FILED

FEB 13 2001

DEPARTMENT OF REAL ESTATE

By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RAYMOND ELWOOD ESSLER, Respondent.	No. H-27129 LA

ORDER DENYING REINSTATEMENT OF LICENSE

On March 4, 1998, an Order was rendered herein revoking the real estate broker license of Respondent but granting Respondent the right to the issuance of a restricted real estate broker license. Respondent failed to apply for said restricted real estate broker license.

On September 21, 1999, Respondent petitioned for reinstatement of said real estate broker 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 failed to demonstrate to my satisfaction that Respondent has undergone

sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate broker license.

The Order in this matter found that Respondent had failed to comply with the requirements of law in handling trust funds and as the officer designated by a corporate broker licensee failed to exercise reasonable supervision over the activities of the corporation for which a real estate license is required.

Given the violations found and the fact that Respondent has not engaged as a broker in the operation of a real estate brokerage business or otherwise acted in a fiduciary capacity, Respondent has not established that he has complied with Section 2911 (j), Title 10, California Code of Regulations. Consequently, I am not satisfied that Respondent is sufficiently rehabilitated to receive an unrestricted real estate broker license. Additional time and evidence of correction as a restricted real estate broker is necessary to establish that Respondent is rehabilitated.

I am satisfied, therefore, that it will not be against the public interest to issue a restricted real estate broker license to Respondent.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement of his real estate broker license is denied.

A restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and

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Professions Code, if Respondent satisfies the following conditions within nine (9) months from the date of this Order:

1. Submittal of a completed application and payment of the fee for a restricted real estate broker license.

2. Submittal of evidence of having, 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.

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

A. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

B. 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.

C. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal

of any of the limitations, conditions or restrictions of a restricted license until one (1) year has elapsed from the date of the issuance of the restricted license to respondent.

This Order shall become effective at 12 o'clock noon on March 6, 2001.

DATED: December 18, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

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

Telephone (213) 897-3937

FILED
JUN - 9 1998
DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc., Respondents.	NO. H-27129 LA L-1997050282 STIPULATION AND AGREEMENT

It is hereby stipulated by and between THE WILLIAM FIRMIN COMPANY, INC. (sometimes referred to herein as "Respondent"), acting by and through its attorney of record, Harry E. Floyd, Jr., Esq., and the Complainant, acting by and through Darlene Averetta, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on March 25, 1997, in this matter.

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1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

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

3. On June 19, 1997, Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that it understands that by withdrawing said Notice of Defense, it will thereby waive its right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that it will waive other rights afforded to it in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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4. This Stipulation and Agreement is based on the factual allegations contained in the Accusation filed in this proceeding. In the interest of expedience and economy, Respondent chooses not to contest these allegations, but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. This Stipulation and Agreement and Respondent's decision not to contest the Accusation are hereby expressly limited to this proceeding and made for the sole purpose of reaching an agreed disposition of this proceeding. Respondent's decision not to contest the factual allegations is made solely for the purpose of effectuating this Stipulation and is intended to be non-binding upon him in any actions against Respondent by third parties. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

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

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

DETERMINATION OF ISSUES

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

The conduct, acts and/or omissions of Respondent THE WILLIAM FIRMIN COMPANY, INC., as alleged in the Accusation, are grounds for the suspension or revocation of all real estate licenses and license rights of Respondent under the provisions of Business and Professions Code (hereinafter "Code") Section 10177(d) for violation of Code Section 10145 and Section 2832.1 Title 10, Chapter 6, California Code of Regulations.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All real estate licenses and license rights of Respondent THE WILLIAM FIRMIN COMPANY, INC., under the Real Estate Law are hereby suspended for a period of ninety (90) days from the effective date of this Decision.

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A. The initial thirty (30) days of said ninety (90) day suspension, shall commence on the effective date of this Decision; provided however, if Respondent, prior to the effective date of this Decision, proves to the satisfaction of the Real Estate Commissioner that the trust account shortage cited in the audit has been cured; and if Respondent so requests, said thirty (30) day suspension of Respondent's license and license rights shall be permanently stayed if Respondent pays to the Department's Real Estate Recovery Account the sum of Three Thousand Dollars ($3,000), prior to the effective date of this Decision in accordance with the provisions of Code Section 10175.2.

(1) Payment of the aforementioned monetary penalty shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Payment must be made prior to the effective date of this Decision.

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

B. The remaining sixty (60) days of said ninety (90) day suspension shall be stayed on the condition that no further cause for disciplinary action against the real estate license and license rights of Respondent shall occur within two (2) years from the effective date of this Decision.

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(1) If the Real Commissioner determines pursuant to the Administrative Procedure Act that further cause for disciplinary action against the real estate license or license rights of Respondent has occurred within two (2) year from the effective date of this Decision, the sixty (60) day stay of suspension hereby granted to Respondent, or such portion thereof as the Real Estate Commissioner shall deem to be appropriate, may be vacated by the Real Estate Commissioner.

(2) If no further cause for disciplinary action against the real estate license and license rights of Respondent shall occur within two (2) years from the effective date of this Decision, the stay hereby granted shall be permanent.

C. Pursuant to Section 10148 of the Code, Respondent, THE WILLIAM FIRMIN COMPANY, INC., shall be jointly and severally liable with RAYMOND ELWOOD ESSLER to pay the Commissioner's reasonable costs for an audit to ensure that Respondent, THE WILLIAM FIRMIN COMPANY, INC., is in compliance with the Real Estate Law, including the handling of trust funds. In calculating the amount of the Commissioner's reasonable costs, the Commissioner may use the estimated average hourly salary for all Department Audit Section personnel performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work, and per diem. The Commissioner's reasonable costs shall in no event exceed $2,800.00

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(a) THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER shall jointly or severally pay such costs within 45 days of receipt of an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities;

(b) Notwithstanding the provisions of any other Paragraph herein, if Respondent, THE WILLIAM FIRMIN COMPANY, INC. and/or RAYMOND ELWOOD ESSLER fail to pay, within 45 days from receipt of the invoice specified above, the Commissioner's reasonable costs for an audit, the Commissioner may order the suspension of Respondent, THE WILLIAM FIRMIN COMPANY, INC.'s, license pending a hearing held in accordance with Section 11500, et seq., of the Government Code. The suspension shall remain in effect until payment is made in full, or until THE WILLIAM FIRMIN COMPANY, INC. and/or RAYMOND ELWOOD ESSLER 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.

DATED: March 17, 1998

Darlene Averetta

DARLENE AVERETTA, Counsel for the Complainant, the Department of Real Estate

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

DATED: 2-2-98

THE WILLIAM FIRMIN COMPANY, INC.
by Nadine Gatlin, President

DATED: 2/2/98

HARRY E. FLOYD, JR., Esq.
Counsel for Respondent
Approved as to Form

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on August 11, 1998.

IT IS SO ORDERED 5/27, 1998.

JIM ANTT, JR.
Real Estate Commissioner

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

Telephone (213) 897-3937

FILED
MAR - 9 1998
DEPARTMENT OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc., Respondents.	NO. H-27129 LA L-1997050282 STIPULATION AND AGREEMENT

It is hereby stipulated by and between RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin, Company, Inc. (sometimes referred to herein as "Respondent"), and the Complainant, acting by and through Darlene Averetta, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on March 25, 1997, in this matter.

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1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

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

3. On April 10, 1997, Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense, he will thereby waive his right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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4. This Stipulation and Agreement is based on the factual allegations contained in the Accusation filed in this proceeding. In the interest of expedience and economy, Respondent chooses not to contest these allegations, but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. This Stipulation and Agreement and Respondent's decision not to contest the Accusation are hereby expressly limited to this proceeding and made for the sole purpose of reaching an agreed disposition of this proceeding. Respondent's decision not to contest the factual allegations is made solely for the purpose of effectuating this Stipulation and is intended to be non-binding upon him in any actions against Respondent by third parties. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and sanctions on Respondent's real estate license and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any stipulation or waiver made herein.

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

DETERMINATION OF ISSUES

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

I

The conduct, acts and/or omissions of RAYMOND ELWOOD ESSLER, as alleged in the Accusation, are grounds for the suspension or revocation of all real estate licenses and license rights of RAYMOND ELWOOD ESSLER under the provisions of Business and Professions Code (hereinafter "Code") Section 10177(d) for violation of Code Section 10145.

II

The conduct, acts and/or omissions of RAYMOND ELWOOD ESSLER, as alleged in the Accusation, are grounds for the suspension or revocation of all real estate licenses and license rights of RAYMOND ELWOOD ESSLER under the provisions of Code Section 10177(h) for violation of Code Section 10159.2.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All real estate licenses and license rights of Respondent, RAYMOND ELWOOD ESSLER, under the Real Estate Law, are hereby revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5, of the Code if Respondent, makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (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 Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

1. The restricted license to be issued upon application of Respondent shall not confer any property right in the privileges to be exercised thereunder.

(a) Said restricted license and any privileges granted thereunder may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction (including a plea of nolo contendere) to a crime which is substantially related to Respondent's qualifications, functions, duties, fitness or capacity as a real estate licensee.

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(b) Said restricted license and any privileges granted thereunder may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of the receipt of 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 this restricted license.

2. 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.

3. Respondent shall, within nine (9) 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 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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4. Respondent shall, within nine (9) months from the effective date of the restricted license, 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 the restricted license until Respondent passes the examination.

5. Pursuant to Section 10148 of the Code, Respondent, RAYMOND ELWOOD ESSLER, shall be jointly and severally liable with THE WILLIAM FIRMIN COMPANY, INC.to pay the Commissioner's reasonable costs for an audit to ensure that Respondent, THE WILLIAM FIRMIN COMPANY, INC., is in compliance with the Real Estate Law, including the handling of trust funds. In calculating the amount of the Commissioner's reasonable costs, the Commissioner may use the estimated average hourly salary for all Department Audit Section personnel performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work, and per diem. The Commissioner's reasonable costs shall in no event exceed $2,800.00

(a) Respondent RAYMOND ELWOOD ESSLER and THE WILLIAM FIRMIN COMPANY, INC., shall jointly or severally pay such costs within 45 days of receipt of an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities;

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(b) Notwithstanding the provisions of any other Paragraph herein, if Respondent RAYMOND ELWOOD ESSLER and/or THE WILLIAM FIRMIN COMPANY, INC., fail to pay, within 45 days from receipt of the invoice specified above, the Commissioner's reasonable costs for an audit, the Commissioner may order the suspension of the restricted real estate license issued to Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code. The suspension shall remain in effect until payment is made in full, or until Respondents enter 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.

DATED: February 4, 1998

Darlene Averetta

DARLENE AVERETTA, Counsel for the Complainant, the Department of Real Estate

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

DATED: 2/3/98

RAYMOND ELWOOD ESSLER, Respondent individually and as designated officer of The William Firmin Co., Inc.

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on March 31, 1998.

IT IS SO ORDERED 3/4, 1998.

JIM ANTT, JR.
Real Estate Commissioner

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of **THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc.,** *Respondent(s)*	Case No. **H-27129 LA** OAH No. L-1997050282

FILED
AUG 26 1997
DEPARTMENT OF REAL ESTATE
By

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, Second Floor, Los Angeles, CA 90012 on **JANUARY 21 and 22, 1998,** 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 subpenas 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 26, 1997 By Darlene Averetta

DARLENE AVERETTA, Counsel

cc: The William Firmin Company, Inc.
Harry E. Floyd, Esq.
Raymond Elwood Essler
Sacto.
OAH

CEB

RE 501 (La Mac 11/92)

SPC

FILED
JUL 25 1997
DEPARTMENT OF REAL ESTATE
By CB

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc., Respondents.	NO. H-27129 LA

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On May 13, 1997, a Default Order was filed. Thereafter, on June 3, 1997, a Decision was rendered revoking the real estate corporate broker license of Respondent, THE WILLIAM FIRMIN COMPANY, INC, effective June 26, 1997. Thereafter an Order Staying Effective Date of the Decision was granted on June 19, 1997, which stayed the effective date of the Decision to July 25, 1997.

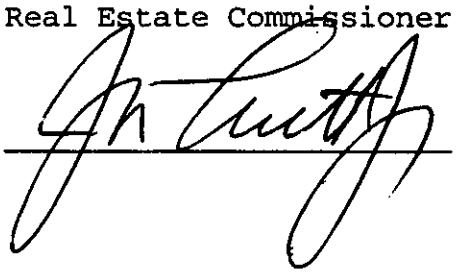
On June 20, 1997, good cause was presented to set aside the Default Order of May 13, 1997, and to vacate the Decision of June 3, 1997, and to have the matter remanded to the Office of Administrative Hearings as a contested matter.

NOW, THEREFORE, IT IS ORDERED that the Default Order of May 13, 1997, is set aside and the Decision of June 3, 1997, is vacated and that the Matter of the Accusation filed on March 25, 1997, be remanded to the Office of Administrative Hearings.

This Order shall be effective immediately.

DATED: 7/22/97.

JIM ANTT, JR.
Real Estate Commissioner



FILED
JUL 21 1997
DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of the William Firmin Company, Inc., Respondents.	NO. H-27129 LA

ORDER STAYING EFFECTIVE DATE

On June 3, 1997, a Decision was rendered in the above-entitled matter, as to THE WILLIAM FIRMIN COMPANY, INC. to become effective June 26, 1997. On June 19, 1997, the effective date of said Order was stayed until July 25, 1997.

IT IS HEREBY ORDERED that the effective date of the Decision of June 3, 1997, is stayed for an additional period of ten (10) days.

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The Decision of June 3, 1997, shall become effective at 12 o'clock noon on, August 4, 1997.

DATED: July 21, 1997

JIM ANTT, JR.
Real Estate Commissioner

By: Randolph Brendia
RANDOLPH BRENDIA
Regional Manager

SPK

FILED
JUN 19 1997
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of the William Firmin Company, Inc., Respondents.	NO. H-27129 LA

ORDER STAYING EFFECTIVE DATE

On June 3, 1997, a Decision was rendered in the above-entitled matter, as to THE WILLIAM FIRMIN COMPANY, INC., to become effective June 26, 1997.

IT IS HEREBY ORDERED that the effective date of the Decision of June 3, 1997, is stayed for a period of thirty (30) days.

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The Decision of June 3, 1997, shall become effective at 12 o'clock noon on July 25, 1997.

DATED: 19 June 97.

JIM ANTT, JR.
Real Estate Commissioner

By: Randolph Brendia
RANDOLPH BRENDIA
Regional Manager

FILED
JUN - 6 1997
DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc., Respondents.	No. H-27129 LA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on May 13, 1997, and the findings of fact set forth herein are based on one or more of the following: (1) certified documents, (2) affidavits, and (3) other evidence.

FINDINGS OF FACT

I

On March 25, 1997, Thomas McCrady made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondent THE WILLIAM FIRMIN COMPANY, INC.'s last known main office and mailing address on file with the Department on March 25, 1997 and April 23, 1997.

On May 13, 1997, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent THE WILLIAM FIRMIN COMPANY, INC.'s default was entered herein. Respondent RAYMOND ELWOOD ESSLER was severed from these proceedings as he filed a Notice of Defense.

II

THE WILLIAM FIRMIN COMPANY, INC. (hereinafter "WILLIAM FIRMIN") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code").

III

At all times material herein, WILLIAM FIRMIN was licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a corporate real estate broker by and through RAYMOND ELWOOD ESSLER as the designated officer and broker responsible pursuant to the provisions of Section 10159.2 of the Code for supervising the activities requiring a real estate license conducted on behalf of WILLIAM FIRMIN, by WILLIAM FIRMIN's officers, agents and employees.

IV

At all times material herein, WILLIAM FIRMIN engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, for another or others, for or in expectation of compensation, within the meaning of Section 10131(b) of the Code. Said activities included the operation and conduct of a property management business with the public wherein WILLIAM FIRMIN, leased or rented or offered for lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

V

At all times material herein, in connection with the activities described in Finding IV, above, WILLIAM FIRMIN accepted or received funds, including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by WILLIAM FIRMIN, and thereafter made deposits and/or disbursement of such funds. From time to time herein mentioned, said trust funds were deposited and/or maintained by WILLIAM FIRMIN in trust bank accounts, for each property managed. During the audit period WILLIAM FIRMIN maintained forty-six (46) trust accounts.

VI

On or about October 9, 1996, the Department completed an audit examination of WILLIAM FIRMIN's books and records pertaining to its activities as a real estate broker covering a period from July 1, 1995 to August 31, 1996, which revealed violations of the Code and Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulations") as set forth below.

VII

In the course of activities described in Findings IV and V, above, and during the examination period described in Finding VI, WILLIAM FIRMIN acted in violation of the Code and the Regulations in that Respondent WILLIAM FIRMIN caused, permitted and/or allowed the withdrawal or disbursement of trust funds from trust accounts, thereby reducing the account balance in the trust account, as of August 30, 1996, to an amount less than the aggregate trust fund liability to all owners of the trust funds without prior written consent of every principal who then was an owner of funds in the account, in violation of Code Section 10145 and Regulation 2832.1 as follows:

(a) Trust Account No. 00576-07929, at Bank of America, for Kenmore Apartments, had a shortage in the amount of approximately Two Thousand and Twenty Dollars ($2,020);

(b) Trust Account No. 00576-05302, at Bank of America, for 2nd Street Apartments, had a shortage in the amount of approximately Five Thousand Eighty-Seven Dollars and Fifty Cents ($5,087.50);

(c) Trust Account No. 00578-11524, at Bank of America, for Leo Holiday, had a shortage in the amount of approximately One Thousand One Hundred and Forty Dollars ($1,140);

(d) Trust Account No. 00572-11508, at Bank of America, for Corinth Properties, had a shortage in the amount of approximately Four Hundred Dollars ($400);

(e) Trust Account No. 00571-06347, at Bank of America, for Peter Trias 4th Ave., had a shortage in the amount of approximately Two Thousand Five Hundred Seventy-One Dollars and Nineteen Cents ($2,571.19).

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent THE WILLIAM FIRMIN COMPANY, INC. exists pursuant to Code Section 10177(d).

II

The standard of proof applied was clear and convincing to a reasonable certainty.

ORDER

The license and license rights of Respondent, THE WILLIAM FIRMIN COMPANY, INC., under the provisions of Part 1 of Division 4 of the Business and Professions Code, are revoked.

This Decision shall become effective at 12 o'clock noon on June 26, 1997.

DATED: 6/3/97.

JIM ANTT, JR.
Real Estate Commissioner

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

(213) 897-3937

FILED
MAY 13 1997
DEPARTMENT OF REAL ESTATE

By C. Bay

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC., and RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc., Respondents.	NO. H-27129 LA DEFAULT ORDER

Respondent, THE WILLIAM FIRMIN COMPANY, INC., having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS HEREBY ORDERED 13 May 1997.

JIM ANTT, JR.
Real Estate Commissioner

Randolph Brendia

By: RANDOLPH BRENDIA
Regional Manager

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	Case No. H-27129 LA
)	
RAYMOND ELWOOD ESSLER,)	OAH No. L-1997050282
)	
)	
Respondent(s)	

FILED
MAY 29 1997
DEPARTMENT OF REAL ESTATE
By C. B.

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, Second Floor, Los Angeles, CA 90012 on **JANUARY 21 and 22, 1998,** 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 subpenas 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: May 29, 1997

By Darlene Averetta
DARLENE AVERETTA, Counsel

cc: Raymond Elwood Essler
Sacto.
OAH

CEB

RE 501 (La Mac 11/92)

SAC

DARLENE AVERETTA, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
MAR 25 1997
DEPARTMENT OF REAL ESTATE

By C. B.

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of the William Firmin Company, Inc., Respondents.	No. H-27129 LA A C C U S A T I O N

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against THE WILLIAM FIRMIN COMPANY, INC. and RAYMOND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc., is informed and alleges in his official capacity as follows:

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FIRST CAUSE OF ACCUSATION

1.

THE WILLIAM FIRMIN COMPANY, INC. (hereinafter "WILLIAM FIRMIN") and RAYMOPND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc. (hereinafter "ESSLER"), sometimes collectively referred to herein as Respondents, are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code").

2.

At all times material herein, WILLIAM FIRMIN was licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a corporate real estate broker. From approximately January 5, 1996 to present, WILLIAM FIRMIN was licensed by and through ESSLER as the designated officer and broker responsible, pursuant to the provisions of Section 10159.2 of the Code for supervising the activities requiring a real estate license conducted on behalf of WILLIAM FIRMIN by WILLIAM FIRMIN's officers, agents and employees.

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3.

At all times material herein, ESSLER was licensed by the Department. Effective October 23, 1995, ESSLER was licensed by the Department as a real estate broker, and as designated officer of WILLIAM FIRMIN. From approximately January 5, 1996 to present, ESSLER was licensed as the designated broker-officer, responsible for the supervision and control of the activities requiring a real estate license conducted on behalf of WILLIAM FIRMIN by WILLIAM FIRMIN's officers, agents and employees as necessary to secure full compliance with the provisions of the Real Estate Law as required pursuant to the provisions of Section 10159.2 of the Code.

4.

All further references to "Respondents", unless otherwise specified, include the parties identified in Paragraphs 1 through 3, above, and also include the officers, directors, managers, employees, agents and/or real estate licensees employed by or associated with said parties, 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, agency, or employment.

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5.

At all times material herein, 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(b) of the Code, for another or others, for or in expectation of compensation. Said activities included the operation of and conduct of a property management business with the public wherein, for or in expectation of compensation, for another or others, Respondents leased or rented or offered for lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

6.

On or about October 9, 1996, the Department completed an audit examination of Respondents' books and records pertaining to their activities as real estate brokers covering a period from July 1, 1995 to August 31, 1996, which revealed violations of the Code and Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulations") as set forth in the following paragraphs.

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7.

At all times material herein, in connection with the activities described in Paragraph 5, above, Respondents accepted or received funds, including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by Respondents, and thereafter made deposits and/or disbursement of such funds. From time to time herein mentioned, said trust funds were deposited and/or maintained by Respondents in trust bank accounts, for each property managed. During the audit period Respondents maintained forty-six (46) trust accounts.

8.

In the course of activities described in Paragraphs 5 and 7, above, and during the examination period described in Paragraph 6, Respondents acted in violation of the Code and the Regulations. Respondents caused, permitted and/or allowed the withdrawal or disbursement of trust funds from trust accounts, thereby reducing the account balance in the trust account, as of August 30, 1996, to an amount less than the aggregate trust fund liability to all owners of the trust funds without prior written consent of every principal who then was an owner of funds in the account, in violation of Code Section 10145 and Regulation 2832.1 as follows:

(a) Trust Account No. 00576-07929, at Bank of America, for Kenmore Apartments, had a shortage in the amount of approximately Two Thousand and Twenty Dollars ($2,020);

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(b) Trust Account No. 00576-05302, at Bank of America, for 2nd Street Apartments, had a shortage in the amount of approximately Five Thousand Eighty-Seven Dollars and Fifty Cents ($5,087.50);

(c) Trust Account No. 00578-11524, at Bank of America, for Leo Holiday, had a shortage in the amount of approximately One Thousand One Hundred and Forty Dollars ($1,140);

(d) Trust Account No. 00578-11524, at Bank of America, for Corinth Properties, had a shortage in the amount of approximately Four Hundred Dollars ($400);

(e) Trust Account No. 00578-11524, at Bank of America, for Peter Trias 4th Ave., had a shortage in the amount of approximately Two Thousand Five Hundred Seventy-One Dollars and Nineteen Cents ($2,571.19).

9.

The conduct, acts and/or omissions of Respondents, as described in Paragraph 8 above, constitutes cause for the suspension or revocation of Respondents' real estate licenses and license rights of under the provisions of Code Section 10177(d) and/or 10176(e).

SECOND CAUSE OF ACCUSATION

10.

Complainant incorporates herein the Preamble and the allegations of Paragraphs 1 through 9, inclusive, herein above.

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11.

The conduct, acts and/or omissions of Respondent ESSLER, in causing, allowing, or permitting Respondent WILLIAM FIRMIN to violate the Real Estate Law, as described herein above, constitutes failure on the part of Respondent ESSLER, as the officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of Respondent WILLIAM FIRMIN, as required by Section 10159.2 of the Code. Said conduct is cause to suspend or revoke the real estate licenses and license rights of Respondent ESSLER pursuant to the provisions of Code Section 10177(h).

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 THE WILLIAM FIRMIN COMPANY, INC. and RAYMOPND ELWOOD ESSLER, individually and as designated officer of The William Firmin Company, Inc., 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.

Dated at Los Angeles, California
this 25th day of March, 1997.

THOMAS McCRADY
Deputy Real Estate Commissioner

cc: The William Firmin Company, Inc.
Raymond Elwood Essler
L.A. Audit Section
Sacto.
MLB