

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-2380

FILED
JUN - 2 2011

DEPARTMENT OF REAL ESTATE
By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-11026 SF
12)
13 NATHAN YORK, LTD. and)
14 ROBERT SCOTT WEBSTER,) STIPULATION AND AGREEMENT
15 Respondents.) IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between NATHAN YORK, LTD. (NYL), and
17 ROBERT SCOTT WEBSTER (WEBSTER), and their counsel Scott M. Phillips, and the
18 Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real
19 Estate; as follows for the purpose of settling and disposing of the Accusation filed on
20 November 15, 2010, and the First Amended Accusation filed on January 13, 2011, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondents at a formal hearing on the Accusation, which
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
24 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of
25 this Stipulation and Agreement In Settlement and Order.

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1 2. Respondents have received, read and understand the Statement to Respondent,
2 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate
3 in this proceeding.

4 3. On November 23, 2010, Respondents NYL and WEBSTER, filed a Notice of
5 Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a
6 hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily
7 withdraw said Notices of Defense. Respondents acknowledge that they understand that by
8 withdrawing said Notices of Defense they will thereby waive their right to require the
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that they will waive other rights afforded to
11 them in connection with the hearing such as the right to present evidence in defense of the
12 allegations in the Accusation and the right to cross-examine witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
15 true and correct and the Real Estate Commissioner shall not be required to provide further
16 evidence of such allegations.

17 5. It is understood by the parties that the Real Estate Commissioner may adopt
18 the Stipulation and Agreement In Settlement and Order as his Decision in this matter, thereby
19 imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set
20 forth in the below "Order". In the event that the Commissioner in his discretion does not adopt
21 the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect, and
22 Respondents shall retain the rights to a hearing and proceeding on the Accusation under all the
23 provisions of the APA and shall not be bound by any admission or waiver made herein.

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an
26 estoppel, merger or bar to any further administrative or civil proceedings by the Department of
27

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1 Real Estate with respect to any matters which were not specifically alleged to be causes for
2 accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and waivers, and solely for
5 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
6 agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute
7 grounds for the suspension or revocation of the licenses and license rights of NATHAN YORK,
8 LTD. under the provisions of Sections 2742, 2831, 2831.1, 2831.2, 2832 and 2835 of Title 10 of
9 the California Code of Regulations (Regulations) and Sections 10145, 10176(e) and 10177(g) of
10 the Business and Professions Code (the Code), and constitute grounds for the suspension or
11 revocation of the licenses and license rights of ROBERT SCOTT WEBSTER under the
12 provisions of Section 2725 of the Regulations and Sections 10159.2 and 10177(h) of the Code.

13 ORDER

14 A. NATHAN YORK, LTD.

15 1. The corporate real estate broker license and license rights of Respondent
16 NATHAN YORK LTD (NYL), under the Real Estate Law are suspended for a period of sixty
17 (60) days from the effective date of this Order; provided, however, that if LTD petitions, thirty
18 (30) days of said suspension shall be stayed upon condition that:

19 a. NYL pays a monetary penalty pursuant to Section 10175.2 of the Business
20 and Professions Code at the rate of \$75.00 per day for thirty (30) days of the suspension for a
21 total monetary penalty of \$2,250.00.

22 b. Said payment shall be in the form of a cashier's check or certified check made
23 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
24 Department prior to the effective date of the Decision in this matter.

25 c. No further cause for disciplinary action against the real estate license of NYL
26 occurs within one year from the effective date of the Decision in this matter.

27 ///

1 d. If NYL fails to pay the monetary penalty in accordance with the terms and
2 conditions of the Decision, the Commissioner may, without a hearing, order the immediate
3 execution of all or any part of the stayed suspension in which event NYL shall not be entitled to
4 any repayment nor credit, prorated or otherwise, for money paid to the Department under the
5 terms of this Decision.

6 e. If NYL pays the monetary penalty, and if no further cause for disciplinary
7 action against the real estate license of NYL occurs within one (1) year from the effective date
8 of the Decision, the stay hereby granted shall become permanent.

9 2. The remaining thirty (30) days of said suspension shall be stayed for one (1)
10 year upon the following terms and conditions:

11 a. NYL shall obey all laws, rules and regulations governing the rights, duties
12 and responsibilities of a real estate licensee in the State of California and;

13 b. That no final subsequent determination be made, after hearing or upon
14 stipulation, that cause for disciplinary action occurred within one (1) year from the effective
15 date of this Order. Should such a determination be made, the Commissioner may, in his
16 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
17 suspension.

18 B. ROBERT SCOTT WEBSTER

19 1. The real estate broker license and license rights of Respondent ROBERT
20 SCOTT WEBSTER (WEBSTER), under the Real Estate Law are suspended for a period of
21 sixty (60) days from the effective date of this Order; provided, however, that if WEBSTER
22 petitions, thirty (30) days of said suspension shall be stayed upon condition that:

23 a. WEBSTER pays a monetary penalty pursuant to Section 10175.2 of the
24 Business and Professions Code at the rate of \$75.00 per day for thirty (30) days of the
25 suspension for a total monetary penalty of \$2,250.00.

26 ///

27 ///

1 b. Said payment shall be in the form of a cashier's check or certified check made
2 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
3 Department prior to the effective date of the Decision in this matter.

4 c. No further cause for disciplinary action against the real estate license of
5 WEBSTER occurs within one year from the effective date of the Decision in this matter.

6 d. If WEBSTER fails to pay the monetary penalty in accordance with the terms
7 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
8 execution of all or any part of the stayed suspension in which event WEBSTER shall not be
9 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
10 under the terms of this Decision.

11 e. If WEBSTER pays the monetary penalty, and if no further cause for
12 disciplinary action against the real estate license of Respondent occurs within one (1) year from
13 the effective date of the Decision, the stay hereby granted shall become permanent.

14 2. The remaining thirty (30) days of said suspension shall be stayed for one (1)
15 year upon the following terms and conditions:

16 a. WEBSTER shall obey all laws, rules and regulations governing the rights,
17 duties and responsibilities of a real estate licensee in the State of California, and,

18 b. That no final subsequent determination be made, after hearing or upon
19 stipulation, that cause for disciplinary action occurred within one (1) year from the effective
20 date of this Order. Should such a determination be made, the Commissioner may, in his
21 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
22 suspension. Should no such determination be made, the stay imposed herein shall become
23 permanent.

24 3. All licenses and licensing rights of WEBSTER are indefinitely suspended
25 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
26 successfully completed the continuing education course on trust fund accounting and handling
27 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions

1 Code. Proof of satisfaction of this requirement includes evidence that respondent has
2 successfully completed the trust fund account and handling continuing education course within
3 120 days prior to the effective date of the Decision in this manner.

4
5 4/29/11
6 DATED

Richard K. Uno
7 RICHARD K. UNO, Counsel
8 DEPARTMENT OF REAL ESTATE

9 ***

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

18 April 27, 2011
19 DATED

Robert Scott Webster
20 NATHAN YORK LTD
21 Respondent
22 By ROBERT SCOTT WEBSTER
23 Designated Officer

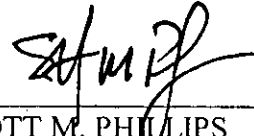
24 April 27, 2011
25 DATED

Robert Scott Webster
26 ROBERT SCOTT WEBSTER
27 Respondent

1 I have reviewed this Stipulation and Agreement as to form and content and have
2 advised my clients accordingly.

3
4 4/27/11

5 DATED

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8 

9 SCOTT M. PHILIPS
10 Attorney For Respondents

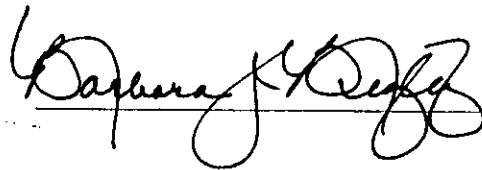
11 * * *

12 The foregoing Stipulation and Agreement In Settlement and Order is hereby
13 adopted by the Real Estate Commissioner as his Decision and Order and shall become effective
14 at 12 o'clock noon on JUN 23 2011

15 IT IS SO ORDERED

16 5/26/11

17
18 BARBARA J. BIGBY
19 Acting Real Estate Commissioner

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21
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27 

FLAG

FILED

JAN 19 2011

DEPARTMENT OF REAL ESTATE

By K. Mat

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

12 In the Matter of the Accusation of)	
)	NO. H-11026 SF
)	
14 NATHAN YORK LTD. and)	<u>FIRST AMENDED</u>
14 ROBERT SCOTT WEBSTER,)	<u>ACCUSATION</u>
)	
15 Respondents.)	
)	

17 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
18 the State of California, for Accusation against Respondent NATHAN YORK LTD., (NYL), and
19 Respondent ROBERT SCOTT WEBSTER, (WEBSTER), is informed and alleges as follows:

20 1

21 The Complainant makes this Accusation against Respondents in his official
22 capacity.

23 2

24 NYL is presently licensed and/or has license rights under the Real Estate Law,
25 Part 1 of Division 4 of the California Business and Professions Code (the Code) as a corporate
26 real estate broker.

27 ///

1 3

2 WEBSTER is presently licensed by the Department of Real Estate (the
3 Department) as a real estate broker.

4 4

5 At all times herein mentioned, WEBSTER was licensed by the Department as
6 the designated broker/officer of NYL. As the designated broker/officer, WEBSTER was
7 responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the
8 officers, agents, real estate licensees and employees of NYL for which a real estate license is
9 required to ensure the compliance of the corporation with the Real Estate Law and the
10 Regulations.

11 5

12 At all times herein mentioned, NYL engaged in the business of, acted in the
13 capacity of, advertised, or assumed to act as a real estate broker within the State of California
14 the meaning of Section 10131(b) of the Code, including the operation and conduct of a property
15 management business wherein Respondent leased, rented, or offered to lease or rent, solicited
16 listings for lease or rent, collected rents from tenants or lessees, or performed other services for
17 real property owners and tenants or lessees, all for or in expectation of compensation and
18 Section 10131(a) including the operation and conduct of a residential resale brokerage wherein
19 Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and
20 negotiated the purchase, sale or exchange of real property or business opportunities, all for or
21 in expectation of compensation.

22 6

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

1 FIRST CAUSE OF ACTION

2 7

3 On August 4, 2010, an audit was conducted of NYL's real estate activities at its
4 main office located at 2122 Centro East, Tiburon, California, where the auditor examined
5 records for the period of July 1, 2009 through July 31, 2010 (the audit period).

6 8

7 While acting as a real estate broker as described in Paragraph 5, above, and
8 within the audit period, NYL accepted or received funds in trust (trust funds) from tenants on
9 behalf of landlords in connection with the property management activities, deposited or caused
10 to be deposited those funds into a bank account maintained by NYL as follows:

11 Wells Fargo Bank, N. A. (114), P. O. Box 6995; Portland, Oregon 97226-6995,
12 Account No. 9886281220, entitled "Nathan York Ltd" (Bank Account #1), and thereafter from
13 time to time made disbursements of said trust funds.

14 9

15 The following facts were ascertained by the audit for the period referred to
16 above:

17 (a) NYL failed to designate Bank Account #1 as a trust account as required
18 by Section 2832 of the Regulations;

19 (b) NYL failed to maintain adequate records of All Trust Funds Received
20 and Disbursed for Bank Account #1 as required by Section 2831 of the Regulations;

21 (c) NLY failed to maintain a separate record for each beneficiary or
22 transaction for property owner Bornstein as required by Section 2831.1 of the Regulations;

23 (d) NYL failed to perform monthly reconciliations of the control records to
24 the total balance of the beneficiary records as required by Section 2831.2 of the Regulations;

25 (e) NYL deposited trust funds and general business funds into Bank Account
26 #1, thereby commingling them in violation of Section 2835 of the Regulations and 10176(e) of
27 the Code and

1 (f) NYL continued to operate as a corporate real estate broker while its
2 corporate status was suspended by the Secretary of State on August 26, 2010, in violation of
3 Section 2742 of the Regulations.

4 10

5 The acts and/or omissions of NYL as alleged above violate Sections 2742
6 (Corporate Status: Good Standing Required), 2831 (Control Records), 2831.1 (Separate
7 Beneficiary Records), 2831.2 (Monthly Reconciliation of Separate Beneficiary Records), 2832
8 (Trust Account Designation) and 2835 (Commingling) of the Regulations, and Sections 10145
9 (Trust Fund Handling) and 10176(e) (Commingling) of the Code and are grounds for
10 disciplinary action under Sections 10177(d) (Willful Disregard/Real Estate Law) and 10177(g)
11 (Negligence/Incompetence Real Estate Licensee) of the Code.

12 SECOND CAUSE OF ACTION

13 11

14 Complainant refers to Paragraphs 1 through 10, above, and incorporates them
15 herein by reference.

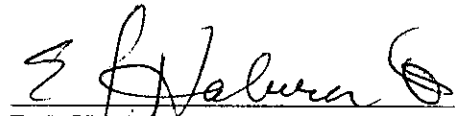
16 12

17 At all times herein above mentioned, WEBSTER was responsible, as the
18 designated broker/officer of NYL, for the supervision and control of the activities conducted on
19 behalf of the corporation by its officers and employees to ensure its compliance with the Real
20 Estate Law and the Regulations. WEBSTER failed to exercise reasonable supervision and
21 control over the property mortgage loan brokering activities of NYL. In particular, WEBSTER
22 permitted, ratified and/or caused the conduct described in the First Cause of Action, above, to
23 occur, and failed to take reasonable steps, including but not limited to the handling of trust
24 funds, supervision of employees, and the implementation of policies, rules, procedures, and
25 systems to ensure the compliance of the corporation with the Real Estate Law and the
26 Regulations.

27 ///

The above acts and/or omissions of WEBSTER violate Section 10159.2 (Broker Supervision) of the Code and Section 2725 (Broker Supervision) of the Regulations and constitute grounds for disciplinary action under Section 10177(h) (Designated Officer Supervision) 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.


E. J. HABERER, II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 12th day of January, 2011.

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

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NOV 15 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

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

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-11026 SF
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14 ROBERT SCOTT WEBSTER,) ACCUSATION
15 Respondents.)

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17 the State of California, for Accusation against Respondent NATHAN YORK LTD., (NYL), and
18 Respondent ROBERT SCOTT WEBSTER, (WEBSTER), is informed and alleges as follows:

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20 The Complainant makes this Accusation against Respondents in his official
21 capacity.

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23 NYL is presently licensed and/or has license rights under the Real Estate Law,
24 Part 1 of Division 4 of the California Business and Professions Code (the Code) as a corporate
25 real estate broker.

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2 WEBSTER is presently licensed by the Department of Real Estate (the
3 Department) as a real estate broker.

4 4

5 At all times herein mentioned, WEBSTER was licensed by the Department as
6 the designated broker/officer of NYL. As the designated broker/officer, WEBSTER was
7 responsible; pursuant to Section 10159.2 of the Code, for the supervision of the activities of the
8 officers, agents, real estate licensees and employees of NYL for which a real estate license is
9 required to ensure the compliance of the corporation with the Real Estate Law and the
10 Regulations.

11 5

12 At all times herein mentioned, NYL engaged in the business of, acted in the
13 capacity of, advertised, or assumed to act as a real estate broker within the State of California
14 the meaning of Section 10131(b) of the Code, including the operation and conduct of a property
15 management business wherein Respondent leased, rented, or offered to lease or rent, solicited
16 listings for lease or rent, collected rents from tenants or lessees, or performed other services for
17 real property owners and tenants or lessees, all for or in expectation of compensation and
18 Section 10131(a) including the operation and conduct of a residential resale brokerage wherein
19 Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and
20 negotiated the purchase, sale or exchange of real property or business opportunities, all for or
21 in expectation of compensation

22 6

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

1 FIRST CAUSE OF ACTION

2 7

3 On August 4, 2010, an audit was conducted of NYL's real estate activities at its
4 main office located at 2122 Centro East, Tiburon, California, where the auditor examined
5 records for the period of July 1, 2009 through July 31, 2010 (the audit period).

6 8

7 While acting as a real estate broker as described in Paragraph 5, above, and
8 within the audit period, NYL accepted or received funds in trust (trust funds) from tenants on
9 behalf of landlords in connection with the property management activities, deposited or caused
10 to be deposited those funds into a bank account maintained by NYL as follows:

11 Wells Fargo Bank, N. A. (114), P. O. Box 6995, Portland, Oregon 97226-6995,
12 Account No. 9886281220, entitled "Nathan York Ltd" (Bank Account #1), and thereafter from
13 time to time made disbursements of said trust funds.

14 9

15 The following facts were ascertained by the audit for the period referred to
16 above:

17 (a) An accountability performed for Bank Account #1, revealed a shortage
18 of \$15,100.16 as of November 30, 2009, in violation of Section 10145 of the Code;

19 (b) NYL failed to designate Bank Account #1 as a trust account as required
20 by Section 2832 of the Regulations;

21 (c) NYL failed to maintain adequate records of All Trust Funds Received
22 and Disbursed for Bank Account #1 as required by Section 2831 of the Regulations;

23 (d) NLY failed to maintain a separate record for each beneficiary or
24 transaction for property owner Bornstein as required by Section 2831.1 of the Regulations;

25 (e) NYL failed to perform monthly reconciliations of the control records to
26 the total balance of the beneficiary records as required by Section 2831.2 of the Regulations;

27 ///

1 (f) NYL deposited trust funds and general business funds into Bank Account
2 #1, thereby commingling them in violation of Section 2835 of the Regulations and 10176(e) of
3 the Code and

4 (g) NYL continued to operate as a corporate real estate broker while its
5 corporate status was suspended by the Secretary of State on August 26, 2010, in violation of
6 Section 2742 of the Regulations.

7 10

8 The acts and/or omissions of NYL as alleged above violate Sections 2742
9 (Corporate Status: Good Standing Required), 2831 (Control Records), 2831.1 (Separate
10 Beneficiary Records), 2831.2 (Monthly Reconciliation of Separate Beneficiary Records), 2832
11 (Trust Account Designation) and 2835 (Commingling) of the Regulations, and Sections 10145
12 (Trust Fund Handling) and 10176(e) (Commingling) of the Code and are grounds for
13 disciplinary action under Sections 10177(d) (Willful Disregard/Real Estate Law) and 10177(g)
14 (Negligence/Incompetence Real Estate Licensee) of the Code.

15 SECOND CAUSE OF ACTION

16 11

17 Complainant refers to Paragraphs 1 through 10, above, and incorporates them
18 herein by reference.

19 12


20 At all times herein above mentioned, WEBSTER was responsible, as the
21 designated broker/officer of NYL, for the supervision and control of the activities conducted on
22 behalf of the corporation by its officers and employees to ensure its compliance with the Real
23 Estate Law and the Regulations. WEBSTER failed to exercise reasonable supervision and
24 control over the property mortgage loan brokering activities of NYL. In particular, WEBSTER
25 permitted, ratified and/or caused the conduct described in the First Cause of Action, above, to
26 occur, and failed to take reasonable steps, including but not limited to the handling of trust
27 funds, supervision of employees, and the implementation of policies, rules, procedures, and

1 systems to ensure the compliance of the corporation with the Real Estate Law and the
2 Regulations.

3 13

4 The above acts and/or omissions of WEBSTER violate Section 10159.2 (Broker
5 Supervision) of the Code and Section 2725 (Broker Supervision) of the Regulations and
6 constitute grounds for disciplinary action under Section 10177(h) (Designated Officer
7 Supervision) of the Code.

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

13
14 
15 E. J. HABERER, II
16 Deputy Real Estate Commissioner

17 Dated at Oakland, California,
18 this 12th day of November, 2010.