

FILED

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

NOV 14 2007

DEPARTMENT OF REAL ESTATE

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In the Matter of the Accusation of )  
 )  
 MICHAEL JAMES BOOKER, )  
 JAMES EDWARD GORDON, )  
 AND MAYA REALTY CORP., )  
 )  
 Respondents. )

NO. H-9968 SF  
 OAH NO. N-2007050644

By *[Signature]*

DECISION

The Proposed Decision dated October 12, 2007, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter with the following exception:

Condition "10" on Page 18 of the Order of the Proposed Decision is not adopted and shall not be part of the Decision.

This Decision shall become effective at 12 o'clock noon  
DEC - 5 2007  
 on \_\_\_\_\_

IT IS SO ORDERED \_\_\_\_\_

*11-7-07*  
 JEFF DAVIS  
 Real Estate Commissioner

*[Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL JAMES BOOKER,  
JAMES EDWARD GORDON,  
and MAYA REALTY CORP.,

Respondent.

No. H-9968 SF

OAH No. N2007050644

**PROPOSED DECISION**

On September 13, 2007, 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.

Respondent Michael James Booker and Respondent James Edward Gordon appeared for the hearing, but otherwise neither individual respondent was represented. As the owner of all shares in the corporation, Respondent Booker appeared on behalf of Maya Realty Corp., although the designated broker, Respondent Gordon, was present throughout the proceeding.

On September 13, 2007, the parties submitted the matter and the record closed.

**FACTUAL FINDINGS**

1. Complainant E. J. Haberer II (Complainant), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the Accusation against Respondent Michael James Booker (Respondent Booker), Respondent James Edward Gordon (Respondent Gordon) and Respondent Maya Realty Corporation. (Respondent MRC). Complainant signed the Accusation on March 22, 2007, but the Accusation was not served on respondents until April 11, 2007.

2. On January 26, 2004, the Department originally issued a conditional salesperson license to Respondent Booker.

Respondent Booker's first employing broker was Alfonso Carpio Barretto at an address in Newark, California at a business called Loan Express Mortgage. (Respondent spent about one and one-half years as an unlicensed trainee and then as a conditionally

licensed real estate salesperson with real estate broker Barretto.) After about four months in a licensee capacity with Loan Express Mortgage, on June 1, 2004, Respondent Booker changed his employing broker to Wentworth Enterprises, Inc., of Fremont, California that operated under the "dba" of Horizon Real Estate and Financial Services, and which functioned under a controlling broker named George Duarte. Respondent Booker's employment with Wentworth Enterprises, Inc., discontinued as of March 1, 2005.

On April 14, 2005, Respondent Booker had his employment activated with Respondent MRC. (The corporation is owned "100 percent" by Respondent Booker; yet Respondent Gordon has been the responsible licensed broker of the corporation since March 12, 2005.)

On July 26, 2005, Respondent Booker's conditional salesperson license expired. Also the Department noted that as of July 27, 2005, the salesperson license in the name of Respondent Booker was suspended indefinitely under the provision of section 10153.4, subdivision (c), of the Business and Professions Code (Failure of a Conditional Real Estate Salesperson Licensee to Complete Educational Requirements).

Six months after the license suspension, the Department on January 31, 2006, reinstated the real estate salesperson license upon Respondent Booker's completion of educational requirements. But as of February 1, 2006, he had no known employing broker so that his address of record was on Revere Avenue in Oakland. On February 24, 2006, Respondent's real estate salesperson license was activated in the employment of Respondent MRC.

Respondent Booker's real estate salesperson license will expire on January 25, 2008, unless surrendered, suspended or revoked before that date.

3. Respondent Gordon is now licensed as a real estate broker under the California Real Estate Law, which is set out in Part 1 of Division 4 of the Business and Professions Code (Code). Respondent Gordon is the designated officer and responsible broker for Respondent MRC.

Respondent Gordon's real estate broker license will expire on February 26, 2009, unless surrendered, suspended or revoked before that date.

4. Respondent MRC is presently licensed and has license rights under the Code as a corporate real estate broker doing business both under the fictitious business name ("doing business as" or dba) of "Centennial Mortgage," which was effective from March 12, 2005, and under the dba of "Monte Vista Realty," which was effective from March 28, 2005. Respondent MRC was incorporated in January 2005 by Respondent Booker. The business activities of Respondent MRC opened to the public on April 1, 2005, with Respondent Gordon as the designated broker.

From the original date of licensure on March 12, 2005, for the corporate broker of Respondent MRC, Respondent Gordon has been the designated officer and responsible broker. Respondent Booker owns all shares in Respondent MRC and he is the president and CEO for the corporation.

Respondent MRC has its main office at 22320 Foothill Boulevard, Suite 330, Hayward, California 94541. On December 27, 2005, Respondent MRC secured a branch license for an address in Walnut Creek.

On March 11, 2009, the license of Respondent MRC will expire. And on that date the designated officer status of Respondent Gordon as the corporate broker will expire.

*Respondent Booker's Activity in Real Estate Sales Transactions that Require Licensure*

*a. Transaction involving Representation of Proposed Buyers of Winged Foot Court House*

5. Mr. David H. Tang appeared at the hearing of this matter to provide credible evidence.

Mr. Tang is employed by Reliance Realty Group as a "realtor."

Between mid-October 2005 and late-November 2005, in a transaction in which Mr. Tang represented sellers, Respondent Booker provided services as a licensed real estate agent for potential buyers of a house at Winged Foot Court in Livermore, California. Respondent Booker engaged in negotiations with Mr. Tang that resulted in the execution of a contract by supposed clients of Respondent Booker for the purchase of the residential structure on Winged Foot Court.

Before the close of escrow, on behalf of the proposed buyers, Respondent Booker caused to be sent to Mr. Tang a letter and a notice of cancellation that led to the sales transaction to be rescinded. The claimed basis for the proposed buyers to seek rescission of the contract for purchase of the Winged Foot Court property was the loss of employment by one of the buyers. But the purported basis for discharge of the obligation of the buyers under the contract was false.

Before the sellers of the Winged Foot Court house were informed of the desire of the pending buyers to escape an executed contract on the transaction, Mr. Tang received a telephone call from a real estate agent (Ms. Judith Pipkin) for sellers of a house on Lobelia Way in Livermore. The other sellers' agent conveyed to Mr. Tang that the clients of Respondent Booker wished to buy the Lobelia Way property, and that other agent was troubled by her examination of computer records that showed the buyers were involved in a transaction to buy property of clients represented by Mr. Tang. Neither of the potential buyers, who were represented by Respondent Booker, had lost employment so as to preclude their purchase of the Lobelia Way house. Then Mr. Tang received from the other sellers' agent a copy of a Cancellation of Contract form, dated in mid-November 2005, that

purported to reflect the signatures of the sellers represented by Mr. Tang. After examining the Cancellation of Contract form, Mr. Tang concluded that his clients' signatures had been forged.

Mr. Tang communicated with Respondent Gordon that the sellers of the Winged Foot Circle were distressed with the forgery of their signatures on the Cancellation of Contract form. To avoid being sued and confronting litigation regarding the forgery and the damages incurred through the Winged Foot Circle property being "off the market from November 3 until November 15," the clients of Mr. Tang accepted as compensation for their damages the deposit of \$10,000, as previously placed in an escrow account by the proposed buyers, who had been represented by Respondent Booker in his employment with Respondent MRC, doing business as Monte Vista Realty, which was under the guidance of its designated officer, Respondent Gordon.

6. Documents associated with the transaction for the Winged Foot Court property in Livermore, California, showed Respondent Booker's active participation in the real estate transaction that required a license as a salesperson. Among other things, on October 25, 2005, Respondent Booker signed a Residential Purchase Agreement as real estate agent for Armando Buenrostro and Evelia Buenrostro as proposed buyers of the Winged Foot Court, Livermore property.

*b. Transaction involving Proposed Buyers of Lobelia Way House*

7. Ms. Judith "Judy" P. Pipkin offered credible and persuasive evidence at the hearing of his matter.

During the course of her employment as a realtor with Intero Real Estate, Ms. Pipkin acted as the listing agent for residential real estate known as Lobelia Way in Livermore. During the performance of her licensing duties in November 2005 and December 2005, Ms. Pipkin interacted with Respondent Booker who held himself out as a real estate salesperson who was associated with Respondent MRC, doing business as Monte Vista Realty, which was under the guidance of its designated officer, Respondent Gordon.

Even though the conditional real estate salesperson license he once held had been indefinitely suspended for his failure to meet educational requirements, Respondent Booker represented interested buyers of the Lobelia Way property. Although not licensed, Respondent Booker sent Ms. Pipkin an offer, via telefacsimile, on behalf of proposed buyers for the Lobelia Way property. And Respondent Booker signed pages to a real estate sales contract for the Lobelia Way property in the capacity of a real estate salesperson. On November 29, 2005, Respondent Booker affixed his signature under the "Agent's Inspection Disclosure" clause. Also on November 29, 2005, he signed as "agent (broker obtaining the offer)." On November 21, 2005, Respondent Booker signed the Supplemental Statutory and Contractual Disclosure page on the on the line captioned: "Associate-Licensee." On the disclosure's line near Respondent's signature, at the printing that read: "Agent (Broker Obtaining the Offer)," there appeared: "Monte Vista Realty," which is the fictitious business

name for Respondent MRC. And, on November 29, 2005, Respondent Booker signed the Statutory Natural Hazard Disclosure Statement as "agent." The transaction was deemed closed on December 20, 2005.

In December 2005, Ms. Pipkin received a letter, which appeared on the stationery of Monte Vista Realty, as signed by Respondent Booker in the capacity of "Realtor." Respondent Booker's letter, in part, read: "As specified in the MLS listing for . . . Lobelia Way, Livermore . . ., the cooperating broker compensation is [three percent] of the final purchase price. Based on an \$810,000 purchase price, commission [payable] to Monte Vista Realty is \$24,300 minus a credit for \$8,772.19. Thus total commission check to Monte Vista Realty at close of escrow is \$15,527.81."

8. In late 2005 Respondent Booker participated as a real estate professional in real estate transactions that involved residential property known as Winged Foot Court and Lobelia Way, the Commissioner had suspended the conditional real estate salesperson license for Respondent Booker because of his failure to timely complete educational course requirements for licensure.

Accordingly, Respondent Booker unlawfully engaged in other acts that required a real estate agent to hold an active license when he held himself out as a real estate agent for the transactions mentioned above.

#### *Matters in Mitigation—Respondent Booker*

9. While Respondent Booker attended San Jose State University, he began work as a telemarketer in about 2002. He worked for Cal Coast Financial over a period of one year as a part-time employee while attending college classes. Then in 2003 Respondent Booker began to work as a telemarketer for Loan Express Mortgage as a part-time employee while he attended college classes. (Respondent Booker last attended college in 2004 to completely devote himself to work in the real estate field.)

10. When Respondent MRC began its business operations in April 2005, the business employed about six salespersons and another half dozen employees, including escrow coordinators, secretaries, loan processors and a receptionist.

Respondent Booker, as CEO of Respondent MRC, managed two distinct business entities that pursued real estate related business. By way of the fictitious business name of "Centennial Mortgage Group," under the management of Respondent Booker along with Respondent Gordon, the corporate broker focused on the mortgage origination business. While under the name of "Monte Vista Realty," respondents attended to the business of real estate sales. The resources and time for respondents were expended by about 70 percent through the mortgage loan business, while 30 percent of efforts, time and resources were devoted to real estate sales business activity

*Matters in Extenuation – Respondent Booker*

11. Respondent Booker recalled receiving notice from the Department that the conditional salesperson license as issued to him would be suspended if he did not timely complete required courses of instruction. After his receipt of the notice, Respondent Booker enrolled in a correspondence course with a company called First Tuesday, which sent him study material including course books. But due to his “hectic schedule” with various business activities, Respondent was unable to complete the correspondence course before the prescribed date for the suspension of the conditional salesperson license. Because completing the courses was not his paramount priority, his obligation to complete the courses so as to attain full licensure “slipped [his] mind.”

12. Regarding the forgery of the signatures of sellers of the Winged Foot Court property, Respondent Booker turned to an intern, who spoke Spanish, and an escrow assistant to procure all signatures on documents related to the transaction. Respondent Booker denies that he directly or indirectly acted to forge signatures. Respondent Booker asserts that during the course of investigating the false document the escrow coordinator resigned and she moved to Arizona, and also an intern, who spoke Spanish to assist the buyers, was discharged from the corporate broker’s office facility.

*Matters in Rehabilitation– Respondent Booker*

13. At the hearing of this matter Respondent Booker expressed contrition for the acts and omissions that reflect past unprofessional conduct on his part. Respondent Booker acknowledged the truth and accuracy of all aspects of the Accusation.

14. After taking the requisite number of courses to qualify for licensure, Respondent Booker acquired a license from the Department for reinstatement as a real estate salesperson on January 31, 2006. He activated his employment as a real estate salesperson with Respondent MRC three weeks later on February 24, 2006.

15. At the hearing of this matter Respondent Booker proclaimed that he is committed to relying more closely on the advice and direction of Respondent MRC’s responsible broker and designated officer, Respondent Gordon. Respondent Booker notes that the ultimate responsibility for the operations of broker-like activity of the businesses conducted under the name of Respondent MRC rests with Respondent Gordon.

Respondent Booker compellingly asserted that since the commencement of the “ordeal” that stemmed from the complaint of another real estate licensee (namely, Ms. Pipkin) that Respondent Gordon has taken on and exhibited zeal and great scrutiny to be “deadly on top” of the broker’s functions and obligations in aiding each salesperson in the office.

16. Since his resumption of the work of a real estate salesperson in late February 2006, Respondent Booker represents that he has conducted all of the corporate broker's business transactions in an honorable and ethical manner. Complainant offers no evidence to show that after the license reinstatement and activation of employment that Respondent Booker has committed an error or misdeed for which the Department has received a complaint against Respondent Booker or the other respondents in this matter.

17. The courses that Respondent Booker completed for the real estate salesperson's licensure have been beneficial to him in providing professional salesperson services to consumers who he represents in transactions.

18. After gaining knowledge of the false document (that is, the Notice of Cancellation for the Winged Foot Court property), respondents accepted the resignation of the office escrow officer and discharged an intern who were directly responsible for the false documents.

*Matter in Aggravation—Respondent Booker*

19. For the Lobelia Way transaction, when confronted by the agent of sellers of the house with the fact that he did not possess a valid salesperson license, Respondent Booker prompted Respondent Gordon to receive the commission on the transaction and to assume primary responsibility for the transaction that was grounded upon deceit by the buyers to rescind a preexisting contract for a transaction on Winged Foot Court. Rather than severing ties with dishonest buyers and declining receipt of money from the tainted transaction, the individual respondents pressed forward to close the Lobelia Way transaction in order to receive compensation

*Matters that Negatively Impact on Respondent Booker's Progress towards Rehabilitation*

20. At the hearing of this matter, Respondent Booker was not believable when he asserted that he received notice of the suspension of the conditional salesperson license "at the tail end of the transaction" for the Winged Foot Court house. Rather, the record shows that Respondent Booker's conditional license expired on July 26, 2005, and it was indefinitely suspended under Business and Professions Code section 10153.4, subdivision (c), on July 27, 2005. A reasonable inference may be drawn that the Department properly dispatched notice of the expiration and suspension to both Respondent Booker and the designated broker, Respondent Gordon, and those individual respondents received the notice, on or about July 30, 2005. But the transaction on the Winged Foot Court house began in late October 2005 and ended with a Notice of Cancellation, dated November 14, 2005.

*Respondent Gordon*

21. For the transaction that pertained to the Lobelia Way property in Livermore, Respondent Gordon signed the "cooperating broker compensation" letter, dated December 19, 2005. As the responsible individual broker and designated officer, Respondent Gordon



signed the letter, which appeared on the stationery of Monte Vista Realty (22320 Foothill Blvd., Suite 330, Hayward, CA), the fictitious business name for Respondent MRC. The letter was typed for the signature of Respondent Booker as "Realtor."

22. Through the provision of broker's license privileges by Respondent Gordon, the responsible broker and designated officer for Respondent MRC, Respondent Gordon allowed Respondent Booker to violate Code section 10130.

23. In dealings with other licensed real estate professionals with regard to the transactions for the Winged Foot Court property and the Lobelia Way house, as the responsible broker and designated officer for the corporate broker, Respondent Gordon demonstrated negligence or incompetence in performing duties required of a real estate broker licensee. Such acts or omissions violate Business and Professions Code section 10177, subdivision (g).

*Matters in Mitigation—Respondent Gordon*

24. At the time that Respondent Booker received notice from the Department that the conditional license he held was soon to be suspended, Respondent Gordon gained knowledge for the then prospective occurrence by way of a letter from the Department. Respondent Gordon brought the matter of the pending suspension date to the attention of Respondent Booker and the responsible broker assumed that Respondent Booker would take the courses, especially when Respondent Booker expressed that he would "take care" of taking the courses necessary for him to acquire full licensed status.

*Matters in Rehabilitation – Respondent Gordon*

25. At the hearing of this matter Respondent Gordon expressed contrition for the acts and omissions on his part that reflect his past unprofessional conduct. Respondent Gordon acknowledged the truth and accuracy of all aspects of the Accusation.

26. Respondent Gordon made admissions at the hearing of this matter that he failed to properly supervise Respondent Booker with regard to both the real estate salesperson's failure to take proper courses of study before a conditional license was suspended, and during real estate sales transactions when the salesperson did not possess a valid license.

Now Respondent Gordon acknowledges that he neglected his functions and duties as the designated officer and responsible broker by failing to follow-up with reminders to Respondent Booker to take the required courses for the full licensure of Respondent Booker. Since the date of the Accusation, Respondent Gordon has developed a system to prompt him to monitor real estate agents, under his direction, to timely require the real estate salesperson to fulfill tasks related to renewal of licenses or to move from conditional license status to unrestricted license status.

*Respondent MRC, Only*

27. The acts and omissions of Respondent Booker, as president and CEO, and Respondent Gordon, as the designated officer and responsible broker for the corporation, are imputed to Respondent MRC.

*Ultimate Findings-Respondents Booker and Gordon*

28. Respondent Booker engaged in unlawful conduct with regard to the two transactions mentioned herein when he engaged in the business, acted in the capacity or assumed to act as a real estate salesperson without first maintaining a valid real estate license. Through the two transactions mentioned herein, Respondent Booker or Respondent MRC received a total amount of \$16,000 as fees through the unlicensed activities of Respondent Booker. Respondent Booker's unlawful and unethical conduct violated California Business and Professions Code section 10130.

29. The acts and omissions of Respondent Booker with regard to the proposed buyers of the Winged Foot Court property involved negligent misrepresentations.

By Respondent Gordon's correspondence in the Lobelia Way transactions, and both individual respondents having engaged in discussions regarding the forgery of signatures of sellers in the Winged Foot Court property, Respondent Gordon and Respondent Booker negligently aided in, contributed to or effected misdeeds on behalf of the buyers who used deceit to renege on closing a purchase transaction for the Winged Foot Court house. The acts and omission of the wrongdoing buyers of real estate can be imputed to the individual respondents and the respondent corporate broker.

30. The acts and omissions of Respondent Booker, in his capacity as an unlicensed real estate salesperson with regard to the two transactions mentioned herein, demonstrate a willful disregard or violation of the Real Estate Law or the rules and regulations of the Real Estate Commissioner that are prescribed for the administration and enforcement of the Real Estate Law. Such acts or omissions violate Business and Professions Code section 10177, subdivision (d).

31. The acts and omissions of Respondent Gordon, in his capacity as a real estate broker with regard to the two transactions mentioned hereinabove, demonstrate a willful disregard or violation of the Real Estate Law or the rules and regulations of the Real Estate Commissioner that are prescribed for the administration and enforcement of the Real Estate Law. Such acts or omissions violate Business and Professions Code section 10177, subdivision (d).

32. Respondent Gordon failed to exercise proper supervision and control over the unlicensed activities of the corporate brokers' employees or agents, who either aided buyers or enabled clerical employees of the corporate real estate broker's office to effect forgeries of

signatures on a Notice of Cancellation for the transaction on Winged Foot Court in Livermore. Such acts or omissions violate Business and Professions Code section 10177, subdivision (h).

## LEGAL CONCLUSIONS

### *The Standard of Proof*

1. In an administrative disciplinary action before the Department, Complainant must establish by "clear and convincing evidence to a reasonable certainty" that Respondent did the things alleged and that those allegations constituted cause for discipline as charged in the accusation. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal. App. 3d 853)

"Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence. (BAJI No. 2.62 (8th ed. 1994).

Hence, the burden rests on Complainant to adduce proof that is clear, explicit, and unequivocal - so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re. Marriage of Weaver* (1990) 224 Cal. App. 3d 278; *Mock vs. Michigan Millers Mutual Insurance Co* (1992) 4 Cal.App.4th 306; *Ettinger vs. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

### *Causes for Discipline*

#### *Respondent Booker*

2. Business and Professions Code section 10130 prescribes that "it is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as . . . a real estate salesperson within this state without first obtaining a real estate license from the [Department of Real Estate]. . . ."

Business and Professions Code section 10131, subdivision (a), provides, "A real estate [professional] within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: . . . [s]ells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity. . . ."

3. Business and Professions Code section 10177, subdivision (d), sets out that the Real Estate Commissioner may suspend or revoke a real estate license when the licensee has willfully disregarded or violated the Real Estate Law or the rules and regulations of the [Real Estate Commissioner] for the administration and enforcement of the Real Estate Law.

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.4th 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. Cause exists for disciplinary action against the license issued to respondent under Business and Professions Code sections 10130, and 10131, subdivision (a), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings in this decision.

5. During a period of time that he did not hold a valid license as a real estate salesperson, Respondent Booker actively engaged in matters that required a license issued by the Department. He failed to timely complete courses of study to transcend from a conditional license to an unrestricted licensure even though he had ample notice that the conditional license would expire, or be suspended, by a prescribed date.

Notwithstanding his unlawful acts in providing real estate sales services during a period of time that he did not hold a valid license, Respondent Booker finally completed the specified courses of study so that the Department renewed the license in early 2006. Although discipline is necessary, it would not be against the public interest for Respondent Booker to hold a restricted license during a period of probation that includes a period of actual suspension.

6. Business and Professions Code section 10176, subdivision (i), sets out that the Commissioner may, upon his own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

Complainant did not establish by clear and convincing evidence that Respondent Booker engaged in or approved acts that constituted fraud or dishonest dealings. His failure to attend to all phases of the sales transactions by delegating to an escrow agent and an intern matters that led to a forged Notice of Cancellation to be presented reflected negligence and lack of due care rather than fraud or dishonest dealing.

No cause for discipline against Respondent Booker exists under Business and Professions Code section 10176, subdivision (i), by reason of Factual Findings 12 and 18.

*Respondent Gordon*

7. Business and Professions Code section 10137 sets out, in part, that "it is unlawful for any licensed real estate broker to employ or compensate . . . any person for performing any of the acts within the scope of this chapter who is not a licensed real estate . . . salesperson. . . ."

Business and Professions Code section 10177 subdivision (h), establishes that the Commissioner may suspend or revoke the license of a real estate licensee, who as a broker licensee, failed to exercise reasonable supervision over the activities of his 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.

Cause exists for disciplinary action against the license issued to Respondent Gordon under Business and Professions Code sections 10131, subdivision (a), and 10137, in conjunction with section 10177, subdivision (h), by reason of the matters set forth in the Factual Findings in this decision:

8. California Code of Regulations, title 10, section 2725, sets out the Department's rules regarding broker supervision. The regulation prescribes, in pertinent part: "A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: . . . transactions requiring a real estate license; . . . [d]ocuments which may have a material effect upon the rights or obligations of a party to the transaction. . . [r]egular and consistent reports of licensed activities of salespersons. . . [t]he form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices. . . . A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker."

Business and Professions Code section 10177, subdivision (g), sets out that the commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

Cause exists for disciplinary action against the license issued to Respondent Gordon under California Code of Regulations, title 10, section 2725, in conjunction with section 10177, subdivision (g), by reason of the matters set forth in the Factual Findings in this decision.

9. Business and Professions Code section 10176 subdivision (i), sets out that the Commissioner may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

Complainant did not establish by clear and convincing evidence that Respondent Gordon engaged in or approved acts that constituted fraud or dishonest dealings. His failure to attend to the proper supervision of Respondent Booker and other employees of Respondent MRC reflected negligence and lack of due care on the part of Respondent Gordon rather than fraud or dishonest dealing.

No cause for discipline against Respondent Gordon exists under Business and Professions Code section 10176, subdivision (i), by reason of Factual Findings 12 and 18 and Legal Conclusion 6.

*Respondent Gordon and Respondent MRC*

10. Business and Professions Code section 10177, subdivision (h), prescribes that the Commissioner may suspend or revoke the license of a real estate licensee when such person has "as a broker licensee, failed to exercise reasonable supervision over the activities of his . . . salesperson. . . ."

Cause exists for disciplinary action against the license issued to Respondent Gordon and Respondent MRC under Business and Professions Code section 10177, subdivision (h), by reason of the matters set forth in Factual Findings in this decision.

*Respondent MRC*

11. Business and Professions Code section 10137 sets out, in part, that it is unlawful for any licensed real estate broker to employ or compensate any person for performing any of the acts within the scope of this chapter who is not a licensed real estate salesperson.

12. Business and Professions Code section 10177, subdivision (h), establishes that the commissioner may suspend or revoke the license of a corporation, where as a broker licensee, has failed, through the omissions of a designed individual broker, 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.

Cause exists for disciplinary action against the license issued to respondent under Business and Professions Code section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings in this decision.

13. Business and Professions Code section 10176, subdivision (i), prescribes that the Commissioner may suspend or revoke the license of a real estate licensee "where the licensee, while a real estate licensee" performed or attempted to perform acts for which guilt attaches by "any other conduct, whether of the same or a different character than specified . . . which constitutes fraud or dishonest dealing."

Complainant did not establish by clear and convincing evidence that Respondent MRC, through its designated broker, officers or employees engaged in or approved acts that constituted fraud or dishonest dealing.

No cause for discipline against Respondent MRC exists under Business and Professions Code section 10176, subdivision (i), by reason of Factual Findings 12 and 18 and Legal Conclusions 6 and 9.

14. Business and Professions Code section 10177, subdivision (g), prescribes that the Commissioner may suspend or revoke the license of a real estate licensee when such person has "demonstrated negligence or incompetence in performing any act for which he . . . is required to hold a license."

Cause exists for disciplinary action against the license issued to Respondent Gordon and Respondent MRC under Business and Professions Code section 10177(g), by reason of the matters set forth in the Factual Findings in this decision.

*As to All Respondents*

15. Business and Professions Code section 10175.2 sets out, in part:

(a) If the Real Estate Commissioner determines that the public interest and public welfare will be adequately served by permitting a real estate licensee to pay a monetary penalty to the department in lieu of an actual license suspension, the commissioner may, on the petition of the licensee, stay the execution of all or some part of the suspension on the condition that the licensee pay a monetary penalty and the further condition that the licensee incur no other cause for disciplinary action within a period of time specified by the commissioner.

(d) The amount of the monetary penalty payable under this section shall not exceed two hundred fifty dollars (\$250) for each day of suspension stayed or a total of ten thousand dollars (\$10,000) per decision regardless of the number of days of suspension stayed under the decision.

Business and Professions Code section 10050 prescribes that "it is the principal responsibility of the [C]ommissioner to enforce all laws [comprising the Real Estate Law] . . . in a manner which achieves the maximum protection of . . . those persons dealing with real estate licensees."

The Department's regulations include section 2930, subpart 18 of the California Code of Regulations, title 10, that contemplates that licensed real estate professionals who may be subject to actual suspension may pay a monetary amount in lieu of suspension in accordance with Business and Professions Code section 10175.2.

An objective of the Commissioner in honoring the duty imposed by Code section 10050 is to maintain a high level of public confidence in those persons licensed by the Department of Real Estate. The Commissioner would meet the duty under the Code, by imposing upon Respondents, as a condition to retain their respective professional license, an obligation to disgorge of most of the commission earned in the Lobelia Way property transaction, which was in excess of \$15,000. Respondent Booker's acts and omissions were central to the unlawful acts. But by accepting the benefits of the acts of the purported agent, Respondent Gordon and Respondent MRC ratified the unlawful and unethical acts and omissions of Respondent Booker. (Civ. Code, § 2310. *Pacific Factors v. St. Paul Hotel* (1931) 113 Cal.App. 657.) Thus, the three respondents are subject to disciplinary action that should involve, at a minimum, the disgorgement of most of the ill-earned commission that related to closure of the Lobelia Way transaction. Complainant argued that under the Commissioner's regulations, at a minimum, respondents should pay monetary penalties in lieu of such suspension. But in this matter, Respondent Booker and the corporate broker that is wholly owned by Respondent Booker were associated with the deceitful buyers of real estate who resorted to making misrepresentations of material fact so as to rescind a contract for the purchase of the Winged Foot Way house.

#### ORDER

*Respondent Michael James Booker*

All licenses and licensing rights of Respondent Michael James Booker under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent Booker pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to Respondent Booker shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6.



1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
  - (a) The conviction of Respondent Booker (including a plea of nolo contendere) of a crime that is substantially related to respondent's fitness or capacity as a real estate licensee; or
  - (b) The receipt of evidence that Respondent Booker has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
2. Respondent Booker shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three (3) years have elapsed from the date of issuance of the restricted license to respondent.
3. With the application for license, or with the application for transfer to a new employing broker, Respondent Booker shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate that shall certify as follows:
  - (a) That the employing broker has read the Decision that is the basis for the issuance of the restricted license; and
  - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.
4. Respondent Booker 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 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 Respondent Booker presents such evidence. The Commissioner shall afford

respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. The restricted license to Respondent Booker shall be suspended for a period of twenty (20) days from the effective date of this Decision; provided, however, that if Respondent Booker petitions, the suspension (or a portion thereof) shall be stayed upon condition that:

- (a) Respondent Booker pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$250 for each day of the suspension for a total monetary penalty of \$5,000.
- (b) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.
- (c) No further cause for disciplinary action against the real estate license of Respondent Booker occurs within one year from the effective date of the Decision in this matter.
- (d) If Respondent Booker fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent Michael James Booker shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.
- (e) If Respondent Booker pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

*Respondent Maya Realty Corp.*

6. All licenses and licensing rights of Respondent Maya Realty Corporation (MRC) under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent MRC pursuant to Section 10156.5 of the Business and Professions Code if Respondent MRC, through its qualifying broker, makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent MRC shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to

the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

7. The restricted license issued to Respondent MRC may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of the conviction or plea of nolo contendere of its qualifying broker or any corporate officer to a crime which is substantially related to such person's fitness or capacity as a real estate licensee.
8. The restricted license issued to Respondent MRC may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent MRC, its qualifying broker or any corporate officer has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
9. Respondent MRC shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.
10. Respondent MRC shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that the qualifying broker for Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent MRC fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent MRC presents such evidence. The Commissioner shall afford Respondent MRC the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
11. All licenses and licensing rights of Respondent Maya Realty Corp. under the Real Estate Law are suspended for a period of twelve (12) days from the effective date of this Decision; provided, however, that if Respondent MRC petitions, said suspension (or a portion thereof) shall be stayed upon condition that:
  - (a) Respondent MRC pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$250 for each day of the suspension for a total monetary penalty of \$3,000.
  - (b) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said

*not adopted*

check must be received by the Department prior to the effective date of the Decision in this matter.

- (c) No further cause for disciplinary action against the real estate license of Respondent MRC occurs within one year from the effective date of the Decision in this matter.
- (d) If Respondent MRC fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.
- (e) If Respondent MRC pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent MRC occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

*Respondent James Edward Gordon*

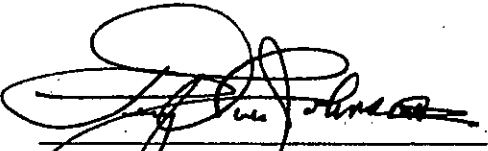
12. All licenses and licensing rights of Respondent James Edward Gordon under the Real Estate Law are suspended for a period of eight (8) days from the effective date of this Decision; provided, however, that if Respondent James Edward Gordon petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

- (a) Respondent Gordon pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$250 for each day of the suspension for a total monetary penalty of \$2,000.
- (b) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.
- (c) No further cause for disciplinary action against the real estate license of Respondent Gordon occurs within one year from the effective date of the Decision in this matter.
- (d) If Respondent Gordon fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money

paid to the Department under the terms of this Decision.

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

DATED: October 12, 2007

  
PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

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FILED  
APR 10 2007

DEPARTMENT OF REAL ESTATE

*[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-9968 SF  
12 MICHAEL JAMES BOOKER, )  
13 JAMES EDWARD GORDON, ) ACCUSATION  
14 and MAYA REALTY CORP., )  
15 Respondents. )

16 The Complainant, E. J. Haberer II, a Deputy Real  
17 Estate Commissioner of the State of California for cause of  
18 Accusation against MICHAEL JAMES BOOKER (hereinafter Respondent  
19 " BOOKER "), JAMES EDWARD GORDON (hereinafter Respondent "  
20 GORDON "), and MAYA REALTY CORPORATION (hereinafter Respondent  
21 "MRC") is informed and alleges as follows:

22 I

23 The Complainant, E. J. Haberer II, a Deputy Real  
24 Estate Commissioner of the State of California, makes this  
25 Accusation against Respondents in his official capacity.

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II

Respondent GORDON is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code") as a real estate broker and as the designated officer of Respondent MRC, Macrorealty Incorporated, and Sean Martin Corp.

III

Respondent MRC is presently licensed and/or has license rights under the Code as a corporate real estate broker dba Centennial Mortgage and Monte Vista Realty.

IV

Respondent BOOKER is presently licensed and/or has license rights under the Code as a real estate salesperson. However, from July 27, 2005 to January 31, 2006 Respondent BOOKER'S license was suspended.

V

On or about October 24, 2005, Respondent BOOKER, on behalf of Armando Buenrostro and Evelia Buenrostro, and while in the employ of Respondent MRC dba Monte Vista Realty, submitted a California Residential Purchase Agreement and Joint Escrow Instructions regarding the real property located at 1144 Winged Foot Ct., Livermore (hereinafter the "Winged Foot Property"), to David Tang, a real estate salesperson in the employ of Reliance Realty Group, and representing Brian and Julie Goldstone as sellers.

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1 VI

2 Respondent BOOKER represented Armando Buenrostro and  
3 Evelia Buenrostro, and performed acts described in Section  
4 10131(a) of the Code in furtherance of such representation, in  
5 their attempted purchase of the Winged Foot Property, from at  
6 least October 24, 2005 to and including November 3, 2005 when  
7 the transaction was canceled.

8 VII

9 The activities performed by Respondent BOOKER as  
10 discussed in Paragraphs V and VI above, are acts for which a  
11 real estate license is required pursuant to Section 10130 and  
12 10131(a) of the Code. However, Respondent BOOKER'S real estate  
13 license was suspended when these acts were performed.

14 VIII

15 On or about November 13, 2005, Respondent BOOKER, on  
16 behalf of Armando Buenrostro and Evelia Buenrostro, and while in  
17 the employ of Respondent MRC dba Monte Vista Realty, submitted a  
18 California Residential Purchase Agreement and Joint Escrow  
19 Instructions regarding the real property located at 5810 Lobelia  
20 Way, Livermore (hereinafter the "Lobelia Property"), to Judith  
21 Pipkin, a real estate salesperson in the employ of Alain Pinel,  
22 and representing Robert and Leticia Stivers as sellers.

23 IX

24 Respondent BOOKER represented Armando Buenrostro and  
25 Evelia Buenrostro, and performed acts described in Section  
26 10131(a) of the Code in furtherance of such representation, in  
27 their purchase of the Lobelia Property, from at least



1 November 13, 2005 to and including December 20, 2005 when the  
2 escrow successfully closed.

3 X

4 The activities performed by Respondent BOOKER as  
5 discussed in Paragraphs VIII and IX above, are acts for which a  
6 real estate license is required pursuant to Section 10130 and  
7 10131(a) of the Code. However, Respondent BOOKER'S real estate  
8 license was suspended when these acts were performed.

9 XI

10 Respondent BOOKER was compensated for the acts for  
11 which a real estate license is required and discussed in  
12 Paragraphs V, VI, VIII, and IX in violation of Sections 10130  
13 and 10137 of the Code.

14 XII

15 At all times mentioned herein, Respondent GORDON  
16 failed to exercise reasonable supervision over the activities of  
17 his salesperson, Respondent BOOKER, and permitted, ratified  
18 and/or caused the conduct described above. Respondent GORDON  
19 failed to reasonably or adequately review, oversee, inspect and  
20 manage the salespersons under his employ, and/or to establish  
21 reasonable policies, rules, procedures and systems for such  
22 review, oversight, inspection and management.

23 XIII

24 The acts and/or omissions of Respondents described  
25 above are grounds for the suspension or revocation of  
26 Respondents' licenses and license rights as follows:

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(1) As to Respondent GORDON, under Sections 10137, 10177(h), and 10176(i) and/or 10177(g) of the Code and Section 2725 of the Regulations in conjunction with Section 10177(d) of the Code; and

(2) As to Respondent BOOKER, under Section 10137 of the Code and Sections 10130 and 10131(a) of the Code in conjunction with Section 10177(d) of the Code; and

(3) As to Respondent MRC, under Sections 10137, 10177(h), and 10176(i) and/or 10177(g) of the Code.

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

*Robert Forman for*  
E. J. HABERER II  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 22<sup>ND</sup> day of March, 2007.