



1                   On March 24, 2004, the Administrative Law Judge (ALJ)  
2 issued a Proposed Decision recommending various conditions and  
3 among them, that (1) the corporate real estate broker license of  
4 Respondent ALLIANCE BUSINESS GROUP (hereinafter "Respondent  
5 ALLIANCE") be suspended for a period of 2 years with an actual  
6 suspension of 45 days provided, however, that if Respondent  
7 ALLIANCE petitions, the 45 days of actual suspension shall be  
8 stayed upon condition that Respondent ALLIANCE pays a monetary  
9 penalty at a rate to be determined by the Department; and (2)  
10 the real estate broker license of Respondent JAMES CARL PROVOST  
11 (hereinafter "Respondent PROVOST") be suspended for a period of  
12 2 years with an actual suspension of 90 days provided, however,  
13 that if Respondent PROVOST petitions, the 90 days of actual  
14 suspension shall be stayed upon condition that Respondent  
15 PROVOST pays a monetary penalty at a rate to be determined by  
16 the Department. I declined to adopt the Proposed Decision as my  
17 Decision. Pursuant to Section 11517(c) of the Government Code  
18 of the State of California, Respondents were served with notice  
19 of my determination not to adopt the Proposed Decision of the  
20 Administrative Law Judge along with a copy of said Proposed  
21 Decision. Respondents were notified that the case would be  
22 decided by me upon the record, the transcript of proceedings  
23 held on February 20, 2004, and upon any written argument  
24 offered by Respondents and Complainant.

25                   Both Complainant and Respondents have submitted  
26 written argument.  
27

1 I have given careful consideration to the record in  
2 this case including the transcript of proceedings held on  
3 February 20, 2004, and the written arguments of both  
4 Respondents and Complainant.

5 The following shall constitute the Decision of the  
6 Real Estate Commissioner in this proceeding:

7 FACTUAL FINDINGS

8 1. Complainant Les R. Bettencourt ("Complainant"), a  
9 Deputy Real Estate Commissioner of the State of California,  
10 made the Accusation in his official capacity.

11 2. On August 27, 2001, a corporate real estate  
12 broker license was issued to Provost Properties with the  
13 designated officer being Respondent PROVOST and a dba of  
14 Alliance Property Management. (DRE Exhibit 2b.) On October 30,  
15 2001, the corporate name was changed to Alliance Business  
16 Group. (Ibid.)

17 3. On February 15, 2001, a real estate broker  
18 license was issued to Respondent PROVOST. (DRE Exhibit 2a.) On  
19 August 27, 2001, Respondent PROVOST was issued a license as  
20 the designated officer of Provost Properties which changed to  
21 Alliance Business Group as of October 30, 2001. (Ibid.)

22 4. Beginning on September 10, 2002, the Department's  
23 auditor, Robert Leonard ("Mr. Leonard"), performed an audit of  
24 the bank statements, canceled checks, separate records of each  
25 beneficiary, bank signature cards, management agreements, and  
26 various invoices maintained by Respondent ALLIANCE, for the  
27

1 period of January 1, 2002, to December 31, 2002, and including  
2 four separate trust accounts they maintained. (DRE Exhibit 3a.)

3 5. During the course of Respondent ALLIANCE 's  
4 property management activities, and for the time described  
5 above, Respondent ALLIANCE received and disbursed funds held in  
6 trust on behalf of another or others. Respondent ALLIANCE  
7 managed about 355 separate real estate properties, which  
8 consisted of 570 residential rental units or apartments.  
9 Respondent ALLIANCE managed the properties, and collected rents,  
10 for about 125 individual clients. Respondent ALLIANCE collected  
11 approximately \$450,000 per month in rental receipts. (DRE  
12 Exhibit 3a).

13 6. During the period covered by Mr. Leonard's Audit  
14 Report, Respondent ALLIANCE maintained the following four trust  
15 fund accounts (DRE Exhibit 3a.):

<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANKS</u>
17 Provost Properties Trust Account #1 (Prior to July 8, 2002) 18 Alliance Business Group Account No. 4111159 19 (hereinafter "Trust #1")	Sonoma National Bank Santa Rosa, California
20 Provost Properties For the Yorktown Trust (Prior to September 16, 2002) 21 Alliance Business Group dba Alliance Property Mgmt - Trust 22 (As of September 16, 2002) Account No. 029-4143961 23 (hereinafter "Trust #2")	California Federal Bank Santa Rosa, California
24 Provost Properties For the Terrance Trust (Prior to September 16, 2002) 25 Alliance Business Group dba Alliance Property Mgmt - Trust 26 (As of September 16, 2002) Account No. 029-4143987 27	California Federal Bank Santa Rosa, California

(hereinafter "Trust #3)

1 Provost Properties For Palm Garden California Federal Bank  
2 Trust (Prior to September 16, 2002) Santa Rosa, California  
3 Alliance Business Group dba  
4 Alliance Property Mgmt-Trust  
(As of September 16, 2002)  
5 Account No. 029-4143979  
(hereinafter "Trust #4")

6 7. Respondent ALLIANCE's property management trust  
7 accounts, were not in the full and proper name of Respondent  
8 ALLIANCE as trustee at a bank or other financial institution  
9 in violation of Section 2832, Title 10, California Code of  
10 Regulations (hereinafter the "Regulations"). (DRE Exhibit 3a.)

11 8. Trust #1 as of February 1, 2002, had a shortage  
12 in the account in the amount of \$104,062 in violation of  
13 Section 10145 of the Code (DRE Exhibit 3a).

14 9. During the period covered by the audit, Respondent  
15 ALLIANCE caused the disbursement of trust funds from Trust #1  
16 without the written consent of every principal who was an owner  
17 of the funds, causing the balance of the funds in the account to  
18 be an amount less than the existing aggregate trust fund  
19 liability of Respondent ALLIANCE to all owners of said funds in  
20 violation of Section 10145 of the Code and Section 2832.1 of the  
21 Regulations (DRE Exhibit 3a).

22 10. Trust #3 as of February 1, 2002, had a shortage  
23 in the account in the amount of \$115.86 in violation of  
24 Section 10145 of the Code (DRE Exhibit 3a).

25 11. Trust #4 as of February 1, 2002, had a shortage  
26 in the account in the amount of \$1,125.00 in violation of  
27 Section 10145 of the Code (DRE Exhibit 3a).

1           12. Trust #1 as of November 30, 2002, had a  
2 shortage in the account in the amount of \$36,170.20 in  
3 violation of Section 10145 of the Code. (DRE Exhibit 3a.)

4           13. Trust #3 as of November 30, 2002, had a  
5 shortage in the account in the amount of \$688.69 in violation  
6 of Section 10145 of the Code (DRE Exhibit 3a).

7           14. Trust #4 as of November 30, 2002, had a  
8 shortage in the account in the amount of \$3,437.27 in  
9 violation of Section 10145 of the Code (DRE Exhibit 3a).

10           15. In connection with the receipt and disbursement  
11 of trust funds in accounts mentioned in Factual Finding 6,  
12 Respondent ALLIANCE permitted, at a minimum Christina Lynn  
13 Provost and Jessica Bell, to withdraw funds when neither was a  
14 corporate officer, nor a licensed salesperson employed by  
15 Respondent ALLIANCE, nor an authorized unlicensed employee  
16 covered by a fidelity bond that would indemnify Respondent  
17 ALLIANCE against loss in an amount sufficient to cover the  
18 maximum amount of money to which the subject unauthorized  
19 employees had access at any time in violation of Section 2834  
20 of the Regulations (DRE Exhibit 3a).

21           16. Respondent ALLIANCE failed, as to Trust #1, to  
22 adequately maintain a separate record for each beneficiary or  
23 transaction accounting therein for all said trust funds  
24 received, deposited, and disbursed in violation of Section  
25 2831.1 of the Regulations (DRE Exhibit 3a).

26           17. Respondent ALLIANCE failed, as to Trust #1, to  
27 adequately maintain and perform a reconciliation with the

1 records of all trust funds received and disbursed at least once  
2 per month, in violation of Section 2831.2 of the Regulations  
3 (DRE Exhibit 3a).

4 18. Within the three-year period immediately  
5 preceding the filing of the Accusation herein, Respondent  
6 ALLIANCE failed to retain and make available to a representative  
7 of the Commissioner cancelled checks executed by Respondent  
8 ALLIANCE in connection with transactions for which a real estate  
9 license is required in violation of Section 10148 of the Code.  
10 (DRE Exhibit 3a).

11 19. In the matters for which Respondent ALLIANCE 's  
12 personnel failed to adhere to the real estate law and the  
13 Department's regulations, Respondent PROVOST failed in his  
14 capacity as the designated officer of Respondent ALLIANCE to  
15 exercise reasonable control over the activities of Respondent  
16 ALLIANCE and its employees. He allowed violations of law to  
17 occur and to continue while serving as the designated officer  
18 in control of Respondent ALLIANCE.

19 Matters in Mitigation and Extenuation

20 20. Respondent PROVOST is a partner, with Greg  
21 Moore and Richard Caldwell, in a business venture that owns  
22 apartment building complexes known as Yorktown (73  
23 apartments), Terrace Apartments (44 apartments) and Palm  
24 Garden Apartments (80 apartments) (Transcript pp. 88-89).

25 21. Respondent PROVOST permitted resident, or on-  
26 site, apartment managers, employees of Respondent ALLIANCE,  
27 to deposit tenants' rental checks into the respective Cal

1 Federal bank accounts trust funds for the three distinct  
2 apartment building complexes. The property managers then  
3 used facsimile transmissions of the deposit receipts to the  
4 Santa Rosa offices of Respondent ALLIANCE. Respondent  
5 ALLIANCE wrote checks from the distinct Cal Fed trust  
6 accounts for deposit into the primary trust fund account with  
7 Sonoma National Bank. Between the first day and the third day  
8 of each month, Respondent ALLIANCE's personnel, via checks,  
9 paid recurring expenses, such as mortgage payments for the  
10 apartment buildings and homeowners' association dues.  
11 Respondent ALLIANCE's personnel paid non-recurring expenses,  
12 such as maintenance and electric bills, generally on the  
13 fifth day or twentieth day of each month. During each month,  
14 Respondent ALLIANCE's personnel effected hundreds, if not  
15 thousands of separate entries (Transcript pp. 84-87).

16           22. There is no evidence that Respondent PROVOST  
17 intentionally used trust fund money for his personal use.

18           23. Respondent PROVOST left his personal funds in  
19 the various trust accounts in a misguided attempt to assure  
20 such trust accounts were not "short" for the benefit of the  
21 trust fund beneficiaries (Transcript pg. 94).

22           24. Neither Respondent PROVOST nor Respondent  
23 ALLIANCE have had any prior disciplinary action by the  
24 Department nor have any other complaints been filed against  
25 Respondents with the Department.

26  
27



1           25. Respondent PROVOST has sought to correct many  
2 of the deficiencies in his record keeping and accounting  
3 practices of Respondent ALLIANCE (Transcript pp. 91-92).

4           26. The YARDI system may have contributed to a  
5 shortage of \$115.86 as found by the auditor in Trust #3.

6           27. During the audit, a shortage of \$1,125 in Trust  
7 #4 caused by a transaction was not properly reflected in the  
8 general ledger for February 1, 2002. But, the error was  
9 corrected in March 2002.

10           28. None of Respondent ALLIANCE's property  
11 management clients or trust account beneficiaries suffered  
12 any actual financial losses as a result of Respondent  
13 PROVOST's practices.

14           29. Certified Public Account Ms. Shelly Williams  
15 appeared at the hearing on behalf of Respondents. Her  
16 credible testimony shows that no long term financial injury  
17 was sustained by any property owner associated with the four  
18 trust accounts discussed herein controlled and maintained by  
19 Respondent ALLIANCE (Transcript pp. 116-166).

20           30. Mr. E. Robert Miller, a real estate broker who  
21 has devoted several decades to real estate property  
22 management, offered evidence at the hearing of this matter.  
23 Mr. Miller expresses high regard for the reputation of  
24 Respondent PROVOST in the community of real estate  
25 professionals in Santa Rosa. Mr. Miller indicates that  
26 Respondent PROVOST, and Respondent ALLIANCE, are on the local  
27 prosecutor's "good list" of property management firms in the

1 Santa Rosa area. Mr. Miller conveys his knowledge that no  
2 record exists of complaints by local law enforcement offices  
3 against either Respondent ALLIANCE or Respondent PROVOST  
4 (Transcript pp. 64-66 and 68-80).

5 31. The Administrative Law Judge, in his Proposed  
6 Decision, made a number of findings in aggravation with respect  
7 to Respondents among which were the following:

8 "36. Respondent refuses to acknowledge the  
9 potential adverse consequences associated with the negative  
10 balances [shortages] that he permitted Respondent Corporation  
11 to manifest on its books of account. Respondent Provost does  
12 not fully grasp the fiduciary obligation Respondent  
13 Corporation owes to owners of properties that the  
14 corporation's personnel manage. Respondent Provost appears  
15 oblivious to the illegality of the unauthorized use of one  
16 owner's funds to pay the obligations of another owner.

17 Respondent Provost does not comprehend the strict  
18 construction and absolute dictate of the regulations the  
19 implement the State of California's trust fund laws.

20 ...

21 Respondent Provost asserts that Respondent  
22 Corporation did not receive from its bank, copies of the  
23 reverse side of checks processed by the bank. But, such bank  
24 practice is not a matter in extenuation. Rather, Respondents  
25 are obligated to secure banking services that will facilitate  
26 Respondent Corporations to comply with the Department's  
27 regulations. Respondent Corporation, which takes in tens of



1           3. Respondents assert that their bookkeeping  
2 practices have been corrected but continue to claim that there  
3 was no shortage.

4           4. Respondents assert that there are no unidentified  
5 funds in the trust fund accounts.

6           5. The trust fund accounts have been properly  
7 identified and designated.

8           It is accepted that there is no record of disciplinary  
9 action against either Respondent and that Respondent PROVOST has  
10 a good reputation in the community.

11           It is also true that some bookkeeping practices had  
12 been corrected by the time the Department's audit was  
13 completed including the proper identification and designation  
14 of the trust accounts and the use of acceptable signatories.

15           The Department remains concerned with Respondents'  
16 failure to relent on their position that there was no shortage  
17 in the trust accounts of Respondent ALLIANCE.

18           The testimony of the Department's auditor at the  
19 hearing and the audit report and supporting papers submitted  
20 into evidence at the hearing established that a shortage in a  
21 trust account as of a certain date is determined by calculating  
22 the adjusted balance of funds in the account as of that date and  
23 subtracting from that figure the accountability of the broker to  
24 the beneficiaries of that trust fund account as of that date. If  
25 that amount is a negative number there is a shortage in the  
26 account as of that date. Accountability is determined by adding  
27 all of the positive balances of the beneficiaries in the trust

1 account. Only positive balances are added because the trust  
2 account must have enough money in it at any one time to account  
3 for the total sum of all monies that the beneficiaries have in  
4 the account. By way of example, if there are 11 beneficiaries  
5 in a trust account and ten of them have positive balances of  
6 \$100 each and the other person has a negative balance of \$50 the  
7 trust account would have an accountability of \$1,000. The reason  
8 for this is that the total amount owed to beneficiaries would be  
9 \$100 times 10 or \$1,000. However, since one beneficiary had a  
10 negative balance of \$50 the balance of actual money in the  
11 account would only be \$950 (\$1,000 - \$50). Therefore, there is  
12 a shortage of \$50 even though if a check were written on the  
13 account for, say, \$130, it would not "bounce" because there is  
14 more than enough in the trust account to cover the check. The  
15 concepts of "negative balance" and "shortage" have nothing to do  
16 with whether or not a check written on an account will "bounce".

17           On the basis of this analysis, it becomes clearer why  
18 Respondents' suggestion that positive balances in the separate  
19 accounts of Palm, Yorktown, and Terrace could not be attributed  
20 to the negative balances of the other beneficiaries in Trust #1.  
21 It is because the actual money had not been transferred. The  
22 negative balances would still exist and there would still be a  
23 shortage "in the trust account". For that same reason, the  
24 amount of any positive balance in Trust #2 or #3 or #4 could not  
25 be used to reduce the shortage in Trust #1 without actually  
26 moving the money.

27

1           The Proposed Decision of the ALJ in this matter was  
2 well-reasoned, detailed, and comprehensive. It effectively dealt  
3 with all of the issues raised at the hearing and discussed in  
4 the Respondents' arguments on rejection. As such, the Department  
5 makes the following conclusions which are consistent with those  
6 of the ALJ.

7           Business and Professions Code section 10177,  
8 subdivision (d) establishes that: "The commissioner may  
9 suspend or revoke the license of a real estate licensee...  
10 who has done any of the following, or may suspend or revoke  
11 the license of a corporation...if an officer, director, or  
12 person owning or controlling 10 percent or more of the  
13 corporation's stock has ... (d) [w]illfully disregarded or  
14 violated the Real Estate Law ... or the rules and regulations  
15 of the commissioner for the administration and enforcement of  
16 the Real Estate Law...."

17           The concept of "willful" is given broad meaning in  
18 the realm of administrative licensure disciplinary  
19 proceedings. "Willful" does not imply a malicious intent to  
20 do wrong or a consciousness for malfeasance on the part of a  
21 licensee to violate a rule, statute or standard of due care.  
22 The term " 'willful' ... does not necessarily imply anything  
23 blamable, or any malice or wrong toward the other party, or  
24 perverseness or moral delinquency, but merely that the thing  
25 done or omitted to be done was done or omitted intentionally.  
26 It amounts to nothing more than this: That the person knows  
27 what he is doing, intends to do what he is doing, and is a

1 free agent. [citations omitted.]" *Suman v. BMW of North*  
2 *America, Inc.* (1994) 23 Cal.App.4<sup>th</sup> 1, 12. (See also: *Murrill*  
3 *v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713;  
4 *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575 f i.9; and  
5 *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174  
6 Cal.App.3d 625, 639.)

7 Cause for disciplinary action exists under Business  
8 and Professions Code section 10177, subdivision (d) in  
9 conjunction with Title 10, California Code of Regulations  
10 section 2832, subdivision (a), by reason of the matters set  
11 forth in Finding 7.

12 Cause for disciplinary action exists under Business  
13 and Professions Code section 10177, subdivision (d) in  
14 conjunction with Code section 10145, by reason of the matters  
15 set forth in Findings 8, 10, 11, 12, 13, and 14.

16 Cause for disciplinary action exists under Business  
17 and Professions Code section 10177, subdivision (d) in  
18 conjunction with Title 10, California Code of Regulations  
19 section 2832.1, by reason of the matters set forth in  
20 Finding 9.

21 Cause for disciplinary action exists under Business  
22 and Professions Code section 10177, subdivision (d) in  
23 conjunction with Title 10, California Code of Regulations  
24 section 2834, by reason of the matters set forth in  
25 Finding 15.

26 Cause for disciplinary action exists under Business  
27 and Professions Code section 10177, subdivision (d) in

1 conjunction with Title 10, California Code of Regulations  
2 section 2831.1 and 2831.2, by reason of the matters set forth  
3 in Findings 16 and 17.

4 Cause for disciplinary action exists under Business  
5 and Professions Code section 10177, subdivision (d) in  
6 conjunction with Code section 10148, by reason of the matters  
7 set forth in Finding 18.

8 Cause for disciplinary action exists under Business  
9 and Professions Code section 10159.2 in conjunction with Code  
10 section 10177, subdivision (d) and section 10177, subdivision  
11 (h), by reason of the matters set forth in Finding 19.

12 The Proposed Decision of the ALJ failed to provide  
13 for the Department to recover the costs of the audit which  
14 formed the basis for the Accusation herein.

15 Section 10148 of the Code provides, in pertinent part,  
16 that:

17 "(b) The commissioner shall charge a real estate  
18 broker for the cost of any audit, if the commissioner has found,  
19 in a final desist and refrain order issued under Section 10086  
20 or in a final decision following a disciplinary hearing held in  
21 accordance with Chapter 5 (commencing with Section 11500) of  
22 Part 1 of Division 3 of Title 2 of the Government Code that the  
23 broker has violated Section 10145 or a regulation or rule of the  
24 commissioner interpreting Section 10145."

25 Section 2930 of the Regulations provides, in pertinent  
26 part, that:

27 "All licenses and licensing rights of Respondent are



1 suspended for two years from the effective date of this  
2 Decision; provided, however, that the suspension shall be stayed  
3 upon the following terms and conditions:

4 1. Respondent's license and license rights  
5 shall be actually suspended for a period of  
6 \_\_\_\_\_ days. Respondent may, pursuant to Section  
7 10175.2, petition the Commissioner to pay a  
8 monetary penalty and thereby further stay  
9 imposition of the term of the actual  
10 suspension. (Note: The last sentence is  
11 optional.)

12 2. Respondent shall obey all laws, rules and  
13 regulations governing the rights, duties and  
14 responsibilities of a real estate licensee in  
15 the State of California.

16 3. The Commissioner may, if a final subsequent  
17 determination is made, after hearing or upon  
18 stipulation, that cause for disciplinary action  
19 occurred during the term of the suspension  
20 provided for in condition "1", vacate and set  
21 aside the stay order including any further stay  
22 imposed pursuant to Section 10175.2. Should no  
23 order vacating the stay be made pursuant to  
24 this condition or condition "4" below, the stay  
25 imposed herein shall become permanent.

26 4. Pursuant to Section 10148 of the Business  
27 and Professions Code, Respondent shall pay the  
Commissioner's reasonable cost for: a) the  
audit which led to this disciplinary action  
and, b) a subsequent audit to determine if  
Respondent has corrected the trust fund  
violation(s) found in paragraphs \_\_\_\_\_ of  
the Determination of Issues. In calculating the  
amount of the Commissioner's reasonable cost,  
the Commissioner may use the estimated average  
hourly salary for all persons performing audits  
of real estate brokers, and shall include an  
allocation for travel costs, including mileage,  
time to and from the auditor's place of work  
and per diem. Respondent shall pay such cost  
within 60 days of receiving an invoice from the  
Commissioner detailing the activities performed  
during the audit and the amount of time spent

1 performing those activities. The Commissioner  
2 may, in his discretion, vacate and set aside  
3 the stay order, if payment is not timely made  
4 as provided for herein, or as provided for in a  
5 subsequent agreement between the Respondent and  
6 the Commissioner. The vacation and the set  
7 aside of the stay shall remain in effect until  
8 payment is made in full, or until Respondent  
9 enters into an agreement satisfactory to the  
10 Commissioner to provide for payment. Should no  
11 order vacating the stay be issued, either in  
12 accordance with this condition or condition  
13 "3", the stay imposed herein shall become  
14 permanent."

9 Section 10148 states that the Commissioner shall  
10 charge the broker for the cost of any audit. The provisions of  
11 2930 quoted above specifically include the cost of the audit  
12 which led to the disciplinary action to be charged to the  
13 broker. As such, this decision shall provide for the recovery of  
14 such costs in the Order.

15 ORDER

16 I

17 A. All licenses and licensing rights of Respondent  
18 ALLIANCE under the Real Estate Law are suspended for two  
19 years from the effective date of this Decision; provided,  
20 however, that:

21 1. All but Forty-five (45) days of said suspension  
22 shall be stayed for two (2) years upon the following terms and  
23 conditions:

24 (a) Respondent ALLIANCE shall obey all laws, rules  
25 and regulations governing the rights, duties and  
26 responsibilities of a real estate licensee in the State of  
27 California; and

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

9                   2. The remaining forty-five (45) days of said two  
10 year suspension shall be stayed, as to Respondent ALLIANCE upon  
11 the condition that Respondent ALLIANCE petition pursuant to  
12 Section 10175.2 of the Business and Professions Code pays a  
13 monetary penalty pursuant to Section 10175.2 of the Business and  
14 Professions Code at a rate of \$222.22 for each day of the  
15 suspension for a total monetary penalty of \$9,999.90 for  
16 Respondent ALLIANCE:

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

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

26                   (c) If Respondent ALLIANCE fails to pay the monetary  
27 penalty as provided above prior to the effective date of this

1 Order, the stay of the suspension shall be vacated as to  
2 Respondent ALLIANCE and the order of suspension shall be  
3 immediately executed, under this Paragraph A. of this Order, in  
4 which event Respondent ALLIANCE shall not be entitled to any  
5 repayment nor credit, prorated or otherwise, for the money paid  
6 to the Department under the terms of this Order.

7 (d) If Respondent ALLIANCE pays the monetary penalty  
8 and any other moneys due under this Order and if no further  
9 cause for disciplinary action against the real estate licenses  
10 of said Respondent ALLIANCE occurs within two (2) years from the  
11 effective date of this Order, the entire stay hereby granted  
12 under Paragraphs A. and B. of this Order, as to said Respondent  
13 only, shall become permanent.

14 3. Pursuant to Section 10148 of the Business and  
15 Professions Code, Respondents PROVOST and ALLIANCE shall pay the  
16 Commissioner's reasonable cost for the audit which led to this  
17 disciplinary action and a subsequent audit to determine if  
18 Respondent ALLIANCE has corrected the trust fund violation(s)  
19 found in the LEGAL CONCLUSIONS. In calculating the amount of  
20 the Commissioner's reasonable cost, the Commissioner may use the  
21 estimated average hourly salary for all persons performing  
22 audits of real estate brokers, and shall include an allocation  
23 for travel time to and from the auditor's place of work.  
24 Respondents PROVOST and ALLIANCE shall pay such cost within 60  
25 days of receiving an invoice from the Commissioner detailing the  
26 activities performed during the audit and the amount of time  
27 spent performing those activities. The Commissioner may suspend

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

11 B. All licenses and licensing rights of Respondent  
12 PROVOST under the Real Estate Law are suspended for two years  
13 from the effective date of this Decision; provided, however,  
14 that:

15 1. All but ninety (90) days of said suspension  
16 shall be stayed for two (2) years upon the following terms and  
17 conditions:

18 (a) Respondent PROVOST shall obey all laws, rules and  
19 regulations governing the rights, duties and responsibilities of  
20 a real estate licensee in the State of California; and,

21 (b) That no final subsequent determination be made,  
22 after hearing or upon stipulation, that cause for disciplinary  
23 action occurred within two (2) years from the effective date of  
24 this Order. Should such a determination be made, the  
25 Commissioner may, in his discretion, vacate and set aside the  
26 stay order and reimpose all or a portion of the stayed  
27

1 suspension. Should no such determination be made, the stay  
2 imposed herein shall become permanent.

3 2. The remaining ninety (90) days of said two year  
4 suspension shall be stayed, as to Respondent PROVOST upon the  
5 condition that Respondent PROVOST petition pursuant to Section  
6 10175.2 of the Business and Professions Code pays a monetary  
7 penalty pursuant to Section 10175.2 of the Business and  
8 Professions Code at a rate of \$111.11 for each day of the  
9 suspension for a total monetary penalty of \$9,999.90 for  
10 Respondent PROVOST:

11 (a) Said payment shall be in the form of a cashier's  
12 check or certified check made payable to the Recovery Account of  
13 the Real Estate Fund. Said check must be delivered to the  
14 Department prior to the effective date of the Order in this  
15 matter.

16 (b) No further cause for disciplinary action against  
17 the Real Estate licenses of said Respondent occurs within two  
18 (2) years from the effective date of the decision in this  
19 matter.

20 (c) If Respondent PROVOST fails to pay the monetary  
21 penalty as provided above prior to the effective date of this  
22 Order, the stay of the suspension shall be vacated as to  
23 Respondent PROVOST and the order of suspension shall be  
24 immediately executed, under this Paragraph B. of this Order, in  
25 which event Respondent PROVOST shall not be entitled to any  
26 repayment nor credit, prorated or otherwise, for the money paid  
27 to the Department under the terms of this Order.

1                    (d) If Respondent PROVOST pays the monetary penalty  
2 and any other moneys due under this Order and if no further  
3 cause for disciplinary action against the real estate licenses  
4 of said Respondent occurs within two (2) years from the  
5 effective date of this Order, the entire stay hereby granted  
6 under Paragraphs A. and B. of this Order, as to said Respondent  
7 only, shall become permanent.

8                    3. Respondent PROVOST shall, prior to the date this  
9 Decision After Rejection becomes effective, submit proof  
10 satisfactory to the Commissioner of having taken and  
11 successfully completed the continuing education course on trust  
12 fund accounting and handling specified in subdivision (a) of  
13 Section 10170.5 of the Business and Professions Code. Proof of  
14 satisfaction of this requirement includes evidence that  
15 Respondent PROVOST has successfully completed the trust fund  
16 account and handling continuing education course within 120 days  
17 prior to the effective date of the Decision After Rejection in  
18 this matter.

19                    4. Respondent PROVOST shall, within six (6) months  
20 from the effective date of this Decision, take and pass the  
21 Professional Responsibility Examination administered by the  
22 Department including the payment of the appropriate examination  
23 fee. If Respondent PROVOST fails to satisfy this condition, the  
24 Commissioner may order suspension of Respondent PROVOST's  
25 license until Respondent PROVOST passes the examination.

26                    5. Respondent PROVOST shall, within nine (9) months  
27 from the effective date of this Decision, present evidence

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

12 This Decision shall become effective at 12 o'clock  
13 noon on SEPTEMBER 30, 2004.

14 IT IS SO ORDERED August 31, 2004.

15 JOHN R. LIBERATOR  
16 Acting Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

BY Shelly Ely

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA  
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In the Matter of the Accusation of	)	
ALLIANCE BUSINESS GROUP,	)	No. H-8566 SF
and JAMES CARL PROVOST,	)	
Respondent.	)	N-2003120086

NOTICE

TO: ALLIANCE BUSINESS GROUP and JAMES CARL PROVOST, Respondents,  
and CHARLES D. COCHRAN, their Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision  
herein dated March 24, 2004, of the Administrative Law Judge is  
not adopted as the Decision of the Real Estate Commissioner. A  
copy of the Proposed Decision dated March 24, 2004, 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 February 20,

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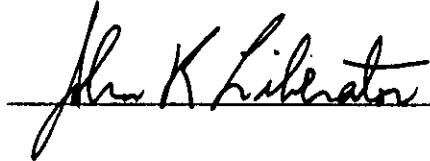
1 2004, and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

3           Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of February 20, 2004, at the Sacramento office  
6 of the Department of Real Estate unless an extension of the time  
7 is granted for good cause shown.

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

13           DATED: April 2, 2004

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15           JOHN R. LIBERATOR  
16           Acting Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ALLIANCE BUSINESS GROUP  
and JAMES CARL PROVOST,

Respondents.

No. H-8566 SF

OAH No. N 2003120086

**PROPOSED DECISION**

On February 20, 2004, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented Complainant.

Charles D. Cochran<sup>1</sup>, Attorney at Law, Law Offices of Hinton, Cochran & Borba, 50 Old Courthouse Square, Suite 601, Santa Rosa, California 95404, represented Respondents Alliance Business Group and James Carl Provost. Respondent Provost was present during all phases of the hearing.

During the hearing, Complainant made a motion that was not opposed to amend the Accusation in accordance with Government Code section 11507 as follows: at page 4, line 4, change the name "Trust #3," to "Trust #4;" at page 7, strike paragraph XVIII as found between lines 9 to 17; at page 8, strike paragraph XX subpart (7) as found between lines 18 to 20.

The record remained open for the purpose of providing the parties the ability to file written closing arguments. On March 2, 2004, Respondents filed via telefacsimile transmission, with OAH a brief entitled "Respondents' Written Final Argument," dated March 1, 2004. The brief was marked as Exhibit "C," and received as Respondents' rebuttal argument. On March 3, 2003, via telefacsimile transmission, Complainant, through the Department's counsel, filed with OAH a brief captioned "Complainant's Closing Brief." The written closing argument was marked as Exhibit "4," and received as argument.

On March 3, 2004, the matter was deemed submitted and the record closed.

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<sup>1</sup> Respondents' Written Final Argument suggests legal representation in addition to Mr. Cochran by: John A Borba, Esq.; Austin D. Garner, Esq.; Desiree O. Cox, Esq.; Philip T. Bazzano, Esq.; and Kristen L. Frizzell Kerns, Esq., of Hinton, Cochran & Borba.

## FINDINGS OF FACT

1. Complainant Les R. Bettencourt ("Complainant"), a Deputy Real Estate Commissioner of the State of California, made the Accusation in his official capacity.

2. Respondents are presently licensed and have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) as follows:

### *Alliance Business Group*

On August 27, 2001, the Commissioner originally issued a corporation license number 1317582 to Provost Properties with the designated officer being James Carl Provost. The principal place of business and main office was located at 1611 Fourth Street, Santa Rosa, California 95404. Also, on August 27, 2001, a fictitious business name was added as Alliance Property Management.

On October 30, 2001, a corporate restructure resulted in the fictitious business name of Provost Properties, doing business as Alliance Property Management, to be changed to the corporation of Alliance Business Group ("Respondent Corporation"). Also on October 30, 2001, the corporation added a fictitious business name of Redwood Financial.

The real estate corporation license will expire on August 26, 2005.

### *James Carl Provost*

On April 1, 1993, the Commissioner issued Respondent James Carl Provost ("Respondent Provost") a real estate salesperson license with an employing broker being Patron Ventures, Inc. of Santa Rosa, California.

On February 15, 2001, the Commissioner issued Respondent a real estate broker license number 01155662. On August 27, 2001, Respondent Provost was issued a license as officer of Provost Properties. Also, on August 27, 2001 another fictitious business name was added as Alliance Property Management.

On October 30, 2001, a corporate restructure resulted in the fictitious business name of Provost Properties to be changed to the corporation of Alliance Business Group. Also on October 30, 2001, the corporation added a fictitious business name of Redwood Financial.

Respondent Provost's broker license will expire on February 14, 2005. The license as an officer will expire on August 26, 2005.

3. Over the course of several weeks beginning on September 10, 2002, Complainant's auditor, Robert Leonard ("Mr. Leonard"), performed an accounting examination of the bank statements, canceled checks, separate record of each beneficiary, bank signature cards, management agreements, and various invoices maintained by Respondent corporation, with Respondent Provost as the designated corporate officer, for the property management business operations for four separate trust account facilities.

Complainant's auditor examined records regarding Respondent corporation's real estate broker activities, for the period of January 1, 2002, to December 31, 2002, in the context of the property management business affairs of various banking transactions under the control and supervision of Respondent Corporation.

On May 9, 2003, Mr. Leonard prepared an Audit Report, which was reviewed and approved by Supervising Auditor Daniel J. Sandri. The Audit Report, which contained sections titled "audit scope," "background," "audit findings," "list of bank accounts," "discussions of issues," and "conclusions," was reasonable and sound.

4. Within the three-year period immediately preceding the filing of this Accusation, Respondent Corporation, for, or in expectation of, a compensation and acting on behalf of another or others, solicited prospective tenants for, collected rents from and otherwise managed certain real properties located in or near Santa Rosa and Sacramento, California.

5. During the course of Respondent Corporation's property management business, and for the time described in Finding 4, Respondent Corporation received and disbursed funds held in trust on behalf of another or others. Respondent managed about 355 separate real estate parcels, which consisted of 570 residential rental units or apartments. Respondent Corporation managed the properties, and collected rents, for about 125 individual clients. Respondent collected approximately \$450,000 per month in rental receipts.

6. During the period covered by Mr. Leonard's Audit Report, Respondent Corporation maintained the following four trust fund accounts:

TITLE & ACCOUNT NO.	BANK	Signatories
<i>Before August 8, 2002</i>		
Provost Properties Trust	Sonoma National Bank	James Provost
Trust Account #1	1211 A West College Ave	John McNeil
<i>After August 8, 2002</i>	Santa Rosa, California	Christina Provost
Alliance Business Group		Carol Holmes
Account No. 4111159		
("Trust Account #1")		

*Before Sept. 16, 2002*  
Provost Properties for  
the Yorktown Trust  
*After September 16, 2002,*  
Alliance Business Group  
dba Alliance Property  
Mgmt - Trust  
Acct. No. 029-4143961  
("Trust Account #2")

California Federal Bank  
745 Coddington Drive  
Santa Rosa, CA 95401

*Before Sept 16, 2002*  
John R. Jock McNeil  
James Carl Provost  
Christina Lynn Provost  
William David Provost  
Jessica Bell  
*After Sept 16, 2002*  
James Carl Provost  
John R. Jock McNeil  
Carol L. Holmes

*Before Sept. 16, 2002*  
Provost Properties for  
the Terrace Trust  
*After September 16, 2002,*  
Alliance Business Group  
dba Alliance Property  
Mgmt - Trust  
Acct. No. 029-4143987  
("Trust Account #3")

California Federal Bank  
745 Coddington Drive  
Santa Rosa, CA 95401

*Before Sept 16, 2002*  
John R. Jock McNeil  
James Carl Provost  
Christina Lynn Provost  
William David Provost  
Jessica Bell  
*After Sept 16, 2002*  
James Carl Provost  
John R. Jock McNeil  
Carol L. Holmes

*Before Sept. 16, 2002*  
Provost Properties for  
the Palm Garden Trust  
*After September 16, 2002,*  
Alliance Business Group  
dba Alliance Property  
Mgmt - Trust  
Acct. No. 029-4143979  
("Trust Account #4")

California Federal Bank  
745 Coddington Drive  
Santa Rosa, CA 95401

*Before Sept 16, 2002*  
John R. Jock McNeil  
James Carl Provost  
Christina Lynn Provost  
William David Provost  
Jessica Bell  
*After Sept 16, 2002*  
James Carl Provost  
John R. Jock McNeil  
Carol L. Holmes

7. Trust Account #1, as maintained at Sonoma National Bank, was a checking account used for deposits and disbursements regarding management of 570 apartments or residential units at about 355 separate real estate structures. Deposits into Trust Account #1 included tenant security deposits, tenant rental payments, contributions from owners of the structures, and transfers from Trust Account numbers 2, 3, and 4.

Trust Account #2, as maintained at the California Federal Bank, was an interest bearing account used for deposits related to management of an apartment complex

made up of 80 units known as Yorktown. Deposits into Trust Account #2 included tenant security deposits, tenant rental payments, and earned interest payments. Checks from Trust Account #2 were disbursed in the way of transferring funds into Trust Account #1.

Trust Account #3, as maintained at the California Federal Bank, was an interest bearing account used for deposits related to management of an apartment complex made up of 40 units known as Terrace. Deposits into Trust Account #3 included tenant security deposits, tenant rental payments, and earned interest payments. Checks from Trust Account #3 were disbursed in the way of transferring funds into Trust Account #1.

Trust Account #4, as maintained at the California Federal Bank, was an interest bearing account used for deposits related to management of an apartment complex made up of 80 units known as Palm Garden. Deposits into Trust Account #2 included tenant security deposits, tenant rental payments, and earned interest payments. Checks from Trust Account #4 were disbursed in the way of transferring funds into Trust Account #1.

8. For the portions of time regarding the period examined by the Department's auditor - Mr. Leonard, Respondent Corporation's property management trust accounts, were not in the full and proper name of Respondent Corporation as trustee at a bank or other financial institution.

This omission violated California Code of Regulations<sup>2</sup>, title 10, section 2832.

9. In connection with the collection and disbursement of trust funds, Respondent Corporation, with the acquiescence of Respondent Provost, failed to accurately and regularly deposit and maintain all trust funds in the Sonoma National Bank account with the name Alliance Business Group Trust Account #1. The accounting analysis by the Department's audit established that as of February 1, 2002, a shortage in the trust funds existed in the amount of \$104,062. Respondent employed an improper practice of disbursing funds from the trust accounts for properties and beneficiaries who had sufficient funds on deposit into the accounts of beneficiaries who lacked positive balances in particular accounts.

Respondent's acts that led to a shortage of trust account funds violated Business and Professions Code<sup>3</sup> section 10145.

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<sup>2</sup> Reference herein to "Regulations" shall mean Title 10, California Code of Regulations, unless otherwise specified.

<sup>3</sup> Reference herein to "Code" shall mean the California Business and Professions Code, unless otherwise specified.

10. During the period analyzed by the Department's auditor, Respondent Corporation, with the acquiescence of Respondent Provost, failed to obtain prior written consent from each of his property management business principals for the reduction of the aggregate balance of trust funds in the Sonoma National Bank account. Respondent Corporation failed to procure consent from each of the 125 principals regarding the trust fund being taken to a monetary amount less than the existing aggregate trust fund monetary liability to the trust fund owners.

Respondent's omission and irregular business practice violated Regulations section 2832.1.

11. In connection with the collection and disbursement of trust funds, Respondent Corporation, with the acquiescence of Respondent Provost, failed to accurately and regularly deposit and maintain all trust funds in the California Federal Bank account with the name initially as Provost Properties for the Terrace Trust and then under the name of Alliance Business Group Trust Account #3. The accounting analysis by the Department's audit established that as of February 1, 2002, a shortage in the trust funds existed in the amount of \$115.86. Respondent Corporation employed an improper practice of disbursing funds from the trust accounts for properties and beneficiaries who had sufficient funds on deposit into the accounts of beneficiaries who lacked positive balances in particular accounts.

Respondent's acts that led to a shortage of trust account funds violated Code section 10145.

12. In connection with the collection and disbursement of trust funds, Respondent Corporation, with the acquiescence of Respondent Provost, failed to accurately and regularly deposit and maintain all trust funds in the California Federal Bank account with the name initially as Provost Properties for the Palm Garden Trust and then under the name of Alliance Business Group Trust Account #4. The accounting analysis by the Department's audit established that as of February 1, 2002, a shortage in the trust funds existed in the amount of \$1,125.00. Respondent Corporation employed an improper practice of disbursing funds from the trust accounts for properties and beneficiaries who had sufficient funds on deposit into the accounts of beneficiaries who lacked positive balances in particular accounts.

Respondent's acts that led to a shortage of trust account funds violated Code section 10145.

13. In connection with the collection and disbursement of trust funds, Respondent Corporation, with the acquiescence of Respondent Provost, failed to accurately and regularly deposit and maintain all trust funds in the Sonoma National Bank account with the name initially as Provost Properties and then under the name of Alliance Business Group Trust Account #1. The accounting analysis by the



Department's audit established that as of November 30, 2002, a shortage in the trust funds existed in the amount of \$36,170.20. Respondent Corporation employed an improper practice of disbursing funds from the trust accounts for properties and beneficiaries who had sufficient funds on deposit into the accounts of beneficiaries who lacked positive balances in particular accounts.

Respondent's acts that led to a shortage of trust account funds violated Code section 10145.

14. In connection with the collection and disbursement of trust funds, Respondent Corporation, with the acquiescence of Respondent Provost, failed to accurately and regularly deposit and maintain all trust funds in the California Federal Bank account with the name initially as Provost Properties for the Terrace Trust and then under the name of Alliance Business Group Trust Account #3. The accounting analysis by the Department's audit established that as of November 30, 2002, a shortage in the trust funds existed in the amount of \$688.69. Respondent Corporation employed an improper practice of disbursing funds from the trust accounts for properties and beneficiaries who had sufficient funds on deposit into the accounts of beneficiaries who lacked positive balances in particular accounts.

Respondent's acts that led to a shortage of trust account funds violated Code section 10145.

15. In connection with the collection and disbursement of trust funds, Respondent Corporation, with the acquiescence of Respondent Provost, failed to accurately and regularly deposit and maintain all trust funds in the California Federal Bank account with the name initially as Provost Properties for the Palm Garden Trust and then under the name of Alliance Business Group Trust Account #4. The accounting analysis by the Department's audit established that as of November 30, 2002, a shortage in the trust funds existed in the amount of \$3,437.27. Respondent Corporation employed an improper practice of disbursing funds from the trust accounts for properties and beneficiaries who had sufficient funds on deposit into the accounts of beneficiaries who lacked positive balances in particular accounts.

Respondent's acts that led to a shortage of trust account funds violated Code section 10145.

16. In connection with receipt and disbursement of trust funds in accounts mentioned in Factual Finding 6, Respondent Corporation, with the acquiescence of Respondent Provost, permitted, at a minimum Christina Lynn Provost and Jessica Bell, to withdraw funds. At the time of the withdrawal of trust funds, Christina Lynn Provost and Jessica Bell were neither a corporate officer, nor a licensed salesperson employed by Respondent Corporation, nor an authorized unlicensed employee as covered by a fidelity bond that would indemnify Respondent Corporation against loss in an amount sufficient

to cover the maximum amount of money to which the subject unauthorized employees had access at any time.

The omissions and acts in this regard of Respondent Corporation, with the acquiescence of Respondent Provost, violated Regulations section 2834.

17. In connection with receipt and disbursement of trust funds in accounts mentioned in Factual Finding 6, Respondent Corporation, with the acquiescence of Respondent Provost, failed as to Trust Account #1 at the Sonoma National Bank to adequately maintain a separate record for each beneficiary or transaction accounting therein for all the trust funds received, deposited and disbursed.

The omissions and acts in this regard of Respondent Corporation, with the acquiescence of Respondent Provost, violated Regulations section 2831.1.

18. In connection with the receipt and disbursement of trust funds associated with Trust Account #1 as maintained at the Sonoma National Bank, Respondent Corporation, with the acquiescence of Respondent Provost, failed to adequately maintain and perform business techniques and systems for the proper reconciliation with the records of all trust funds received and disbursed. Respondent's acts and omissions violated the methods and manner of record keeping required by Regulations section 2831.1.

Respondent failed to reconcile trust fund accounts at least once per month in conformance with Regulations section 2831.2.

19. Within the period of three years immediately before the date of filing of the Accusation in this matter, in connection with the receipt and disbursement of trust funds as described in Factual Finding 6, Respondent Corporation, with the acquiescence of Respondent Provost, failed to retain and to make available to the Commissioner's representative, namely Mr. Leonard, cancelled checks as executed on behalf of Respondent Corporation in connection with transactions for which a real estate license is required.

The omissions and acts in this regard of Respondent Corporation, with the acquiescence of Respondent Provost, violated Code section 10148.

20. In the matters for which Respondent Corporation's personnel failed to adhere to the real estate law and the Department's regulations, Respondent Provost failed in his capacity as the designated officer of Respondent Corporation to exercise reasonable control over the activities of Respondent Corporation and its employees. He allowed violations of law to occur and to continue while serving as principal for the subject licensed real estate corporation.

21. Department regulations required Respondent Corporation to strictly adhere to cash based accounting for trust fund accounts.

*Matters in Mitigation and Extenuation*

22. Respondent Provost is a partner in a business venture that has a principal objective of owning, and benefiting from controlling, three apartment buildings, which are situated in the Sacramento, California, area. The apartment building complexes are known as Yorktown (73 apartments), Terrace Apartments (44 apartments) and Palm Garden Apartments (80 apartments).

The apartment building complexes are managed by Respondent Corporation's personnel, who use the trust fund accounts as described in Factual Finding 6, above: as Trust Account #2 (Yorktown), Trust Account #3 (Terrace Apartments) and Trust Account #4 (Palm Garden Apartment).

The other named partners for the three apartments, but at different levels of ownership, are: Greg Moore and Richard Caldwell.

23. Respondent Provost approved a business practice for Respondent Corporation, under the fictitious business name - Alliance Property Management - of permitting resident, or on-site, apartment managers to deposit tenants' rental cheques into the respective Cal Federal bank accounts for trust funds for the three distinct apartment building complexes. The property managers then used telefacsimile transmissions of the deposit receipts from Cal Federal to the Santa Rosa offices of Respondent Corporation's property management central office. The business practice of Respondent Corporation enabled bookkeepers for Respondent Corporation to write checks from the distinct Cal Fed trust accounts for deposit into the primary trust fund account with Sonoma National Bank. Between the third day and the fifth day of each month, Respondent Corporation's personnel, via cheques, paid recurring expenses, such as mortgage payments for the apartment buildings and homeowners' association dues. Respondent Corporation's personnel paid non-recurring expenses, such as maintenance and electric bills, between the fifth day and twentieth day of each month. During each month, Respondent Corporation's personnel effected hundreds, if not thousands, separate entries.

24. Claimant offers no competent evidence to show that Respondent Provost used trust fund money for his personal use. Respondent persuasively proclaims that no trust fund account asset was employed in a hypothecation<sup>4</sup>.

25. Respondent Provost compellingly claims that he used personal financial resources to make the trust account solvent for the benefit of the trust fund beneficiaries.

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<sup>4</sup> A contract of mortgage or pledge in which the subject matter is not delivered into possession of the pledgee.

26. Complainant does not demonstrate that Respondent Provost, individually, or through Respondent Corporation, engaged in acts involving moral turpitude.

27. Complainant does not establish past disciplinary action, or other consumer complaints, against respondent's license.

28. Respondent Provost has sought to correct the deficiencies in his record keeping and accounting practices of Respondent Corporation.

After the audit by the Department's Mr. Leonard, Respondent Provost followed Mr. Leonard's recommendations regarding trust fund accounting for Respondent Corporation.

Respondent Corporation, through the guidance of Respondent Provost, has improved the computerized accounting system known as the YARDI system. Since the audit, Respondent Provost had sought to correct Respondent Corporation's admitted "automatic fallacy [as] built into the YARDI software system" corrected. Deductions by Respondent Corporation's employees, principals or agents that followed the audit by Mr. Leonard led to discovering that the YARDI system manifested irregularities or errors. The YARDI system, for example, calculated the general ledger balance based upon a preprogrammed deduction system for recurring costs. After the audit, Respondent Corporation changed the YARDI system ledger software so that the computer system more properly applied deposits in transit immediately recorded onto the ledger.

29. The YARDI system may have contributed to a shortage of \$115.86 as found by Complainant's auditor - Mr. Leonard - for Trust Account number #3.

30. During the audit by Mr. Leonard, a shortage of \$1,125 by Trust Account #4 caused by a transaction trust was not properly reflected in the general ledger for February 1, 2002. But, the error was corrected in March 2002.

31. Complainant provides no evidence that any of Respondent Corporation's property management clients or trust account beneficiaries suffered any financial harm by respondent's irregular business practices.

32. Certified Public Account Ms Shelly Williams appeared at the hearing on behalf of Respondent. Her credible testimony shows that no long term financial injury was sustained by any property owner associated with the four trust funds controlled and maintained by Respondent Corporation. Ms Williams shows that Respondent Provost, and his partners, inject financial resources to maintain the trust accounts in balance when shortfalls occurred, for short period of a few days.

But, Ms Williams is not persuasive that Respondent Corporation, as controlled by Respondent Provost, conducted business with regard to trust fund accounts as not to violate the real estate law of the State of California. She is not credible that Respondents maintained strict balance of trust fund accounts, effected precise timely reconciliation of accounts and preserved records for the Department's auditor to show transparent and accurate analysis of checks written on trust accounts.

33. Certified Public Account Mr. John Jones appeared at the hearing on behalf of Respondents.

Notwithstanding the outstanding qualification of CPA Mr. Jones, he is not fully conversant and knowledgeable with regard to the Department's regulations regarding trust fund accounting principles and rules.

CPA Jones does not show that the Department' trust fund regulations, and the real estate laws of the State of California, were in any way misapplied by the comprehensive and reasonable findings and conclusions of Complainant's auditor – Mr. Leonard.

34. Mr. E. Robert Miller, real estate broker who has devoted several decades to real estate property management, offered evidence at the hearing of this matter.

Mr. Miller expresses high regard for the reputation of Respondent Provost in the community of real estate professionals in the community of Santa Rosa. Mr. Miller shows that Respondent Provost, and Respondent Corporation, are on the local prosecutor's "good list" of property management firms in the Santa Rosa area. Mr. Miller conveys his knowledge that no record exists of complaints by local law enforcement offices against either licensee involved in this matter.

But, Mr. Miller offers no proof to refute Complainant's well presented evidence of Respondents' violation of the law regarding trust fund practices, including Respondents' failure to strictly control the signatories on the trust fund accounts at issue in this matter.

#### *Matters in Aggravation*

35. For a period of time for the actual deficiencies in the trust accounts, Respondent Provost deemed the improper negative balances as an aspect of creative tax avoidance and real estate investment practices of a partnership in which he had a substantial interest.

Yet, Respondent Provost provides no evidence that he assured that interest was applied to the account of a trust account beneficiary whose money was "borrowed" to pay the debts or obligations of a trust account client who had a negative balance. Nor

does Respondent Provost provide evidence that explicit written consent from all affected persons, whether or not such individuals occupied with him a partnership relationship, was placed in the business records of Respondent Corporation. Nor did Respondent Provost demonstrate by competent evidence that Respondent Corporation extended express language to all trust account beneficiaries whose money was used for the benefit of all clients of Respondent Corporation.

36. Respondent refuses to acknowledge the potential adverse consequences associated with the negative balances that he permitted Respondent Corporation to manifest on its books of account. Respondent Provost does not fully grasp the fiduciary obligation Respondent Corporation owes to owners of properties that the corporation's personnel manage. Respondent Provost appears oblivious to the illegality of the unauthorized use of one owner's funds to pay the obligations of another owner.

Respondent Provost does not comprehend the strict construction and absolute dictate of the regulations that implement the State of California's trust fund laws.

37. Respondents' argument is fallacious in many of its arguments. (In particular, lines 20 to 28, page 4, Respondents' Written Final Argument.) Most egregious is Respondents' denigration of the professionalism and devotion to the public interest of Complainant's auditor - Mr. Leonard. Respondent errs by, and proves nothing, by asserting: "...[O]wners of investments frequently want certain properties to show 'negative balances' for tax purposes. The Auditor simply dropped the ball in showing common-sense approaches to real estate investment.... [T]he Auditor filed to follow basic auditing principles ...."

Respondents' arguments are not compelling that the tax avoidance schemes that adversely impacted the subject trust fund accounts mitigate the trust fund irregularities and shortages as detected by Complainant's audit - Mr. Leonard.

Respondent Provost asserts that Respondent Corporation did not receive from its bank, copies of the reverse side of cheques processed by the bank. But, such bank practice is not a matter in extenuation. Rather, Respondents are obligated to secure banking services that will facilitate Respondent Corporations to comply with the Department's regulations. Respondent Corporation, which takes in tens of thousands of dollars in rental receipts each month, may be required to secure the services of a large bank to accommodate the requirement that Respondent Corporation retain, for three years, copies of both sides of cheques written on trust fund accounts.

#### *Other*

38. It would not be against the public interest to permit Respondent Corporation and Respondent Provost to maintain the respective licenses and licensing rights issued as a real estate corporation and real estate broker following a period of

suspension. Moreover, the public interest will be served by each licensee functioning and conducting business transactions during a rehabilitation period of two years under respective disciplined licenses.

## LEGAL CONCLUSIONS

1. The Factual Findings and Order, herein, rest upon proof by clear and convincing evidence to a reasonable certainty<sup>5</sup> that Respondents' acts and omissions in all matters recorded herein.

2. Business and Professions Code section 10177, subdivision (d) establishes that: "The commissioner may suspend or revoke the license of a real estate licensee... who has done any of the following, or may suspend or revoke the license of a corporation...if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has ... (d) [w]illfully disregarded or violated the Real Estate Law ... or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law...."

3. The concept of "willful" is given broad meaning in the realm of administrative licensure disciplinary proceedings. "Willful" does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term " 'willful' ... does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent. [citations omitted.]" *Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4<sup>th</sup> 1, 12. (See also: *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575 fn.9; and *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639.)

4. California Code of Regulations, title 10, section 2832, subdivision (a) provides "Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson."

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Title 10, California Code of Regulations section 2832, subdivision (a), by reason of the matters set forth in Finding 8.

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<sup>5</sup> *Ettinger v. Board of Medical Quality Assurance* (1985) 135 Cal. App. 3d 853.)

5. Business and Professions Code section 10145 (a) (1) sets forth: "A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds."

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Code section 10145, by reason of the matters set forth in Findings 9, 11, 12, 13, 14, and 15.

6. California Code of Regulations, title 10, section 2832.1 sets out:

a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.



Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Title 10, California Code of Regulations section 2832.1, by reason of the matters set forth in Finding 10.

7. California Code of Regulations section, title 10, 2834 declares:

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a salesperson licensed to the broker.

(2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker

(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

(1) an officer through whom the corporation is licensed pursuant to section 10158 or 10211 of the Code; or

(2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account:

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, or the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Title 10, California Code of Regulations section 2834, by reason of the matters set forth in Finding 16.

8. California Code of Regulations, title 10, section 2831.2 sets forth: "The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions."

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Title 10, California Code of Regulations section 2831.1 and 2831.2, by reason of the matters set forth in Findings 17 and 18.

9. Professions Code section 10148, in part, prescribes: "...A licensed real estate broker shall retain for three years copies of *all* listings, deposit receipts, *canceled checks*, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice...." [Emphasis added.]

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Code section 10148, by reason of the matters set forth in Finding 19.

10. Business and Professions Code section 10177, subdivision, declares in pertinent part: "The commissioner may suspend or revoke the license of a real estate licensee... who has done any of the following, or may suspend or revoke the license of a corporation...if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has .... h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

Business and Professions Code section 10159.2, sets out in important part:

(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of

the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Code sections 10177, subdivision (h) and 10159.2, by reason of the matters set forth in Finding 20.

11. The matters set forth in Findings 22 to 34 were considered in making the following order.

#### ORDER

A. All licenses and licensing rights of Respondent Corporation Alliance Business Group under the Real Estate Law are suspended for two years from the effective date of this Decision pursuant to Legal Conclusions 4 through 19, singly and collectively. However, the suspension shall be stayed upon the following terms and conditions:

1. Corporate Respondent's license and license rights shall be actually suspended for a period of forty-five (45) days. Corporate Respondent may, pursuant to section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the term of the actual suspension.
2. Respondent Corporation, through its officers and directors, shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

*not adopted*

*not  
adopted*

3. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for in condition "1," vacate and set aside the stay order including any further stay imposed pursuant to section 10175.2. Should no order vacating the stay be made pursuant to this condition or condition "4" below, the stay imposed herein shall become permanent.

4. Pursuant to section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for an audit to determine if Respondent Corporation has corrected the trust fund violation(s) set forth in the Legal Conclusions. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent Corporation, its officers and directors, shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition or condition "3," the stay imposed herein shall become permanent.

B. All licenses and licensing rights of Respondent James Carl Provost under the Real Estate Law are suspended for two years from the effective date of this Decision pursuant to Legal Conclusions 4 through 20, singly and collectively. However, the suspension shall be stayed upon the following terms and conditions:

1. Respondent Provost's license and license rights shall be actually suspended for a period of ninety (90) days. Respondent may, pursuant to section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the term of the actual suspension.

*not  
adopted*

2. Respondent Provost shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
3. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for in condition "1," vacate and set aside the stay order including any further stay imposed pursuant to section 10175.2. Should no order vacating the stay be made pursuant to this condition or condition "4" below, the stay imposed herein shall become permanent.
4. Pursuant to section 10148 of the Business and Professions Code, Respondent Provost shall pay the Commissioner's reasonable cost for an audit to determine if respondent has corrected the trust fund violation(s) set forth in the Legal Conclusions. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition or condition "3," the stay imposed herein shall become permanent.
5. Respondent Provost shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing

*Not  
adopted*



education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

- 6. Respondent Provost shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent Provost fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

DATED: March 24, 2004

PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

FILED

JAN - 8 2004

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

DEPARTMENT OF REAL ESTATE

*Shelly [Signature]*

*In the Matter of the Accusation of*

ALLIANCE BUSINESS GROUP, and  
JAMES CARL PROVOST



Case No. H-8566 SF

OAH No. N2003120086

*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 **FRIDAY--FEBRUARY 20, 2004**, 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: JANUARY 8, 2004

DEPARTMENT OF REAL ESTATE  
*[Signature]*  
By DAVID B. SEALS, Counsel

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

**FILED**  
DEC 11 2003

DEPARTMENT OF REAL ESTATE

By Laurie A. Zini

*In the Matter of the Accusation of*

ALLIANCE BUSINESS GROUP,  
AND JAMES CARL PROVOST,

}

Case No. H-8566 SF

OAH No. N-2003120086

*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 **FRIDAY, JANUARY 16, 2004**, 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.

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DEPARTMENT OF REAL ESTATE

By David B. Seals  
DAVID B. SEALS, Counsel (L2)

Dated: DECEMBER 11, 2003



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  
NOV - 7 2003

DEPARTMENT OF REAL ESTATE

By *Laurie J. Rein*

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 ALLIANCE BUSINESS GROUP, ) No. H-8566 SF  
13 and JAMES CARL PROVOST, ) ACCUSATION  
14 Respondents. )

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 accusation against ALLIANCE BUSINESS GROUP dba Alliance Property  
18 Management and Redwood Financial (hereinafter "Respondent  
19 ALLIANCE") and JAMES CARL PROVOST (hereinafter "Respondent  
20 PROVOST") is informed and 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 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 ALLIANCE BUSINESS GROUP - as a real estate broker  
6 corporation.

7 JAMES CARL PROVOST - as a real estate broker and as  
8 designated broker-officer of Respondent ALLIANCE.

9 III

10 Whenever reference is made in an allegation in this  
11 Accusation do 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 Santa  
24 Rosa, California.

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V

Beginning on or about September 10, 2002, the Department conducted an audit of Respondents' property management activities for the time periods January 1, 2002 to December 31, 2002 as set forth in Audit No. OK-02-0042 dated May 9, 2003. During the course of the property management activities described in Paragraph IV above, Respondents received and disbursed funds held in trust on behalf of another or others.

VI

Beginning on or before January 1, 2002 through on or after December 31, 2002, Respondents maintained the following trust fund accounts:

<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANKS</u>
Provost Properties Trust Account #1 (Prior to July 8, 2002) Alliance Business Group Account No. 4111159 (hereinafter "Trust #1")	Sonoma National Bank Santa Rosa, California
Provost Properties For the Yorktown Trust (Prior to September 16, 2002) Alliance Business Group dba Alliance Property Mgmt - Trust (As of September 16, 2002) Account No. 029-4143961 (hereinafter "Trust #2")	California Federal Bank Santa Rosa, California
Provost Properties For the Terrance Trust (Prior to September 16, 2002) Alliance Business Group dba Alliance Property Mgmt - Trust (As of September 16, 2002) Account No. 029-4143987 (hereinafter "Trust #3")	California Federal Bank Santa Rosa, California
///	
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1 Provost Properties For Palm Garden California Federal Bank  
Trust (Prior to September 16, 2002) Santa Rosa, California  
2 Alliance Business Group dba  
Alliance Property Mgmt-Trust  
3 (As of September 16, 2002)  
Account No. 029-4143979  
4 (hereinafter "Trust #4")

5 VII

6 In connection with the receipt and disbursement of  
7 trust funds described in Paragraph V above, Respondents failed  
8 to maintain Account #1, Account #2, Account #3, and Account #4  
9 in the name of ALLIANCE BUSINESS GROUP, or a fictitious name in  
10 which Respondent ALLIANCE was licensed by the Department, as  
11 trustee at a bank or other financial institution in violation of  
12 Section 10145 of the Code and Section 2832 of Title 10,  
13 California Code of Regulations (hereinafter "Regulations").

14 VIII

15 In connection with the receipt and disbursement of  
16 trust funds described in Paragraph V above, Respondents failed  
17 to deposit and maintain trust funds in Trust #1 in such manner  
18 that as of February 1, 2002, there was a shortage of \$104,062.42  
19 of trust funds.

20 IX

21 In connection with the receipt and disbursement of  
22 trust funds described in Paragraph V above, Respondents failed  
23 to deposit and maintain trust funds in Trust #3 in such manner  
24 that as of February 1, 2002, there was a shortage of \$115.85 of  
25 trust funds.

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X

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to deposit and maintain trust funds in Trust #3 in such manner that as of February 1, 2002, there was a shortage of \$1,125.00 of trust funds.

XI

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to deposit and maintain trust funds in Trust #1 in such manner that as of November 30, 2002, there was a shortage of \$36,170.20 of trust funds.

XII

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to deposit and maintain trust funds in Trust #3 in such manner that as of November 30, 2002, there was a shortage of \$688.69 of trust funds.

XIII

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to deposit and maintain trust funds in Trust #4 in such manner that at of November 30, 2002, there was a shortage of \$3,437.27 of trust funds.

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XIV

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

XV

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents permitted withdrawals to be made from Trust #2, Trust #3, and Trust #4, by someone other than a corporate officer, or a salesperson licensed to Respondent ALLIANCE and authorized in writing by Respondents to withdraw said funds, or an authorized unlicensed employee covered by a fidelity bond indemnifying Respondent ALLIANCE against loss in an amount sufficient to cover the maximum amount of funds to which the employee had access at any time, as required by Section 2834 of the Regulations.

XVI

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed, as to Trust #1 to adequately maintain a separate record for each beneficiary or transaction accounting therein for all said trust funds received, deposited, and disbursed in the manner required by Section 2831.1 of the Regulations.

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1 XVII

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

9 XVIII

10 Within the three-year period immediately preceding the  
11 filing of this Accusation, in connection with the receipt and  
12 disbursement of trust funds described in Paragraph V above,  
13 Respondents opened, or caused to be opened and maintained Trust  
14 #3 and Trust #4, as an interest-bearing account. In opening and  
15 operating said interest-bearing account, Respondents failed to  
16 comply with the requirements of Section 2830.1 of the  
17 Regulations and Section 10145(d) of the Code.

18 XIX

19 Within the three-year period immediately preceding the  
20 filing of this Accusation, in connection with the receipt and  
21 disbursement of trust funds described in Paragraph V above,  
22 Respondents failed to retain and make available to a  
23 representative of the Commissioner cancelled checks executed by  
24 Respondents in connection with transactions for which a real  
25 estate license is required in violation of Section 10148 of the  
26 Code.

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

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

7 (2) As to Paragraphs VIII, IX, X, XI, XII, and XIII,  
8 under Section 10177(d) of the Code in conjunction with Section  
9 10145 of the Code;

10 (3) As to Paragraph XIV, under Section 10177(d) of  
11 the Code in conjunction with Section 2832.1 of the Regulations;

12 (4) As to Paragraph XV, under Section 10177(d) of the  
13 Code in conjunction with Section 2834 of the Regulations;

14 (5) As to Paragraph XVI, under Section 10177(d) of  
15 the Code in conjunction with Section 2831.1 of the Regulations;

16 (6) As to Paragraph XVII, under Section 10177(d) of  
17 the Code in conjunction with Section 2831.2 of the Regulations;

18 (7) As to Paragraph XVIII, under Section 10177(d) of  
19 the Code in conjunction with Section 10145(d) of the Code and  
20 Section 2830.1 of the Regulations; and


21 (8) As to Paragraph XIX, under Section 10177(d) of  
22 the Code in conjunction with Section 10148 of the Code.

23 In the alternative, the acts and/or omissions of  
24 Respondent PROVOST described above, constitute failure on the  
25 part of Respondent PROVOST, as designated broker-officer for  
26 Respondent ALLIANCE, to exercise reasonable supervision and  
27 control over the licensed activities of Respondent ALLIANCE



1 required by Section 10159.2 of the Code, and is cause for the  
2 suspension or revocation of Respondent PROVOST's license and/or  
3 license rights under Section 10177(h) of the Code.

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

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12 \_\_\_\_\_  
13 LES R. BETTENCOURT  
14 Deputy Real Estate Commissioner

14 Dated at Oakland, California,  
15 this 14<sup>th</sup> day of October, 2003.

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