code in conjunction with Section 2832 of the Regulations;

16 (2) As to Paragraphs VIII and IX, under Section
17 10177(d) of the Code in conjunction with Section 10145 of the
18 Code;

19 (3) As to Paragraph X, under Section 10177(d) of the
20 Code in conjunction with Section 2832.1 of the Regulations;

21 (4) As to Paragraph XI, under Section 10177(d) of the
22 Code in conjunction with Section 2834 of the Regulations;

23 (5) As to Paragraph XII, under Section 10177(d) of
24 the Code in conjunction with Section 2831.2 of the Regulations;

25 (6) As to Paragraph XIII, under Section 10177(d) of
26 the Code in conjunction with Section 2831.1 of the Regulations;

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1 (7) As to Paragraph XIV, under Section 10177(d) of
2 the Code in conjunction with Section 2831 of the Regulations;
3 and

4 (8) As to Paragraph XV, under Section(s) 10176(i)
5 and/or 10177(j) of the Code.

6 In the alternative, the acts and/or omissions of
7 Respondent MARCHANT described above, constitute failure on the
8 part of Respondent MARCHANT, as designated broker-officer for
9 Respondent BAK-MAR, to exercise reasonable supervision and
10 control over the licensed activities of Respondent BAK-MAR
11 required by Section 10159.2 of the Code, and is cause for the
12 suspension or revocation of Respondent MARCHANT's license and or
13 license rights under Section 10177(h) of the Code.

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

21
22 
23 JANICE WADDELL
24 Deputy Real Estate Commissioner

25 Dated at Los Angeles, California,
26 this 12th day of April, 2002.
27