

By Elizabeth

STATE OF CALIFORNIA

* * * * *

Respondents.

The matter came on for hearing before Paul M. Hogan, Administrative Law Judge of the Office of Administrative hearings, in Los Angeles, California, on June 13, 1996.

Sean Crahan, Counsel, represented the complainant. Respondents De Miranda Management, Inc. and Jay R. De Miranda appeared with counsel, Stephen B. Goldberg, Esq. of Spirer, Woodward, Corbalis & Goldberg.

Evidence was received, the hearing was closed, and the matter was submitted.

On July 19, 1996, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision

1 herein. Pursuant to Section 11517(c) of the Government Code of
2 the State of California, Respondent was served with notice of my
3 determination not to adopt the Proposed Decision of the
4 Administrative Law Judge along with a copy of said Proposed
5 Decision. Respondent was notified that the case would be decided
6 by me upon the record, the transcript of proceedings held on June
7 13, 1996, and upon any written argument offered by Respondent.

8 Argument has been submitted on behalf of Respondents.

9 I have given careful consideration to the record in this
10 case, including the transcript of proceedings of June 13, 1996 and
11 to the argument submitted on behalf of Respondents.

12 The following shall constitute the Decision of the Real
13 Estate Commissioner in the above - entitled matter:

14 FINDINGS OF FACT

15 The Findings Of Fact set forth in the Proposed Decision
16 dated July 19, 1996 of the Administrative Law Judge are hereby
17 adopted as the Findings of Fact of the Real Estate Commissioner in
18 the above - entitled matter.

19 SUPPLEMENTAL FINDINGS

20 The order of June 15, 1989, referred to in Findings of
21 Fact, paragraph 5 of the Proposed Decision, was a Decision
22 imposing discipline against JAY R. DE MIRANDA by revoking his
23 broker license and granting him a restricted real estate
24 salesperson license due to his use of trust funds belonging to
25 others to support and maintain real properties which he either
26 owned or in which he had an interest. Official notice is taken of
27 the Department's licensing records that effective November 29,

1 1989, respondent was issued a restricted broker license.

2 DETERMINATION OF ISSUES

3 All Determinations Of Issues set forth in the Proposed
4 Decision dated July 19, 1996 of the Administrative Law Judge are
5 hereby adopted as the Determination Of Issues of the Real Estate
6 Commissioner in the above - entitled matter.

7 SUPPLEMENTAL DETERMINATION OF ISSUES

8 In light of the prior disciplinary actions and desist
9 and refrain orders issued to respondents, the following Order is
10 deemed appropriate under the circumstances.

11 ORDER

12 WHEREFORE, THE FOLLOWING ORDER is hereby made:

13 I

14 All licenses and license rights of Respondent DE MIRANDA
15 MANAGEMENT, INC. under Part 1 of Division 4 of the Business and
16 Professions Code are revoked; provided, however, a restricted real
17 estate broker license shall be issued to Respondent DE MIRANDA
18 MANAGEMENT, INC. pursuant to Section 10156.5 of the Code if
19 Respondent makes application therefor and pays to the Department
20 of Real Estate the appropriate fee for said licenses within ninety
21 (90) days from the effective date of the Decision.

22 The restricted license issued to Respondent DE MIRANDA
23 MANAGEMENT, INC. shall be subject to all of the provisions of
24 Section 10156.7 of the Business and Professions Code and to the
25 following limitations, conditions and restrictions imposed under
26 authority of Section 10156.6 of said Code and to the following
27 limitations, conditions and restrictions imposed under authority



1 of Section 10156.6 of said Code:

2
3 (1) The restricted license may be suspended prior
4 to hearing by order of the Real Estate Commissioner in the event
5 of Respondent DE MIRANDA MANAGEMENT, INC.'s conviction or plea of
6 nolo contendere to a crime which bears a significant relation to
7 Respondent's fitness or capacity as a real estate licensee.

8 (2) The restricted license may be suspended prior
9 to hearing by Order of the Real Estate Commissioner on evidence
10 satisfactory to the Commissioner that Respondent DE MIRANDA
11 MANAGEMENT, INC. has, during the time he holds a restricted
12 license, violated provisions of the California Real Estate Law,
13 the Subdivided Lands Law, Regulations of the Real Estate
14 Commissioner, or the conditions attaching to these restricted
15 licenses.

16 (3) The operations of Respondent DE MIRANDA
17 MANAGEMENT, INC. shall not, during the time it holds a restricted
18 license, be directed or controlled by Respondent JAY R. DE
19 MIRANDA. With its application for a restricted license,
20 Respondent DE MIRANDA MANAGEMENT, INC. shall designate a real
21 estate broker other than Respondent JAY R. DI MIRANDA to be the
22 designated officer responsible for the supervision of the
23 activities of Respondent DE MIRANDA MANAGEMENT, INC.

24 (4) Respondent DE MIRANDA MANAGEMENT, INC. shall
25 not be eligible to apply for the issuance of an unrestricted real
26 estate license nor the removal of any of the conditions,
27 limitations or restrictions of a restricted license until two (2)
years has elapsed from the date of issuance of the restricted

1 license to Respondent.

2 (5) Respondent DE MIRANDA MANAGEMENT, INC. shall
3 report in writing to the Department of Real Estate as the Real
4 Estate Commissioner shall direct by his Order herein or by
5 separate written order issued while Respondent holds a restricted
6 license, such information concerning Respondent's activities for
7 which a real estate license is required as the Commissioner shall
8 deem to be appropriate to protect the public interest.

9 (6) Within two years from the effective date of
10 this order, the Commissioner may audit the books and records of
11 respondent DE MIRANDA MANAGEMENT, INC. to determine compliance
12 with the Real Estate Law and Regulations of the Real Estate
13 Commissioner, pursuant to Code Section 10148.

14 (a) The Real Estate Commissioner may charge
15 respondent DE MIRANDA MANAGEMENT, INC. the reasonable cost of this
16 audit. In calculating the amount of the reasonable costs, the
17 Commissioner may use the estimated average hourly salary for all
18 persons performing audits of real estate brokers, and shall
19 include an allocation for travel costs, including mileage, time to
20 and from the auditor's place of work, and per diem.

21 (b) Respondent shall pay, within 45 days from
22 receipt of the invoice, the Commissioner's reasonable costs for
23 the chargeable follow-up audit;

24 (c) If Respondent fails to pay, within 45
25 days from receipt of the invoice, for the Commissioner's
26 reasonable costs for an audit, the Commissioner may order the
27 suspension of Respondent's real estate license and license rights.



1 The suspension shall remain in effect until payment is made in
2 full, or until Respondent enters into an agreement satisfactory to
3 the Commissioner to provide for such payment. The Commissioner
4 may impose further reasonable disciplinary terms and conditions
5 upon Respondent's real estate license and license rights as part
6 of any such agreement.
7

8 II

9 All real estate broker licenses, all licenses and
10 license rights of Respondent JAY R. DE MIRANDA under Part 1 of
11 Division 4 of the Business and Professions Code are revoked;
12 provided, however, a restricted real estate salesperson license
13 shall be issued to Respondent JAY R. DE MIRANDA pursuant to
14 Section 10156.5 of the Code if Respondent makes application
15 therefor and pays to the Department of Real Estate the appropriate
16 fee for said licenses within ninety (90) days from the effective
17 date of the Decision. The restricted licenses issued to
18 Respondent JAY R. DE MIRANDA shall be subject to all of the
19 provisions of Section 10156.7 of the Business and Professions Code
20 and to the following limitations, conditions and restrictions
21 imposed under authority of Section 10156.6 of said Code:

22 (1) The restricted license may be suspended prior
23 to hearing by order of the Real Estate Commissioner in the event
24 of Respondent JAY R. DE MIRANDA's conviction or plea of nolo
25 contendere to a crime which bears a significant relation to
26 Respondent's fitness or capacity as a real estate licensee.

27 (2) The restricted license may be suspended prior
to hearing by Order of the Real Estate Commissioner on evidence

1 satisfactory to the Commissioner that Respondent JAY R. DE MIRANDA
2 has, during the time he holds a restricted license, violated
3 provisions of the California Real Estate Law, the Subdivided Lands
4 Law, Regulations of the Real Estate Commissioner, or the
5 conditions attaching to these restricted licenses.

6
7 (3) Respondent JAY R. DE MIRANDA, during the time
8 he holds a restricted license, shall not have access to trust
9 funds nor shall he be a signatory on a trust account. All trust
10 funds received by any business owned by Respondent for which a
11 license is required shall be placed into the hands of a real
12 estate broker responsible for the licensed activities performed by
13 such business.

14 (4) Respondent JAY R. DE MIRANDA shall not be
15 eligible to apply for the issuance of an unrestricted real estate
16 broker or salesperson license nor the removal of any of the
17 conditions, limitations or restrictions of a restricted license
18 until three (3) years have elapsed from the date of issuance of
19 the restricted license to Respondent.

20 (5) Respondent JAY R. DE MIRANDA shall submit with
21 any application for license under an employing broker, or any
22 application for transfer to a new employing broker, a statement
23 signed by the prospective employing real estate broker on a form
24 approved by the Department of Real Estate which shall certify:

25 (a) That the employing broker has read the
26 Proposed Decision and the Decision of the
27 Commissioner which granted the right to a
restricted license; and

1
2 (b) That the employing broker will exercise
3 close supervision over the performance by the
4 restricted licensee relating to activities for
5 which a real estate license is required.

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

18 (7) Respondent JAY R. DE MIRANDA shall, within six
19 months from the effective date of this Decision, take and pass the
20 Professional Responsibility Examination administered by the
21 Department including the payment of the appropriate examination
22 fee. If Respondent fails to satisfy this condition, the
23 Commissioner may order suspension of Respondent's license until
24 Respondent passes the examination.

25 (8) Within two years from the effective date of
26 this order, the Commissioner may audit the books and records of
27 respondent DE MIRANDA MANAGEMENT, INC.'s to determine compliance
with the Real Estate Law and Regulations of the Real Estate

1 Commissioner, pursuant to Code Section 10148.

2
3 (a) The Real Estate Commissioner may charge
4 respondent DE MIRANDA MANAGEMENT, INC., and Respondent JAY R. DE
5 MIRANDA, jointly and severally, the reasonable cost of this audit
6 of Respondent DE MIRANDA MANAGEMENT, INC. In calculating the
7 amount of the reasonable costs, the Commissioner may use the
8 estimated average hourly salary for all persons performing audits
9 of real estate brokers, and shall include an allocation for travel
10 costs, including mileage, time to and from the auditor's place of
11 work, and per diem.

12 (b) Respondents DE MIRANDA MANAGEMENT, INC.,
13 and Respondent JAY R. DE MIRANDA, jointly and severally, shall
14 pay, within 45 days from receipt of the invoice, the
15 Commissioner's reasonable costs for the chargeable follow-up
16 audit;

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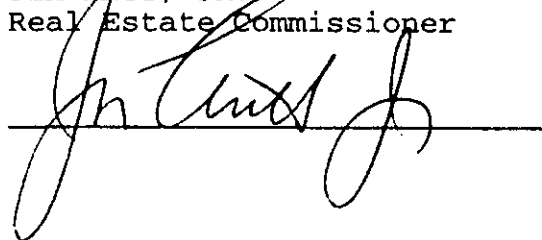
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(c) If Respondents DE MIRANDA MANAGEMENT, INC., and Respondent JAY R. DE MIRANDA, jointly and severally fail to pay, within 45 days from receipt of the invoice, for the Commissioner's reasonable costs for an audit, the Commissioner may order the suspension of Respondents DE MIRANDA MANAGEMENT, INC.'s, and/or Respondent JAY R. DE MIRANDA's real estate licenses and license rights. The suspension shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for such payment. The Commissioner may impose further reasonable disciplinary terms and conditions upon Respondent's real estate license and license rights as part of any such agreement.

This Decision shall become effective at 12 o'clock noon
on April 8, 1997.

IT IS SO ORDERED 3/13 1997.

JIM AMTT, JR.
Real Estate Commissioner



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FILED
AUG 19 1996

DEPARTMENT OF REAL ESTATE.

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DE MIRANDA MANAGEMENT, INC.,) NO. H-25867 LA
and JAY R. DE MIRANDA,) L-9410040
individually and as)
designated officer of)
De Miranda Management, Inc.,)
Respondents.)

NOTICE

TO: DE MIRANDA MANAGEMENT, INC., and JAY R. DE MIRANDA,
Respondents
and
STEPHEN B. GOLDBERG, their Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated July 19, 1996, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated July 19, 1996, is attached
for your information.

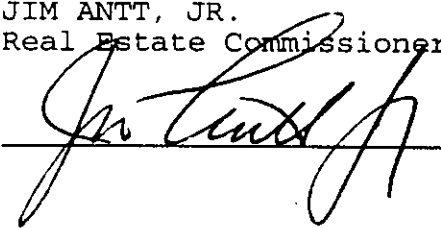
In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein

1 including the transcript of the proceedings held on June 13,
2 1996, and any written argument hereafter submitted on behalf of
3 respondents and complainant.

4 Written argument of respondents to be considered by me
5 must be submitted within 15 days after receipt of the transcript
6 of the proceedings of June 13, 1996, at the Los Angeles office of
7 the Department of Real Estate unless an extension of the time is
8 granted for good cause shown.

9 Written argument of complainant to be considered by me
10 must be submitted within 15 days after receipt of the argument of
11 respondents at the Los Angeles office of the Department of Real
12 Estate unless an extension of the time is granted for good cause
13 shown.

14 DATED: 8/6/96

15 JIM ANTT, JR.
16 Real Estate Commissioner
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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-25867 LA
)
) L-9410040
DE MIRANDA MANAGEMENT, INC., and)
JAY R. DE MIRANDA, individually)
and as designated officer of)
De Miranda Management, Inc.,)
Respondents.)

PROPOSED DECISION

This matter came on regularly to be heard before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California on June 13, 1996.

Complainant was represented by Sean Crahan, Staff Counsel. Respondent corporation appeared by its designated officer, Jay R. De Miranda, who also appeared personally. Both were represented by Stephen B. Goldberg, attorney at law.

Evidence, both oral and documentary was presented. A briefing schedule was established, and the matter was submitted upon the record and upon written briefs on July 18, 1996. The Administrative Law Judge makes his findings of fact and determination of issues and renders his proposed decision as follows:

Findings of Fact

1. Complainant, Steven J. Ellis, filed and served the accusatory pleadings¹ herein while acting solely in his official

¹After hearing, a second amended accusation was withdrawn by complainant.

capacity as a Deputy Real Estate Commissioner of the State of California.

2. At all times mentioned herein, respondent DE MIRANDA MANAGEMENT, INC., ("MANAGEMENT") was and still is licensed by the above Department as a corporate real estate broker.

3. At all times mentioned herein, JAY R. DE MIRANDA, ("DE MIRANDA"), individually and as designated officer of MANAGEMENT, was and still is licensed by the said Department as a real estate broker.

4. At all times mentioned herein, MANAGEMENT acted in the capacity of a broker in anticipation of compensation in the operation of a property management business, which included the leasing and collection of rents from properties owned by members of the public, and the making of expenditures necessary to the maintenance of such properties.

5. On August 12, 1987, April 6, 1988, and on June 15, 1989 MANAGEMENT was the subject of administrative orders of the Department arising from shortages in its trust accounts maintained by it in connection with its management of properties.

6. In the present case, the Department conducted an audit for the period January 1, 1992 through April 30, 1993. MANAGEMENT's combined trust account was short \$4,723.07. An additional \$4,850. was available to offset this shortage in another account maintained by MANAGEMENT in connection with its management of a housing project, Seaward Arms, under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD). The Department's audit did not recognize this second account.

7. HUD, during the audit period, required managers to maintain separate bank accounts for each housing project managed, thus proscribing combining the Seaward Arms funds with the funds in MANAGEMENT's combined trust account. MANAGEMENT complied with this requirement erratically. When it was more convenient, MANAGEMENT would deposit Seaward funds in the combined account, and redeposit them in the separate account when required to satisfy HUD inspections.

8. The remainder of the properties for which MANAGEMENT was responsible were served by the combined trust account, and consisted of some sixty groups with variable ownerships: some were owned by MANAGEMENT, some by DE MIRANDA, and others by various partnerships, some of which included DE MIRANDA, and some not.

There were management contracts between MANAGEMENT and the owners of all the properties, including the properties owned by DE MIRANDA personally, or with other individuals, or with partnerships.

9. Because of the HUD requirements, the monies in the Seaward Arms account were not legally available to fund the needs of the remaining sixty properties served by MANAGEMENT. As of April 30, 1993, MANAGEMENT had, by disbursing or allowing the disbursement of funds from the combined trust account, without the prior written consent of every principal who was then an owner of funds in the said account, so as to reduce its balance to an amount which was \$4,723.07 less than the existing trust fund liability to all owners of said trust funds.

10. While it is true that MANAGEMENT's use of two bank accounts in its business has been known to agents of the Department since 1991, it is equally true that respondents had a more than general knowledge of their fiduciary duties as trustees in light of the past disciplinary actions against their licenses described above. They were on notice of the potentially conflicting requirements of HUD and of the Department, and had, at minimum, a duty to inquire. Instead, they made no substantial effort to comply with either agency's requirements. They are in no position to assert estoppel against the Department.

11. In light of the passage of time since the Department's discovery of the existence of the two bank accounts, the record has been examined to determine the reasonableness of the delay, if any, in the prosecution of this action, and the prejudice enuring against respondents, if any, as a result thereof. No such delay or prejudice has been found.

12. DE MIRANDA, as designated officer of MANAGEMENT, failed to exercise supervision and control of MANAGEMENT's activities with regard to its maintenance of the business's trust account.

Determination of Issues

I

The conduct of MANAGEMENT with respect to its maintenance of its trust account in violation of Section 10145 of the Business and Professions Code and Section 2832.1 of Title 10, California Code of Regulations constitutes cause for discipline of

MANAGEMENT's license pursuant to Section 10177(d) of said Code.

II

The conduct of DE MIRANDA with respect to supervision, as designated officer, of the corporate respondent's activities, constitutes cause for discipline of his license pursuant to Sections 10177(h) and 10177(k) of said Code.

III

It is determined that the defense of estoppel is not available to respondents.

IV

It is further determined that the defense of laches has not been established by respondents.

Order

Effective ninety (90) days from the effective date of this decision, the broker's license issued to MANAGEMENT is revoked; provided, however, that if a broker-designated officer successor to DE MIRANDA acceptable to the Department qualifies as designated officer of respondent, and assumes that position, then the foregoing order of revocation shall be null and void.

IT IS FURTHER ORDERED that the broker's license issued to DE MIRANDA is suspended for six months, commencing ninety (90) days from the effective date of this decision; provided however, that if, within the said ninety-day period, a successor designated officer for the corporate broker shall be approved by the Department and shall assume office, then one hundred and twenty (120) days of the six month suspension shall be stayed so long as DE MIRANDA refrains from taking any part, directly or indirectly, in the operation of the business of respondent MANAGEMENT.

IT IS FURTHER ORDERED that, upon the designation, approval by the Department, and assumption of duties by

NOT ADOPTED

NOT ADOPTED

MANAGEMENT's successor designated officer, respondent Jay R. De Miranda is enjoined and restrained from taking any part in the business affairs of respondent MANAGEMENT, whether as officer, director, manager or employee, either directly or indirectly, or in person or by agent.

IT IS FURTHER ORDERED that in the event a successor designated officer to Jay R. De Miranda does not qualify and assume office within the aforesaid period of ninety days, that Department may then, without further notice, deem the foregoing stay orders vacated, and reimpose its orders of revocation and suspension.

July 19, 1996

Paul M. Hogan
PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

George W. Wright, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California, 90012

Telephone: (213) 897-3937



By AKudachy

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-25867 LA
DE MIRANDA MANAGEMENT, INC. and)	A M E N D M E N T
JAY R. DE MIRANDA, individually)	T O
and as designated officer of)	A C C U S A T I O N
De Miranda Management, Inc.,)	
Respondents.)	

The Accusation filed heretofore on September 12, 1994,
in the above-entitled matter, is hereby amended as follows:

I

By amending Paragraph VIII in the Accusation to read as
follows:

" On or about June 15, 1989, a Decision was rendered by
the Real Estate Commissioner revoking DE MIRANDA'S real estate
broker license effective November 29, 1989, in Case No. H-23076
LA. Said Decision revoked DE MIRANDA'S broker license but allowed
respondent to apply for and receive a restricted broker license
subject to certain terms and conditions. Respondent was found to

1 have violated Sections 10145 and 10176(e) of the Code and Section
2 2832.1 of the Regulations."

3 Dated at Los Angeles, California
4 this 2nd day of October , 1995.
5

6 PETER F. HURST

7 Deputy Real Estate Commissioner
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26 cc: De Miranda Management, Inc.
27 Jay R. De Miranda
Sacto.

Sacto
July

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

FILED
5 1996

In the Matter of the Accusation of

DE MIRANDA MANAGEMENT INC., et al.,

}

By *R. M. ...*

Case No. H-25867 LA

OAH No. L-10040

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

on June 13, 1996 **, 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: February 5, 1996

By *Dwight W. Wright*
Counsel

cc: DeMiranda Mgmt. Inc.
Jay R. DeMiranda
S. Goldberg, Esq.
Sacto OAH

RE 501 (1/92)
kw

Handwritten initials: JWS

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

NOV 17 1994
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DE MIRANDA MANAGEMENT INC., et al.,

Respondent

By *K. Friedrich*

Case No. H-25867 LA

OAH No. L-10040

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at
Office of Administrative Hearings, 314 West First Street, Los Angeles

on March 16, 1995, 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: November 17, 1994

By *George W. Wright*
Counsel

cc: DeMiranda Management Inc.
Jay R. DeMiranda
S. Goldberg, Esq.
Sacto OAH

RE 501 (1/92)
kw

George Wright, Staff Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
SEP 12 1994
DEPARTMENT OF REAL ESTATE

By K. Wiederholz

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-25867 LA
DE MIRANDA MANAGEMENT, INC. and)	
JAY R. DE MIRANDA, individually)	A C C U S A T I O N
and as designated officer of)	
De Miranda Management, Inc.,)	
Respondents.)	

The Complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against DE MIRANDA MANAGEMENT, INC., and JAY R. DE MIRANDA, individually and as designated officer of De Miranda Management, Inc., alleges as follows:

I

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

II

At all times mentioned herein, DE MIRANDA MANAGEMENT, INC., ("MANAGEMENT") was and still is licensed by the Department

1 of Real Estate of the State of California ("Department") as a
2 corporate real estate broker.

3 III

4 At all times herein mentioned, JAY R. DE MIRANDA ("DE
5 MIRANDA"), individually and as designated officer of De Miranda
6 Management, Inc., was and still is licensed by the Department as a
7 real estate broker. As the designated officer of MANAGEMENT, DE
8 MIRANDA was and is responsible for the supervision and control of
9 the activities conducted on behalf of MANAGEMENT by its officers
10 and employees as necessary to secure full compliance with the Real
11 Estate Law as set forth in Section 10159.2 of the Code.

12 IV

13 All further references to the "Code" are to the
14 California Business and Professions Code, and all further
15 references to the "Regulations" are to Chapter 6, Title 10,
16 California Code of Regulations.

17 V

18 At all times mentioned herein, for or in expectation of
19 compensation, MANAGEMENT engaged in the business of, acted in the
20 capacity of, advertised or assumed to act as a real estate broker
21 in the State of California, within the meaning of Section 10131(b)
22 of the Code. In the operation of a real property management
23 business, services were rendered in connection with certain real
24 properties owned by third parties. The services included but were
25 not limited to leasing or renting and collecting rents from
26 tenants residing on said properties and making payments from the
27

1 rental funds collected in connection with the expenses of said
2 properties.

3 VI

4 On or about August 12, 1987, an Order to Desist and
5 Refrain (NO. H-23051 LA) was issued to MANAGEMENT and DE MIRANDA
6 for violations of Sections 10137, 10145, 10161.8 and 10176(e) of
7 the Code and Section 2832.1 of the Regulations.

8 VII

9 On or about April 6, 1988, an Order to Desist and
10 Refrain (NO. H-23273 LA) was issued to MANAGEMENT and DE MIRANDA
11 for violations of Section 10145 of the Code and Section 2831.1 of
12 the Regulations.

13 VIII

14 On or about June 15, 1989, a Decision was rendered by
15 the Real Estate Commissioner revoking DE MIRANDA'S real estate
16 broker license effective November 29, 1989, in Case No. H-23273
17 LA. Said Decision revoked DE MIRANDA'S broker license but allowed
18 respondent to apply for and receive a restricted salesperson
19 license subject to certain terms and conditions. Respondent was
20 found to have violated Sections 10145 and 10176(e) of the Code and
21 Section 2832.1 of the Regulations.

22 IX

23 On or about June 17, 1993, Department personnel
24 completed an investigative audit of the books and records of
25 MANAGEMENT, pertaining to its activities as a property management
26 broker, for a period commencing on January 1, 1992, and
27 terminating on April 30, 1993, and unless otherwise specified, the

1 relevant period of time referenced herein shall be the same. The
2 findings of that audit are set forth in the paragraphs that
3 follow.

4 X

5 In connection with the aforesaid property management
6 activities, MANAGEMENT accepted or received funds in trust
7 ("trust funds") in the form of rent monies collected from tenants
8 residing on said real properties. MANAGEMENT deposited these
9 funds into the individual property owner's bank account. At the
10 end of the day, the bank would then automatically transfer these
11 funds into the following clearing trust account:

12 "De Miranda Management, Inc.
13 Trust Account"
14 Account No. 2500112002
Union Bank

15 XI

16 The audit examination revealed that as of April 30,
17 1993, MANAGEMENT violated Section 10145 of the Code and Section
18 2832.1 of the Regulations by disbursing or allowing the
19 disbursement of funds from the above-described account, without
20 the prior written consent of every principal who was then an owner
21 of said funds in the account, in an amount which was \$4,723.07
22 less than the existing aggregate trust fund liability to all
23 owners of said trust funds.

24 XII

25 The conduct of MANAGEMENT, as alleged hereinabove
26 in Paragraphs X through XI, constitutes cause for the
27

1 suspension or revocation of all licenses and/or license
2 rights of the Respondent under Section 10177(d) of the Code.

3 XXV

4 The conduct of Respondent DE MIRANDA, in allowing
5 Respondent MANAGEMENT to violated the above-described
6 provisions of the Code while acting as the designated officer
7 of MANAGEMENT, constitutes a failure to exercise reasonable
8 supervision and control of the activities of MANAGEMENT for
9 which a real estate license is required under Section
10 10159.2, and is cause for the suspension or revocation of the
11 licenses and/or licensing rights of DE MIRANDA under Sections
12 10177(h) and 10177(k) of the Code.

13 WHEREFORE, Complainant prays that a hearing be conducted
14 on the allegations of this Accusation and that upon proof thereof,
15 a decision be rendered imposing disciplinary action against all
16 licenses and/or license rights of the Respondents under the Real
17 Estate Law and for such other and further relief as may be proper
18 under applicable provisions of law.

19 Dated at Los Angeles, California
20 this 12th day of September , 1994.

21 STEVEN J. ELLIS

22 Deputy Real Estate Commissioner

23
24
25 cc: De Miranda Management, Inc.
26 Jay R, De Miranda
27 SACTO
TG