

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED

FEB 20 2004

DEPARTMENT OF REAL ESTATE

*Laurie A. Zan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) DRE No. H-8544 SF  
12 QAL AFFILIATES, INC., )  
13 a Corporation, and ) STIPULATION AND AGREEMENT  
14 ROBERT J. FERNANDEZ, )  
15 Respondents. )

16 It is hereby stipulated by and between Respondents QAL  
17 AFFILIATES, INC., a corporation, and ROBERT J. FERNANDEZ (herein  
18 "Respondents"), individually and by and through Steven  
19 H. Bovarnick, Esq., attorney of record herein for Respondents, and  
20 the Complainant, acting by and through James L. Beaver, Counsel  
21 for the Department of Real Estate (herein "the Department"), as  
22 follows for the purpose of settling and disposing of the  
23 Accusation filed on October 3, 2003 in this matter (herein "the  
24 Accusation"):

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

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

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

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

9 3. On October 14, 2003, Respondents filed Notices of  
10 Defense pursuant to Section 11505 of the Government Code for the  
11 purpose of requesting a hearing on the allegations in the  
12 Accusation. Respondents each hereby freely and voluntarily  
13 withdraw said Notice of Defense. Respondents acknowledge that  
14 Respondents understand that by withdrawing said Notice of Defense  
15 Respondents will thereby waive Respondents' right to require the  
16 Real Estate Commissioner (herein "the Commissioner") to prove the  
17 allegations in the Accusation at a contested hearing held in  
18 accordance with the provisions of the APA and that Respondents  
19 will waive other rights afforded to Respondents in connection  
20 with the hearing such as the right to present evidence in defense  
21 of the allegations in the Accusation and the right to cross-  
22 examine witnesses.

23 4. This Stipulation is based on the factual  
24 allegations contained in the Accusation. In the interests of  
25 expediency and economy, Respondents choose not to contest these  
26 allegations, but to remain silent and understand that, as a

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

1 result thereof, these factual allegations, without being admitted  
2 or denied, will serve as a prima facie basis for the disciplinary  
3 action stipulated to herein. The Real Estate Commissioner shall  
4 not be required to provide further evidence to prove said factual  
5 allegations.

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

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

21 7. Respondents understands that the Commissioner  
22 may charge said Respondents for:

23 (a) costs in the amount of \$\$2,642.99 of the audit  
24 conducted pursuant to Section 10148 of the Business and  
25 Professions Code that resulted in the determination that  
26 Respondents committed the violations described in Paragraph I

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

1 of the Determination of Issues, below; and

2 (b) the costs, not to exceed \$2,650.08, of any audit  
3 conducted pursuant to Section 10148 of the Business and  
4 Professions Code to determine if Respondents have corrected the  
5 violations described in Paragraph I of the Determination of  
6 Issues, below.

7 DETERMINATION OF ISSUES

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

12 I

13 The acts and omissions of Respondent QAL as described  
14 in the Accusation are grounds for the suspension or revocation of  
15 the licenses and license rights of such Respondent QAL under the  
16 following provisions of the California Business and Professions  
17 Code (herein "the Code"):

18 (a) As to Paragraph IX(a) under Section 10145 of the  
19 Code and Section 2831 of the Regulations in conjunction with  
20 Section 10177(d) of the Code;

21 (b) As to Paragraph IX(b) under Section 10145 of the  
22 Code and Section 2831.1 of the Regulations in conjunction with  
23 Section 10177.(d) of the Code;

24 (c) As to Paragraph IX(c) under Section 10145 of the  
25 Code and Section 2831.2 of the Regulations in conjunction with  
26 Section 10177(d) of the Code;

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

1 (d) As to Paragraph IX(d) under Section 10145 of the  
2 Code and Section 2832 of the Regulations in conjunction with  
3 Section 10177(d) of the Code;

4 (e) As to Paragraph IX(e) under Section 10145 of the  
5 Code and Section 2832.1 of the Regulations in conjunction with  
6 Section 10177(d) of the Code; and

7 (f) As to Paragraph IX(f) under Section 10145 of the  
8 Code and Section 2834 of the Regulations in conjunction with  
9 Section 10177(d) of the Code.

10 II

11 The acts and omissions of Respondent ROBERT J.  
12 FERNANDEZ as described in Paragraph X of the Accusation are  
13 grounds for the suspension or revocation of the licenses and  
14 license rights of Respondent ROBERT J. FERNANDEZ under Sections  
15 10177(g) and 10177(h) of the Code and Section 10159.2 of the Code  
16 in conjunction with Section 10177(d) of the Code.

17 ORDER

18 I

19 All licenses and licensing rights of Respondent QAL  
20 AFFILIATES, INC. under the Real Estate Law are revoked; provided,  
21 however, a restricted corporate real estate broker license shall  
22 be issued to such Respondent pursuant to Section 10156.5 of the  
23 Code if, within 90 days from the effective date of the Decision  
24 makes application for the restricted license and pays to the  
25 Department the appropriate fee therefor.

26 The restricted license issued to Respondent shall be

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

1 subject to all of the provisions of Section 10156.7 of the Code  
2 and to the following limitations, conditions and restrictions  
3 imposed under authority of Section 10156.6 of the Code:

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

10 2. Any restricted license issued to Respondent  
11 pursuant to this Decision may be suspended prior to hearing by  
12 Order of the Commissioner on evidence satisfactory to the  
13 Commissioner that Respondent has violated provisions of the  
14 California Real Estate Law, the Subdivided Lands Law, Regulations  
15 of the Commissioner or conditions attaching to the restricted  
16 license.

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

22 4. Pursuant to Section 10148 of the Code, Respondent  
23 shall pay (jointly and severally with Respondent FERNANDEZ) the  
24 Commissioner the sum of \$2,642.99 as and for the cost of the  
25 audit that resulted in the determination that Respondents  
26 committed the violations described in Paragraph I of the

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

1 Determination of Issues, above. Respondent shall pay such cost  
2 within 45 days of receiving an invoice therefor from the  
3 Commissioner. The Commissioner may suspend the restricted  
4 license issued to respondent pending a hearing held in accordance  
5 with Section 11500, et seq., of the Government Code, if payment  
6 is not timely made as provided for herein, or as provided for in  
7 a subsequent agreement between the Respondent and the  
8 Commissioner. The suspension shall remain in effect until  
9 payment is made in full or until Respondent enters into an  
10 agreement satisfactory to the Commissioner to provide for  
11 payment, or until a decision providing otherwise is adopted  
12 following a hearing held pursuant to this condition.

13 5. Pursuant to Section 10148 of the Code, Respondent  
14 shall pay (jointly and severally with Respondent FERNANDEZ) the  
15 Commissioner's reasonable cost, not to exceed \$2,650.08, for an  
16 audit to determine if Respondents have corrected the trust fund  
17 violation(s) found in Paragraph I of the Determination of Issues.  
18 In calculating the amount of the Commissioner's reasonable cost,  
19 the Commissioner may use the estimated average hourly salary for  
20 all persons performing audits of real estate brokers, and shall  
21 include an allocation for travel time to and from the auditor's  
22 place of work. Respondent shall pay such cost within 45 days of  
23 receiving an invoice from the Commissioner detailing the  
24 activities performed during the audit and the amount of time  
25 spent performing those activities. The Commissioner may suspend  
26 the restricted license issued to respondent pending a hearing

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

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

9 II

10 All licenses and licensing rights of Respondent ROBERT  
11 J. FERNANDEZ under the Real Estate Law are revoked; provided,  
12 however, a restricted real estate salesperson license shall be  
13 issued to said Respondent pursuant to Section 10156.5 of the Code  
14 if, within 90 days from the effective date of the Decision  
15 entered pursuant to this Order, such Respondent makes application  
16 for the restricted license and pays to the Department the  
17 appropriate fee therefor.

18 The restricted license issued to Respondent shall be  
19 subject to all of the provisions of Section 10156.7 of the Code  
20 and to the following limitations, conditions and restrictions  
21 imposed under authority of Section 10156.6 of the Code:

22 1. Any restricted license issued to Respondent  
23 pursuant to this Decision may be suspended prior to hearing by  
24 Order of the Commissioner in the event of Respondent's conviction  
25 or plea of nolo contendere to a crime which is substantially  
26 related to Respondent's fitness or capacity as a real estate

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ



1 licensee.

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

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

14 4. Pursuant to Section 10148 of the Code, Respondent  
15 shall pay (jointly and severally with Respondent QAL) the  
16 Commissioner the sum of \$2,642.99 as and for the cost of the  
17 audit that resulted in the determination that Respondents  
18 committed the violations described in Paragraph I of the  
19 Determination of Issues, above. Respondent shall pay such cost  
20 within 45 days of receiving an invoice therefor from the  
21 Commissioner. The Commissioner may suspend the restricted  
22 license issued to respondent pending a hearing held in accordance  
23 with Section 11500, et seq., of the Government Code, if payment  
24 is not timely made as provided for herein, or as provided for in  
25 a subsequent agreement between the Respondent and the  
26 Commissioner. The suspension shall remain in effect until

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

1 payment is made in full or until Respondent enters into an  
2 agreement satisfactory to the Commissioner to provide for  
3 payment, or until a decision providing otherwise is adopted  
4 following a hearing held pursuant to this condition.

5 5. Pursuant to Section 10148 of the Code, Respondent  
6 shall pay (jointly and severally with Respondent QAL) the  
7 Commissioner's reasonable cost, not to exceed \$2,650.08, for an  
8 audit to determine if Respondents have corrected the trust fund  
9 violation(s) found in Paragraph I of the Determination of Issues.  
10 In calculating the amount of the Commissioner's reasonable cost,  
11 the Commissioner may use the estimated average hourly salary for  
12 all persons performing audits of real estate brokers, and shall  
13 include an allocation for travel time to and from the auditor's  
14 place of work. Respondent shall pay such cost within 45 days of  
15 receiving an invoice from the Commissioner detailing the  
16 activities performed during the audit and the amount of time  
17 spent performing those activities. The Commissioner may suspend  
18 the restricted license issued to respondent pending a hearing  
19 held in accordance with Section 11500, et seq., of the Government  
20 Code, if payment is not timely made as provided for herein, or as  
21 provided for in a subsequent agreement between the Respondent and  
22 the Commissioner. The suspension shall remain in effect until  
23 payment is made in full or until Respondent enters into an  
24 agreement satisfactory to the Commissioner to provide for  
25 payment, or until a decision providing otherwise is adopted  
26 following a hearing held pursuant to this condition.

27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

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

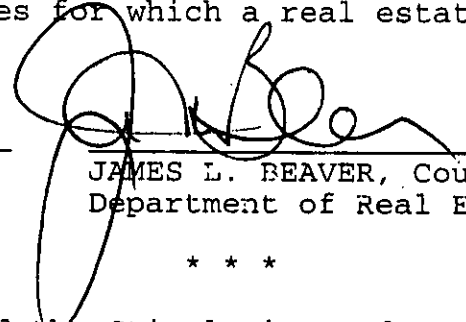
13                   7. Respondent shall, within six (6) months from the  
14 issuance of the restricted license, take and pass the  
15 Professional Responsibility Examination administered by the  
16 Department, including the payment of the appropriate examination  
17 fee. If Respondent fails to satisfy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

20                   8. Respondent shall submit with any application for  
21 license under an employing broker, or any application for  
22 transfer to a new employing broker, a statement signed by the  
23 prospective employing real estate broker on a form approved by  
24 the Department of Real Estate which shall certify:

1 a. That the employing broker has read the Decision of  
2 the Commissioner which granted the right to a restricted license;  
3 and

4 b. That the employing broker will exercise close  
5 supervision over the performance by the restricted licensee  
6 relating to activities for which a real estate license is  
7 required.

8 12/26/03  
9 DATED



JAMES L. BEAVER, Counsel  
Department of Real Estate

\* \* \*

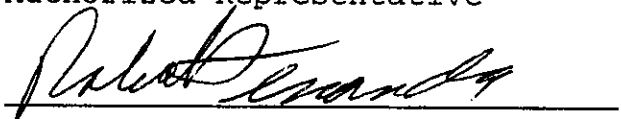
11 I have read the Stipulation and Agreement and have  
12 discussed its terms with my attorney and its terms are understood  
13 by me and are agreeable and acceptable to me. I understand that I  
14 am waiving rights given to me by the California Administrative  
15 Procedure Act (including but not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

22 12/20/2003  
23 DATED

QAL AFFILIATES, INC.  
Respondent

24 BY Robert Fernandez  
25 ROBERT J. FERNANDEZ  
26 Authorized Representative

27 12/20/2003



DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

1 DATED

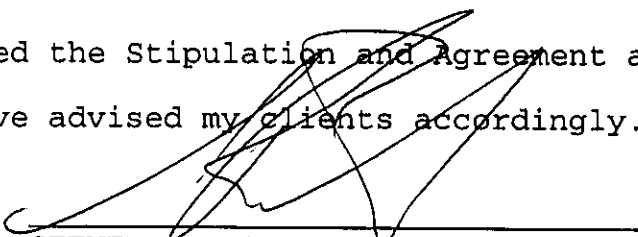
ROBERT J. FERNANDEZ  
Respondent

2 \* \* \*

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

5 12/20/03

6 DATED

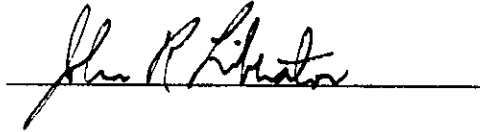
  
7 STEVEN H. BOVARNICK  
Attorney for Respondents

8 \* \* \*

9 The foregoing Stipulation and Agreement is hereby  
10 adopted by me as my Decision in this matter and shall become  
11 effective at 12 o'clock noon on MARCH 12, 2004.

12 IT IS SO ORDERED January 28, 2004.

13 JOHN R. LIBERATOR  
14 Chief Deputy Commissioner

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27 DRE No. H-8544 SF

QAL AFFILIATES, INC.  
and ROBERT J. FERNANDEZ

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
NOV - 5 2003

In the Matter of the Accusation of

QAL AFFILIATES, INC.,  
a Corporation, and  
ROBERT J. FERNANDEZ,

DEPARTMENT OF REAL ESTATE

By Laurie L. Zini

Case No. H-8544 SF

OAH No. N-2003100566

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 TUESDAY, DECEMBER 16, 2003, 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: NOVEMBER 5, 2003

By James L. Beaver  
JAMES L. BEAVER, Counsel (12)

1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0788 (Direct)

FILED  
OCT - 3 2003

DEPARTMENT OF REAL ESTATE

*Laurie B. Zini*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	
12	QAL AFFILIATES, INC.,	)	No. H-8544 SF
13	a Corporation, and	)	<u>ACCUSATION</u>
14	ROBERT J. FERNANDEZ,	)	
15	Respondents.	)	

16 The Complainant, Les R. Bettencourt, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Accusation against QAL AFFILIATES, INC. (hereinafter "QAL"), and  
19 ROBERT J. FERNANDEZ (hereinafter "FERNANDEZ"), is informed and  
20 alleges as follows:

21 I

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

25 ///  
26 ///  
27 ///

1 II

2 At all times herein mentioned, Respondents QAL and  
3 FERNANDEZ (hereinafter "Respondents") were and now are licensed  
4 and/or have license rights under the Real Estate Law (Part 1 of  
5 Division 4 of the Business and Professions Code) (hereinafter  
6 "the Code").

7 III

8 At all times herein mentioned, Respondent QAL was and  
9 now is licensed by the Department of Real Estate of the State of  
10 California (hereinafter "the Department") as a corporate real  
11 estate broker by and through Respondent FERNANDEZ as designated  
12 officer-broker of Respondent QAL to qualify said corporation and  
13 to act for said corporation as a real estate broker.

14 IV

15 At all times herein mentioned, Respondent FERNANDEZ  
16 was and now is licensed by the Department as a real estate  
17 broker, individually and as designated officer-broker of  
18 Respondent QAL. At all times mentioned herein since May 11,  
19 2000, the license of Respondent FERNANDEZ has been and now is a  
20 restricted real estate broker license subject to terms,  
21 conditions and restrictions pursuant to Sections 10156.6 and  
22 10156.7 of the Code. As said designated officer-broker,  
23 Respondent FERNANDEZ was at all times mentioned herein  
24 responsible pursuant to Section 10159.2 of the Code for the  
25 supervision of the activities of the officers, agents, real  
26 estate licensees and employees of Respondent QAL for which a  
27 license is required.



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V

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

VI

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

VII

In so acting as real estate brokers, as described in Paragraph VI above, Respondents accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners and tenants in connection with the leasing, renting, and

1 collection of rents on real property or improvements thereon, as  
2 alleged herein, and thereafter from time to time made  
3 disbursements of said funds.

4 VIII

5 The aforesaid trust funds accepted or received by  
6 Respondents were deposited or caused to be deposited by  
7 Respondents into one or more bank accounts (hereinafter "trust  
8 fund accounts") maintained by Respondents for the handling of  
9 trust funds, including but not necessarily limited to the  
10 "Quimby Square Realty, Inc. dba Lloyds Real Estate Investments"  
11 account, Account Number 18101550, maintained by Respondents at  
12 the Santa Clara, California, branch of Cupertino National Bank  
13 (hereinafter "Bank Account #1").

14 IX

15 Between on or about January 1, 2002 and on or about  
16 July 31, 2002, in connection with the collection and  
17 disbursement of said trust funds, Respondent QAL:

18 (a) Failed to keep a columnar record in chronological  
19 sequence of all trust funds received and disbursed from Bank  
20 Account #1 containing all the information required by Section  
21 2831 of Title 10, California Code of Regulations (hereinafter  
22 "the Regulations");

23 (b) Failed to keep a separate record for each  
24 beneficiary or transaction, accounting therein for all funds  
25 which have been deposited into Bank Account #1, containing all  
26 information required by Section 2831.1 of the Regulations;

27 ///

1 (c) Failed to reconcile, at least once a month, the  
2 balance of all separate beneficiary or transaction records with  
3 the record of all trust funds received into and disbursed from  
4 Bank Account #1, in compliance with Section 2831.2 of the  
5 Regulations;

6 (d) Failed to place trust funds entrusted to  
7 Respondent QAL into the hands of a principal on whose behalf the  
8 funds were received, into a neutral escrow depository, or into a  
9 trust fund account in the name of Respondent QAL as trustee at a  
10 bank or other financial institution, in conformance with the  
11 requirements of Section 10145 of the Code and Section 2832(a) of  
12 Chapter 6, Title 10, California Code of Regulations (hereinafter  
13 "the Regulations"), in that Respondent QAL placed such funds in  
14 Bank Account #1, an account that was not in the name of  
15 Respondent QAL as trustee;

16 (e) Caused, suffered or permitted the balance of  
17 funds in Bank Account #1 to be reduced to an amount which, as of  
18 June 28, 2002, was approximately \$15,926.47 less than the  
19 aggregate liability of Respondent QAL to all owners of such  
20 funds, and as of May 31, 2002, was approximately \$16,120.00 less  
21 than the aggregate liability of Respondent QAL to all owners of  
22 such funds, without the prior written consent of the owners of  
23 such funds;

24 (f) Authorized Jeanette Castro, an unlicensed person  
25 without fidelity bond coverage, to make disbursements from Bank  
26 Account #1;

27 ///

1 (g) Commingled money belonging to QAL with funds  
2 deposited into Bank Account #1 received and held in trust by QAL  
3 in course of the property management and trust fund activities  
4 described above; and

5 (h) Failed to retain for three years copies of trust  
6 records obtained by Respondent in connection with transactions  
7 for which a real estate broker license is required.

8 X

9 Respondent FERNANDEZ failed to exercise reasonable  
10 supervision over the acts of Respondent QAL in such a manner as  
11 to allow the acts and events described in Paragraph IX, above,  
12 to occur.

13 PRIOR DISCIPLINE

14 XI

15 Effective May 11, 2000, in Case No. H-7720 SF, the  
16 Real Estate Commissioner revoked the real estate broker license  
17 of Respondent FERNANDEZ pursuant to the provisions of Section  
18 10177.5 of the Code, but granted such Respondent the right to  
19 the issuance of a restricted real estate broker license, subject  
20 to terms, conditions and restrictions pursuant to Sections  
21 10156.6 and 10156.7 of the Code.

22 XII

23 On August 5, 1997, in Case No. H-7494 SF, the Real  
24 Estate Commissioner issued an order pursuant to Section 10086 of  
25 the Code requiring Respondents QAL and FERNANDEZ to desist and  
26 refrain from activities for a which a license is required until  
27 submission of evidence satisfactory to the Commissioner of

1 reinstatement of the corporate powers, rights and privileges of  
2 Respondent QAL theretofore suspended pursuant to the provisions  
3 of Section 23302 of the Revenue and Taxation Code.

4 XIII

5 The facts alleged above are grounds for the suspension  
6 or revocation of the licenses and license rights of Respondents  
7 QAL under the following provisions of the Code and/or the  
8 Regulations:

9 (a) As to Paragraph IX(a), under Section 10145 of the  
10 Code and Section 2831 of the Regulations in conjunction with  
11 Section 10177(d) of the Code;

12 (b) As to Paragraph IX(b), under Section 10145 of the  
13 Code and Section 2831.1 of the Regulations in conjunction with  
14 Section 10177(d) of the Code;

15 (c) As to Paragraph IX(c), under Section 10145 of the  
16 Code and Section 2831.2 of the Regulations in conjunction with  
17 Section 10177(d) of the Code;

18 (d) As to Paragraph IX(d), under Section 10145 of the  
19 Code and Section 2832 of the Regulations in conjunction with  
20 Section 10177(d) of the Code;

21 (e) As to Paragraph IX(e), under Section 10145 of the  
22 Code and Section 2832.1 of the Regulations in conjunction with  
23 Section 10177(d) of the Code;

24 (f) As to Paragraph IX(f), under Section 10145 of the  
25 Code and Section 2834 of the Regulations in conjunction with  
26 Section 10177(d) of the Code;

27 ///

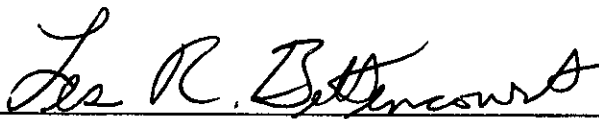
1 (g) As to Paragraph IX(g), under Section 10176(e) of  
2 the Code; and

3 (h) As to Paragraph IX(h), under Section 10148 of the  
4 Code in conjunction with Section 10177(d) of the Code.

5 XIV

6 The facts alleged in Paragraph X, above, are grounds  
7 for the suspension or revocation of the licenses and license  
8 rights of Respondent FERNANDEZ under Section 10177(g) and/or  
9 Section 10177(h) of the Code and Section 10159.2 of the Code in  
10 conjunction with Section 10177(d) of the Code.

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

18  
19   
20 LES R. BETTENCOURT  
Deputy Real Estate Commissioner

21 Dated at Oakland, California,  
22 this 9th day of September, 2003.