

FILED
JUL 09 2009

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By L. Frost

* * *

In the Matter of the Accusation of)
) No. H-22568 LA
ELAINE ROSE SCHWARTZ,)
)
Respondent.)
_____)

ORDER DENYING RECONSIDERATION

On May 15, 2009, a Order Denying Reinstatement of Respondent's real estate salesperson license ("Decision") was rendered in the above – entitled matter. The Decision was to become effective at 12 o'clock noon on June 10, 2009.

On June 9, 2009, Respondent petitioned for reconsideration of the Decision.

An order staying the effective date was issued June 9, 2009, staying the effective date for a total period of 30 days until 12 o'clock noon on July 10, 2009.

Respondent submitted argument in support of her petition for reconsideration. Written argument has been submitted on behalf of Complainant.

I have given careful consideration to the record in this case, including the written arguments offered by Respondent and Complainant. I find there is no good cause to reconsider the Decision of May 15, 2009, and reconsideration is hereby denied.

IT IS SO ORDERED 7-8-09

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby
BY: Barbara J. Bigby
Chief Deputy Commissioner

file

FILED

JUN 09 2009

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
ELAINE ROSE SCHWARTZ,)
Respondent.)

NO. H-22568 LA

ORDER STAYING EFFECTIVE DATE

On May 15, 2009, an Order Denying Reinstatement of License was rendered in the above-entitled matter to become effective on June 10, 2009. On June 9, 2009, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Order Denying Reinstatement of License of May 15, 2009.

IT IS HEREBY ORDERED that the effective date of the Order Denying Reinstatement of License be stayed for a period of thirty (30) days. The Order Denying Reinstatement of License of May 15, 2009, shall become effective at 12 o'clock noon on July 10, 2009.

DATED: 6/9, 2009.

JEFF DAVI
Real Estate Commissioner

[Signature]
BY: Barbara J. Bigby
Chief Deputy Commissioner

FLAG

FILED

MAY 20 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
ELAINE ROSE SCHWARTZ,
Respondent.

No. H-22568 LA

ORDER DENYING REINSTATEMENT OF LICENSE

On August 6, 1987, in Case No. H-22568 LA, a Decision was entered revoking the real estate salesperson license of Respondent Elaine Rose Schwartz. The Decision became effective October 1, 1987.

On January 19, 2007, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate salesperson license.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and

1 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
2 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d
3 395).

4 The Department has developed criteria in Section 2911 of Title 10, California
5 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
6 reinstatement of a license. Among the criteria relevant in this proceeding are:

7 Regulation 2911(a) The passage of not less than two years since the most recent
8 criminal conviction or act of the applicant that is a basis to deny the departmental action
9 sought. (A longer period will be required if there is a history of acts or conduct substantially
10 related to the qualifications, functions or duties of a licensee of the department.)

11 On June 12, 1989, in Los Angeles County Municipal Court, Respondent was
12 convicted of Petty Theft in violation of Penal Code section 484(a), a misdemeanor.

13 On May 27, 1994, in Los Angeles County Municipal Court, Respondent was
14 convicted of Theft in violation of Penal Code section 484f(2), a misdemeanor.

15 Regulation 2911(c) Expungement of criminal convictions resulting from
16 immoral or antisocial acts.

17 Respondent has provided no evidence of expungement of her 1994 conviction.

18 Regulation 2911(k) Correction of business practices resulting in injury to others
19 or with the potential to cause such injury.

20 On August 6, 1987, in Case No. H-22568 LA, a Decision was entered revoking
21 the real estate salesperson license of Respondent pursuant to the provisions of Sections
22 10176(a) and 10176(i) of the Business and Professions Code, on the grounds Respondent
23 misrepresented the handling of escrow proceeds. The Decision became effective October 1,
24 1987. From April 19, 2007 through August 28, 2007, the Department intermittently conducted
25 examinations of the escrow handling activities of Respondent's employer, Exclusive Real
26 Estate Corporation. The examinations disclosed Respondent mishandled trust funds by failing
27 to get a proper authorization from the parties involved before disbursing a disputed amount to

1 the seller. The examinations also disclosed that Respondent willfully disregarded regulations
2 requiring maintenance of columnar and separate records of trust fund transactions, and prompt
3 deposit of trust funds. At the time, Respondent was an unlicensed, unbonded, trust account
4 signatory. This information indicates that Respondent has not corrected her business practices.

5 Regulation 2911(l) Significant or conscientious involvement in community,
6 church or privately-sponsored programs designed to provide social benefits or to ameliorate
7 social problems.

8 Respondent has not provided any evidence of qualifying community service
9 activities.

10 Regulation 2911(n) Change in attitude from that which existed at the time of the
11 conduct in question as evidenced by any or all of the following:

12 (1) Testimony of applicant

13 Information provided by Respondent in support of her petition was incomplete
14 and unreliable. In response to item 3 of the petition, ("Have you ever been convicted of any
15 violation of law?) Respondent failed to disclose that on May 27, 1994, in Los Angeles County
16 Municipal Court, Respondent was convicted of Theft in violation of Penal Code section
17 484f(2), a misdemeanor. In response to item 4 of the petition, ("Have you ever been a
18 defendant in any civil court litigation, including small claims court?) Respondent disclosed a
19 single lawsuit by Celeste C. Merritt, but failed to disclose:

20 (A) An action filed in Los Angeles County Superior Court, case number
21 EC031640, brought against Respondent by Longwood and Ruben Mandalian;

22 (B) An action filed in Los Angeles County Superior Court, case number
23 LC075534, brought against Respondent by Payman Rochel; and

24 (C) An action filed in Los Angeles County Superior Court, case number
25 246310, brought against Respondent by Mohamad Hamideh.
26

27 These deficiencies reflect unfavorably on a change in Respondent's attitude.

1 (2) Evidence from family members, friends or other persons familiar with
2 applicant's previous conduct and with his subsequent attitudes and behavioral
3 patterns.

4 On February 9, 2007, the Department received a letter from Jean Buetow,
5 commenting adversely on Respondent's honesty, behavior and traits and recommending that
6 Respondent's license not be reinstated.

7 (3) Evidence from probation or parole officers or law enforcement officials
8 competent to testify as to applicant's social adjustments.

9 (4) Evidence from psychiatrists or other persons competent to testify with regard
10 to neuropsychiatric or emotional disturbances.

11 Respondent submitted no such evidence.

12 (5) Absence of subsequent felony or misdemeanor convictions that are reflective
13 of an inability to conform to societal rules when considered in light of the
14 conduct in question.

15 Respondent has suffered two theft-related convictions since her license was
16 disciplined.

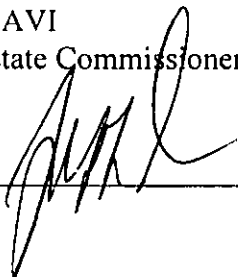
17 Consequently, I am not satisfied that Respondent is sufficiently rehabilitated to
18 receive an unrestricted real estate license.

19 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
20 reinstatement of Respondent's real estate salesperson license is denied.

21 This Order shall become effective at 12 o'clock noon on JUN 10 2009

22 DATED: 5-15, 2009.

23 JEFF DAVI
24 Real Estate Commissioner

25 
26 _____
27

SACD.
ELAS

FILED

OCT - 1 1987

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	No. H-22568 LA
	)	
ELAINE ROSE SCHWARTZ,	)	L-37887
et al.,	)	
	)	
Respondents.	)	

ORDER DENYING RECONSIDERATION

On August 6, 1987, a Decision was rendered in the above-entitled matter. The Decision is to become effective on October 1, 1987.

On August 31, 1987, respondent petitioned for reconsideration of the Decision of August 6, 1987.

I have given due consideration to the petition of respondent. I find no good cause to reconsider the Decision of August 6, 1987, and reconsideration is hereby denied.

IT IS SO ORDERED September 29, 1987.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: *[Signature]*
JOHN R. LIBERATOR
Chief Deputy Commissioner

SACD.
flag

FILED

AUG 31 1987

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-22568 LA
ELAINE ROSE SCHWARTZ,)	
et al.,)	L-37887
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On August 6, 1987, a Decision was rendered in the above-entitled matter to become effective September 1, 1987.

IT IS HEREBY ORDERED that the effective date of the Decision of August 6, 1987, is stayed for a period of 30 days.

The Decision of August 6, 1987, shall become effective at 12 o'clock noon on October 1, 1987.

DATED: August 31, 1987.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: *[Signature]*
ROBERT ARNOLD
Regional Manager

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED

AUG 12 1987

DEPARTMENT OF REAL ESTATE

BY *Chad J. Jones*

In the Matter of the Accusation of)

ELAINE ROSE SCHWARTZ, aka)
Elaine Rose Harding Marks;)
TOM EVAN RODDA; and GARY)
JAY GOLDBERG,)

No. H- 22568 LA

L- 37887

Respondent(s).)

DECISION

The Proposed Decision dated July 14, 1987
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.

This Decision shall become effective at 12 o'clock
noon on September 1, 1987.

IT IS SO ORDERED August 6, 1987.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: *John R. Liberato*

JOHN R. LIBERATOR
Chief Deputy Commissioner

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation)
of:)
)
ELAINE ROSE SCHWARTZ, aka)
Elaine Rose Harding Marks;) No. H-22568 LA
TOM EVAN RODDA; and GARY)
JAY GOLDBERG,)
)
) L-37887
)
Respondents.)
)

PROPOSED DECISION

This matter came on regularly for hearing before Milford A. Maron, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 20 and July 7, 1987. Marjorie P. Mersel, Counsel, appeared on behalf of the Complainant. Respondent Tom Evan Rodda was represented by his counsel Christopher Rolin, Esquire. Respondent Elaine Rose Schwartz was represented by her counsel W. Douglas Weigand, Jr. Respondent Gary Jay Goldberg appeared in person without counsel. Oral and documentary evidence having been introduced, the matter stood submitted and the Administrative Law Judge finds the following facts:

I

Randolph Brendia, Complainant, is a Deputy Real Estate Commissioner of the State of California and made the Accusation in his official capacity.

II

A. At all times herein mentioned, Respondent Elaine Rose Schwartz aka Elaine Rose Harding Marks, was and now is licensed by the Department of Real Estate as a real estate salesperson.

B. At all times herein mentioned, respondent Tom Evan Rodda was and now is licensed by the Department of Real Estate of the State of California as a real estate broker.

C. At all times herein mentioned, Respondent Gary Jay Goldberg was and now is licensed by the Department of Real Estate of the State of California as a real estate broker.

III

In performing the acts hereinafter found Respondents, and each of them, were at all times performing acts for which a real estate license is and was required, for or in expectation of a compensation.

IV

A. At all times herein mentioned, Celeste C. Merritt ("Seller") was the seller of certain real property located at 15605 Freeman Avenue, Lawndale, California.

B. On or about March 2, 1983, Respondent Schwartz obtained a listing agreement on the property for a listing price of \$93,000.

C. On or about May 20, 1983, Respondent Schwartz procured an Agreement to Purchase and Receipt for Deposit from Respondent Goldberg. The terms of said offer were as follows: (1) a purchase price of \$89,000, (2) with a \$1,000 check for deposit on the property and (3) an additional \$1,300 due prior to the closing of escrow, with (4) Respondent Goldberg obtaining an FHA loan of \$77,000 on the property and (5) Seller to carry a \$9,000 Second Deed of Trust outside of escrow since Respondent Goldberg could only qualify for an \$80,000 loan.

D. On or about May 22, 1983, Seller accepted the above-mentioned offer. Thereafter, escrow was opened.

E. On or about August 8, 1983, Seller signed a commission authorization to the escrow holder authorizing payment of a \$2,400 commission to Respondent Goldberg to be credited as part of his cash consideration through escrow.

F. On or about August 27, 1983, Respondent Schwartz prepared an agreement wherein Respondent Goldberg outside of escrow would issue a promissory note in favor of Seller for \$9,000 to be secured by his retirement fund and a second trust deed which was not to be recorded until after the close of escrow.

G. On or about September 1, 1983, Respondent Goldberg and Respondent Schwartz told Seller that instead of the aforementioned deed of trust and note for \$9,000, Seller

would receive \$7,500 cash at the close of escrow and requested Seller to return the note and deed of trust. Based upon this promise, Seller returned the deed of trust and note.

H. On or about September 21, 1983, escrow on the real property closed. Seller did not get the \$9,000 Second Trust Deed or the \$7,500 cash that Respondent Schwartz had promised. Both Respondents Schwartz and Goldberg failed and have continued to fail to give the \$9,000 Second Trust Deed or \$7,500 cash to the Seller.

V

From on or about March 2, 1983 through September, 1983, Respondent Rodda used the fictitious name of Bay Area Realty for which the Department had not issued a license as required under the Real Estate Law. This was primarily due to inadvertence.

VI

The evidence abundantly reflects that Respondent Rodda was not fully informed of all the facts concerning the transaction. The evidence does not reflect that he failed to exercise reasonable supervision and control over the activities of his employees.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

ELAINE ROSE SCHWARTZ

Cause for disciplinary action exists against Respondent pursuant to Sections 10176(a) and 10176(i) of the Business and Professions Code.

II

TOM EVAN RODDA

A. Cause for disciplinary action exists against Respondent pursuant to Title 10, California Administrative Code, Section 2731 and Sections 10159.5 and 10177(d) of the Business and Professions Code.

B. No cause for disciplinary action was established against Respondent pursuant to Section 10177(h)

of the Business and Professions Code and Title 10,
California Administrative Code, Section 2725.

III

GARY JAY GOLDBERG

Cause for disciplinary action exists against
Respondent pursuant to Section 10177(j) of the Business and
Professions Code.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

ELAINE ROSE SCHWARTZ

The real estate salesperson's license previously
issued to Respondent Elaine Rose Schwartz aka Elaine Rose
Harding Marks, is hereby revoked.

II

TOM EVAN RODDA

No public purpose would be furthered by imposing
discipline on Respondent under the facts herein found;
therefore, the Accusation is terminated without the imposi-
tion of penalty.

III

GARY JAY GOLDBERG

The real estate broker's license heretofore issued
to Respondent Gary Jay Goldberg, is hereby suspended for a
period of 180 days.

DATED: July 14, 1987



MYLFORD A. MARON
Administrative Law Judge
Office of Administrative Hearings

MAM:hk

*SPED.
FILED*

FILED

DEPARTMENT OF REAL ESTATE

APR 29 1987

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY *Marjorie P. Merse*

In the Matter of the Accusation of)
ELAINE ROSE SCHWARTZ, et al,)
Respondents.)

Case No. H-22568 LA
L-37887

NOTICE OF CONTINUED HEARING ON ACCUSATION

TO THE ABOVE-NAMED RESPONDENTS:

YOU ARE HEREBY NOTIFIED that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 West First Street, Los Angeles, California, on the 7th day of July, 1987, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person, nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

DATED: April 29, 1987.

JAMES A. EDMONDS, JR.
DEPARTMENT OF REAL ESTATE

cc: Elaine Rose Schwartz
Tom Evan Rodda
Gary Jay Goldberg
Christopher Rolin, Esq.
W. Douglas Weigand, Jr., Esq.
FSR Brokerage, Inc.
Sacto.
OAH
AS

By: *Marjorie P. Merse*
MARJORIE P. MERSEL
Counsel

DEPARTMENT OF REAL ESTATE

FEB 11 1987

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
ELAINE ROSE SCHWARTZ, et al,)
Respondents.)

Case No. H-22568 LA
L-37887

NOTICE OF CONTINUED HEARING ON ACCUSATION

TO THE ABOVE-NAMED RESPONDENTS:

YOU ARE HEREBY NOTIFIED that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 West First Street, Los Angeles, California, on the 30th day of March, 1987, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person, nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

DATED: February 11, 1987.

JAMES A. EDMONDS, JR.
DEPARTMENT OF REAL ESTATE

cc: Elaine Rose Schwartz
Tom Evan Rodda
Gary Jay Goldberg
Christopher Rolin, Esq.
FSR Brokerage, Inc.
Sacto.
OAH
AS

By: 
MARJORIE P. MERSEL
Counsel

NOV 14 1963

VERIFIED BY [Signature] DATE 7/1/88

In the Matter of the Accusation of
ELAINE ROSE SCHWARTZ, et al,
Respondents.

Case No. H-22568 LA
L-37887

NOTICE OF HEARING ON ACCUSATION

TO THE ABOVE-NAMED RESPONDENTS:

YOU ARE HEREBY NOTIFIED that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 West First Street, Los Angeles, California, on the 20th day of January, 1987, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person, nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

DATED: November 14, 1986

cc: Elaine Rose Schwartz
Tom Evan Rodda
Gary Jay Goldberg
Rose Pothier, Esq.
FSR Brokerage, Inc.
Sacto.
OAH
AS

JAMES A. EDMONDS, JR.
DEPARTMENT OF REAL ESTATE

By: Marjorie P. Merse
MARJORIE P. MERSEL
Counsel

1 MARJORIE P. MERSEL, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012
5
6
7
8 (213) 620-4790
9

FILED

MAY -7 1986

DEPARTMENT OF REAL ESTATE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) No. H-22568 LA
)
ELAINE ROSE SCHWARTZ, aka) A C C U S A T I O N
Elaine Rose Harding Marks;)
TOM EVAN RODDA; and GARY)
JAY GOLDBERG,)
)
Respondents.)

The complainant, Randolph Brendia, a Deputy Real Estate
Commissioner of the State of California, for cause of accusation
against ELAINE ROSE SCHWARTZ, aka Elaine Rose Harding Marks; TOM
EVAN RODDA; and GARY JAY GOLDBERG alleges as follows:

I

The complainant, Randolph Brendia, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation in
his official capacity.

II

ELAINE ROSE SCHWARTZ, aka Elaine Rose Harding Marks
(hereinafter referred to as respondent SCHWARTZ), is presently
licensed and/or has license rights under the Real Estate Law

1 (Part 1 of Division 4 of the Business and Professions Code).

2 III

3 At all times herein mentioned, respondent SCHWARTZ was
4 and now is licensed by the Department of Real Estate as a real
5 estate salesperson.

6 IV

7 TOM EVAN RODDA (hereinafter referred to as respondent
8 RODDA) is presently licensed and/or has license rights under the
9 Real Estate Law (Part 1 of Division 4 of the Business and
10 Professions Code).

11 V

12 At all times herein mentioned, respondent RODDA was and
13 now is licensed by the Department of Real Estate of the State of
14 California as a real estate broker.

15 VI

16 GARY JAY GOLDBERG (hereinafter referred to as respondent
17 GOLDBERG) is presently licensed and/or has license rights under
18 the Real Estate Law (Part 1 of Division 4 of the Business and
19 Professions Code).

20 VII

21 At all times herein mentioned, respondent GOLDBERG was
22 and now is licensed by the Department of Real Estate of the State
23 of California as a real estate broker.

24 VIII

25 In performing the acts described below, respondents, and
26 each of them, were at all times performing acts for which a real
27 estate license is required, for or in expectation of a

1 compensation.

2 IX

3 At all times herein mentioned, Celeste C. Merritt
4 (hereinafter referred to as Seller) was the seller of certain real
5 property located at 15605 Freeman Avenue, Lawndale, California
6 (hereinafter referred to as the Property).

7 X

8 On or about March 2, 1983, respondent SCHWARTZ obtained
9 a listing agreement on the Property for a listing price of
10 \$93,000.

11 XI

12 On or about May 20, 1983, respondent SCHWARTZ procured
13 an Agreement to Purchase and Receipt for Deposit from respondent
14 GOLDBERG. The terms of respondent GOLDBERG's offer were a
15 purchase price of \$89,000 with a \$1,000 check for deposit on the
16 Property and an additional \$1,300 due prior to the closing of
17 escrow, with respondent GOLDBERG obtaining an FHA loan on the
18 Property of \$77,000. Respondent SCHWARTZ persuaded Seller to
19 carry a \$9,000 Second Deed of Trust outside of escrow since
20 respondent GOLDBERG could only qualify for an \$80,000 loan. On or
21 about May 22, 1983, Seller accepted the above-mentioned offer.

22 XII

23 On or about May 24, 1983, escrow was opened on the
24 Property at Equity Escrow under Escrow No. 2843. Said escrow had
25 a closing date of July 24, 1983.

26 /

27 /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XIII

On or about August 8, 1983, Seller signed a commission authorization to Equity Escrow authorizing payment of \$2,400 commission to C-21 Sea Realty and \$2,400 to respondent GOLDBERG to be credited as part of his cash consideration through escrow.

XIV

On or about August 16, 1983, Seller signed an amendment to escrow which stated "Seller herein is made aware that in lieu of cash deposit in escrow of \$1000, Buyer is using the commission due him as Broker as the cash consideration through this escrow. Said commission being \$2400."

XV

On or about August 27, 1983, respondent SCHWARTZ prepared an agreement which Seller and respondent GOLDBERG signed, which provided that Seller would make respondent GOLDBERG a \$9,000 loan to be secured by a second deed of trust. Respondent SCHWARTZ had respondent GOLDBERG sign a promissory note for the \$9,000 to be secured by collateral. The second trust deed was not to be recorded until after the close of escrow.

XVI

On or about September 1, 1983, respondent GOLDBERG and respondent SCHWARTZ told Seller that instead of the aforementioned deed of trust and note for \$9,000, Seller would receive \$7,500 cash at the close of escrow and requested Seller to return the note and deed of trust. Based upon this promise, Seller returned the deed of trust and note.

/

1 XVII

2 On or about September 12, 1983, respondent GOLDBERG
3 signed a Mortgage Loan Statement with Mission Hills Mortgage
4 Corporation for a \$77,000 FHA loan. He told Mission Hills
5 Mortgage Corporation that he was using his commission to purchase
6 the Property but did not disclose the \$9,000 secondary financing.

7 XVIII

8 On or about September 22, 1983, Escrow No. 2843 at
9 Equity Escrow, Manhattan Beach, closed. Seller did not get the
10 \$9,000 Second Trust Deed or the \$7,500 cash that respondent
11 SCHWARTZ had promised. Respondent SCHWARTZ failed and has
12 continued to fail to give the \$9,000 Second Trust Deed or \$7,500
13 cash to the Seller.

14 XIX

15 The conduct of respondent SCHWARTZ as alleged
16 hereinabove, constitutes the making of substantial
17 misrepresentations, fraud or dishonest dealing, and is cause for
18 suspension or revocation of respondent SCHWARTZ's real estate
19 license and license rights under Sections 10176(a) and 10176(i) of
20 the Business and Professions Code of the State of California.

21 SECOND CAUSE OF ACCUSATION

22 XX

23 The complainant, Randolph Brendia, a Deputy Real Estate
24 Commissioner of the State of California, for a Second Cause of
25 Accusation alleges as follows:

26 /

27 /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XXI

Complainant repleads and realleges Paragraphs I through XVIII of the First Cause of Accusation.

XXII

From on or about March 2, 1983, through September, 1983, respondent RODDA used the fictitious name of Bay Area Realty for which the Department had not issued a license as required under the Real Estate Law.

XXIII

Respondent RODDA failed to completely supervise the escrow described hereinabove. Respondent RODDA failed to exercise reasonable supervision over the real estate activities of respondent SCHWARTZ as required by Section 2725 of Title 10, Chapter 6, California Administrative Code. The conduct of respondent RODDA, as alleged hereinabove, constitutes failure on his part, as broker designated, to exercise reasonable supervision and control of the activities of his employees for which a real estate license is required, and is grounds for the suspension or revocation of his real estate licenses and license rights under the provisions of Section 10177(h) of the Business and Professions Code and Section 10177(d) of the Business and Professions Code for violating Section 2725 of Title 10, Chapter 6, California Administrative Code.

XXIV

The conduct of respondent RODDA as described in Paragraph XXII is grounds for the suspension or revocation of his real estate licenses and license rights under the provisions of

1 Section 2731 of the Regulations of the Real Estate Commissioner
2 and Section 10159.5 and Section 10177(d) of the Business and
3 Professions Code.

4 THIRD CAUSE OF ACCUSATION

5 XXV

6 The complainant, Randolph Brendia, a Deputy Real Estate
7 Commissioner of the State of California for a Third Cause of
8 Accusation alleges as follows:

9 XXVI

10 Complainant repleads and realleges Paragraphs I through
11 XVIII of the First Cause of Accusation.

12 XXVII

13 On or about September 21, 1983, Escrow No. 2843 at
14 Equity Escrow, Manhattan Beach, closed. Seller did not get the
15 \$9,000 Second Trust Deed signed by respondent GOLDBERG nor did
16 Seller get the \$7,500 cash that respondent GOLDBERG had promised
17 to give at the close of escrow in lieu of the \$9,000 Second Trust
18 Deed. Respondent GOLDBERG failed and has continued to fail to
19 give the \$9,000 Second Trust Deed or \$7,500 cash to the Seller.

20 XXVIII

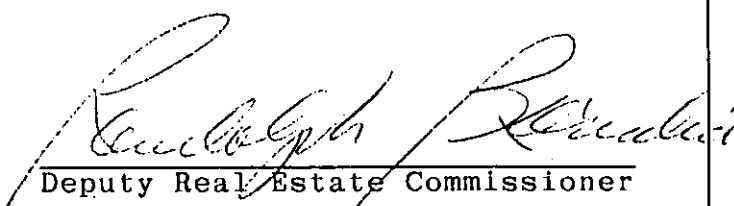
21 Respondent GOLDBERG's conduct, as alleged hereinabove,
22 is grounds for the suspension or revocation of his licenses and
23 license rights under the provisions of Section 10177(j) of the
24 Business and Professions Code.

25 /

26 /

27 /

1 WHEREFORE, complainant prays that a hearing be conducted
2 on the allegations of this Accusation and, that upon proof
3 thereof, a decision be rendered imposing disciplinary action
4 against all licenses and license rights of respondents ELAINE ROSE
5 SCHWARTZ, aka Elaine Rose Harding Marks; TOM EVAN RODDA; and GARY
6 JAY GOLDBERG under the Real Estate Law (Part 1 of Division 4 of
7 the Business and Professions Code) and for such other and further
8 relief as may be proper under other applicable provisions of law.
9 Dated at Los Angeles, California
10 this 7th day of May, 1986.

11
12 
13 Deputy Real Estate Commissioner
14
15
16
17
18
19
20
21
22
23
24

25 cc: Elaine Rose Schwartz
26 Tom Evan Rodda
27 Gary Jay Goldberg
FSR Brokerage, Inc.
Sacto.
AS