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FILED
JUL 13 1998
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By *Laura B. Orrow*

* * * * *

In the Matter of the Accusation of)
)
TIME DEPOSITS INTERNATIONAL, INC.)
a California corporate)
broker, and STEPHEN E. BERNAL,)
individually and as designated)
officer of Time Deposits)
International, Inc.,)
)
)
)
Respondent(s).)
_____)

No. H-27465 LA
L-1998020137

DECISION

The Proposed Decision dated June 9, 1998,
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 August 4, 1998.

IT IS SO ORDERED 7/8/98

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt, Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	Case No. H-27465 LA
Against:)	
)	OAH No. L-1998020137
TIME DEPOSITS INTERNATIONAL, INC.,)	
a California corporate)	
broker, and STEPHEN E. BERNAL,)	
individually and as designated)	
officer of Time Deposits)	
International, Inc.,)	
)	
Respondents.)	

PROPOSED DECISION

This matter came on regularly for hearing before W.F. Byrnes, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on May 11, 1998. Elliott Mac Lennan, Counsel, represented the complainant. Ronald Lewis Gallant, Attorney at Law, represented the respondents.

Upon complainant's motion, the following amendments were made to the Accusation:

- At page 5, lines 18-26, paragraph XI(c) was dismissed.
- At page 6, line 18 was stricken.

Evidence having been received and the matter submitted, the Administrative Law Judge finds the following facts:

1

Thomas McCrady made the Accusation in his official capacity as a Deputy Real Estate Commissioner.

II

TIME DEPOSITS INTERNATIONAL, INC. (TDI) and STEPHEN E. BERNAL (BERNAL), sometimes collectively referred to as 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).

III

At all times mentioned, TDI was licensed by the Department of Real Estate of the State of California as a corporate real estate broker. TDI was first licensed by the Department on November 14, 1983. As a result of the discipline imposed in DRE Case No. H-26593 LA, set forth below in Finding VI, TDI and BERNAL received restricted real estate licenses effective January 2, 1997.

IV

At all times mentioned, BERNAL was licensed by the Department as designated officer of TDI to qualify TDI and to act for TDI as a real estate broker and, as provided by Business and Professions Code section 10159.2, was responsible for the supervision and control of the activities conducted on behalf of TDI by its officers, managers, and employees as necessary to secure full compliance with the Real Estate Law.

V

At all times mentioned, in the City of Van Nuys, Los Angeles County, California, respondent TDI and respondent BERNAL acted as a real estate brokers within the meaning of Business and Professions Code section 10131(d), including the operation of a mortgage loan brokerage with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance; or, collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property. In addition, respondents conducted broker controlled escrows under the exemption set forth in Financial Code section 17006(a)(4).

VI

Effective January 2, 1997, pursuant to stipulation in Case No. H-26593 LA, as a consequence of a previous Department audit, TDI and BERNAL were disciplined (as described above in Finding III) for violations of Business and Professions Code sections 10145(a), 10231.2, 10232.2, 10232.25, 10240, 10177(d), and 10177(h) and Title 10, California Code of Regulations, sections 2725, 2831, 2831.1, and 2831.2.

VII

On June 2, 1997, the Department completed a follow-up audit examination, at respondents' expense, of the books and records pertaining to the licensed activities of TDI described above in Finding V. The follow-up audit examination covered a period of time beginning on January 1, 1997, and ending on March 31, 1997.

VIII

In connection with their licensed activities, TDI and BERNAL received funds in trust from or on behalf of borrowers and lenders and thereafter made disbursements of such funds. Respondents maintained four trust accounts at the First Bank of Beverly Hills, as described in paragraph X of the Accusation, into which they deposited certain of those funds.

IX

The Department's follow-up audit examination completed on June 2, 1997, showed that TDI was substantially in compliance with Business and Professions Code sections 10232.25, 10232.2, 10231.2, 10240, 10177(d), and 10177(h) and Title 10, California Code of Regulations, sections 2831, 2831.1, and 2725. In addition, the follow-up audit disclosed the two issues considered below.

X

There was a shortage of \$763.93 in one of the trust accounts, eventually traced back to receipt of an NSF check from a borrower, and a subsequent bookkeeping error in attempting to correct it. The error was extremely difficult to trace, and TDI personnel spent many hours in the attempt between February and April, 1997, tracing every transaction in the account from December, 1996, forward. It was finally solved during the audit, and the shortage was immediately cured. In the interim, of course, the monthly account reconciliations were not accurate. The error occurred during a difficult transition from their former accounting software to their present, much more satisfactory system; respondents are confident that a similar error could not occur undetected in the new system. There was no loss or threat of loss to any person.

XI

While acting as a principal, TDI failed to place all funds received from Alan Leupp for the purchase of nine notes secured by liens on real property into a neutral escrow depository, where the delivery of the notes did not occur simultaneously with the receipt of said funds. The funds were instead deposited in

TDI's escrow trust account for a few days pending recordation of the notes, due to a misunderstanding of the statutory requirements on the part of Robert Whitaker, the President of TDI. It is extremely unlikely that this mistake will ever be repeated. There was no loss or threat of loss to any person.

XII

It was not established that the overall conduct of respondents TDI and BERNAL constituted negligence or incompetence.

XIII

It was not established that the overall conduct of respondent BERNAL constituted willful disregard or violation of the Real Estate Law or failure to exercise reasonable supervision and control of the activities of TDI.

XIV

TDI is an extremely large and busy mortgage loan broker, with 40 employees handling about 150 transactions per month involving millions of dollars. Following their prior audit, respondents undertook extraordinary efforts to guarantee their compliance with the laws and regulations. They switched to another bank which could better accommodate their needs, they hired the best accounting department senior managers they could find, and they spared no expense in converting to the finest accounting software available for their needs, a system on which separate record accountability is very clear. They are committed to producing flawless records at any future audit.

* * * * *

Pursuant to the foregoing findings of fact, the following is the legal basis for the decision:

I

It was not established that respondents violated Business and Professions Code section 10145(a) or Title 10, California Code of Regulations, sections 2832.1 or 2831.2, by reason of Finding X. Respondents did not "cause or permit" improper disbursement of trust funds; they corrected an employee's error as expeditiously as possible. Furthermore, until that error was detected and corrected it was impossible to do an accurate reconciliation of the account.

II

Respondent TDI violated Business and Professions Code section 10145(b), by reason of Finding XI. However, the violation was committed in good faith.

III

It was not established that respondents violated Business and Professions Code section 10177(g), by reason of Finding XII.

IV

It was not established that respondent BERNAL violated Business and Professions Code sections 10177(d) or 10177(h), by reason of Finding XIII.

V


It would not be in the public interest to impose license discipline in this matter.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Accusation is terminated without imposition of discipline.

Dated: 6-9-98



W.F. BYRNES
Administrative Law Judge
Office of Administrative Hearings

WFB:rfm

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ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012
(213) 897-3937

FILED
DEC 15 1997
DEPARTMENT OF REAL ESTATE

James A. Olson

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H- 27465LA
TIME DEPOSITS INTERNATIONAL, INC.,)	
a California corporate)	A C C U S A T I O N
broker, and STEPHEN E. BERNAL,)	
individually and as designated)	
officer of Time Deposits)	
International, Inc.,)	
)	
)	
Respondents.)	
_____)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TIME DEPOSITS INTERNATIONAL, INC., a California corporate broker, and STEPHEN E. BERNAL, individually and as designated officer of Time Deposits International, Inc., is informed and alleges as follows:

I

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

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II

TIME DEPOSITS INTERNATIONAL, INC., (TDI) and STEPHEN E. BERNAL (BERNAL), sometimes collectively referred to 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).

III

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

IV

At all times mentioned, TDI was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker. TDI was first licensed by the Department on November 14, 1983.

V

At all times mentioned, BERNAL was licensed by the Department as designated officer of TDI to qualify TDI and to act for TDI as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of TDI by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

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1 VI

2 Whenever reference is made in an allegation in the
3 Accusation to an act or omission of TDI such allegation shall be
4 deemed to mean that the officers, directors, managers, employees,
5 agents and real estate licensees employed by or associated with
6 TDI, including BERNAL, committed such act or omission while
7 engaged in the furtherance of the business or operation of TDI and
8 while acting within the course and scope of its corporate
9 authority, agency and employment.

10 VII

11 At all times mentioned, TDI and BERNAL were acting as
12 the agent or employee of the other and within the course and scope
13 of such agency or employment.

14 VIII

15 At all times mentioned, in the City of Van Nuys, Los
16 Angeles County, California, Respondent TDI and Respondent BERNAL
17 acted as real estate brokers within the meaning of Section
18 10131(d) of the Code, including the operation of a mortgage loan
19 brokerage with the public wherein lenders and borrowers were
20 solicited for loans secured directly or collaterally by liens on
21 real property, wherein such loans were arranged, negotiated,
22 processed, and consummated on behalf of others for compensation or
23 in expectation of compensation and for fees often collected in
24 advance; or, collected payments or performed services for
25 borrowers or lenders or note owners in connection with loans
26 secured directly or collaterally by liens on real property. In
27 addition, Respondents conducted broker controlled escrows under



1 the exemption set forth in Section 17006(a)(4) of the California
2 Financial Code.

3 IX

4 On June 2, 1997, the Department completed an audit
5 examination of the books and records pertaining to the activities
6 of TDI described in Paragraph VIII. The audit examination covered
7 a period of time beginning on January 1, 1997 and ending on March
8 31, 1997. That audit examination revealed violations of the Code
9 and the Regulations as set forth in the following paragraphs.

10 X

11 In connection with the aforesaid real estate activities
12 described in Paragraph VIII, TDI and BERNAL, accepted or received
13 funds in trust (trust funds) from or on behalf borrowers and
14 lenders and thereafter made disbursements of such funds.
15 Respondents maintained the following trust accounts at the First
16 Bank of Beverly Hills, California, into which they deposited
17 certain of these funds:

18 (T/A #1)
19 "Time Deposits International, Inc. as Tee DFS Escrow Trust Account
Account No. 0155000272"

20 (T/A #2)
21 "Time Deposits International, Inc. as Tee DFS Real Estate Trust
Account
22 Account No. 0155000308"

23 (T/A #3)
24 "Time Deposits International, Inc. as Tee DFS Certificate Trust
Account Pool #3
Account No. 0155000285"

25 (T/A #4)
26 "Time Deposits International, Inc. as Tee DFS Certificate Trust
Account Pool #4
27 Account No. 0155000298"



1
2
3 With respect to the trust funds referred to in Paragraph
4 X, TDI and BERNAL:

5 (a) Permitted, allowed or caused the disbursement of
6 trust funds from T/A #2 where the disbursement of said funds
7 reduced the aggregate funds in T/A #2, to an amount which, on
8 March 31 1997, was \$763.93, less than the existing aggregate trust
9 fund liability of every principal who was an owner of said funds,
10 without first obtaining the prior written consent of the owners of
11 said funds, as required by Section 10145(a) of the Code and
12 Section 2832.1 of the Regulations;

13 (b) Failed to perform a monthly reconciliation of the
14 balance of all separate beneficiary or transaction records
15 maintained pursuant to Regulation 2831.1 with the record of all
16 trust funds received and disbursed by T/A #2, as required by
17 Regulation 2831.2;

18 (c) Made an unauthorized disbursement of loan payoff
19 funds to TDI from borrowers Julius and Anestine Berry's loan
20 proceeds. The Berry loan was owned by Kitay. TDI purchased the
21 servicing contract on the Kitay-owned Berry loan from Swift
22 Financial Services. TDI had advanced fees for foreclosures
23 expenses on the Equileo and Margarate Bucio and Theresa Dilello
24 loan transactions. TDI reimbursed itself for the Bucio and
25 Dilello loan from proceeds from the Berry loan without
26 instructions from Kitay, the person entitled to such funds; and
27



1 (d) While acting as a principal, failed to place all
2 funds received from Alan Leupp for the purchase of thirteen real
3 property sales contracts or promissory notes secured directly or
4 collaterally by liens on real property into a neutral escrow
5 depository where the delivery of the contracts or promissory notes
6 did not occur simultaneously with the receipt of said funds, as
7 required by Section 10145(b) of the Code.

8 XII

9 The conduct of Respondents TDI and BERNAL, described in
10 Paragraph XI, violated the Code and the Regulations as set forth:

11	<u>Paragraph</u>	<u>Provisions Violated</u>
12	XI(a)	Section 10145(a) & 10159.2 of the Code, and
13		Section 2832.1 of the Regulations
14		
15	XI(b)	Section 10145 & 10159.2 of the Code, and
16		Section 2831.2 of the Regulations
17		
18	XI(c)	Section 10145(a)(1) & 10159.2 of the Code
19		
20	XI(d)	Section 10145(b) & 10159.2 of the Code

21 Each of the foregoing violations separately constitutes cause for
22 the suspension or revocation of the real estate licenses and
23 license rights of Respondents TDI and BERNAL under the provisions
24 of Section 10177(d) of the Code.

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XIII

The overall conduct of Respondents TDI and BERNAL, as constitutes negligence and/or incompetence. This conduct and violations are cause to suspend or revoke the real estate license and license rights of Respondents pursuant to Section 10177(g) of the Code.

XIV

The overall conduct of Respondent BERNAL, constitutes a failure on his part, as officer designated by a corporate broker licensee, responsible for the supervision and control over the activities conducted on behalf of TDI by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required. This conduct is cause for the suspension or revocation of the real estate license and license rights of BERNAL pursuant to the provisions of Sections 10159.2, 10177(d) and 10177(h) of the Code.

Prior Discipline

XV

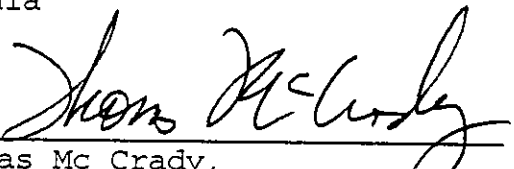
On April 30, 1996, in Case No. H-26593 LA, an Accusation was filed against Respondents TIME DEPOSITS INTERNATIONAL, INC., and STEPHEN E. BERNAL that resulted in discipline for said Respondents for violations of Sections 10145(a), 10231.2, 10232.2, 10232.25, 10240, 10177(d) and 10177(h) of the Business and Professions Code and Sections 2725, 2831, 2831.1 and 2831.2 of Title 10, Chapter 6, California Code of Regulations.



1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations of this Accusation and, that upon proof
3 thereof, a decision be rendered imposing disciplinary action
4 against the licenses and license rights of Respondents TIME
5 DEPOSITS INTERNATIONAL, INC., a California corporate broker, and
6 STEPHEN E. BERNAL, individually and as designated officer of Time
7 Deposits International, Inc., under the Real Estate Law (Part 1 of
8 Division 4 of the Business and Professions Code) and for such
9 other and further relief as may be proper under other applicable
10 provisions of law.

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Dated at Los Angeles, California
this 15th day of December, 1997.



Thomas Mc Crady,
Deputy Real Estate Commissioner

cc: Time Deposits International, Inc..
c/o Stephen R. Bernal, Designated Officer
Sacto
MGS