

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 739-3607
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FILED
NOV 23 1992
DEPARTMENT OF REAL ESTATE

By *Lucie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
)	
12 D. A. PETERSON ENTERPRISES, INC.,)	NO. H-24978 LA
13 a Corporation, and DENNIS ANTHONY)	
14 PETERSON, individually and as)	<u>STIPULATION AND AGREEMENT</u>
15 designated officer of D.A. Peterson)	<u>IN SETTLEMENT AND ORDER.</u>
16 Enterprises, Inc.,)	
)	
17 Respondents.)	

17 It is hereby stipulated by and between D. A. PETERSON
18 ENTERPRISES, INC. (hereinafter "respondent ENTERPRISES") and
19 DENNIS ANTHONY PETERSON (hereinafter "respondent PETERSON")
20 (sometimes referred to as Respondents) and their attorney of
21 record, Lawrence H. Lackman, and the Complainant, acting by and
22 through David A. Peters, Counsel for the Department of Real
23 Estate, as follows for the purpose of settling and disposing of
24 the Accusation filed on January 31, 1992, in this matter:

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondents
27 at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement in Settlement.

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

9 3. On February 27, 1992, Respondents filed Notices of
10 Defense pursuant to Section 11505 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notices of Defense. Respondents acknowledge that they
14 understand that by withdrawing said Notices of Defense they will
15 thereby waive their right to require the Commissioner to prove the
16 allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that they will waive
18 other rights afforded to them in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

21 4. Respondents, pursuant to the limitations set forth
22 below, hereby admit that the factual allegations in Paragraphs
23 II, III, IV, V, VI, VII, VIII, IX and X(e) of the Accusation filed
24 in this proceeding are true and correct and the Real Estate
25 Commissioner shall not be required to provide further evidence to
26 prove such allegations.

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1 5. It is understood by the parties that the Real Estate
2 Commissioner may adopt the Stipulation and Agreement in Settlement
3 as his decision in this matter thereby imposing the penalty and
4 sanctions on Respondents' real estate licenses and license rights
5 as set forth in the below "Order". In the event that the
6 Commissioner in his discretion does not adopt the Stipulation and
7 Agreement in Settlement, it shall be void and of no effect, and
8 Respondents shall retain the right to a hearing and proceeding on
9 the Accusation under all the provisions of the APA and shall not
10 be bound by any admission or waiver made herein.

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

18 Any admissions made by Respondents pursuant to this
19 Stipulation are agreed to only for the purpose of this proceeding
20 and any subsequent proceeding between Respondents and the
21 Department. The parties hereto intend that the Determination of
22 Issues and Order not be given res judicata/collateral estoppel
23 effect except as between them.

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1 DETERMINATION OF ISSUES

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

6 I

7 The conduct of Respondents as described in Paragraph
8 X(e) of the Accusation in this matter constitutes cause under
9 Section 10145 of the Code and Section 2830 of the Regulations in
10 conjunction with Section 10177(d) of the Code for suspension or
11 revocation of all licenses and license rights of Respondents under
12 the Real Estate Law.

13 ORDER

14 I

15 A. The real estate broker license and all license
16 rights of respondent ENTERPRISES under the Real Estate Law are
17 revoked.

18 B. A restricted real estate broker license shall be
19 issued to respondent ENTERPRISES pursuant to Business and
20 Professions Code Section 10156.5 if respondent ENTERPRISES makes
21 application therefor and pays to the Department the appropriate
22 fee for said license within ninety (90) days from the effective
23 date of this Decision herein.

24 C. The restricted license issued to respondent
25 ENTERPRISES shall be subject to all the provisions of Section
26 10156.7 of the Business and Professions Code and to the following
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1 limitations, conditions and restrictions imposed under authority
2 of Section 10156.6 of said Code:

3 (1) The license shall not confer any property right in
4 the privileges to be exercised, and the Real Estate Commissioner
5 may by appropriate order suspend the right to exercise any
6 privileges granted under the restricted license in the event of:

7 (a) The conviction of respondent ENTERPRISES (including
8 a plea of nolo contendere) to a crime which bears a
9 significant relation to respondent ENTERPRISES'
10 fitness or capacity as a real estate licensee; or

11 (b) The receipt of evidence that respondent ENTERPRISES
12 has violated provisions of the California Real
13 Estate Law, Subdivided Lands Law, Regulations of
14 the Real Estate Commissioner or conditions
15 attaching to the restricted license.

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

22 D. Any restricted real estate broker license issued to
23 respondent ENTERPRISES may be suspended or revoked for a violation
24 by respondent ENTERPRISES of any of the conditions attaching to
25 the restricted license.

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A. The real estate broker license and all license rights of respondent PETERSON under the Real Estate Law are revoked.

B. A restricted real estate broker license shall be issued to respondent PETERSON pursuant to Business and Professions Code Section 10156.5 if respondent PETERSON makes application therefor and pays to the Department the appropriate fee for said license within ninety (90) days from the effective date of the Decision herein.

C. The restricted license issued to respondent PETERSON shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

(1) The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under the restricted license in the event of:

(a) The conviction of respondent PETERSON (including a plea of nolo contendere) to a crime which bears a significant relation to respondent PETERSON's fitness or capacity as a real estate licensee; or

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1 (b) The receipt of evidence that respondent PETERSON
2 has violated provisions of the California Real
3 Estate Law, Subdivided Lands Law, Regulations of
4 the Real Estate Commissioner or conditions
5 attaching to the restricted license.
6 (2) Respondent PETERSON shall not be eligible to apply
7 for issuance of an unrestricted real estate license nor the
8 removal of any of the conditions, limitations or restrictions
9 attaching to the restricted license until one (1) year has elapsed
10 from the date of issuance of a restricted license to respondent
11 PETERSON.

12 D. Respondent PETERSON shall, within nine (9) months
13 from the effective date of the Decision, present evidence
14 satisfactory to the Real Estate Commissioner that he has, since
15 the most recent issuance of an original or renewal real estate
16 license, taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
18 for renewal of a real estate license. If respondent PETERSON
19 fails to satisfy this condition, the Commissioner may order the
20 suspension of the restricted license until respondent PETERSON
21 presents such evidence. The Commissioner shall afford respondent
22 PETERSON the opportunity for a hearing pursuant to the
23 Administrative Procedure Act to present such evidence.

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

8 F. Any restricted real estate broker license issued to
9 respondent PETERSON may be suspended or revoked for a violation by
10 respondent PETERSON of any of the conditions attaching to the
11 restricted license.

12 DATED: 10/8/92

13 DEPARTMENT OF REAL ESTATE

14 
15 DAVID A. PETERS, Counsel
16


17 * * *

18 I have read the Stipulation and Agreement, have
19 discussed it with my counsel, and its terms are understood by me
20 and are agreeable and acceptable to me. I understand that I am
21 waiving rights given to me by the California Administrative
22 Procedure Act (including but not limited to Sections 11506, 11508,
23 11509, and 11513 of the Government Code), and I willingly,
24 intelligently, and voluntarily waive those rights, including the
25 right of requiring the Commissioner to prove the allegations in
26 the Accusation at a hearing at which I would have the right to


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1 cross-examine witnesses against me and to present evidence in
2 defense and mitigation of the charges.

3 DATED: October 15, 1992

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5 
6 D. A. PETERSON ENTERPRISES, INC.
7 By Dennis Anthony Peterson
Respondent

8 DATED: October 15, 1992

9
10 
11 DENNIS ANTHONY PETERSON
Respondent

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

14 DATED: 10-16-92

15
16 
17 LAWRENCE H. LACKMAN
Attorney for Respondents

18 * * *

19 The foregoing Stipulation and Agreement for Settlement
20 is hereby adopted by the Real Estate Commissioner as Decision and
21 Order and shall become effective at 12 o'clock noon on
22 December 14, 1992.

23 IT IS SO ORDERED November 2, 1992.

24 CLARK WALLACE
25 Real Estate Commissioner

26 
27 BY: John R. Liberator
Chief Deputy Commissioner

for

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

MAR 26 1992

DEPARTMENT OF REAL ESTATE

BY C. Berg

In the Matter of the Accusation of

D.A. PETERSON ENTERPRISES, INC.,
DENNIS ANTHONY PETERSON, etc.,

Case No. H-24978 LA

OAH No. L-56473

Respondent

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 W. First Street, Los Angeles, CA 90012

on Tues., October 13 and Wed., October 14, 1992, at the hour of 9:00 A.M.,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission 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 Administrative Law Judge 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 Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

By James L. Beaver
JAMES L. BEAVER, Counsel

Dated: March 26, 1992

cc: D. A. Peterson Enterprises, Inc.
Dennis Anthony Peterson
Lawrence H. Lackman, Esq.

✓ Sacto.

OAH

RE 501 (1/92)

MJ

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1 James L. Beaver, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California, 90012
5 Telephone (213) 897-3937

JAN 31 1952

DEPARTMENT OF REAL ESTATE

C. Be...

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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12 In the Matter of the Accusation of) No. H-24978 LA
13 D. A. PETERSON ENTERPRISES, INC.,)
14 a Corporation, and DENNIS ANTHONY) ACCUSATION
15 PETERSON, individually and as)
16 designated officer of D.A. Peterson)
17 Enterprises, Inc.,)
18 Respondents.)

17 The Complainant, STEVEN J. ELLIS, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against D. A. PETERSON ENTERPRISES, INC, a Corporation, and DENNIS
20 ANTHONY PETERSON, individually and designated officer of D. A.
21 Peterson Enterprises, Inc. (herein "Respondents"), is informed and
22 alleges as follows:

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24 The term "the Regulations" as used herein refers to
25 provisions of Chapter 6, Title 10, California Code of Regulations.

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II

The Complainant, STEVEN J. ELLIS, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

III

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code").

IV

At all times mentioned herein, Respondent D. A. PETERSON ENTERPRISES, INC. (herein "DAPE"), a Corporation, has been and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through DENNIS ANTHONY PETERSON (herein "PETERSON") as the officer and broker responsible pursuant to the provisions of Section 10159.2(a) of the Code for supervising the activities requiring a real estate license conducted on behalf of DAPE by DAPE's agents, officers and employees.

V

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

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2 VI

3 All further references herein to "Respondents" include
4 the parties identified in Paragraphs IV through V, above, and also
5 include the officers, directors, employees, agents and real estate
6 licensees employed by or associated with said parties and who at
7 any time herein mentioned were engaged in the furtherance of the
8 business or operations of said parties and who were acting within
9 the course and scope of their authority and employment.

10 VII

11 At all times herein mentioned, Respondents engaged in
12 the business of, acted in the capacity of, advertised or assumed
13 to act as real estate brokers in the State of California within
14 the meaning of Section 10131(b) of the Code, including the
15 operation of and conduct of a property management business with
16 the public wherein, for or in expectation of compensation, for
17 another or others, Respondents leased and rented and offered to
18 lease and rent, and placed for rent, and solicited listings of
19 places for rent, and solicited for prospective tenants, and
20 collected rents from real property, or improvements therein.

21 VIII

22 At all times mentioned herein, in connection with the
23 activities described in Paragraph VII, above, Respondents accepted
24 or received funds in trust (herein "trust funds") from or on
25 behalf of actual or prospective parties to property management
26 transactions handled by Respondents and thereafter made
27 disbursement of such funds. From time to time mentioned herein
these trust funds were maintained by Respondents in bank accounts,

1 including but not necessarily limited to account number 1028839
2 (herein "T/A #1") at the Santa Barbara, California, office of City
3 of Commerce Bank, and account number 0036-019-649 (herein "T/A
4 #2") at the Santa Barbara, California, office of Security Pacific
5 National Bank.
6

7 IX

8 On or about September 5, 1991, the Department completed
9 an examination of Respondents books and records pertaining to the
10 property management and trust fund handling activities described
11 in Paragraphs VII and VIII, above, for the nineteen month period
12 ending July 31, 1991, which revealed violations of the Code and
13 the Regulations as set forth in the following paragraphs.

14 X

15 In connection with the trust funds described in
16 Paragraph VI, Respondents acted in violation of the Code and the
17 Regulations in that:

18 (a) Respondents deposited funds entrusted to DAPE into
19 T/A #2, which account was maintained in the name of Laurel
20 Management Company and not in the name of DAPE as trustee, as
21 required by Section 10145 of the Code and Section 2830 of the
22 Regulations;

23 (b) Respondents failed to maintain an adequate columnar
24 record in chronological order of all trust funds deposited into
25 and disbursed from T/A #1 and T/A #2 (herein "said accounts"), as
26 required by Section 2831 of the Regulations;

27 (c) Respondents failed to maintain adequate separate
records for each beneficiary or transaction, accounting therein

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2 for all trust funds received, deposited into said accounts and
3 disbursed, as required by Section 2831.1 of the Regulations;

4 (d) Respondents failed to perform a monthly
5 reconciliation of the receipt and disposition of all trust funds
6 received by Respondents and deposited into said accounts, and the
7 balance of all separate beneficiary or transaction records
8 relating to trust funds so deposited, as required by Section
9 2831.2 of the Regulations;

10 (e) Respondents permitted, allowed or caused the
11 disbursement of trust funds from said, accounts, where the
12 disbursement of said funds reduced the aggregate funds in said
13 accounts to an amount which, on July 31, 1991, was approximately
14 \$8,252.43 less than the existing aggregate trust fund liability to
15 all owners of said funds, without first obtaining the prior
16 written consent of every principal who was an owner of said funds;
17 and

18 (f) Respondents permitted the withdrawal of trust funds
19 from T/A #1 by Cynthia Peterson, a person who was neither licensed
20 to DAPE nor bonded in an amount equal to or greater than the
21 amount of trust funds subject to withdrawal by said person, and
22 Respondents permitted the withdrawal of trust funds from T/A #2 by
23 Danette Wolfe and Jack Stafford, persons who were neither licensed
24 to DAPE nor bonded in an amount equal to or greater than the
25 amount of trust funds subject to withdrawal by said persons, in
26 violation of Section 2834 of the Regulations.

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XI

In course of the property management activities described in Paragraph VII, during the nineteen month period ending July 31, 1991, Respondents acted in violation of the Code and the Regulations in that:

(a) Respondents used the fictitious name "Laurel Management Company", without first obtaining a license from the Department bearing such fictitious name, as required by Section 10159.5 of the Code in conjunction with Section 2731 of the Regulations;

(b) Respondents maintained the location of 1215 De La Vina Street #G, Santa Barbara, California, on file with the Department as the address of DAPE's principal place of business for the conduct of DAPE's real estate broker activities and as DAPE's mailing address, but Respondents vacated said place of business and thereafter failed to inform the Department of a change in said address, as required by Section 10162 of the Code and Section 2715 of the Regulations; and

(c) Respondents conducted business as real estate brokers at 205A West Newlove, Santa Maria, California, and at 205B West Newlove, Santa Maria, California, without first obtaining branch office licenses for such addresses as required by Section 10163 of the Code, and without filing with the Commissioner the address of such branch business offices as prescribed in Sections 2710(c) and 2715 of the Regulations.

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2 XII

3 In course of the property management activities
4 described in Paragraph VII, during the nineteen month period
5 ending July 31, 1991, Respondents, with full knowledge that
6 neither Wanda Castillo nor Tammy Lopez were licensed by the
7 Department as a real estate salesperson or as a real estate
8 broker, employed and compensated Wanda Castillo nor Tammy Lopez to
9 perform acts for which a real estate license is required,
10 including but not limited to leasing and renting and offering to
11 lease and rent, and soliciting listings of places for rent, and
12 soliciting for prospective tenants, and collecting rents from real
13 property or improvements thereon, for another or others, for or in
14 expectation of compensation, in violation of Section 10137 of the
15 Code.

16 XIII

17 The acts and omissions of Respondents described in
18 Paragraphs X and XI(a), above, violated the Code and the
19 Regulations as set forth below:

20	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
21	X(a)	Sec. 10145 of the Code, and
		Sec. 2830 of the Regulations;
22	X(b)	Sec. 2831 of the Regulations;
	X(c)	Sec. 2831.1 of the Regulations;
23	X(d)	Sec. 2831.2 of the Regulations;
	X(e)	Sec. 2832.1 of the Regulations;
24	X(f)	Sec. 2834 of the Regulations;
	IX(a)	Sec. 10159.5 of the Code, and
25		Sec. 2731 of the Regulations.

26 Each of the foregoing violations separately constitutes cause for
27 the suspension or revocation of all real estate licenses and

1
2 license rights of Respondents under the provisions of Section
3 10177(d) of the Code.

4 XIV

5 The acts and omissions of Respondents described in
6 Paragraphs XI(b) and XI(c), above, violated the Code and the
7 Regulations as set forth below:

8 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9 XI(b)	Sec. 10162 of the Code, and Sec. 2715 of the Regulations;
10 XI(c)	Sec. 10163 of the Code, Sec. 2710(c) of the Regulations, and 11 Sec. 2715 of the Regulations.

12 Each of the foregoing violations separately constitutes cause for
13 the suspension or revocation of all real estate licenses and
14 license rights of Respondents under the provisions of Sections
15 10165 and 10177(d) of the Code.

16 XV

17 The acts and omissions of Respondents described in
18 Paragraph XII, above, constitute cause for the suspension or
19 revocation of all real estate licenses and license rights of
20 Respondents under the provisions of Section 10137 of the Code.

21 SECOND CAUSE OF ACCUSATION

22 XVI

23 Complainant incorporates herein the allegations of
24 Paragraphs I through XVI, inclusive, hereinabove.

25 XVII


26 Respondent PETERSON, caused, suffered, and permitted
27 DAPE to violate Sections 10137, 10145, 10159.5, 10162 and 10163 of

1
2 the Code and Sections 2710(c), 2715, 2731, 2830, 2831, 2831.1,
3 2832.1, and 2834 of the Regulations, as described in Paragraphs IX
4 through XII, hereinabove.

5 XVIII

6 The acts and omissions of Respondent PETERSON described
7 in Paragraph XVII, above, independently and collectively
8 constitute failure on the part of Respondent PETERSON, as the
9 officer designated by a corporate broker licensee, to exercise the
10 supervision and control over the licensed activities of DAPE
11 required by Section 10159.2 of the Code, and are cause for the
12 suspension or revocation of all real estate licences and license
13 rights of PETERSON pursuant to the provisions of Section 10177(h)
14 of the Code.

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

22 
23 STEVEN J. ELLIS
24 Deputy Real Estate Commissioner

25 Dated at Los Angeles, California
26 this 31st day of January , 1992.

27 cc: D. A. Peterson Enterprises Inc.
Dennis Anthony Peterson
Sacto.
MJ