

1 Department of Real Estate  
2 107 South Broadway, Room 8107  
3 Los Angeles, California, 90012

4 Telephone: (213) 897-3937

NOV 27 1991

DEPARTMENT OF REAL ESTATE  
*K. M. Derbold*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \* \*

11	In the Matter of the Accusation of )	H-24186 LA
12	<b>THOMAS HENRY BYMA,</b> )	<u>STIPULATION AND AGREEMENT</u>
13	dba Farwest Property Management, )	<u>IN SETTLEMENT AND ORDER</u>
14	Respondent. )	

15  
16 It is hereby stipulated by and between THOMAS HENRY  
17 BYMA (sometimes referred to as "Respondent"), and the Complainant,  
18 acting by and through George W. Wright, Counsel for the Department  
19 of Real Estate, as follows for the purpose of settling and  
20 disposing of the Accusation filed on AUGUST 10, 1990, in this  
21 matter:

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

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1 submitted solely on the basis of the provisions of this  
2 Stipulation.

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

8 3. On August 17, 1990, Respondent filed a Notice of  
9 Defense pursuant to Section 11505 of the Government Code for the  
10 purpose of requesting a hearing on the allegations in the  
11 Accusation. Respondent hereby freely and voluntarily withdraws  
12 said Notice of Defense. Respondent acknowledges that he  
13 understands that by withdrawing said Notice of Defense, he will  
14 thereby waive his right to require the Commissioner to prove the  
15 allegations in the Accusation at a contested hearing held in  
16 accordance with the provisions of the APA and that he will waive  
17 other rights afforded to him in connection with the hearing such  
18 as the right to present evidence in defense of the allegations in  
19 the Accusation and the right to cross-examine witnesses.

20 4. Respondent, pursuant to the limitations set forth  
21 below, hereby admits that the factual allegations in Paragraphs  
22 one (I) through twelve (XII) of the Accusation filed in this  
23 proceeding are true and correct and the Real Estate Commissioner  
24 shall not be required to provide further evidence of such  
25 allegations.

26 5. It is understood by the parties that the Real  
27 Estate Commissioner may adopt the Stipulation And Agreement In  
Settlement and Order as his decision in this matter thereby

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imposing the penalty and sanctions on Respondent's real estate licenses and license rights as set forth in the below "order". In the event that the Commissioner in his discretion does not adopt the Stipulation And Agreement In Settlement and Order, the Stipulation And Agreement In Settlement and Order shall be void and of no effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of Issues shall be made:

The conduct or omissions of Respondent THOMAS HENRY BYMA as set forth in paragraphs seven (VII) through twelve (XII) of the Accusation constitute cause to suspend or revoke his real estate licenses and license rights under the provisions of Business and Professions Code Section 10177(d).

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2 ORDER

3 WHEREFORE, THE FOLLOWING ORDER is hereby made:

4 A. The licenses and license rights of THOMAS HENRY  
5 BYMA under Part 1 of Division 4 of the Business and Professions  
6 Code are revoked.

7 B. However, Respondent shall be entitled to apply for  
8 and be issued a restricted real estate broker license pursuant to  
9 Section 10156.5 of the Code if Respondent makes application  
10 therefor and pays to the Department of Real Estate the appropriate  
11 fee for said license within one hundred twenty (120) days from the  
12 effective date of the Decision.

13 C. The restricted real estate broker license issued  
14 pursuant to this Order shall be suspended for thirty (30) days  
15 from the effective date of the restricted license.

16 D. However, if Respondent petitions, the thirty (30)-  
17 day suspension of Respondent's restricted broker license shall be  
18 permanently stayed upon condition that Respondent pay to the  
19 Department's Recovery Account \$3,500 prior to the effective date  
20 of this Decision, pursuant to the provisions of Section 10175.2.

21 (1) Payment of the aforementioned monetary penalty  
22 shall be in the form of cashiers checks or certified checks, made  
23 payable to the Recovery Account of the Real Estate Fund. Payment  
24 must be made prior to the effective date of this Decision.

25 (2) The Commissioner, in exercising his discretion  
26 under Code Section 10175.2, agrees by adopting this Order that it  
27 would not be against the public interest to permit such  
petitioning Respondent to pay the aforesaid monetary penalty.

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2 E. The restricted license issued to Respondent shall be  
3 subject to all of the provisions of Section 10156.7 of the  
4 Business and Professions Code and to the following limitations,  
5 conditions and restrictions imposed under authority of Section  
6 10156.6 of said Code:

7 (1) Said restricted license may be suspended prior  
8 to hearing by order of the Real Estate Commissioner in the event  
9 of Respondent's conviction or plea of nolo contendere to a crime  
10 which bears a significant relation to Respondent's qualifications,  
11 duties or functions as a real estate licensee.

12 (2) Said restricted license may be suspended prior  
13 to hearing by Order of the Real Estate Commissioner on evidence  
14 satisfactory to the Commissioner that Respondent has violated  
15 provisions of the California Real Estate Law, the Subdivided Lands  
16 Law, Regulations of the Real Estate Commissioner, or the  
17 conditions attaching to this restricted license.

18 (3) Respondent shall, within nine (9) months from  
19 the effective date of the restricted license, present evidence  
20 satisfactory to the Real Estate Commissioner that he has, since  
21 the most recent issuance of an original or renewal real estate  
22 license, taken and successfully completed the continuing education  
23 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
24 for renewal of a real estate license. If Respondent fails to  
25 satisfy this condition, the Real Estate Commissioner may order the  
26 suspension of the restricted license until Respondent presents  
27 such evidence. The Real Estate Commissioner shall afford

1 Respondent the opportunity for a hearing pursuant to the APA to  
2 present such evidence.

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4 (4) Respondent shall, within six (6) months from  
5 the effective date of the restricted license, take and pass the  
6 Professional Responsibility Examination administered by the  
7 Department, including the payment of the appropriate fee. If  
8 Respondent fails to satisfy this condition, the Commissioner may  
9 order suspension of the restricted license until Respondent passes  
10 the examination.

11 (5) Respondent shall report in writing to the  
12 Department of Real Estate as the Real Estate Commissioner shall  
13 direct by his Decision herein or by separate written order issued  
14 while Respondent holds a restricted license, such information  
15 concerning Respondent's activities for which a real estate license  
16 is required as the Commissioner shall deem to be appropriate to  
17 protect the public interest.

18 (6) Respondent shall not be eligible to apply for  
19 the issuance of an unrestricted real estate license nor the  
20 removal of any of the conditions, limitations or restrictions of a  
21 restricted license until one (1) year has elapsed from the date of  
22 issuance of the restricted license to Respondent.

23 (7) Respondent shall submit to the Department of  
24 Real Estate a Trust Funds Position Statement as of the last day of  
25 each March, June, September and December for so long as said  
26 restricted license shall remain in effect. The Position Statement  
27 shall consist of the following:

1 (I) A schedule of trust fund accountability with the  
2 following information concerning funds held by Respondent as agent  
3 or trustee to the owner(s) of said funds:

- 4 (a) Account number and depositories.  
5 (b) Names of principals and beneficiaries.  
6 (c) Trust fund liability to (b).  
7

8 (II) A report of trust funds in the custody and control of  
9 Respondent as of the accounting date consisting of:

10 (a) A copy of Respondent's trust accounts' bank  
11 statements (listed above as (I)(a) ) showing the balance of funds  
12 in the accounts as of the accounting date.

13 (b) A schedule of uncleared checks drawn on the  
14 accounts adjusting the accounts to their true balance as of the  
15 accounting date.

16 (III) A copy of Respondent's (i) trust funds records  
17 maintained pursuant to Section 2831 of the Regulations, (ii)  
18 separate records maintained pursuant to Section 2831.1 of the  
19 Regulations and reconciliation maintained pursuant to Section  
20 2831.2 of the Regulations.

21 (IV) A statement explaining any discrepancy between the total  
22 liability shown under (I) above and the adjusted trust accounts'  
23 balances shown under (II) above.

24 The Trust Funds Position Statement shall be submitted by  
25 Respondent to the Los Angeles Office of the Department of Real  
26 Estate not later than sixty (60) days after each accounting date.  
27 If Respondent has no trust fund liability as of the accounting  
date, the report to the Department shall so state.

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Respondent shall certify under penalty of perjury the completeness and accuracy of each Position Statement submitted by Respondent.

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

DATED: 11-7-91

Thomas Henry Byma  
THOMAS HENRY BYMA, Respondent

DATED: 11/14/91

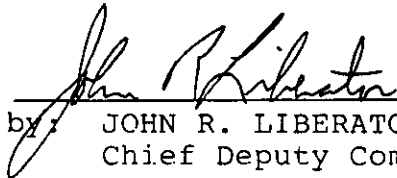
George W. Wright  
George W. Wright, Counsel for the Complainant

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The foregoing Stipulation and Agreement In Settlement  
is hereby adopted as my Decision and Order and shall become  
effective at 12 o'clock noon on December 17, 1991

IT IS SO ORDERED November 18, 1991.

CLARK WALLACE  
Real Estate Commissioner

  
by: JOHN R. LIBERATOR  
Chief Deputy Commissioner

*Handwritten initials/signature*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

BY K. [Handwritten]

In the Matter of the Accusation of

THOMAS HENRY BYMA,

Case No. H-24186 LA

OAH No. L-51394

Respondent(s)

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at \_\_\_\_\_  
Office of Administrative Hearings 314 West First Street, Los Angeles  
on the 21st day of November, 19 91, 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.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: August 13, 1991

By George W. Wright Counsel

cc: Thomas Henry Byma  
Sacto  
OAH  
JO

*File to Gary*

FILED

AUG 10 1990

DEPARTMENT OF REAL ESTATE  
BY *K. Medelkelt*

1 GEORGE W. WRIGHT, Counsel  
2 Department of Real Estate  
3 107 South Broadway, Room 8107  
4 Los Angeles, California 90012  
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14 (213) 620-4790

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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11 In the Matter of the Accusation of ) No. H-24186 LA  
12 THOMAS HENRY BYMA, )  
13 dba Farwest Property Management, ) A C C U S A T I O N  
14 Respondent. )

15 The Complainant, Steven J. Ellis, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of accusation  
17 against THOMAS HENRY BYMA dba Farwest Property Management, alleges  
18 as follows:

I

20 The Complainant, Steven J. Ellis, a Deputy Real Estate  
21 Commissioner of the State of California, makes this Accusation  
22 in his official capacity.

II

24 THOMAS HENRY BYMA, doing business as Farwest Property  
25 Management (hereinafter referred to as Respondent) is presently  
26 licensed and/or has license rights under the Real Estate Law  
27 (Part 1 of Division 4 of the Business and Professions Code).

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III

At all times mentioned herein, Respondent was and now is licensed by the California Department of Real Estate (hereinafter "Department") as a real estate broker.

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All further references to Respondent shall include Respondent and shall be deemed to refer also to the employees, agents, and real estate licensees employed by or associated with Respondent, who at all times herein mentioned were engaged in the furtherance of the business or operations of Respondent, and who were acting within the course and scope of their authority and employment.

V

At all times material herein, Respondent operated a real property management business within the meaning of Section 10131(b) of the Code. In the operation of said real property management business, services were rendered in connection with certain real properties owned by third parties. Said services included, but were not necessarily limited to, leasing or renting and collecting rents from tenants residing on said real properties, and making payments in connection with the expenses of said properties from the rent monies collected, all for or in expectation of compensation.

VI

In performing the acts described hereinbelow, Respondent was at all times performing acts for which a real estate license is required, for or in expectation of compensation.

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VII

On or about December 4, 1989, up to and including January 19, 1990, the Department conducted an audit on Respondent concerning trust fund handling and record-keeping in the above-described real property management business. The time period covered in said audit was from January 1, 1989, up to and including November 30, 1989, and unless otherwise mentioned, the relevant period of time referenced herein shall be the same.

VIII

At all times material herein in connection with the above-described real estate activities, Respondent received trust funds in the form of rental receipts and other miscellaneous funds and deposited and disbursed said funds into and from a bank account at Mid Cities National Bank entitled "Far West Property Management Trust Account" (hereinafter "FWPM Account"). Respondent violated Regulation 2830 by depositing funds into and disbursing funds out of said account which Respondent maintained in his fictitious business name rather than in an account maintained in his own name as trustee.

IX

At all times material herein, Respondent maintained control records for the receipt and disbursement of trust funds into and from the FWPM account. Respondent violated Regulation 2831 in that said control records failed to maintain a daily balance of funds in said account and failed to contain all dates when funds were received and deposited.

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At all times material herein, Respondent maintained separate records for the receipt and disbursement of trust funds into and out of the FWPM Account. Respondent violated Regulation 2831.1 in that the separate records did not show the dates when trust funds were deposited into the FWPM Account, did not contain a daily balance, and did not show dates, amounts and check numbers of each disbursement from said account.

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XI

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On October 31, 1989, and then again on November 30, 1989, Respondent violated Section 10145 of the Code and Regulation 2832.1 by disbursing or allowing the disbursement of funds from the FWPM Account without the prior written consent of every principal who was then an owner of trust funds in said account wherein the disbursements reduced the balance of funds in the FWPM Account on said dates to an amount which was \$37,121.09, and \$34,218.57, respectively, less than the existing aggregate trust fund liability to all owners of said trust funds on said dates. Said conduct and violations are cause to suspend or revoke the real estate license and/or license rights of Respondent under the provisions of Section 10177(d) of the Code.

22

XII

23

At all times material herein, Respondent commingled his own funds with trust funds belonging to others, received and disbursed by Respondent in the course and scope of his activities as a real estate broker and held in his FWPM Account. This conduct is in violation of Section 10176(e) of the Code and is

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1 cause for suspension or revocation of Respondent's license and/or  
2 license rights.

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

12 Dated at Los Angeles, California  
13 this 10th day of August, 1990.

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17 Deputy Real Estate Commissioner  
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26 cc: Thomas Henry Byma  
27 Sacto.  
JO