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FEB 13 2004

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

JANE E. BROWN, INC. and)

JANE EVANGELINE BROWN,)

Respondents.)

NO. H-8468 SF

DECISION AFTER REJECTION

This matter was heard before Michael C. Cohn,
Administrative Law Judge, State of California, Office of
Administrative Hearings, in Oakland, California on October 29,
2003.

On November 4, 2003, the Administrative Law Judge
submitted a Proposed Decision recommending that Respondent's real
estate salesperson license be suspended for a period of 7 days
provided, however, that if respondent petitions, said suspension
shall be stayed upon condition that respondent pays a monetary
penalty at the rate of \$200 for each day of the suspension for a
total monetary penalty of \$1,400. I declined to adopt the
Proposed Decision as my Decision. Pursuant to Section 11517(c)

1 of the Government Code of the State of California, Respondent was
2 served with notice of my determination not to adopt the Proposed
3 Decision of the Administrative Law Judge along with a copy of
4 said Proposed Decision. Respondent was notified that the case
5 would be decided by me upon the record, the transcript of
6 proceedings held on October 29, 2003, and upon any written
7 argument offered by Respondent and Complainant.

8 Both Complainant and Respondent have submitted written
9 argument.

10 I have given careful consideration to the record in
11 this case including the transcript of proceedings held on October
12 29, 2003, and the written arguments both Respondent and
13 Complainant.

14 The following shall constitute the Decision of the Real
15 Estate Commissioner in this proceeding:

16 This matter was heard before Michael C. Cohn,
17 Administrative Law Judge, State of California, Office of
18 Administrative Hearings, in Oakland, California on October 29,
19 2003.

20 Complainant Les R. Bettencourt, Deputy Real Estate
21 Commissioner of the State of California, was represented by David
22 B. Seals, Counsel, Department of Real Estate.

23 Respondent Jane Evangeline Brown was present and she
24 and respondent Jane E. Brown, Inc., were represented by J. Anne
25 Rawlins, Attorney at Law, 1007 7TH Street, Suite 300, Sacramento,
26 California 95814.

27 The matter was submitted on October 29, 2003.

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1 Respondent Brown was the only person who made deposits to and
2 withdrawals from the account.

3 5. On March 29, 2001, Respondent JEB deposited into
4 the trust account a check for \$3,000 for repairs to an office
5 building Respondent JEB had purchased. These were not trust
6 funds. Therefore, Respondent JEB commingled its own funds with
7 trust funds, thereby violating Business and Professions Code
8 Section 10176(e) and Section 2835, Title 10, California Code of
9 Regulations (hereinafter the "Regulations").

10 6. Respondent JEB failed to maintain separate records
11 for each beneficiary or transaction, thereby violating Section
12 2831.1 of the Regulations.

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14 7. Because Respondent JEB did not maintain separate
15 records for each beneficiary, it was unable to reconcile the
16 balance of all separate beneficiary records with the record of
17 all trust funds received, thereby violating Section 2831.2 of the
18 Regulations. In addition the lack of separate records and
19 reconciliation made it impossible to determine accountability and
20 therefore determine whether there was a shortage in the trust
21 account.

22 8. Respondent JEB's trust account was an interest-
23 bearing account. Respondent JEB failed to keep the trust funds in
24 the account separate, distinct and apart from the broker's own
25 funds, and it failed to disclose to the trust beneficiaries the
26 nature of the account and how interest would be calculated and
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1 paid. Respondent JEB thereby violated Section 10145(d) of the
2 Code.

3 9. Some trust funds received by Respondent JEB were
4 not placed in the trust account, but were deposited into escrow
5 depositories. Respondent JEB failed to maintain a log of such
6 funds received but not placed into the trust account, thereby
7 violating Section 2831 of the Regulations.

8 10. At least some of the mortgage loan disclosure
9 statements used by Respondent JEB did not meet legal
10 requirements. In some cases, the disclosure statements were not
11 signed or dated by the borrowers. In some cases, there was no
12 disclosure of funds to be paid the broker and/or the broker's
13 license was not included and/or there was no statement that the
14 estimate was not a loan commitment. Respondent JEB thereby
15 violated Section 10240 of the Code and Sections 2840 and 2840.1
16 of the Regulations.

17 11. Respondent JEB failed to timely notify the
18 Department of the employment of real estate salesperson Barbara
19 Ann Newman. Although Respondent JEB had an employment agreement
20 with Newman dated April 18, 2001, the Department had not been
21 notified of her employment by the time of the audit in January
22 2002. Respondent JEB thereby violated Section 10161.8 of the Code
23 and section 2752 of the Regulations.

24 12. Respondent JEB failed to timely notify the
25 Department of the termination of the employment of real estate
26 salesperson Cris Wilkerson. Although Respondent BROWN testified
27 that Wilkerson was never terminated, but merely went on inactive

1 status, this conflicts with her statement at the time of the
2 audit. In January 2002, Respondent BROWN told the auditor that
3 Wilkerson had been terminated several months prior to December
4 31, 2001. By failing to timely notify the Department of
5 Wilkerson's termination, Respondent JEB violated Business and
6 Professions Code section 10161.8.

7 13. Respondent Brown was first licensed as a real
8 estate salesperson in May 1990 and as a real estate broker in
9 January 1991. Respondent Brown testified at the hearing that she
10 is also licensed to act as a broker for real estate sales and
11 loans in Virginia and Georgia, and for real estate loans only in
12 South Carolina and Texas. At the time of the audit, Respondent
13 JEB had six real estate salespersons. Neither Respondent JEB nor
14 ///

15 Respondent BROWN have been previously disciplined by the
16 Department.

17 14. Respondent Brown acknowledged that she failed to
18 comply in a number of respects with the laws and regulations
19 governing trust accounts and admits she was not aware of all
20 those laws and regulations. Although Respondent BROWN deposited
21 credit report and appraisal fees collected from potential
22 borrowers into Respondent JEB's trust account, when she paid the
23 credit reporting firm or appraisers she did so out of Respondent
24 JEB 's operating account. Because of that, she testified that she
25 came to feel that all the money left in the trust account
26 belonged to her. And she therefore indicated that she did not see
27 a problem in commingling non-trust funds in the account.

1 15. Respondent Brown testified that she has changed
2 her policies and procedures to correct most or all of the
3 deficiencies revealed by the audit. However, she provided no
4 verifiable tangible evidence at the hearing to support that
5 claim.

6 LEGAL CONCLUSIONS

7 1. Business and Professions Code sections 10177(d)
8 provides that the Department may suspend or revoke the license of
9 a real estate licensee who has willfully disregarded or violated
10 the Real Estate Law or the commissioner's regulations. Section
11 10176(e) provides the Department may suspend or revoke the
12 license of a real estate licensee who commingles the licensee's
13 own money with the money of others being held by the licensee.
14 Section 10177(g) provides that the Department may suspend or
15 revoke the license of a real estate licensee who has demonstrated
16 negligence or incompetence in performing acts for which a license
17 is required. And section 10177(h) provides that the Department
18 may suspend or revoke the license of a real estate broker who has
19 failed to exercise reasonable supervision over the activities of
20 the corporation of which he or she is designated officer.

21 2. Cause for disciplinary action against Respondent
22 JEB and Respondent BROWN exists pursuant to Business and
23 Professions Code section 10177(d) by reason of the matters set
24 forth in Findings 2 through 12. While Respondent BROWN did not
25 intentionally violate the laws and regulations set forth in those
26 findings, she nevertheless did so willfully in that her actions
27 were purposeful, not accidental or involuntary. (See Penal Code

1 section 7; Murrill v. State Board of Accountancy (1950) 97
2 Cal.App.2d 709, 713.)

3 3. Cause for disciplinary action against Respondent
4 JEB and Respondent BROWN exists pursuant to Business and
5 Professions Code section 10176(e) by reason of the matters set
6 forth in Findings 2 through 5.

7 4. The matters set forth in Findings 2 through 12
8 demonstrate that Respondent BROWN failed to exercise reasonable
9 supervision over the activities of Respondent JEB, and that she
10 acted negligently or incompetently. Cause for disciplinary action
11 against her thereby exists pursuant to Business and Professions
12 Code sections 10177(g) and 10177(h).

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15 ORDER

16 I

17 All licenses and licensing rights of Respondents JANE
18 E. BROWN, INC. and JANE EVANGELINE BROWN under the Real Estate
19 Law are suspended for a period of sixty (60) days from the
20 effective date of this Order; provided, however, that:

21 1. Forty-six (46) days of said suspension shall be
22 stayed for two (2) years upon the following terms and conditions:

23 A. Respondents shall obey all laws, rules and
24 regulations governing the rights, duties and
25 responsibilities of a real estate licensee in the
26 State of California; and,

1 B. That no final subsequent determination be
2 made, after hearing or upon stipulation, that cause
3 for disciplinary action occurred within two (2) years
4 from the effective date of this Order. Should such a
5 determination be made, the Commissioner may, in his
6 discretion, vacate and set aside the stay order and
7 reimpose all or a portion of the stayed suspension.
8 Should no such determination be made, the stay imposed
9 herein shall become permanent.

10 2. The remaining fourteen (14) days of said 60-day
11 suspension shall be stayed, as to each Respondent individually,
12 upon the condition that each Respondent petition pursuant to
13 Section 10175.2 of the Business and Professions Code and each
14 pays a monetary penalty pursuant to Section 10175.2 of the
15 Business and Professions Code at a rate of \$100 for each day of
16 the suspension for a total monetary penalty of \$1,400 for each
17 Respondent:

18 A. Said payment shall be in the form of a
19 cashier's check or certified check made payable to the
20 Recovery Account of the Real Estate Fund. Said check
21 must be delivered to the Department prior to the
22 effective date of the Order in this matter.

23 B. No further cause for disciplinary action
24 against the Real Estate licenses of said Respondents
25 occurs within two (2) years from the effective date of
26 the decision in this matter.

1 C. If any Respondent fails to pay the
2 monetary penalty as provided above prior to the
3 effective date of this Order, the stay of the
4 suspension shall be vacated as to that Respondent and
5 the order of suspension shall be immediately executed,
6 under this Paragraph 2 of this Order, in which event
7 the said Respondent shall not be entitled to any
8 repayment nor credit, prorated or otherwise, for the
9 money paid to the Department under the terms of this
10 Order.

11 D. If said Respondents pay the monetary
12 penalty and any other moneys due under this Order and
13 if no further cause for disciplinary action against the
14 real estate licenses of said Respondents occurs within
15 two (2) years from the effective date of this Order,
16 the entire stay hereby granted under Paragraphs 1 and 2
17 of this Order, as to said Respondent only, shall become
18 permanent.

19 3. Respondent JANE EVANGELINE BROWN shall, prior to
20 the date this Decision After Rejection becomes effective, submit
21 proof satisfactory to the Commissioner of having taken and
22 successfully completed the continuing education course on trust
23 fund accounting and handling specified in subdivision (a) of
24 Section 10170.5 of the Business and Professions Code. Proof of
25 satisfaction of this requirement includes evidence that
26 Respondent JANE EVANGELINE BROWN has successfully completed the
27 trust fund account and handling continuing education course

1 within 120 days prior to the effective date of the Decision After
2 Rejection in this matter.

3 4. Pursuant to Section 10148 of the Business and
4 Professions Code, Respondents JANE EVANGELINE BROWN and JANE E.
5 BROWN, INC. shall pay the Commissioner's reasonable cost for the
6 audit which led to this disciplinary action and a subsequent
7 audit to determine if Respondent JANE E. BROWN, INC. has
8 corrected the trust fund violation(s) found in Paragraph 2 of the
9 LEGAL CONCLUSIONS. In calculating the amount of the
10 Commissioner's reasonable cost, the Commissioner may use the
11 estimated average hourly salary for all persons performing audits
12 of real estate brokers, and shall include an allocation for
13 travel time to and from the auditor's place of work. Respondents
14 JANE EVANGELINE BROWN and JANE E. BROWN, INC. shall pay such cost
15 within 60 days of receiving an invoice from the Commissioner
16 detailing the activities performed during the audit and the
17 amount of time spent performing those activities. The
18 Commissioner may suspend the licenses of Respondents JANE
19 EVANGELINE BROWN and JANE E. BROWN, INC. pending a hearing held
20 in accordance with Section 11500, et seq., of the Government
21 Code, if payment is not timely made as provided for herein, or as
22 provided for in a subsequent agreement between Respondents JANE
23 EVANGELINE BROWN and JANE E. BROWN, INC. and the Commissioner.
24 The suspension shall remain in effect until payment is made in
25 full or until Respondents JANE EVANGELINE BROWN and JANE E.
26 BROWN, INC. enter into an agreement satisfactory to the
27 Commissioner to provide for payment, or until a decision

1 providing otherwise is adopted following a hearing held pursuant
2 to this condition.

3 This Decision shall become effective at 12 o'clock noon
4 on MARCH 4 , 2004.

5 IT IS SO ORDERED February 13, 2004.

7 JOHN R. LIBERATOR
8 Acting Real Estate Commissioner
9 by Robert T. Wilson Chief Counsel

10 Robert T. Wilson

FILED
DEC 02 2003

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
JANE E. BROWN, INC., and	)	No. H-8468 SF
JANE EVANGELINE BROWN,	)	
Respondent.	)	N-2003080037

NOTICE

TO: JANE E. BROWN, INC., and JANE EVANGELINE BROWN, Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 4, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 4, 2003, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on October 29, 2003, and any written argument hereafter submitted on behalf of Respondent and Complainant.

1 Written argument of Respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of October 29, 2003, at the Sacramento office
4 of the Department of Real Estate unless an extension of the time
5 is granted for good cause shown.

6 Written argument of Complainant to be considered by me
7 must be submitted within 15 days after receipt of the argument of
8 Respondent at the Sacramento office of the Department of Real
9 Estate unless an extension of the time is granted for good cause
10 shown.

11 DATED: November 27, 2003

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13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

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

In the Matter of the Accusation of:

JANE E. BROWN, INC., and
JANE EVANGELINE BROWN,

Respondents.

Case No. H-8468 SF

OAH No. N2003080037

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on October 29, 2003.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California, was represented by David B. Seals, Counsel, Department of Real Estate.

Respondent Jane Evangeline Brown was present and she and respondent Jane E. Brown, Inc., were represented by J. Anne Rawlins, Attorney at Law, 1007 7th Street, Suite 300, Sacramento, California 95814.

The matter was submitted on October 29, 2003.

FACTUAL FINDINGS

1. Jane E. Brown, Inc. (respondent JEB) and Jane Evangeline Brown (respondent Brown) are licensed and have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code. Respondent JEB is a corporate real estate broker through respondent Brown as designated officer. Respondent Brown is a real estate broker doing business as Brown and Logan Financial Associates, Optimum/Brown and Logan Financial Associates, Optimum Financial Services and Optimum Realty, and as the designated broker for respondent JEB. Respondent JEB's license has been renewed through December 11, 2004, respondent Brown's license through January 13, 2007.

2. At all times mentioned, respondents JEB and Brown engaged in the business of real estate brokers, and respondent Brown was responsible for the supervision and control of all licensed activities conducted by respondent JEB.

3. Between January 4 and January 10, 2002, the Department of Real Estate (Department) conducted an investigative audit of the books and records of respondent JEB. The audit covered the period December 1, 2000 through December 31, 2001.

4. Respondent JEB maintained one trust account. The account was used primarily for the receipt of credit report fees and appraisal fees. Respondent JEB's check register showed deposits made into the account, and from whom they were received. Respondent Brown was the only person who made deposits to and withdrawals from the account.

5. On March 29, 2001, respondent JEB deposited into the trust account a check for \$3,000 for repairs to an office building respondent JEB had purchased. These were not trust funds. Therefore, respondent JEB commingled its own funds with trust funds, thereby violating Business and Professions Code section 10176(e) and title 10, California Code of Regulations section 2835.

6. Respondent JEB failed to maintain separate records for each beneficiary or transaction, thereby violating title 10, California Code of Regulations section 2831.1.

7. Because respondent JEB did not maintain separate records for each beneficiary, it was unable to reconcile the balance of all separate beneficiary records with the record of all trust funds received, thereby violating title 10, California Code of Regulations section 2831.2.

8. Respondent JEB's trust account was an interest-bearing account. Respondent JEB failed to keep the trust funds in the account separate, distinct and apart from the broker's own funds, and it failed to disclose to the trust beneficiaries the nature of the account and how interest would be calculated and paid. Respondent JEB thereby violated Business and Professions Code section 10145(d).

9. Some trust funds received by respondent JEB were not placed in the trust account, but were deposited into escrow depositories. Respondent JEB failed to maintain a log of such funds received but not placed into the trust account, thereby violating title 10, California Code of Regulations section 2831.

10. At least some of the mortgage loan disclosure statements used by respondent JEB did not meet legal requirements. In some cases, the disclosure statements were not signed or dated by the borrowers. In some cases, there was no disclosure of funds to be paid the broker and/or the broker's license was not included and/or there was no statement that the estimate was not a loan commitment. Respondent

JEB thereby violated Business and Professions Code section 10240 and title 10, California Code of Regulations sections 2840 and 2840.1.

11. Respondent JEB failed to timely notify the Department of the employment of real estate salesperson Barbara Ann Newman. Although respondent had an employment agreement with Newman dated April 18, 2001, the Department had not been notified of her employment by the time of the audit in January 2002. Respondent thereby violated Business and Professions Code section 10161.8 and title 10, California Code of Regulations section 2752.

12. Respondent JEB failed to timely notify the Department of the termination of the employment of real estate salesperson Cris Wilkerson. Although respondent Brown testified that Wilkerson was never terminated, but merely went on inactive status, this conflicts with her statement at the time of the audit. In January 2002, respondent Brown told the auditor that Wilkerson had been terminated several months prior to December 31, 2001. By failing to timely notify the Department of Wilkerson's termination, respondent JEB violated Business and Professions Code section 10161.8.

13. No loss to any member of the public was shown as the result of any of respondent JEB's and/or respondent Brown's actions.

14. Respondent Brown was first licensed as a real estate salesperson in May 1990 and as a real estate broker in January 1991. Respondent Brown is also licensed to act as a broker for real estate sales and loans in Virginia and Georgia, and for real estate loans only in South Carolina and Texas. At the time of the audit, respondent JEB had one employee other than respondent Brown, and it engaged the services of six real estate salespersons. Neither respondent JEB nor respondent Brown have been previously disciplined by the Department.

15. Respondent Brown acknowledges that she failed to comply in a number of respects with the laws and regulations governing trust accounts and admits she was not aware of all those laws and regulations. Although respondent Brown deposited credit report and appraisal fees collected from potential borrowers into respondent JEB's trust account, when she paid the credit reporting firm or appraisers she did so out of respondent JEB's operating account. Because of that, she came to feel that all the money left in the trust account belonged to her. And she therefore did not see a problem in commingling non-trust funds in the account. In fact, respondent Brown believed, this actually safeguarded her clients' trust funds because it created a "reserve" in the trust account so that the amount in the account would always exceed trust liabilities. Respondent Brown now realizes that all the money in the trust account did not actually belong to her because some of it was always in transition—i.e., payment had not yet been made for some credit reports or appraisals for which prospective borrowers had paid respondent JEB. For the same reason, respondent Brown now realizes that not all the interest earned in the account belonged to her, as she felt at the time of the audit.

Respondent JEB received and deposited into the trust account about \$600 per month, or \$7,200 per year. During the first quarter of each calendar year, respondent Brown would withdraw from the trust account some or all of the trust funds that had accumulated in it during the preceding year. She would leave a balance of \$6,000 to \$7,000 in the account. For example, in April 2001, respondent Brown withdrew \$12,000 from the trust account, leaving it with a balance of \$6,106.07.

16. Respondent Brown testified that she has changed her policies and procedures to correct all of the deficiencies revealed by the audit. For example, respondent JEB no longer maintains a trust account; trust funds either go into an escrow depository or, in the case of credit report fees, are paid by the borrowers with credit cards. Respondent Brown now keeps a log of all trust funds received and sent to a title company. Respondent Brown attributed respondent JEB's failure to always use proper disclosure statements to the fact that some of the Calyx Point software forms she was using did not notify the borrower that it did not represent a loan commitment. Respondent Brown now makes sure respondent JEB uses the "noncommitment" form, which also contains a place for the broker's license. Concerning disclosure forms that were not signed by the borrowers, respondent Brown now will not pay the loan agent a commission until a signed disclosure is in the file. Respondent Brown makes sure she now mails in notification to the Department when a new salesperson is hired, rather than relying upon the salesperson to do it, as happened in the case of Barbara Ann Newman.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 10177(d) provides that the Department may suspend or revoke the license of a real estate licensee who has willfully disregarded or violated the Real Estate Law or the commissioner's regulations. Section 10176(e) provides the Department may suspend or revoke the license of a real estate licensee who commingles the licensee's own money with the money of others being held by the licensee. Section 10177(g) provides that the Department may suspend or revoke the license of a real estate licensee who has demonstrated negligence or incompetence in performing acts for which a license is required. And section 10177(h) provides that the Department may suspend or revoke the license of a real estate broker who has failed to exercise reasonable supervision over the activities of the corporation of which he or she is designated officer.

2. Cause for disciplinary action against respondent JEB and respondent Brown exists pursuant to Business and Professions Code section 10177(d) by reason of the matters set forth in Findings 2 through 12. While respondent Brown did not intentionally violate the laws and regulations set forth in those findings, she nevertheless did so willfully in that her actions were purposeful, not accidental or involuntary. (See Penal Code section 7; *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713.)

3. Cause for disciplinary action against respondent JEB and respondent Brown exists pursuant to Business and Professions Code section 10176(e) by reason of the matters set forth in Findings 2 through 5.

4. The matters set forth in Findings 2 through 12 demonstrate that respondent Brown failed to exercise reasonable supervision over the activities of respondent JEB, and that she acted negligently or incompetently. Cause for disciplinary action against her thereby exists pursuant to Business and Professions Code sections 10177(g) and 10177(h).

5. Respondent Brown has candidly acknowledged that she was not aware of all the laws and regulations governing the handling of trust funds. She has taken steps to change her policies to avoid the kinds of violations found in this decision. Neither respondent JEB nor respondent Brown has suffered previous discipline. No member of the public was harmed by any of the actions of either respondent. Considering all the evidence presented, it is determined that protection of the public interest does not demand that respondents' licenses be revoked or that either be issued a restricted license. The public will be sufficiently protected if respondents' licenses are suspended for a brief time, with the opportunity for them to petition for a monetary penalty in lieu of those suspensions.

ORDER

1. All licenses and licensing rights of respondent Jane Evangeline Brown under the Real Estate Law are suspended for a period of seven (7) days from the effective date of this Decision; provided, however, that if respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

- a. Respondent pays a monetary penalty pursuant to section 10175.2 of the Business and Professions Code at the rate of \$200 for each day of the suspension for a total monetary penalty of \$1,400.
- b. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.
- c. Within six (6) months of the effective date of this Decision, respondent shall enroll in and successfully complete such courses in real estate law and trust fund accounting as the Commissioner or her designee may require. These courses shall be in addition to any courses necessary to meet the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license.

*Not
adapted*

- Not adopted*
- d. No further cause for disciplinary action against respondent's real estate license occurs within one year from the effective date of the Decision in this matter.
 - e. If respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, or fails to take and successfully complete the required educational courses, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event respondent shall not be entitled to any repayment or credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.
 - f. If respondent pays the monetary penalty and completes the required educational courses, and if no further cause for disciplinary action against respondent's real estate license occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

2. All licenses and licensing rights of respondent Jane E. Brown, Inc. under the Real Estate Law are suspended for a period of seven (7) days from the effective date of this Decision; provided, however, that if respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

- a. Respondent pays a monetary penalty pursuant to section 10175.2 of the Business and Professions Code at the rate of \$200 for each day of the suspension for a total monetary penalty of \$1,400.
- b. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.
- c. No further cause for disciplinary action against respondent's real estate license occurs within one year 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, or if respondent Brown fails to take and successfully complete the educational courses required in the Order above, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event respondent shall not be entitled to any repayment or 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 respondent Brown completes the required educational courses, and if no further cause for disciplinary action against respondent's real estate license occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

DATED: November 4, 2003


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
SEP 25 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JANE E. BROWN, INC. and
JANE EVANGELINE BROWN,

Case No. H-8468 SF

OAH No. N-2003080037

Respondents

**FIRST CONTINUED
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 **WEDNESDAY -- OCTOBER 29, 2003**, at the hour of **1:30 PM**, 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: SEPTEMBER 25, 2003

By

DEPARTMENT OF REAL ESTATE

David B. Seals
DAVID B. SEALS, Counsel

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

FILED
SEP 03 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JANE E. BROWN, INC. and
JANE EVANGELINE BROWN

Case No. H-8468 SF

OAH No. N-2003080037

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

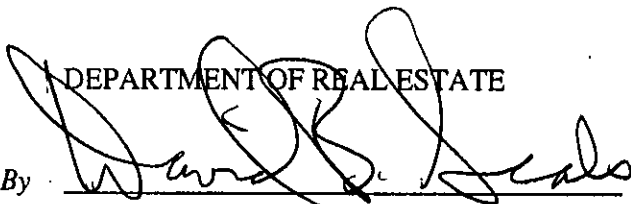
You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **WEDNESDAY--SEPTEMBER 17, 2003**, at the hour of **9:00 AM**, or as soon thereafter 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.

Dated: SEPTEMBER 3, 2003

DEPARTMENT OF REAL ESTATE
By 
DAVID B. SEALS, Counsel

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

5 Telephone: (916) 227-0789

FILED

JUL 14 2003

DEPARTMENT OF REAL ESTATE

By Jean A. Arnold

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JANE E. BROWN, INC., and)
13 JANE EVANGELINE BROWN,)
14 Respondents.)

NO. H-8468 SF

ACCUSATION

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against JANE E. BROWN, INC. (hereinafter "Respondent
18 JEB") and JANE EVANGELINE BROWN (hereinafter "Respondent BROWN"),
19 is informed and alleges as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity.

24 II

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

- 1 (a) Respondent JEB as a corporate real estate broker,
2 through Respondent BROWN as designated officer.
3 (b) Respondent BROWN as a real estate broker dba Brown
4 and Logan Financial Associates, Optimum/Brown &
5 Logan Financial Associates, Optimum Financial
6 Services and Optimum Realty and as the designated
7 officer for Respondent JEB.

8 III

9 At all times mentioned herein, as the designated
10 officer of Respondent JEB, Respondent BROWN was responsible for
11 the supervision and control of the activities conducted on behalf
12 of Respondent JEB by its officers and employees as necessary to
13 secure full compliance with the provisions of the Real Estate
14 Law.

15 IV

16 Whenever reference is made in an allegation in this
17 Accusation to an act or omission of Respondent JEB, such
18 allegation shall be deemed to mean that the officers, directors,
19 employees, agents and real estate licensees employed by or
20 associated with Respondent JEB committed such act or omissions
21 while engaged in furtherance of the business or operation of
22 Respondent JEB and while acting within the course and scope of
23 their corporate authority and employment.

24 V

25 That at all times herein mentioned, Respondent JEB and
26 Respondent BROWN, and both of them, engaged in the business of,
27 acted in the capacity of, advertised, or assumed to act as real

1 estate brokers in the State of California within the meaning of
2 Section 10131(a) of the Code for or in expectation of
3 compensation, by selling or offering to sell, buying or offering
4 to buy, soliciting prospective sellers or purchasers of,
5 soliciting or obtaining listings of, or negotiating the purchase,
6 sale or exchange of real property or a business opportunity and
7 Section 10131(d) of the Code, by soliciting borrowers or lenders
8 for or negotiating loans or collecting payments or performing
9 services for borrowers or lenders or note owners in connection
10 with loans secured directly or collaterally by liens on real
11 property or on a business opportunity.

12 VI

13 That at all times mentioned herein, Respondent JEB and
14 Respondent BROWN accepted or received funds in trust (hereafter
15 trust funds) from and on behalf of their principals placing them
16 in trust accounts and at times thereafter made disbursements of
17 such funds.

18 VII

19 From January 4, 2002 through January 10, 2002 an
20 investigative audit was made by the Department of the records and
21 bank records of Respondent JEB for the period from December 1,
22 2000 to December 31, 2001, as said records related to their
23 activities as a real estate broker.

24 VIII

25 Respondent JEB maintained one trust account for its
26 real estate activities. The account was at California Federal
27 Bank, 444 Castro Street, San Francisco, CA 94114. The account was

1 designated as Acct. #954-0043396 under the name Jane E. Brown,
2 Inc., dba Optimum Financial Service Trust Account.

3 IX

4 During the period from on or about March 29, 2001 to
5 the end of 2001 Respondent JEB commingled its funds, in excess of
6 \$200, with trust funds in the trust account in violation of
7 Section 10176(e) of the Code and Section 2835, Title 10,
8 California Code of Regulations (hereinafter the "Regulations").

9 X

10 Respondent JEB failed to maintain separate records for
11 each beneficiary or transaction in compliance with Section 2831.1
12 of the Regulations.

13 XI

14 Respondent JEB failed to reconcile the balance of all
15 separate beneficiary records with the record of all trust funds
16 received on a monthly basis in compliance with Section 2831.2 of
17 the Regulations.

18 XII

19 The trust account was an interest-bearing account but
20 Respondent JEB failed to (1) keep the funds in the account
21 separate, distinct, and apart from funds belonging to the broker
22 or to any other person for whom the broker held funds in trust
23 and (2) disclose to the trust beneficiaries the nature of the
24 account and how interest would be calculated and paid in
25 violation of Section 10145(d) of the Code.

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1 XIII

2 Respondent JEB failed to maintain an adequate log of
3 trust funds received but not placed into a trust account for its
4 real estate sales transactions in violation of Section 2831 of
5 the Regulations.

6 XIV

7 During the period covered by the audit, Respondent JEB
8 failed to provide adequate mortgage loan disclosure statements to
9 various borrowers, including but not limited to Daniel and Akiko
10 Johnson, Otis and Debra Doxey, and Kaire J. Poole. Nor were such
11 disclosure statements signed by the above named borrowers, all in
12 violation of Section 10240 of the Code in conjunction with
13 Sections 2840 and 2840.1 of the Regulations.

14 XV

15 Respondent JEB failed to timely notify the Department
16 of the employment of Barbara Ann Newman, a salesperson, in
17 violation of Section 10161.8 of the Code and Section 2752 of the
18 Regulations.

19 XVI

20 Respondent JEB failed to timely notify the Department
21 of the termination of the employment of Cris Wilkerson, a
22 salesperson, in violation of Section 10161.8 of the Code.

23 XVII

24 At all times mentioned herein, Respondent BROWN failed
25 to exercise reasonable supervision over the activities of
26 Respondent JEB, and permitted, ratified and/or caused the conduct
27 described above. Respondent BROWN failed to reasonably or

1 adequately review, oversee, inspect and manage the personnel and
2 activities of Respondent JEB, and/or to establish reasonable
3 policies, rules, procedures and systems for such review,
4 oversight, inspection and management.

5 XVIII

6 The acts and/or omissions of Respondents described
7 above are grounds for the revocation or suspension of
8 Respondents' licenses under the following sections of the
9 Business and Professions Code and the Regulations:

- 10 (a) As to Respondents JANE E. BROWN, INC. and JANE
11 EVANGELINE BROWN, and each of them under Section
12 10176(e) of the Code and Section 10177(d) in
13 conjunction with Sections 10145, 10161.8 and 10240
14 of the Code, and Sections 2752, 2831, 2831.1,
15 2831.2, 2832, 2835, 2840 and 2840.1 of the
16 Regulations; and
17 (b) As to Respondent JANE EVANGELINE BROWN only, under
18 Section 10177(g) and/or 10177(h) of the Code.

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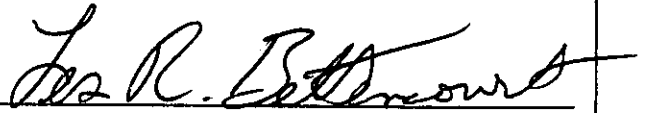
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents,
5 and each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

8 
9
10 LES R. BETTENCOURT
Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 28th day of May, 2003.