

1 MARY F. CLARKE, Counsel (SBN 186744)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

FILED

FEB - 8 2010

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0780 (Direct)

DEPARTMENT OF REAL ESTATE

By K. Contreras

7 BEFORE THE

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 ALAIN PINEL REALTORS, INC., )  
14 a Corporation, )  
15 ALBERT LAWRENCE KNAPP, JR., )  
16 LOREN JOSEPH DAKIN, and )  
17 JOSEPH MICHAEL BENTLEY, )  
18 Respondents. )

NO. H-10692 SF

STIPULATION AND AGREEMENT  
IN SETTLEMENT  
AND ORDER

18 It is hereby stipulated by and between Respondent ALAIN PINEL REALTORS,  
19 INC. (herein "ALAIN PINEL") (herein "Respondent"), by and through William S. Berland,  
20 attorney of record herein for Respondent ALAIN PINEL, and the Complainant, acting by and  
21 through Mary F. Clarke, Counsel for the Department of Real Estate (herein "the Department"), as  
22 follows for the purpose of settling and disposing of the Accusation filed on May 22, 2009, in this  
23 matter:

24 1. All issues which were to be contested and all evidence which was to be  
25 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing  
26 was to be held in accordance with the provisions of the Administrative Procedure Act (herein  
27 APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this

1 Stipulation and Agreement in Settlement.

2           2. Respondent has received, read and understands the Statement to Respondent,  
3 the Discovery Provisions of the APA, and the Accusation filed by the Department in this  
4 proceeding.

5           3. A Notice of Defense was filed on June 4, 2009, by Respondent ALAIN PINEL,  
6 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on  
7 the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said  
8 Notice of Defense. Respondent acknowledges that it understands that by withdrawing said  
9 Notice of Defense it will thereby waive its right to require the Commissioner to prove the  
10 allegations in the Accusation at a contested hearing held in accordance with the provisions of the  
11 APA and that it will waive other rights afforded to it in connection with the hearing such as the  
12 right to present evidence in defense of the allegations in the Accusation and the right to cross-  
13 examine witnesses.

14           4. This Stipulation is based on the factual allegations contained in the Accusation.  
15 In the interests of expedience and economy, Respondent chose not to contest these allegations,  
16 but to remain silent and understands that, as a result thereof, these factual allegations, without  
17 being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to  
18 herein. The Real Estate Commissioner shall not be required to provide further evidence to prove  
19 said factual allegations.

20           5. It is understood by the parties that the Real Estate Commissioner may adopt  
21 the Stipulation and Agreement in Settlement as his decision in this matter this as set forth in the  
22 below "Order". In the event that the Commissioner in his discretion does not adopt the  
23 Stipulation and Agreement in Settlement, it shall be void and of no effect, and Respondent shall  
24 retain the right to a hearing and proceeding on the Accusation under all the provisions of the  
25 APA and shall not be bound by any admission or waiver made herein.

26           6. The Order or any subsequent Order of the Real Estate Commissioner made  
27 pursuant to this Stipulation and Agreement in Settlement shall not constitute an estoppel, merger,

1 or bar to any further administrative or civil proceedings by the Department with respect to any  
2 matters which were not specifically alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 I

5 The acts and omissions of Respondent as described in the Accusation  
6 are grounds for the suspension or revocation of the license and license rights of  
7 Respondent under the following provisions of the Code, and/or Regulations as to  
8 Respondent ALAIN PINEL, under Sections 10176(a) and (i), 10176.5(a), and/or  
9 10177(g) and/or (j) of the Code.

10 ORDER

11 I

12 All licenses and licensing rights of Respondent ALAIN PINEL under the Real  
13 Estate Law are suspended for a period of ninety (90) days from the effective date of this Order;  
14 provided, however, that:

15 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the  
16 following terms and conditions:

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

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

26 2. The remaining thirty (30) days of said 90-day suspension shall be stayed upon  
27 the condition that Respondent ALAIN PINEL petition pursuant to Section 10175.2 of the Code

1 and pay a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$200.00 for each  
2 day of the suspension for a total monetary penalty of \$6,000.00:

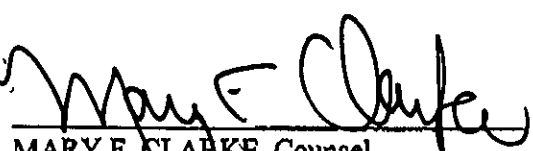
3 (a) Said payment shall be in the form of a cashier's check or certified check  
4 made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered  
5 to the Department prior to the effective date of the Order in this matter.

6 (b) No further cause for disciplinary action against the real estate licenses of  
7 Respondent ALAIN PINEL occurs within two (2) years from the effective date of the Decision  
8 in this matter.

9 (c) If Respondent ALAIN PINEL fails to pay the monetary penalty as  
10 provided above prior to the effective date of this Order, the stay of the suspension shall be  
11 vacated as to Respondent ALAIN PINEL and the order of suspension shall be immediately  
12 executed, under this Paragraph I of this Order, in which event Respondent ALAIN PINEL shall  
13 not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the  
14 Department under the terms of this Order.

15 (d) If Respondent ALAIN PINEL pays the monetary penalty and any other  
16 moneys due under this Stipulation and Agreement in Settlement and if no further cause for  
17 disciplinary action against the real estate license of Respondent ALAIN PINEL occurs within  
18 two (2) years from the effective date of this Order, the entire stay hereby granted under  
19 Paragraph I of this Order, as to Respondent ALAIN PINEL, shall become permanent.

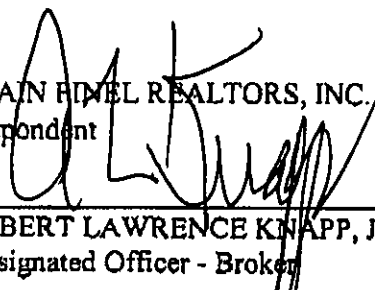
21  
22 11-30-09  
23 \_\_\_\_\_  
24 DATED

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23 \_\_\_\_\_  
24 MARY F. CLARKE, Counsel  
25 DEPARTMENT OF REAL ESTATE

25 I have read the Stipulation and Agreement in Settlement and its terms are  
26 understood by me and are agreeable and acceptable. I understand that I am waiving rights  
27 provided by the California APA (including but not limited to Sections 11506, 11508, 11509, and

1 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights,  
2 including the right of requiring the Commissioner to prove the allegations in the Accusation at a  
3 hearing, at which is the right to cross-examine witnesses with the right to present evidence in  
4 defense and mitigation of the charges.

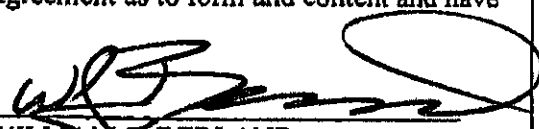
5  
6 11/24/09  
7 DATED

ALAIN PINEL REALTORS, INC.  
Respondent  
By:   
ALBERT LAWRENCE KNAPP, JR.  
Designated Officer - Broker

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

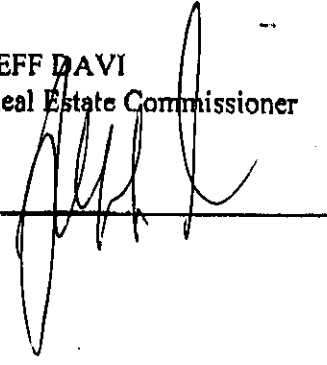
12 11/24/09  
13 DATED

  
WILLIAM S. BERLAND  
Attorney for Respondent

\*\*\*

15 The foregoing Stipulation and Agreement is hereby adopted by me as my Decision  
16 in this matter and shall become effective at 12 o'clock noon on March 1, 2010

17 IT IS SO ORDERED 2-2-2010

19 JEFF DAVI  
20 Real Estate Commissioner  
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23  
24  
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26  
27

FILED

FEB - 4 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )  
)  
ALAIN PINEL REALTORS, INC., )  
a Corporation, )  
ALBERT LAWRENCE KNAPP, JR., )  
LOREN JOSEPH DAKIN, JR., and )  
JOSEPH MICHAEL BENTLEY, )  
)  
Respondents. )  
\_\_\_\_\_ )

NO. H-10692 SF

OAH NO. 2008080118

**DECISION**

*(As to LOREN JOSEPH DAKIN, JR., and  
JOSEPH MICHAEL BENTLEY Only)*

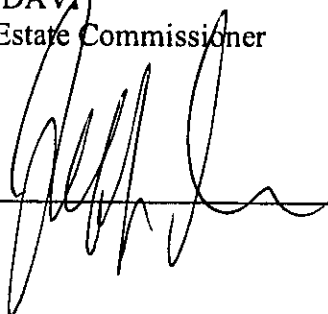
The Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings as to Respondents LOREN JOSEPH DAKIN, JR., and JOSEPH MICHAEL BENTLEY only, dated December 31, 2009, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on

February 24, 2010.

IT IS SO ORDERED 2-3, 2010.

JEFF DAVIS  
Real Estate Commissioner

  
\_\_\_\_\_

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALAIN PINEL REALTORS, INC., a  
Corporation,  
ALBERT LAWRENCE KNAPP, JR.,  
LOREN JOSEPH DAKIN, JR.,  
JOSEPH MICHAEL BENTLEY,

Respondents.

Case No. H-10692 SF

OAH No. 2009080118

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 30 and December 1, 2009.

Mary F. Clarke, Counsel, represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner.

Bruce W. Nickerson, Attorney at Law, represented respondent Loren Joseph Dakin, Jr., who was present.

Joseph R. Polverari, Sr., Attorney at Law, represented respondent Joseph Michael Bentley, who was present.

A stipulated settlement was reached between complainant and Alain Pinel Realtors, Inc., prior to hearing. The accusation was dismissed as to Albert Lawrence Knapp, Jr., prior to hearing. There was no appearance by or on behalf of either of these parties at hearing.

The matter was submitted for decision on December 1, 2009.

**FACTUAL FINDINGS**

1. At all times mentioned respondent Loren Joseph Dakin, Jr., has been licensed and/or has license rights under the Real Estate Law<sup>1</sup> as a real estate salesperson. At all times

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<sup>1</sup> The Real Estate Law is contained in Part I of Division 4 of the Business and Professions Code.

mentioned, Dakin was in the employment of Alain Pinel Realtors, Inc., in its Woodside branch office, and acted in the capacity of a real estate salesperson.

2. At all times mentioned respondent Joseph Michael Bentley has been licensed and/or has license rights under the Real Estate Law as a real estate salesperson. At all times mentioned, Bentley was in the employment of Alain Pinel Realtors, Inc., in its Menlo Park branch office, and acted in the capacity of a real estate salesperson.

*Lindberg Transaction*

3. Between January 26 and April 4, 2007, respondent Bentley represented buyers Gregory M. and Christin A. Lindberg in the purchase of real property located at 232 King Street in Redwood City, California, for the purchase price of \$1,065,000. Respondent Dakin represented the sellers of the King Street property, Alex and Melissa Willingham. Although there was dual agency in this transaction, Dakin and Bentley worked in separate offices and did not know each other prior to this transaction.

4. The King Street property is a single-story house on a raised foundation with a detached garage. The buyers discovered the property through a friend and asked their agent Bentley to arrange for a visit. Christin Lindberg (Lindberg) visited the property the day before the buyers placed an offer to purchase it. She understood that the King Street property had just been put on the market, when in fact the house had been on the market since October 2006. Respondent Bentley was not aware of this. The buyers did not obtain their own home inspection report. The sellers had obtained a home inspection report in October 2006 (the October 2006 WIN Home Inspection Report), which they provided with their disclosures, and respondent Bentley did not encourage the buyers to obtain their own inspection report.<sup>2</sup> And he told the buyers that he saw nothing in his visual inspection that warranted him to be concerned about the condition of the property. The buyers signed an AS IS addendum, however, which advised them that they could commission their own house inspection.

5. Escrow closed March 15, 2007, and the buyers moved into the home within a week. They noticed problems that had been not disclosed soon thereafter. The garage roof leaked and needed to be replaced. The garage flooded with one to three inches of water when there were "big rains." There was noise from the neighbor's barking dogs and from the neighbor's television set, which was played loudly on an outside covered porch located near their son's bedroom. They were located on a fire truck route, and there was noise from the passing fire trucks. Cracks developed in the ceiling of the bedroom. The buyers commissioned their own home inspection report by Peter M. Buenrostro in late 2008, which found evidence of newer grout being placed on the front foundation wall, and recommended further evaluation regarding settlement by an appropriate contractor.

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<sup>2</sup> It was a common practice at this time and in this market area for the sellers to commission a home inspection report and for buyers to rely on that report.



*Respondent Dakin*

6. On January 26, 2007, Dakin represented the condition of the property to the buyers through a three-page PRDS Real Estate Property Transfer Disclosure Statement, and a nine-page PRDS Supplemental Seller's Checklist, each signed by the sellers on October 19, 2006 (October 2006 PRDS disclosure documents).

The October 2006 PRDS disclosure documents represented that the property did not have flooding or drainage problems; did not have a sump pump; did not have cracks in the foundation, retaining walls, or other parts of the structure; that the roof on the house and the roof on the garage were 11 years old; that there was no neighborhood noise; and that there had not been any prior inspection reports relating to the structure of the property.

The October 2006 WIN home inspection report indicated nothing of concern on these items with the exception of moisture and dampness on the raised foundation. The report stated in summary:

There is evidence of past moisture and dampness in the crawl-through area. Investigation should be considered into methods of limiting under-structure moisture. Consult a drainage professional for further evaluation and repair.

7. Dakin had represented the Willinghams in their purchase of the property earlier in 2006. In connection with the Willinghams' purchase of the property, Dakin had been provided a three-page PRDS Real Estate Property Transfer Disclosure Statement, a seven-page PRDS Supplemental Seller's Checklist, and a Listing Agent's Inspection Disclosure Statement, as an addendum to the Property Transfer Disclosure Statement, each dated February 16, 2006 (February 2006 PRDS disclosure documents). These documents disclosed that the property has flooding and drainage problems; that a sump pump was located near the garage; that there were cracks in the garage floor and in the bedroom ceilings; that the age of the garage roof was unknown; that the garage roof had holes in it; that there was neighborhood noise due to barking dogs and trucks; and that there were two prior home inspection reports in February 2006 relating to the structure of the property. One of the reports was commissioned by the Willinghams through WIN. The other report was commissioned by the seller through National Property Inspection.

8. Dakin admits that he did not have in his possession the February 2006 PRDS disclosure statements or the February 2006 inspection reports when he completed the October 2006 PRDS disclosure statements. He admits that he never provided the February 2006 PRDS disclosure documents or the February 2006 home inspection reports to Bentley or the buyers.

9. Dakin told the department's investigator that he was in a hurry to complete the disclosure documents in October 2006, that the February 2006 PRDS disclosure documents

and inspection reports were in storage, and so he completed the October 2006 PRDS disclosure documents without them.

10. Dakin testified at hearing that he was neighbors and friends with the Willinghams. He was familiar with changes they had made to the property. He also was very familiar with the neighborhood, as his parents and grandparents also live in there. The Willinghams made a sudden decision to sell the property in October 2006 due to personal reasons. They had recently suffered a personal tragedy, and a prior death in the family. Their desire to sell had nothing to do with the condition of the property.

The Willinghams contacted Dakin and he agreed to represent him. Dakin testified that he did not follow his normal practice and he completed the disclosure forms with the Willinghams in one day because they were "emotional wrecks" and they wanted the property on the market that weekend. He directed each question on the Transfer Disclosure Statement form to the Willinghams, and he wrote down their answers. If he felt their answer was incorrect or insufficient, he augmented it based on his personal knowledge. He did all of this without the benefit of reviewing the February 2006 PRDS disclosure documents and home inspection reports, which he had forgotten about. Dakin testified that he did not think of the prior reports until after the close of escrow. Dakin admits to failing to disclose or failing to correctly disclose many items. But he did so because of his rush to get the property on the market, not because he wanted to hide any condition of the property that he knew about. The evidence nonetheless establishes that Dakin made substantial and material misrepresentations regarding the condition of the property in connection with the sale of the King Street property. The evidence further establishes that Dakin was grossly negligent in failing to obtain, and disclose to the buyers, the February 2006 PRDS disclosure documents and home inspection reports.

11. While this is a close case, it is concluded that complainant did not establish by clear and convincing evidence that respondent Dakin committed acts amounting to fraud or dishonest dealing in connection with the sale of the King Street property.

12. It was not established that Dakin demonstrated incompetence in the sale of the King Street property. This is not a case of a real estate salesperson lacking sufficient training, skill, or knowledge.

13. Dakin was first licensed by the department in 1989. He allowed the license to expire in 1997 while he pursued a master's degree and a teaching credential. Dakin returned to real estate in 2002, working in residential and small commercial properties. Dakin has been involved in the sale of over 200 homes. This is the first disciplinary action the Commissioner has brought against him.

*Respondent Bentley*

14. Complainant alleges that Bentley "represented that he visually inspected the property and that it appeared to be in good condition, when in fact, he had not visually

inspected the property.” Complainant further alleges that Bentley “misrepresented the visual inspection . . . and the fact that it was in good condition . . . and therefore acted fraudulently and dishonestly in procuring the purchase of the property.” Complainant did not prove either of these allegations by clear and convincing evidence.

15. Bentley credibly testified that he read all the documents in the disclosure packet provided by Dakin. He visually inspected the accessible areas of the home during the four times he was in the home prior to executing the Transfer Disclosure Statement.<sup>3</sup> He saw nothing which would suggest settlement. He walked the property and looked behind the detached garage. He did not notice the sump pump (it was buried and not visible). He looked inside the garage but could not see the floor or above the rafters as the garage was full of the owner’s property. No holes in the roof were visible. He did not see any cracks in his visual inspection. The ground was dry on the day of the visit. He saw nothing that would raise concerns in his mind regarding the condition of the property other than what he disclosed regarding the hardwood floors.

It is further noted that Dakin did not provide Bentley with any of the disclosure statements or home inspection reports prepared in connection with the Willinghams’ purchase of the King Street property in February 2006. Nor did Dakin make reference to any of those documents in any of the October 2008 PRDS disclosure documents. Although Bentley and Dakin each worked for Alain Pinel Realty, Inc., Bentley did not have access to, and could not have accessed, those reports through the files maintained by Alain Pinel Realty, Inc. The only agent who could have obtained documents from the Willinghams’ purchase of the King Street property was Dakin, as he had been the Willinghams’ agent in that transaction.

The evidence thus fails to establish that Bentley failed to visually inspect the King Street property, or that he misrepresented his observations.

16. In the prayer of the accusation, complainant alleges cause for discipline under Business and Professions Code section 10177, subdivision (g) (negligence or incompetence). Complainant does not make any factual allegations of negligence or incompetence by Bentley in connection with his visual inspection of the property or in any other aspect of his role in the purchase of the King Street property. Incompetence or negligence by Bentley was not established.

17. Respondent Bentley has been licensed as a real estate agent since 1990. With Alain Pinel Realty, Inc., he has only worked in the Menlo Park branch office. Bentley’s practice has focused on residential sales in the mid-peninsula area. He has been involved in the sale of over 300 houses. This is the first disciplinary action the Commissioner has brought against him.

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<sup>3</sup> Bentley wrote only the following on the Transfer Disclosure Statement: “Property appears to be in good condition, scratched floor & dent floor.”

## LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence.

2. Pursuant to Business and Professions Code section 10176, subdivision (a), the commissioner may suspend or revoke the real estate license of a licensee who has made a substantial misrepresentation in connection with performing an act within the scope of the Real Estate Law.

Pursuant to Business and Professions Code section 10176, subdivision (i), the Commissioner may suspend or revoke the real estate license of a licensee who has committed an act that amounts to fraud or dishonest dealing in connection with performing an act within the scope of the Real Estate Law.

Pursuant to Business and Professions Code section 10177, subdivision (g), the Commissioner may suspend or revoke the real estate license of a licensee who has demonstrated negligence or incompetence in performing an act for which he is required to hold a real estate license.

Pursuant to Business and Professions Code section 10177, subdivision (j), the Commissioner may suspend or revoke the real estate license of a licensee who has committed any act which constitutes fraud or dishonest dealing.

### Respondent Dakin

3. By reason of the matters set forth in Factual Findings 6 to 10, it was established by clear and convincing evidence that respondent Dakin committed substantial misrepresentations in procuring the sale of the property. Cause for license discipline exists pursuant to Business and Professions Code section 10176, subdivision (a).

4. By reason of the matters set forth in Factual Findings 6 to 10, it was established by clear and convincing evidence that respondent Dakin demonstrated negligence in procuring the sale of the property. Cause for license discipline exists pursuant to Business and Professions Code section 10177, subdivision (g).

5. By reason of the matters set forth in Factual Finding 11, it was not established by clear and convincing evidence that respondent Dakin committed acts of fraud or dishonest dealing in procuring the sale of the property. There is no cause for license discipline pursuant to Business and Professions Code section 10176, subdivision (i), or Business and Professions Code section 10177, subdivision (j).

6. All matters set forth in the Factual Findings have been considered in making the determination that while discipline of respondent Dakin's license is warranted in light of the seriousness of the conduct at issue, the protection of the public does not compel license

revocation. The public will be adequately protected by the following order, which permits him to obtain a restricted real estate salesperson license.

*Respondent Bentley*

7. By reason of the matters set forth in Factual Findings 14 and 15, it was not established that respondent Bentley committed fraud, dishonesty, or misrepresentation regarding his visual inspection of the property. There is no cause for license discipline as alleged pursuant to Business and Professions Code section 10176, subdivisions (a) or (i), or pursuant to Business and Professions Code section 10177, subdivision (j).

8. By reason of the matters set forth in Factual Finding 16 it was not established that respondent Bentley demonstrated negligence or incompetence regarding his visual inspection of the property. There is no cause for license discipline as alleged pursuant to Business and Professions Code section 10177, subdivision (g).

ORDER

*Respondent Dakin*

1. All licenses and licensing rights of respondent Loren Joseph Dakin, Jr., under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if he 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 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 section 10156.6 of that code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction, including by a plea of nolo contendere, of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent 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.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or

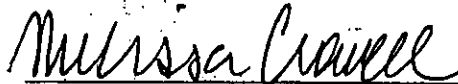
restrictions of a restricted license until two years have elapsed from the effective date of this decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
  - (a) That the employing broker has read the decision of the Commissioner which granted the right to a restricted license; and
  - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent 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 presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

*Respondent Bentley*

2. The accusation against Joseph Michael Bentley is dismissed.

DATED: December 31, 2009

  
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MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings

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JAN - 5 2010

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JOSEPH MICHAEL BENTLEY, )  
 )  
Respondents. )

NO. H-10692 SF

DISMISSAL

The Accusation herein filed on May 22, 2009 is DISMISSED as to Respondent  
ALBERT LAWRENCE KNAPP, JR., only.

IT IS SO ORDERED 12/30/09

JEFF DAVI  
Real Estate Commissioner

Barbara J. Bigby

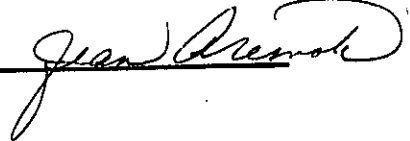
BY: Barbara J. Bigby  
Chief Deputy Commissioner

1 MARY F. CLARKE, Counsel, #186744  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-0780

FILED

MAY 22 2009

DEPARTMENT OF REAL ESTATE

By 

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14 JOSEPH MICHAEL BENTLEY, ) ACCUSATION  
15 )  
16 Respondents. )

17 The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the  
18 State of California, for causes of Accusation against ALAIN PINEL REALTORS, INC. (herein  
19 "APRI"), ALBERT LAWRENCE KNAPP, JR. (herein "KNAPP"), LOREN JOSEPH DAKIN  
20 (herein "DAKIN"), and JOSEPH MICHAEL BENTLEY (herein "BENTLEY") (collectively  
21 referred to herein as "Respondents"), is informed and alleges as follows:

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23 The Complainant makes this Accusation in his official capacity.

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25 At all times herein mentioned, Respondents were and now are licensed and/or  
26 have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and  
27 Professions Code) (herein "the Code").



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At all times herein mentioned, APRI was and now is licensed by the State of California Department of Real Estate (herein the "Department") as a corporate real estate broker by and through KNAPP as designated officer-broker of APRI to qualify said corporation and to act for said corporation as a real estate broker.

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At all times herein mentioned, KNAPP was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of APRI. As said designated officer-broker, KNAPP was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of APRI for which a license is required.

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At all times herein mentioned, DAKIN was and now is licensed by the Department as a real estate salesperson and was in the employ of APRI.

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At all times herein mentioned, BENTLEY was and now is licensed by the Department as a real estate salesperson and was in the employ of APRI.

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

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At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers and/or salespersons for

1 compensation or in expectation of compensation within the State of California within the  
2 meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate  
3 brokerage wherein Respondents sold or offered to sell, bought or offered to buy, solicited  
4 prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase,  
5 sale or exchange of real property or a business opportunity.

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7 Between on or about January 26, 2007 and April 4, 2007, in the course of  
8 Respondent APRI's real estate brokerage activities, BENTLEY represented Gregory M. and  
9 Christin A. Lindberg (herein "the Lindberg's") in the purchase of real property located at 232  
10 King Street, Redwood City, CA 94062 (herein "the property") for a purchase price of  
11 \$1,065,000.00. The sellers, Alex and Melissa Willingham (herein "the Willingham's"), were  
12 represented by DAKIN.

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14 On or about January 26, 2007, DAKIN represented the condition of the property  
15 to the Lindberg's, through a three (3) page PRDS Real Estate Property Transfer Disclosure  
16 Statement and a nine (9) page PRDS Supplemental Seller's Checklist (collectively the "2007  
17 PRDS"). The 2007 PRDS represented no flooding or drainage problems, no sump pump on the  
18 property, no cracks in the foundation, retaining walls or any other part of the structure, house and  
19 garage roof were wood shake and both were 11 years old, no neighborhood noise (vehicular,  
20 traffic, barking dogs, etc.), and no prior inspection reports or other documents relating to the  
21 structure of the property.

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23 BENTLEY represented that he had visually inspected the property and that it  
24 appeared to be in good condition, when, in fact, he had not visually inspected the property.

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26 Eleven months earlier, on about February 13, 2006, DAKIN, who represented the  
27 Willingham's as buyers in the purchase of the property, was provided a three (3) page PRDS

1 Real Estate Property Transfer Disclosure Statement and a seven (7) page PRDS Supplemental  
2 Seller's Checklist (collectively the "2006 PRDS") as well as a Listing Agent's Inspection  
3 Disclosure (Addendum to TDS) (herein the "Addendum"), which disclosed 18 defects in the  
4 property, as observed by the listing agent. The 2006 PRDS and Addendum disclosed flooding  
5 and drainage problems, a sump pump located near the garage, cracks in the garage floor and in  
6 the bedroom ceilings, holes in the garage roof (which was older than the house), noise due to fire  
7 trucks and barking dogs, and the existence of prior inspection reports (there were three (3)  
8 reports, all dated 2006) relating to the structure of the property.

9 13

10 In fact, as the Lindberg's discovered after they took possession of the property,  
11 there were serious flooding and drainage problems, the garage roof leaked and needed to be  
12 replaced, and there was noise from fire trucks, barking dogs (about which complaints had been  
13 made), and the neighbor's television set.

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15 Respondents APRI and DAKIN misrepresented the true condition of the property,  
16 as described in Paragraphs 9 through 13, above, and therefore acted fraudulently and dishonestly  
17 in procuring the sale of said property. The acts and/or omissions of Respondents, in connection  
18 with the sale of said property, violated Sections 10176(a) and (i), 10176.5(a), and/or 10177(g),  
19 and/or (j) of the Code.

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21 Respondents APRI and BENTLEY misrepresented the visual inspection of the  
22 property by BENTLEY and the fact that it was in good condition, as described in Paragraphs 12  
23 through 13, above, and therefore acted fraudulently and dishonestly in procuring the purchase of  
24 said property. The acts and/or omissions of Respondents, in connection with the purchase of  
25 said property, violated Sections 10176(a) and (i), and/or 10177(g), and/or (j) of the Code.

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At all times mentioned herein, Respondent KNAPP failed to exercise reasonable supervision over the acts of Respondent APRI and its agents and employees in such a manner as to allow the acts and omissions on the part of APRI, as described in Paragraphs 9 through 13, above, to occur in violation of Sections 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the Regulations.

PRIOR DISCIPLINE

Effective February 5, 2002, in Case No. H-7964 SF, the Real Estate Commissioner issued a 90 day stayed suspension of Respondent APRI's corporate real estate broker license, including a \$10,000.00 monetary penalty, for violating Section 10137 of the Code.

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

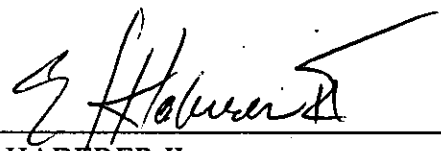
- (a) as to Paragraph 14 and Respondents APRI and DAKIN, under Sections 10176(a) and (i), 10176.5(a), and/or 10177(g) and/or (j) of the Code;
- (b) as to Paragraph 15 and Respondents APRI and BENTLEY under Sections 10176(a) and (i), and/or 10177(g) and/or (j) of the Code; and,
- (c) as to Paragraph 16 and Respondent KNAPP under Sections 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the Regulations, in conjunction with Section 10177(d) of the Code.

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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 applicable provisions of law.



E. J. HABERER II  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 5<sup>th</sup> day of May, 2009.