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FILED
OCT 7 1999
DEPARTMENT OF REAL ESTATE

By Jane B. Jane

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-25149 LA
HECTOR GRAJEDA)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 30, 1993, a Decision was rendered herein revoking the real estate salesperson license of Respondent, HECTOR GRAJEDA (hereinafter "Respondent"), effective May 26, 1993. Respondent was given to apply for and receive a restricted real estate salesperson license but failed to apply for same in a timely manner.

On June 22, 1998, 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

1 demonstrated to my satisfaction that grounds do not presently
2 exist to deny the issuance of an unrestricted real estate
3 salesperson license to Respondent.

4 NOW, THEREFORE, IT IS ORDERED that Respondent's
5 petition for reinstatement is granted and that an
6 unrestricted real estate salesperson license be issued to
7 Respondent, HECTOR GRAJEDA, after Respondent satisfies the
8 following conditions within six months from the date of this
9 Order:

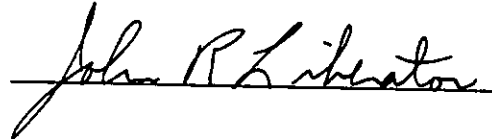
10 1. Submittal of a completed application and
11 payment of the fee for a real estate salesperson license.

12 2. Submittal of evidence satisfactory to the Real
13 Estate Commissioner that Respondent has, since his license
14 was revoked, taken and successfully completed the continuing
15 education requirements of Article 2.5 of Chapter 3 of the
16 Real Estate Law for renewal of a real estate license
17 including three hour courses in trust fund accounting and
18 handling and fair housing.

19 This Order shall become effective immediately.

20 DATED: September 30, 1999.

21 JOHN R. LIBERATOR
22 Acting Commissioner

23 

24 HECTOR GRAJEDA
25 14016 Beaver Street
26 Sylmar, California 911342
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FILED
JUN 21 1993

DEPARTMENT OF REAL ESTATE
BY *Jane B. Dow*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) NO. H-25149 LA
)
PINNACLE ESTATE PROPERTIES, INC.,) L-58123
a corporation; JEFFREY OWEN BLACK,)
individually and as designated)
officer of Pinnacle Estate)
Properties, Inc.; HECTOR GRAJEDA;)
and GUSTAVO VARGAS;)
Respondents.)

ORDER GRANTING PETITION TO PAY MONETARY PENALTY
IN LIEU OF SUSPENSION

On April 30, 1993 a Decision as rendered in the above entitled matter whereby the license and license rights of PINNACLE ESTATE PROPERTIES, INC. (hereinafter PINNACLE) and JEFFREY OWEN BLACK (hereinafter BLACK) were to be suspended for a period of five (5) days. Said Decision was stayed and will become effective on June 25, 1993.

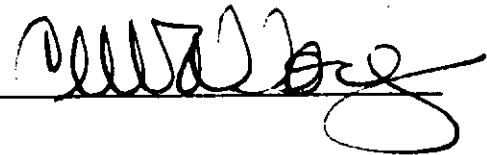
On May 18, 1993, Respondents JEFFREY BLACK and PINNACLE ESTATE PROPERTIES petitioned to each pay a monetary penalty of \$1,250.00 in lieu of a five day suspension. This Petition was by way of a letter dated, May 18, 1993.

1 I have considered the petition submitted on behalf of
2 Respondents BLACK and PINNACLE and have concluded that the public
3 welfare will be adequately served if each respondent is permitted
4 to pay a monetary penalty in lieu of the suspensions imposed by
5 the Order of April 30, 1993.

6 IT IS THEREFORE ORDERED that the five day suspension of
7 each respondent shall be permanently stayed if each respondent
8 pays the sum of \$1,250.00. Said payment shall be in the form of a
9 cashier's check or certified check made payable to the Recovery
10 Account of the Real Estate Fund. Said check must be delivered to
11 the Department prior to June 25, 1993.

12
13 Dated: 6/14/93

14
15 CLARK WALLACE
16 Real Estate Commissioner

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20 Jeffrey Owen Black
21 Pinnacle Estate Properties, Inc.
22 David Shane, Esquire
23 Sacto
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MAY 24 1993

DEPARTMENT OF REAL ESTATE
BY *James B. Orma*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-25149 LA
) L-58123
PINNACLE ESTATE PROPERTIES, INC.,)
a corporation; JEFFREY OWEN BLACK,)
individually and as designated)
officer of Pinnacle Estate)
Properties, Inc.; HECTOR GRAJEDA;)
and GUSTAVO VARGAS;)
)
Respondents.)

ORDER STAYING EFFECTIVE DATE

On April 30, 1993, a Decision was rendered in the above-entitled matter to become effective May 26, 1993.

IT IS HEREBY ORDERED that the effective date of the Decision of April 30, 1993 is stayed for a period of 30 days as to PINNACLE ESTATE PROPERTIES, INC. and JEFFREY OWEN BLACK only.

The Decision of April 30, 1993 shall become effective at 12 o' clock noon on June 25, 1993.

DATED: *24 May 1993*

CLARK WALLACE
Real Estate Commissioner

By: *Randolph Brendia*
RANDOLPH BRENDIA
Regional Manager

lbo

NY-6 1993

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
Sandra B. Orom

* * * * *

In the Matter of the Accusation of)	No. H- 25149 LA
)	
PINNACLE ESTATE PROPERTIES, INC.,)	L- 58123
a corporation; JEFFREY OWEN BLACK,)	
individually and as designated)	
officer of Pinnacle Estate)	
Properties, Inc., HECTOR GRAJEDA;)	
and GUSTAVO VARGAS;)	
)	
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)	
)	
)	
Respondent(s).)	

DECISION

The Proposed Decision dated April 6, 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.

This Decision shall become effective at 12 o'clock
noon on May 26, 1993

IT IS SO ORDERED April 30, 1993

CLARK WALLACE
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. H-25149 LA
PINNACLE ESTATE PROPERTIES, INC.,)	
a corporation; JEFFREY OWEN BLACK,)	OAH No. L-58123
individually and as designated)	
officer of Pinnacle Estate)	
Properties, Inc., HECTOR GRAJEDA;)	
and GUSTAVO VARGAS;)	
)	
Respondents.)	

PROPOSED DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on March 24 and 25, 1993. Complainant, Department of Real Estate ("Department"), was represented by V. Ahda Sands, Staff Counsel. Respondent Pinnacle Estate Properties, Inc. was present by its designated officer, Jeffrey Owen Black; individual respondents Jeffrey Owen Black, Hector Grajeda and Gustavo Vargas were also present; all respondents were represented by Walleck, Shane, Stanard & Blender, by David L. Shane, Attorney at Law.

Oral and documentary evidence was received, the record was closed and the matter was submitted for decision.

FINDINGS OF FACT

The Administrative Law Judge finds the following facts:

1. The Accusation was brought by Stephen J. Ellis in his official capacity as a Deputy Real Estate Commissioner.
2. Pinnacle Estate Properties, Inc. ("Pinnacle") is licensed by the Department as a corporate real estate broker, with respondent Jeffrey Owen Black as its designated officer.
3. Jeffrey Owen Black is licensed by the Department as a real estate broker. His broker license expires 7/10/94, and his officer designation expires 12/12/93.
4. Hector Grajeda is licensed by the Department as a real estate salesperson. His salesperson license expires 7/30/96.

5. Gustavo Vargas is licensed by the Department as a real estate salesperson. His salesperson license expires 2/17/96.

6. At all relevant times, Pinnacle was engaged in business as a residential realtor and Grajeda and Vargas were employed by Pinnacle as licensed salespersons.

7. In connection with its residential realty sales, Pinnacle operated an escrow business and received funds in trust from or on behalf of sellers and buyers and deposited such funds into its trust account.

8. A Department auditor examined the books and records of Pinnacle covering the period from September 1, 1990 through November 30, 1991 ("the audit period"). As of November 30, 1991, the adjusted balance of the trust account was \$1,229,396.26. On that same date, the aggregate trust fund liability of the broker to all owners of said funds was \$1,234,046.30, leaving a shortage of \$4,650.05. The Department's auditor determined that the majority of this shortage was the result of certain unposted bank fees and some returned checks from clients.

Respondents established that the bank fees were improperly charged against the account by the bank and were later removed, and that the other items were also removed later from the bank's month end account statement.

Respondents also established that, on many month end bank statements, certain items may appear that will technically, temporarily create a shortage in the trust account until the items are properly accounted for or otherwise removed from the statement. The Department auditor stated his opinion that, whenever a month end statement reveals a shortage, it is the responsibility of the licensee to place funds in the account to cover that amount until the items are reversed or properly accounted for. Whether or not this interpretation is correct, the licensee must act reasonably and comply with the applicable regulations.

9. California Code of Regulations, Title 10 ("Regulation"), section 2832.1 prohibits a broker from disbursing trust funds if the disbursement will reduce the balance to an amount less than the aggregate trust fund liability to all owners of said funds, "without the prior written consent of every principal who is an owner of the funds in the account."

Technically speaking, respondent's trust account did not comply with the spirit of the regulation due to the shortage, although the degree of noncompliance was de minimis. However, the Department did not establish whether or not there was written permission for the shortage from the owners of the funds in

trust. As the Department has failed to present any evidence on an element of the alleged offense, no violation has been established.

10. Respondents maintained trust fund records, as required by Regulation 2831 and separate records for each beneficiary or transaction, as required by Regulation 2831.1. The Department contends that respondents did not perform a reconciliation of those accounts on at least a monthly basis, as required by Regulation 2831.2, because respondents did not deposit immediately into the trust account the amount found by the auditor to be a shortage at the close of the audit period.

Again, technically speaking, the trust account did not comply with the letter of Regulation 2831.2. However, respondents were aware of the discrepancies between the month end bank statement and the account records, immediately identified the reasons for the discrepancies, and worked to resolve them. The discrepancies noted at the end of the audit period were resolved shortly thereafter. Further, at the suggestion of the Department auditor, respondents placed sufficient funds in the trust account to cover the auditor's preliminary finding of shortage, approximately \$14,000, which still remains in the trust account.

It was not established that any harm resulted as a consequence of respondents' failure to reconcile the account before the auditor found the shortage.

The combination of addressing and resolving any noted discrepancies rapidly, successfully, and to no one's harm, as well as depositing and maintaining extra money in the trust account as a buffer against any future shortages, however momentary they may be, is an appropriate response to the auditor's findings.

11. During the audit period, Kathy Helgedalen was an employee of Pinnacle, was not licensed by the Department and was not bonded, yet nevertheless was a signatory upon, and could and did withdraw funds from, the trust account.

Respondents explained that Kathy Helgedalen's status as a signatory on the trust account was an "oversight" which was immediately corrected.

12. On a date in 1989 not otherwise established by the evidence, Juan and Luz Ortiz ("buyers"), husband and wife, employed respondents, and specifically Vargas, to act as their agent in locating and buying a house.

13. On July 5, 1989, Arturo and Irma Barragan ("sellers"), husband and wife, employed respondents, and

specifically Grajeda, to act as their agent in selling their house at 2007 Seventh Street, San Fernando, California ("the property").

14. Respondents showed buyers the property. On July 14, 1989, buyers submitted an offer to purchase. On July 16, 1989, sellers submitted a counteroffer to buyers. Buyers accepted the counteroffer. Escrow closed, consummating the sale of the property, on October 5, 1989.

15. When Grajeda accepted the listing of the property, he was shown a prior multiple listing service information sheet which indicated that the property had a new roof. Mr. Barragan testified that he told Grajeda that 3/4 of the roof was new, and showed him a receipt of his insurance company's payment for the work (as a result of wind damage). The portion of the roof over an addition to the house had not been repaired. Grajeda testified that no such statements were made or receipt shown. Based upon their comportment and demeanor at the time of hearing, Mr. Barragan's testimony is accepted and Grajeda's testimony is rejected on this subject.

On July 5, 1989, Grajeda prepared, and sellers signed, a Real Property Disclosure Statement pursuant to Civil Code section 1102 which indicated that the roof was approximately 1 year old.

16. Based upon buyers' concerns about a hole in the ceiling and some ceiling water damage stains, a second Real Property Disclosure Statement pursuant to Civil Code section 1102 was prepared and signed by Grajeda on July 17, 1989, which indicated the ceiling water damage, but still indicated that the roof was 1 year old.

Grajeda testified that, prior to preparing the Disclosure, Mrs. Barragan told him that the water damage stains were made before the roof repair, and that there were no leaks since the repair.

17. Buyers relied upon the Disclosures and representations regarding the roof which were made by Grajeda to Vargas to buyers.

18. After the close of escrow, buyers experienced significant problems of water leaking through the roof.

19. Under the facts as found herein, Grajeda had a duty to properly list the condition and age of the roof on the Disclosure forms. Even taking, for argument's sake, Grajeda's version of the facts as true, once the concern was raised by buyers regarding the ceiling hole and water damage, Grajeda should have asked sellers for documentation of the roof repair.

The roofer's receipt clearly indicates that the only portions of the roof which were repaired in 1988 were over the garage and front section of the house.

In preparing the Disclosures and investigating the condition of the property, specifically the roof, Grajeda did not exercise the ordinary care contemplated by Civil Code section 1102.4(a).

By failing to exercise such ordinary care, Grajeda made a substantial misrepresentation about the condition of the exterior of the property, without a reasonable basis for believing its truth, which he knew would be conveyed to buyers and which was made to induce the purchase.

20. Mr. Barragan's testimony that he showed proof of his insurance company's payment for a new roof is not quite the same as if he had shown the actual receipt from the roofer. It is the receipt which indicates that only portions of the roof were replaced. The proof of insurance payment was not placed in evidence, and Mr. Barragan was not asked if the roofer's receipt was what he meant when he referred to the proof of insurance payment.

Initially, Grajeda should have been aware of the condition of the roof based on Mr. Barragan's statement that 3/4 of it was new. When further questions of the ceiling hole and water damage stain were raised, he should have investigated further. His failure to do so, while continuing to represent that the entire roof was only 1 year old, constitutes fraud or dishonest dealing.

21. There was no evidence that Vargas was aware, prior to the close of escrow, of any statements or representations made to Grajeda regarding the condition of the roof, other than what appears on the listing information sheet or the Disclosures.

22. There was no competent evidence that Black or Pinnacle was aware, prior to the close of escrow, of any statements or representations made to or by Grajeda regarding the condition of the roof, other than what appears on the listing information sheet or the Disclosures. Nor was it established that Pinnacle or Black failed to properly supervise Grajeda or Vargas with respect to their acts connected with the sale of the property.

23. The Department contends that respondents did not adequately disclose their dual agency; that is, that Vargas and Grajeda worked for Pinnacle, and that they were representing both the buyer and seller in the transaction.

24. Grajeda prepared a Disclosure Regarding Real

Estate Agency Relationships, signed by sellers on July 5, 1989. The Confirmation section of that Disclosure was signed by Vargas and buyers on July 16, 1989. The Disclosure and Confirmation list Pinnacle as the listing and selling agent.

24. Respondents fully cooperated with the Department during the course of the audit, and accepted the auditor's suggestions with respect to account signatories and a deposit to the trust fund of an amount almost three times the amount of the shortage later established.

Pinnacle and Black established that their outside bookkeepers are aware of and provide documentation to assure compliance with the Department's trust fund regulations.

25. Vargas and Grajeda are no longer employed by Pinnacle.

DETERMINATION OF ISSUES

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

1. Cause does not exist to suspend or revoke the real estate licenses and license rights of Pinnacle and Black under Business & Professions Code section 10177(d) for willfully disregarding or violating Regulation 2832.1, for the trust fund shortage, as set forth in Findings 2, 3, 6, 7, 8 and 9.

2. Cause exists to suspend or revoke the real estate licenses and license rights of Pinnacle and Black under Business & Professions Code section 10177(d), and Regulation 2831.2, for failure to reconcile the separate beneficiary records with the trust account records on at least a monthly basis, as set forth in Findings 2, 3, 6, 7, 8 and 10.

3. Cause exists to suspend or revoke the real estate licenses and license rights of Pinnacle and Black under Business & Professions Code section 10177(d), and Regulation 2834, for allowing an unlicensed and unbonded person to withdraw funds from the escrow trust account, as set forth in Findings 2, 3, 6, 7 and 11.

4. Cause exists to suspend or revoke the real estate license and license rights of Grajeda under Business & Professions Code section 10176(a) and Regulation 2785(a)(10), for making a substantial misrepresentation, as set forth in Findings 2, 3, 4, 6, and 12 through 20.

5. Cause does not exist to suspend or revoke the real estate license and license rights of Vargas under Business &

Professions Code section 10176(a) and Regulation 2785(a)(10), for making a substantial misrepresentation, as set forth in Findings 2, 3, 4, 6, and 12 through 21.

6. Cause does not exist to suspend or revoke the real estate licenses and license rights of Pinnacle and Black under Business & Professions Code section 10176(a) and Regulation 2785(a)(10), for making a substantial misrepresentation, as set forth in Findings 2, 3, 4, 6, and 12 through 25.

7. Cause exists to suspend or revoke the real estate license and license rights of Grajeda under Business & Professions Code section 10176(i), for conduct which constitutes fraud or dishonest dealing, as set forth in Findings 2, 3, 4, 6, and 12 through 20.

8. Cause does not exist to suspend or revoke the real estate license and license rights of Vargas under Business & Professions Code section 10176(i), for conduct which constitutes fraud or dishonest dealing, as set forth in Findings 2, 3, 4, 6, and 12 through 21.

9. Cause does not exist to suspend or revoke the real estate licenses and license rights of Pinnacle and Black under Business & Professions Code section 10176(i), for conduct which constitutes fraud or dishonest dealing, as set forth in Findings 2, 3, 4, 6, and 12 through 25.

10. Cause does not exist to suspend or revoke the real estate licenses and license rights of Pinnacle, Black, Grajeda or Vargas under Business & Professions Code section 10176(a) and Regulation 2785(a)(10), for making a substantial misrepresentation as to dual agency, as set forth in Findings 2, 3, 4, 6, 12, 13, 14, 23 and 24.

11. Cause does not exist to suspend or revoke the real estate licenses and license rights of Pinnacle and Black under Business & Professions Code sections 10159.2 and 10177(h), for failing to exercise reasonable supervision and control over the activities of officers and employees for which a real estate license is required, as set forth in Findings 2, 3, 4, 5, 6, and 12 through 25.

12. No violations have been established as to Vargas. The violations established as to Pinnacle and Black are minor and technical, and have been corrected. There was little evidence tending to indicate a substantial likelihood of recurrence.

//

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Accusation is dismissed as to respondent Gustavo Vargas.

2. The real estate licenses and licensing rights of respondents Pinnacle Estate Properties, Inc. and Jeffrey Owen Black are suspended for five (5) days.

3. All licenses and licensing rights of respondent Hector Grajeda under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business & Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business & Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

A. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

B. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the employing real estate broker on a form approved by the Department of Real Estate which shall certify:

1. That the employing broker has read this Decision which granted the right to a restricted license; and

2. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

C. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect, such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be

Stayed
per Order
Granting
Petition
to Pay
Monetary
Penalty

appropriate to protect the public interest.

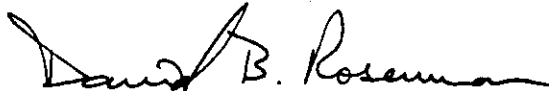
Such reports may include, but shall not be limited to, periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

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

E. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

F. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one (1) year has elapsed from the effective date of this Decision.

DATED: April 6, 1993.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

DBR:dr

501

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

AUG 28 1992

DEPARTMENT OF REAL ESTATE

BY C. Bay

In the Matter of the Accusation of

PINNACLE ESTATE PROPERTIES, INC.;
JEFFREY OWEN BLACK;
HECTOR GRAJEDA;
GUSTAVO VARGAS,

}

Case No. H-25149 LA

OAH No. L-58123

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 March 24 and 25, 1993, 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

Dated: August 28, 1992

By V. Ahda Sands
V. AHDA SANDS, Counsel

cc: Pinnacle Estate Properties, Inc.
Jeffrey Owen Black
Hector Grajeda
Gustavo Vargas
David L. Shane, Esq.
IPC Development Group, Inc.
Sacto/OAH/CEV

Doc

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

JUL 13 1992

DEPARTMENT OF REAL ESTATE
BY C. Bony

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

11	In the Matter of the Accusation of)	No. H- 25149	LA
12)		
13	PINNACLE ESTATE PROPERTIES, INC.,)	<u>A C C U S A T I O N</u>	
14	a corporation; JEFFREY OWEN BLACK,)		
15	individually and as designated)		
16	officer of Pinnacle Estate)		
17	Properties, Inc.; HECTOR GRAJEDA;)		
18	and GUSTAVO VARGAS;)		
19)		
20	Respondents.)		

The Complainant, STEVEN J. ELLIS, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against PINNACLE ESTATE PROPERTIES, INC., a corporation, JEFFREY OWEN BLACK, individually and as designated officer of Pinnacle Estate Properties, Inc., HECTOR GRAJEDA, and HECTOR VARGAS (herein "Respondents"), is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

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The term "the Regulations" as used herein refers to 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 PINNACLE ESTATE PROPERTIES, INC. (herein "PEP"), a corporation, was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker. At all times mentioned herein PEP was and now is licensed as a corporate real estate broker by and through JEFFREY OWEN BLACK (herein "BLACK") 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 PEP by PEP's officers and employees.

V

At all times mentioned herein, Respondent BLACK was and now is licensed by the Department as an individual real estate broker and as an officer of PEP.

VI

At all times mentioned herein, Respondent HECTOR GRAJEDA (herein "GRAJEDA") was and now is licensed by the Department as a real estate salesperson employed by PEP.

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VII

At all times mentioned herein, Respondent GUSTAVO VARGAS (herein "VARGAS") was and now is licensed by the Department as a real estate salesperson. At all times mentioned herein prior to October 22, 1989, VARGAS was so licensed in the employ of PEP.

VIII

All further references herein to "Respondents" include the parties identified in Paragraphs IV through VII, above, and also include the officers, directors, employees, agents and real estate licensees employed by or associated with said parties and who at all times herein mentioned were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority and employment.

IX

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real property resale business with the public wherein Respondents sold or offered to sell, solicited prospective sellers or purchasers of, and negotiated the purchase or sale of real property, for another or others, for or in expectation of compensation.

X

On or about June 1, 1989, in connection with the real estate brokerage activities described in Paragraph IX, above, Juan Ortiz and Luz Ortiz (herein "buyers"), husband and wife, employed

1 Respondents, and each of them, to act as buyers' agents in
2 locating and arranging the purchase of a residence, and Respondent
3 VARGAS accepted said employment on his own behalf and on behalf of
4 Respondents.
5

6 XI

7 On or about July 5, 1989, in connection with the real
8 estate brokerage activities described in Paragraph IX, above,
9 Arturo Barragan and Irma Barragan (herein "sellers") entered into
10 a written agreement with Respondent GRAJEDA whereby sellers
11 employed Respondents as sellers' agents to market and sell
12 residential real property at 2007 Seventh Street, San Fernando,
13 California (herein "the subject property"), to list and advertise
14 the subject property, to find and obtain a buyer of the subject
15 property, and to negotiate and arrange the sale of the subject
16 property, and Respondent GRAJEDA accepted said employment on his
17 own behalf and on behalf of Respondents.

18 XII

19 On or about July 14, 1989, in course of the real estate
20 brokerage activities described in Paragraph IX, above, and the
21 agency and employment described in Paragraphs X and XI, above,
22 Respondents showed buyers the subject property.

23 XIII

24 On or about July 14, 1989, buyers offered to buy the
25 subject property.

26 XIV

27 On or about July 16, 1989, sellers counteroffered to
buyers for the sale of the subject property.

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XV

On or about July 16, 1989, buyers accepted sellers' counteroffer, thereby contracting to purchase the subject property, and on or about October 5, 1989, in accordance with said contract, escrow closed consummating the sale of the subject property from sellers to buyers.

XVI

On or about July 14, 1989, in course of the agency and employment described above, Respondents represented to buyers that the entire residential structure (herein "the residential structure") occupying the subject property was improved with a roof that was "new" or approximately one year old (herein "the representation regarding the roof").

XVII

In making the representation regarding the roof, Respondents knew or should have known that the age of the roof was material to any decision by the buyers to purchase the subject property. Respondents made said representation in order to induce buyers to purchase the subject property.

XVIII

The representation regarding the roof was false. In fact, the entire residential structure was not improved with a new roof. The truth was that in or about January 1988, sellers caused the roof covering the garage and front section of the residential structure to be resurfaced to correct wind damage, but sellers did not resurface the roof covering the rear of the residential structure, including the family room and laundry room area.

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XIX

Respondents had no reasonable basis for believing the representation regarding the roof was true.

XX

Buyers' offer to purchase the subject property, as described in Paragraph XIII, above, was made in reliance on the representation regarding the roof and without knowledge that the representation regarding the roof was false.

XXI

The acts and omissions of Respondents set forth in Paragraph X through XX, above, constitute unlawful conduct within the meaning of Section 2785(a) of the Regulations and the making of a substantial misrepresentation, and are cause for the suspension or revocation of all licenses and license rights of Respondents pursuant to the provisions of Section 10176(a) of the Code.

SECOND CAUSE OF ACCUSATION

XXII

Complainant incorporates herein the allegations of Paragraphs I through XXI, inclusive, herein.

XXIII

On or about July 16, 1989, Respondents and each of them represented to buyers that Respondent VARGAS was acting solely as the agent for buyers with respect to the purchase and sale of the subject property (herein "the representation regarding agency").

XXIV

In making the representation regarding agency,

1
2 Respondents knew or should have known that the agency relationship
3 between Respondents and buyers was material to any decision by the
4 buyers accept or reject representations made to buyers by
5 Respondents relating to the purchase of the subject property.

6 XXV

7 Said representation regarding agency was false, as
8 Respondents knew or should have known. In truth and fact, at all
9 times mentioned herein from and after July 5, 1989, Respondents
10 and each of them were dual agents within the meaning of Civil Code
11 Section 2373(d), representing both buyers and sellers with respect
12 to the purchase and sale of the subject property.

13 XXVI

14 Respondents made the representation regarding agency in
15 order to induce buyers to rely on Respondents' other
16 representations with respect to the purchase of the subject
17 property.

18 XXVII

19 Buyers contracted to purchase and consummated the
20 purchase of the subject property, as described in Paragraph XV,
21 above, in reliance on the representation regarding agency, and
22 without knowledge that said representation was false.

23 XXVIII

24 The acts and omissions of Respondents set forth in
25 Paragraph XXII through XXVII, above, constitute the making of a
26 substantial misrepresentation, and are cause for the suspension or
27 revocation of all licenses and license rights of Respondents
pursuant to the provisions of Section 10176(a) of the Code.

1
2 THIRD CAUSE OF ACCUSATION

3 XXIX

4 Complainant incorporates herein the allegations of
5 Paragraphs I through XXVIII, inclusive, herein.

6 XXX

7 At all times mentioned herein from and after July 16,
8 1992, Respondents GRAJEDA and VARGAS knew that the roof covering
9 the family room and laundry room in the residential structure had
10 leaked and required repair.

11 XXXI

12 From time to time from July 16, 1989 through October 5,
13 1989, Respondents GRAJEDA and VARGAS, and each of them, acting
14 with full knowledge of each others' conduct, repeated or
15 republished the representation to buyers that the subject property
16 was improved with a roof that was "new" or approximately one year
17 old.

18 XXXII

19 On and after July 16, 1989, Respondents GRAJEDA and
20 VARGAS made or republished the representation that the roof was
21 "new" or approximately one year old in order to conceal from
22 buyers that the roof covering the family room and laundry room in
23 the residential structure had leaked and required repair.

24 XXXIII

25 Respondents GRAJEDA and VARGAS concealed the fact that
26 the roof covering the family room and laundry room in the
27 residential structure had leaked and required repair in order to
induce buyers to consummate the purchase of the subject property.

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XXXIV

From July 16, 1989, through October 5, 1989, Buyers consummated the purchase of the subject property, as described in Paragraph XV, above, in reliance on the representation regarding the roof, and without knowledge that the roof covering the family room and laundry room in the residential structure had leaked and required repair.

XXXV

The acts and omissions of Respondents GRAJEDA and VARGAS set forth in Paragraph XXIX through XXXIV, above, constitute fraud and dishonest dealing, and are cause for the suspension or revocation of all licenses and license rights of Respondents GRAJEDA and VARGAS pursuant to the provisions of Section 10176(i) of the Code.

FOURTH CAUSE OF ACCUSATION

XXXVI

Complainant incorporates herein the allegations of Paragraphs I through XXXV, inclusive, herein.

XXXVII

In connection with the real estate brokerage activities described in Paragraph IX, above, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of buyers and sellers and thereafter made disbursements of such funds. Respondents deposited certain of said funds into the Pinnacle Estate Properties, Inc. trust Account, account number 691-673596 maintained by Respondents at the Westwood Blvd. branch of Western Bank in Los Angeles, California (herein "said account"):

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XXXVIII

On February 21, 1992, the Department conducted an examination of Respondents' books and records pertaining to the real estate brokerage activities described in Paragraph IX, above, for the fifteen - month period ending November 30, 1991, which examination revealed violations of the Code and of the Regulations as set forth in the following paragraphs.

XXXIX

In connection with the trust funds referred to in Paragraph XXXVII, above, Respondent PEP:

(a) violated Section 2831.2 of the Regulations by failing to perform a monthly reconciliation of the records of the receipt and disposition of all trust funds deposited into said account maintained in accordance with Section 2831 of the Regulations, and the balance of all separate beneficiary or transaction records maintained in accordance with Section 2831.1 of the Regulations;

(b) violated Section 2832.1 of the Regulations by disbursing or causing or allowing the disbursement of trust funds from said account, where the disbursement of said funds reduced the funds in the said account to an amount which, on November 30, 1991, was approximately \$4,650.05 less than the existing trust fund liability to all owners of said funds, without first obtaining the prior written consent of every principal who was an owner of said funds;

(c) violated Section 2834 of the Regulations in that Respondent PEP permitted the withdrawal of trust funds from said

1 account by an employee named Kathy Helgedalen who was neither
2 licensed by the Department nor covered by a fidelity bond in any
3 amount at the time of the withdrawals.

4 XL

5 The acts and omissions of Respondent PEP described in
6 Paragraph XXXIX, above, violated the Code and the Regulations as
7 set forth below:

8 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9 XXXIX(a)	Sec. 2831.2 of the Regulations;
10 XXXIX(b)	Sec. 2832.1 of the Regulations;
11 XXXIX(c)	Sec. 2834 of the Regulations;

12 Each of the foregoing violations separately constitutes cause for
13 the suspension or revocation of all licenses and license rights of
14 Respondent PEP pursuant to the provisions of Section 10177(d) of
15 the Code.

16 FIFTH CAUSE OF ACCUSATION

17 XLI

18 Complainant incorporates herein the allegations of
19 Paragraphs I through XL, inclusive, herein.

20 XLII

21 Respondent BLACK caused, suffered, and permitted
22 Respondents GRAJEDA and VARGAS to violate Sections 10176(a) and
23 10176(i) of the Code and Section 2785(a) of the Regulations, and
24 caused, suffered, and permitted Respondent PEP to violate Section
25 10176(a) of the Code and Sections 2785(a), 2831.2, 2832.1 and 2834
26 of the Regulations, as described above.

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XLIII

The conduct, acts and omissions of Respondent BLACK, as described in Paragraph XLII, above, independently and collectively constitute failure on the part of BLACK, as the officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of PEP required by Section 10159.2 of the Code, and is cause for the suspension or revocation of all real estate licences and license rights of BLACK pursuant to the provisions of Section 10177(h) of the Code.

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

STEVEN J. ELLIS

STEVEN J. ELLIS
Deputy Real Estate Commissioner

Dated at Los Angeles, California
this 13th day of July , 1992.

cc: Pinnacle Estate Properties, Inc.
Jeffrey Owen Black
Hector Grajeda
Gustavo Vargas
Sacto.
IPC Development Group, Inc.
CEV

jlb