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DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)
)
NORMA JEANNE GEYER,)
individually and dba)
Embarcadero Company,)
)
Respondent.)
_____)

No. H-25045 LA

L-57171

DECISION

The Proposed Decision dated March 12, 1993, 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.

The Decision shall become effective at 12 o'clock noon on April 20, 1993.

IT IS SO ORDERED 3/24, 1993.

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	
	)	
	)	
NORMA JEAN GEYER	)	NO. H-25045 LA
Individually and dba	)	
Embarcadero Company	)	CAH NO. 57171
	)	
	)	
Respondent.	)	
	)	
	)	

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge of the Office of Administrative Hearings, on September 14, 1992, in Los Angeles, California, and on October 13, 1992, in Santa Barbara, California. Complainant was represented by Sean Crahan, Staff Counsel. Respondent Norma Jean Geyer appeared personally and was represented by Kathleen O'Sullivan Mahan, Attorney at Law.

Oral and documentary evidence was received and the record was left open to allow the parties to file written closing arguments. Complainant's closing argument entitled "Amendment To Accusation and Complainant's Opening Trial Brief" was received on October 30, 1992, and identified as Exhibit "26". Respondent's closing argument was received on January 11, 1993, and identified as Exhibit "E". Complainant's rebuttal argument entitled "Complainant's Closing Trial Brief" was received on January 19, 1993, and marked Exhibit "27". The Administrative Law Judge reviewed the written arguments on January 25, 1993, and the matter was deemed submitted on that date.

In Exhibit "26" referred to above, complainant made a motion to amend the Accusation according to proof pursuant to Government Code section 11516. Said motion is granted. Page 3, in paragraph 4(d) now reads as follows:

"respondent collected rents from tenants in approximately one (1) property owned jointly by respondent and her husband, one (1) property owned by respondent and seven (7) properties owned by her husband."

At the hearing, the Administrative Law Judge took under submission the issue of whether to admit exhibits "5A" and "5B". Said documents are admitted. Respondent also made a motion to strike the addresses of property owners contained in Exhibit "D". Said motion is denied.

The Administrative Law Judge will not consider "appendix 1" of complainant's Opening Trial Brief since the document contained therein was not introduced at the hearing.

The Administrative Law Judge finds the following facts:

I

Steven J. Ellis made the Accusation in his official capacity as Deputy Real Estate Commissioner of the State of California.

II

Norma Jean Geyer (hereinafter "respondent") is presently licensed or has licensing rights under Part 1, Division 4, of the Business and Professions Code (hereinafter "Code").

At all relevant times respondent was licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a real estate broker, individually and doing business as the Embarcadero Company.

III

At all times herein mentioned, respondent engaged in the business of a real estate broker within the meaning of Code section 10131(b), in connection with her operation of a rental property management business. As part of said business, respondent collected rents from tenants on behalf of owners, for or in expectation of compensation.

IV

Between October 18, 1992, through November 6, 1992, an auditor from the Department examined the books of the Embarcadero Company covering a period of time from January 1, 1990, through September 30, 1991, (hereinafter "the audit period").

V

A. In connection with the collection of rents from tenants on behalf of owners, respondent received funds from tenants on behalf of said owners and deposited them into to accounts at City Commerce Bank located at 915 State Street, Santa Barbara, California.

B. Bank account No. [REDACTED] (hereinafter designated as account "TA-1") was used to hold rental security deposits on behalf of third party owners and on behalf of respondent and her husband.

C. Bank account No. [REDACTED] (hereinafter designated as account "TA-2") was used to receive and disburse rents collected from tenants on behalf of third party owners and on behalf of respondent and her husband.

VI

A. Accounts TA-1 and TA-2 were interest bearing accounts. Respondent had previously entered into oral agreements (which were later reduced to writing) with individual owners whereby the owners authorized respondent to withdraw the interest that had accrued in each account, as partial payment for the property management services provided by respondent. In spite of this authorization, respondent violated Code section 10145(d)(5) when she withdrew the interest from the accounts.

B. Respondent asserts that her contractual agreements to withdraw the interest is allowed by Code section 10145(d)(6), and, therefore, respondent's action in withdrawing the interest is not a violation of Code section 10145(d)(5). Respondent's assertion is not persuasive. Code section 10145(d)(5) quite clearly proscribes brokers from receiving, directly or indirectly, the benefit of interest earned on trust accounts.

C. Code section 10145(d) directs that "all of the requirements" of subsections (1) through (6) must be met if a broker opens an interest bearing trust account. Therefore, subsection (6) does not create an exception for the other subsections, nor can it be read to defeat the purpose of subsection (5).

D. The fact that each property owner agreed to authorize respondent to withdraw the interest from the trust accounts provides significant mitigation. Indeed, not a single property owner came forward to testify against respondent at the hearing in this matter. Further, respondent sought the advice of counsel for the California Association of Realtors, who informed respondent that she could receive the interest as payment for her services, as long as the principals agreed to such disbursements. Finally, respondent requested the bank to change TA-1 and TA-2 to non-interest bearing accounts.

VII

A. Respondent did not open account TA-2 in her name as trustee for a specified beneficiary as required by Code section 10145(d)(1) for interest bearing accounts. Respondent asserts that her contractual agreements with her clients, authorizing her to withdraw the interest, relieves her of the requirements of Code section 10145(d)(1). This assertion is not persuasive because respondent's agreements are prohibited by Code section 10145(d)(5).

B. In mitigation, respondent maintained separate records for each property owner and tenant.

VIII

A. Respondent is the owner of certain rental property located in Santa Barbara. In connection with this property, respondent collected security deposits and rents from tenants residing on the property. Respondent deposited the security deposits from her property in TA-1, and deposited rent collections from her property in TA-2. As noted in finding V, both TA-1 and TA-2 contained funds deposited on behalf of third-party owners. Therefore, respondent violated Code sections 10145(d)(3) and 10176(e).

B. Upon being informed by the Department's auditor of said violation, respondent removed all funds from TA-1 and TA-2, which had been collected from the tenants of respondent's property.

IX

A. The evidence did not establish that respondent violated Regulation Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulation") section 2832.1. That regulation does not allow the disbursement of funds from a trust account, without the prior written consent of every principal who is the owner of the funds, if the disbursement will reduce the balance of funds to an amount less than the aggregate trust fund liability to all the owners of said funds. The requirements of this regulation were met, since the aggregate amounts in both TA-1 and TA-2 did not fall below the aggregate trust fund liability for both accounts.

B. Although TA-2 may have had a deficit, testimony from the Department's own witness established that there were sufficient funds in TA-1 to cure the deficit in TA-2. Indeed, according to the conclusions of the audit report, the department considered the deficit cured, as a result of respondent transferring a substantial amount of funds from TA-1 to TA-2.

C. A second reason for failing to establish the violation was that the auditor did not take into account all of the possible rents that had been collected, but not yet posted to individual owner ledger accounts. Complainant's assertion that this would have understated the deficit was not supported by competent expert testimony. Finally, the department's auditor made errors in his calculations of the deficits.

X

A. At the time of the audit, the signature card of bank account TA-2 was under the name "Embarcadero Company - General Account". However, the statements of account during the audit period refer to TA-2 as "Embarcadero Company/Trust Account". Therefore, City Commerce Bank, was at some point made aware that TA-2 was in fact a trust account. Further, respondent treated TA-2 as a trust account in that she deposited the rents on behalf of each property owner and thereafter paid these rents to the owners after subtracting payments of monthly debt service, utilities and maintenance. Respondent clearly followed the intent and the spirit of regulation 2830. Further, respondent added the words "trust account" to the signature card, on the very day that she was informed by the auditor, of his interpretation of the requirements of regulation 2830.

B. Based on the all of the facts and circumstances set forth in this finding, complainant has, at most, proven a de minimis technical violation of regulation 2830, which does not establish grounds for discipline.

XI

Respondent did not reconcile her control records with her separate records on a monthly basis as required by Regulation 2831.2. Respondent's assertion that said code does not require her to keep copies of said reconciliations is not persuasive.

XII

A. Craig Geyer was not licensed by the department nor did he hold a fidelity bond in connection with his position as owner of the Embarcadero Company. On a number of occasions Craig Geyer signed checks made out to Central Coast Service and Supply, a company owned by Mr. Geyer. These checks were prepared by respondent's bookkeeper as payment for services rendered by Central Coast. This is a violation of Regulation 2834.

B. Upon being informed by the Department's auditor of said violation, respondent immediately removed Craig Geyer as a person authorized to sign checks on the trust accounts.

XIII

A. The objective of an administrative proceeding relating to licensing privileges is to protect the public. Such proceedings are not for the primary purpose of punishing an individual. Camacho v. Youde (1979) 95 Cal. App. 3rd 161, 164.

B. Respondent did not intentionally violate any statutes or departmental regulations. Indeed, after being informed of violations by the auditor, respondent took immediate action to rectify the problems. Further, no person for whom respondent held funds in trust has lost money, nor has anyone been defrauded by respondent's conduct in connection with the trust accounts.

C. Based on the violations proven in this case, and considering the mitigation established by respondent, some form of discipline is warranted. However, neither suspension nor revocation is appropriate in this case. The public would be adequately protected by imposing public reproof on the license and licensing rights held by respondent.

* * * * *

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

I

Grounds exist for disciplinary action against respondent Norma Jean Geyer's license and licensing rights as follows:

a. Under Business and Professions Code sections 10177(d) and 10145(d)(5), based on finding VI.

b. Under Business and Professions Code sections 10177(d) and 10145(d)(1), based on finding VII.

c. Under Business and Professions Code sections 10177(d), 10145(d)(3) and 10176(e), based on finding VIII.

d. Under Business and Professions Code section 10177(d) and Regulation 2831.2, based on finding XI.

e. Under Business and Professions Code section 10177(d) and Regulation 2834, based on finding XII.

II

Grounds do not exist for disciplinary action against respondent Norma Jean Geyer's license and licensing under Business and Professions Code section 10145 and Regulation 2832.1, based on finding IX.

III

Grounds do not exist for disciplinary action against respondent Norma Jean Geyer's license and licensing rights under Regulation 2830, based on finding X.

* * * * *

WHEREFORE THE FOLLOWING ORDER is hereby made:

Pursuant to Business and Professions Code section 495, the license and licensing rights heretofore issued to Norma Jean Geyer dba Embarcadero Company are hereby publicly reproved.

DATED: March 12, 1993

Humberto Flores

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

5/10/92
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)
NORMA JEANNE GEYER, etc.,)
Respondent.)

Case No. H-25045 LA

OAH No. L-57171

SEP 16 1992

DEPARTMENT OF REAL ESTATE

BY

NOTICE OF FURTHER HEARING ON ACCUSATION

To the above-named Respondent:

You are hereby notified that further hearing will be held before the Department of Real Estate on October 13, 1992, at 9:00 a.m., at 1111 Chapala Street, Suite 320, Santa Barbara, California, and on October 14, 1992, at 9:00 a.m., at Office of Administrative Hearings, 314 West First Street, Los Angeles, California, 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.

Dated: September 16, 1992.

DEPARTMENT OF REAL ESTATE

cc: Norma Jeanne Geyer
Kathleen O'Sullivan Mahan, Esq.
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SEAN CRAHAN, Counsel

RE 501 (Mac 8/92vj)

SACD.
1/28

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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MAY 27 1992

DEPARTMENT OF REAL ESTATE
BY 

In the Matter of the Accusation of

NORMA JEANNE GEYER, etc.

Case No. H-25045 LA

OAH No. L-57171

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 West First Street, Los Angeles, CA 90012,

on September 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


SEAN CRAHAN, Counsel

Dated: May 27, 1992

cc: Norma Jeanne Geyer
Kathleen O'Sullivan Mahan, Esq.
Sacto./Ken Breeding
OAH
JO
RE 501 (1/92) vj

1 SEAN CRAHAN, Counsel
Department of Real Estate
2 107 South Broadway, Room 8107
Los Angeles, California 90012
3 (213) 897-3937
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DEPARTMENT OF REAL ESTATE

BY *[Signature]*

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of) No. H-25045 LA
12 NORMA JEANNE GEYER,)
12 individually and dba) A C C U S A T I O N
13 Embarcadero Company,)
14 Respondent.)
15 _____)

16 The Complainant, Steven J. Ellis, a Deputy Real Estate
17 Commissioner of the State of California, for cause of accusation
18 against NORMA JEANNE GEYER, individually and dba Embarcadero
19 Company, alleges as follows:

20 1.

21 The Complainant, Steven J. Ellis, a Deputy Real Estate
22 Commissioner, brings this Accusation in his official capacity.

23 2.

24 NORMA JEANNE GEYER (hereafter respondent) is presently
25 licensed and/or has license rights under the Real Estate Law, Part 1
26 of Division 4 of the California Business and Professions Code
27 (hereafter cited as the Code). At all times herein mentioned,

1 respondent was licensed by the Department of Real Estate of the
2 State of California (hereafter the Department) as a real estate
3 broker, individually and dba Embarcadero Company.

4
3.

5 At all times mentioned herein, in the State of California,
6 respondent engaged in the business of a real estate broker within
7 the meaning of Code Section 10131(b), including the operation of a
8 rental property management business, in that respondent collected
9 rents from tenants on behalf of owners, for or in expectation of
10 compensation.

11
4.

12 Between October 18, 1991, through November 6, 1991,
13 auditors from the Department examined the books and records of
14 respondent's property management business covering a period of time
15 from January 1, 1990, through September 30, 1991 (hereafter the
16 "audit period"). That examination revealed that respondent, during
17 the audit period, violated the following Code Sections and
18 Regulations from Title 10, Chapter 6, California Code of Regulations
19 (hereafter Regulations):

20 (a) In connection with the collection of rents from
21 tenants on behalf of owners, respondent received funds in trust from
22 or on behalf of owners and deposited them into two accounts at City
23 Commerce Bank, 915 State Street, Santa Barbara, California:

24 (i) Account number [REDACTED] in the name of
25 Embarcadero Company, designated as a Trust Account (hereafter
26 Account A). Account A was used to hold rental security deposits on
27 behalf of third-party owners and of respondent.

1 (ii) Account number [REDACTED] in the name of
2 Embarcadero Company, designated as the General Account (hereafter
3 Account B). Account B was used to receive and disburse rents
4 collected from tenants on behalf of third-party owners and of
5 respondent.

6 (b) Account B was not an account designated as a trust
7 account with respondent as trustee in willful violation of
8 Regulation 2830.

9 (c) Accounts A and B were interest-bearing accounts and
10 earned approximately \$9,551.42 during the audit period. Accounts A
11 and B were maintained in violation of Code Section 10145(d) in the
12 following ways:

13 (i) Account B was not in the name of the broker as
14 trustee for a specified beneficiary, in willful violation of Code
15 Section 10145(d) (1).

16 (ii) Funds of all beneficiaries were commingled
17 with each other's funds and with respondent's funds, in willful
18 violation of Code Section 10145(d) (3).

19 (iii) Respondent commingled with her own money and
20 received the benefit of the interest earned from Accounts A and B,
21 in willful violation of Code Section 10145(d) (5).

22 (d) In addition to collecting rents from tenants in
23 approximately sixty-six (66) properties on behalf of approximately
24 forty-one (41) owners, respondent collected rents from tenants in
25 approximately one (1) property owned jointly by respondent and her
26 husband and seven (7) properties owned by her husband. Respondent

27

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1 commingled in Accounts A and B rents owed to the third-party owners
2 with rents owed to her, in violation of Code Section 10176(e).

3 (e) As of September 30, 1991, respondent's adjusted bank
4 balance in Account A was \$159,663.29. Respondent's accountability
5 to owners on that date was \$160,712.60 leaving a shortage of
6 \$1,049.31. Said shortage was caused, allowed or permitted by
7 respondent and was without the written consent of each and every
8 principal whose funds were in the trust accounts and was in
9 violation of Code Section 10145 and Regulation 2832.1.

10 (f) As of September 30, 1991, respondent's adjusted bank
11 balance in Account B was \$924.18. Respondent's accountability to
12 owners on that date was \$18,134.53 leaving a shortage of \$17,210.35.
13 Said shortage was caused, allowed or permitted by respondent and was
14 without the written consent of each and every principal whose funds
15 were in the trust accounts and was in violation of Code Section
16 10145 and Regulation 2832.1.

17 (g) The shortage set forth in paragraph 4(f) above was
18 caused by respondent paying the expenses of her and her husband's
19 properties with trust funds owed to third-party owners.

20 (h) Respondent failed to monthly reconcile her control
21 records with her separate records, as is required by Regulation
22 2831.2.

23 (i) Craig Geyer was not licensed nor did he hold a
24 fidelity bond. Respondent permitted Craig Geyer to withdrew funds
25 from Account B in willful violation of Regulation 2834.

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5.

2

The conduct or omissions of respondent as set forth above
3 subject her real estate licenses and license rights to suspension or
4 revocation under the following Code Sections:

5

(a) Code Section 10176(e) for commingling, as set forth
6 in paragraphs 4(c)(i), 4(c)(ii) and 4(d).

7

(b) Code Section 10177(d) for willful violations of the
8 following Code Sections and Regulations:

9

(i) Regulation 2830 for depositing and disbursing
10 trust funds from an account not designated as a trust account with
11 respondent as trustee, as set forth in paragraph 4(b) above.

12

(ii) Code Section 10145(d)(1), as set forth in
13 paragraph 4(c)(i) above.

14

(iii) Code Section 10145(d)(3) for commingling, as
15 set forth in paragraphs 4(c)(ii) and 4(c)(iii) above.

16

(iv) Code Section 10145(d)(5) for obtaining the
17 benefit of interest earned on interest-bearing trust accounts, as
18 set forth in paragraph 4(c)(iii) above.

19

(v) Regulation 2831.2 for failure to monthly
20 reconcile the control with the separate records, as set forth in
21 paragraph 4(h) above.

22

(iv) Regulation 2832.1 for the trust fund
23 shortages, as set forth in paragraphs 4(e) and 4(f) above.

24

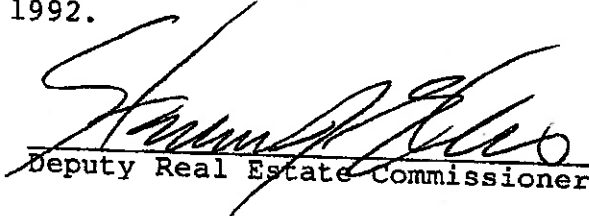
(v) Regulation 2834 for permitting Craig Geyer to
25 withdraw funds from a trust account, as set forth in paragraph 4(i)
26 above.

27

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1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations of this Accusation and, that upon proof thereof,
3 a decision be rendered imposing disciplinary action against all
4 licenses and license rights of respondent NORMA JEANNE GEYER,
5 individually and dba Embarcadero Company, under the Real Estate Law
6 (Part 1 of Division 4 of the Business and Professions Code) and for
7 such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California
10 this 27th day of April, 1992.

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14 Deputy Real Estate Commissioner
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25 cc: Norma Jeanne Geyer
26 Sacto.
JO
27 SC/sc:vj