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FILED

JUN 11 1999

DEPARTMENT OF REAL ESTATE

By *Jean Lund*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
APOLLO BUSINESS SYSTEMS, INC.;) DRE No. H-27664 LA
RICHARD JOSEPH SLAVIN, SR.,) OAH No. L-1997120326
individually and as)
designated officer of Apollo)
Business Systems, Inc., and)
MARJORIE A. HODGES,)
)
Respondents.)

DECISION AFTER REJECTION

The matter of APOLLO BUSINESS SYSTEMS, INC., RICHARD JOSEPH SLAVIN, individually and as designated officer of Apollo Business Systems, Inc., and MARJORIE A. HODGES, came on for hearing before RICHARD LOPEZ, Administrative Law Judge, of the Office of Administrative hearings, in Los Angeles, California, on November 2, 1998.

Elliott Mac Lennan, Counsel, represented the complainant. Respondent Apollo did not appear despite all due and proper notices. Respondent Richard Joseph Slavin, Sr. was present and represented himself. Respondent Marjorie A. Hodges appeared

1 and was represented by Frank Buda, Esq.

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

4 On December 21, 1998, the Administrative Law Judge
5 submitted a Proposed Decision dated November 30, 1998 and a
6 corrected version on December 21, 1998, which I declined to adopt
7 as my Decision herein pursuant to Section 11517(c) of the
8 Government Code of the State of California. Respondents were
9 served with notice of my determination not to adopt the Proposed
10 Decision of the Administrative Law Judge, along with a copy of
11 said Proposed Decision. Respondents were notified that the case
12 would be decided by me upon the record, the transcript of
13 proceedings held on November 2, 1998, and upon any written
14 argument offered by Respondents after the transcript was received.
15 The transcript was received on March 3, 1999. Respondents were
16 notified of this fact and given time to submit further argument.

17 Argument has been submitted on behalf of Respondents
18 RICHARD JOSEPH SLAVIN and MARJORIE A. HODGES.

19 I have given careful consideration to the record in this
20 case, including the transcript of proceedings of November 2, 1998.

21 The following shall constitute the Decision of the Real
22 Estate Commissioner in the above entitled matter:

23 FINDING OF FACT AND DETERMINATION OF ISSUES

24 1. The Factual Findings and Legal Conclusions, as set
25 forth in the Proposed Decision of the Administrative Law Judge
26 dated November 30, 1998, are hereby adopted as to Respondent
27 APOLLO BUSINESS SYSTEMS, INC.



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2. The Factual Findings and Legal Conclusions, as set forth in the Proposed Decision of the Administrative Law Judge, are hereby adopted as to Respondent RICHARD JOSEPH SLAVIN.

3. The Factual Findings and Legal Conclusions, as set forth in the Proposed Decision of the Administrative Law Judge dated November 30, 1998, are hereby adopted as to MARJORIE A. HODGES.

ORDER

I

The Proposed Decision of the Administrative Law Judge dated November 30, 1998, as to all respondents is adopted.

This Decision shall become effective at 12 o'clock noon on July 6, 1999.

IT IS SO ORDERED June 11, 1999

JOHN R. LIBERATOR.
Deputy Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the matter of the Accusation)	Case No. H-27664 LA
Against:)	
)	OAH No. L-1998060477
APOLLO BUSINESS SYSTEM, INC.;)	
RICHARD JOSEPH SLAVIN, SR.,)	
Individually and as)	
Designated officer of Apollo)	
Business System, Inc., and)	
MARJORIE A. HODGES,)	
)	
Respondents.)	
<hr/>		

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on November 2, 1998.

Elliott Mac Lennan, Staff Counsel, represented the complainant.

Respondent Slavin appeared in person and represented himself.

Respondent Hodges appeared and was represented by Frank Buda, Attorney at Law.

Respondent Apollo did not appear despite all due and proper notice and process.

Oral and documentary evidence and evidence by way of stipulation and official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, determines, and orders as follow:

PARTIES AND JURISDICTION

1

(A) The Complainant, Thomas McCrady, filed the accusation acting in his official capacity as a Deputy Real Estate Commissioner of the State of California.

(B) Apollo Business Systems, Inc. (ABSI), Richard Joseph Slavin Sr. (Slavin), and Marjorie A. Hodges, 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).

2

(A) 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.

(B) All prehearing jurisdictional requirements have been met. Jurisdiction for this proceeding exists.

3

At all times mentioned, ABSI was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker by and through Slavin as designated officer. ABSI was first licensed by the Department on October 31, 1991. The fictitious business names of Apollo Realty and Apollo Property Management were licensed under ABSI until September 1996, at which time said names and activities conducted thereunder were transferred to the individual real estate broker license of Slavin.

4

At all times mentioned, Slavin was licensed by the Department as designated officer of ABSI to qualify ABSI and to act for ABSI as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision, operation and control of the activities conducted on behalf of ABSI 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. Slavin was licensed as ABSI's designated officer on March 10, 1995.

5

At all times mentioned, Slavin was individually licensed or had license rights issued by the Department as a real estate broker. Slavin was originally licensed by the Department on February 24, 1995, as a real estate broker.

6

At all times mentioned, Hodges was licensed or had license rights issued by the Department as a real estate salesperson. Hodges was originally licensed by the Department on June 26, 1990, as a real estate salesperson. Effective August 1, 1994, Hodges, pursuant to the discipline imposed by Department Case No. H-1688 SA referenced in Finding 25, was licensed as a restricted real estate salesperson. At no time mentioned was Hodges legally employed by or legally affiliated with either ABSI or Slavin.

2

Whenever reference is made in an Finding to an act or omission of ABSI, such reference shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with ABSI, including Slavin, committed such act or omission while engaged in the furtherance of the business or operation of ABSI and while acting within the course and scope of its corporate authority, agency and employment.

At all times mentioned, ABSI and Slavin were acting as the agent or employee of the other and within the course and scope of such agency or employment.

COMBINED FINDINGS OF FACT/
CONCLUSIONS OF LAW

At all times mentioned, in the City of Perris, Riverside County, respondents ABSI and Slavin acted as real estate brokers, within the meaning of:

(A) Section 10131(a) of the Code in that they operated a commercial and residential real estate resale business with the public wherein, on behalf of others and for compensation or in expectation of compensation, respondents, sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property; and

(B) Section 10131(b) of the Code including the operation and conduct of a property management business with the public wherein, for or in expectation of compensation, for another or others, respondent leased or rented or offered to lease or rent, or placed for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

On May 20, 1997, the Department completed a field audit examination of the books and records pertaining to the activities of Slavin described in Finding/Conclusion 9 and which also included the licensed activities of ABSI up to an including September 26, 1996. The audit examination covered a period of time beginning on January 1, 1996 and ending on March 31, 1997. The audit examination, competent and credible, revealed violations of the Code and the Regulations as set forth in the following Findings/Conclusions.

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In connection with the aforesaid real estate activities described in Finding/Conclusion 9, ABSI and Slavin, accepted or received funds in trust (trust funds) from or on behalf of actual or prospective buyers and sellers and actual or prospective lessors and lessees and thereafter made disbursements of such funds. Respondents maintained the following trust accounts (T/A) into which they deposited certain of these funds:

Apollo Property Management Account Number: 3312239 Valley Bank Perris, CA. 92570	T/A #1
Apollo Property Management Account Number: 3311320 Valley Bank Perris, CA 92570	T/A #2
Keith C. Ratner DBA Apollo Realty Trust Account Account Number: 1888036381 Great Western Bank Moreno Valley, CA 92553	T/A #3
Apollo Realty Commercial Division Trust Account Number: 1888067956 Great Western Bank Moreno Valley, CA 92553	T/A #4

With respect to the trust funds referred to in Finding/Conclusion 9, ABSI and Slavin:

(A) Permitted, allowed or caused the disbursement of trust funds from T/A #1 and T/A #2 where the disbursement of said funds reduced the total of aggregate funds in T/A #1 and T/A #2, to an amount which, on March 31, 1997, was \$1,329.09 less than the existing aggregate trust fund liability of ABSI and Slavin to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Section 10145 of the Code and Section 2832.1 of the Regulations.

(B) Deposited trust funds of TA #2 into an interest-bearing account wherein a total of \$11.59 in interest was earned and accumulated for the period beginning on January 1, 1995 and ending on December 30, 1995. In maintaining this account, ABSI and Slavin failed to meet the conditions set forth in Section 10145(d) of the Code.

(C) Failed to maintain an accurate and complete columnar record of the daily balance of the receipt and disposition of all trust funds in T/A #1 and T/A #2 received, as required by Section 2831 of the Regulations. Deposits recorded on the control record for T/A #1 did not specify the amount of trust funds deposited for each property. Additionally, BSI and Slavin also failed to maintain a record of trust funds received but not placed in T/A #1 for funds deposited directly to a property owner's personal account.

(D) Failed to maintain a separate and accurate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited in and disbursed from T/A #1, T/A #2 and T/A #3, as required by Section 2831.1 of the Regulations. Moreover, some owner statements did not disclose the amount of security deposits or reserves held by the broker, and other owner statements did not disclose the transactions that occurred in the accounts.

(E) Failed to perform a monthly reconciliation of all trust funds received from T/A #1, T/A #2 and T/A #3, with the balance of all separate or beneficiary records, as required by Section 2831.2 of the Regulations.

(F) Failed to maintain T/A # 1, T/A #2 and T/A #4 in the name of the broker as trustee, as required by Section 2832 of the Regulations.

(G) Permitted an unlicensed person who was not bonded, Keith C. Ratner, to be an authorized signatory on T/A #3 and T/A #4 in violation of Section 2834 of the Regulations.

(H) Permitted respondent to be an authorized signatory on the T/A #1 and T/A #2 without written authorization, in violation of Section 2834 of the Regulations.

(I) Permitted Nadine Raymond to be an authorized signatory on the T/A #3 and T/A #4 without written authorization, in violation of Section 2834 of the Regulations.

(J) Commingled funds of ABSI and Slavin funds with trust funds by using trust funds in T/A #2 to pay Apollo Property Management's business expenses, in violation of Section 10176(e) of the Code and Section 2835 of the Regulations. T/A #2 was used for security deposits and reserves held of the respective property owners, but was also used as a general account for property management activities where consequently trust funds and broker-owned funds were consequently trust funds and broker-owned funds were commingled.

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The conduct of respondents ABSI and Slavin, described in Finding/Conclusion 12, violated the Code and the Regulations as set forth:

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FINDING/CONCLUSION

SECTIONS VIOLATED

- 12(A) Section 10145 & 10159.2 of the Code, and Section 2832.1 of the Regulations
- 12(B) Section 10145(d) & 10159.2 of the Code,
- 12(C) Section 10145 & 10159.2 of the Code, and Section 2831 of the Regulations
- 12(D) Section 10145 & 10159.2 of the Code, and Section 2831.1 of the Regulations
- 12(E) Section 10145 & 10159.2 of the Code, and Section 2831.2 of the Regulations
- 12(F) Section 10145 & 10159.2 of the Code, and Section 2832 of the Regulations
- 12(G) Section 10145 & 10159.2 of the Code, and Section 2834 of the Regulations
- 12(H) Section 10145 & 10159.2 of the Code, and Section 2834 of the Regulations
- 12(I) Section 10145 & 10159.2 of the Code, and Section 2834 of the Regulations
- 12(J) Section 10176(e) of the Code, and Section 2835 of the Regulations,

Each of said violations separately constitutes cause for the suspension or revocation of the real estate licenses and license rights of respondents ABSI and Slavin under Section 10177(d) of the Code.

The audit examination further revealed that respondent Slavin used the fictitious names of "Apollo Realty" and "Apollo Property Management" to conduct licensed activities on behalf of Slavin without holding a license bearing these fictitious business names. The conduct of respondent Slavin, in failing to obtain licenses of use of said names, is in violation of Regulation 2731 and is cause to suspend or revoke respondent's real estate license and license rights under Section 10177(d) of the Code.

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The audit examination also revealed that Slavin failed to initiate and maintain written Broker-Salesperson agreements with Slavin's salesperson, Hodges, in violation of Regulation 2726. This conduct and violation are cause to suspend or revoke Slavin's license and license rights under Sections 10177(d) and 10177(h) of the Code. This conduct and violation are also cause to suspend or revoke Slavin's license and license rights under Section 10177(d) of the Code.

The audit examination revealed that respondent Slavin, with full knowledge that Hodges, a salesperson licensed by the Department but not legally employed by Slavin, compensated her for performing acts for which a real estate license is required including negotiating loans secured by liens on real property and specifically including the E. 2nd Street properties and the 1021 Johns property. This conduct and violation are cause to suspend or revoke the license and license rights of respondent Slavin under Section 10137 of the Code.

The audit examination revealed that respondent Hodges, a salesperson licensed by the Department but not legally employed by Slavin, accepted compensation from Slavin for performing acts for which a real estate license is required including property management activities and specifically including the E. 2nd Street properties and the 1021 Johns property. This conduct and violation are cause to suspend or revoke the license and license rights of respondent Hodges under Section 10137 of the Code.

The conduct of respondent Hodges in negotiating real property management agreements with owners and leases and rental agreements with tenants, during a period between March 9, 1995 and March 31, 1997, when she was not affiliated with a real estate broker, as described in Finding/Conclusion 18, is in violation of Section 10130 of the Code and is cause to suspend or revoke her license and license rights under Section 10177(d).

The conduct of respondent Hodges in accepting trust funds in the form of advance fees for property management services and rental payments from tenants from leases and rental agreements negotiated by Hodges on behalf of the broker under whom she was licensed, Slavin, and in depositing only the net amount of the said trust funds after disbursing to herself property management fees constitutes a violation of Sections 10145(c) and 10176(g). For example at the following properties: 1682 Wilson, 1021 Johns, and at E. 2nd Street properties, Hodges took her property management fees out in cash or check without first depositing the total collected rents into T/A #1 her trust account, thereby only depositing the net amount of trust funds. This conduct and violation are cause to suspend or revoke the real estate license and license rights of respondent Hodges pursuant to Section 10177(d) of the Code.

The audit examination moreover revealed that in connection with the 1827 Teak Street property owned by Elizabeth Will, Hodges collected an advance fee within the meaning of Section 10026 of the Code in the form of a one-time set up fee in the amount of \$300.00 from the said owner. Said advance fee collected from the said owner and other similar advance fees for another owners were collected by each would-be owner when submitting a management agreement where the property was vacant at the time of entering into the management agreement, which constitutes an advance fee agreement within the meaning of Sections 10026 and 10085 of the Code and Section 2970 of the Regulations. The failure of Hodges to submit an advance fee agreement to the Commissioner of Real Estate ten days prior to its use is a violation of Section 10085 of the Code and Section 2970 of the Regulations and is cause to suspend or revoke the license and license rights of the respondent Hodges under Section 10177(d) of the Code.

The overall conduct of respondents ABSI, Slavin and Hodges set forth in the Findings/Conclusions does constitutes negligence and incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents ABSI, Slavin and Hodges under Section 10177(g) of the Code.

The conduct of Respondent Slavin, constitutes a failure on his part, as officer designated by a corporate broker licensee, to keep it in compliance with the Real Estate Law, is cause for discipline of the real estate license and license rights of Slavin under Section 10159.2 of the Code.

The overall conduct of respondent Slavin constitutes a failure to exercise reasonable supervision over the acts of his salesperson Hodges. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of respondent Slavin under Section 10177(h) of the Code.

FINDINGS IN AGGRAVATION

(A) On December 14, 1993, in Department Case No. H-1688 SA, an accusation was filed against respondent Hodges that resulted in discipline of said respondent for violations of Sections 490 and 10177(b) of the Code, effective August 1, 1994. Respondent's license was revoked, the revocation was stayed and respondent's license was placed on a restricted probationary status.

(B) The underlying cause for that said discipline was a petty theft committed by Hodges. The crime was a crime of dishonesty and of moral turpitude.

26

(A) Respondent Hodges is still a restricted licensee. Condition (C) of said restricted license states:

Respondent shall obey all laws of the United States and of the State of California and its subdivisions, and further obey and comply with all rules and regulations of the Real Estate Commissioner.

(B) By her conduct as set forth in the Findings/Conclusions respondent has violated said condition.

27

SUPPLEMENTAL FINDINGS

(A) Respondent Hodges has been, since 1990, licensed as a real estate salesperson. Her experience includes transactions involving resale, residential and property management.

(B) Respondent Hodges worked for ABSI until a transfer of ownership on or about March, 1996. Respondent acted with knowledge of the "business workings" of ABSI and acted as the de facto manager of property management for ABSI. The subject audit arose from a consumer complaint involving property management for ABSI.

(C) Said respondent's conduct caused risk of loss to the public.

28

(A) Respondent Slavin, 77 years of age, has held licensure as a real estate salesperson since 1987 and has held licensure as a real estate broker since 1995. Neither license has suffered prior discipline. Respondent, presently, is a sole broker operating from his home in Perris, California.

(B) Respondent Slavin, only recently licensed as a real estate broker became - at the behest of others - the designated officer of ABSI; he became so without sufficient knowledge of the "business workings" of ABSI and was so during the subject audit. The negligent conduct of respondent Slavin was in substantial part due to that said lack of knowledge.

(C) Respondent Slavin's conduct caused risk of loss to the public.

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DETERMINATION OF ISSUES

Cause exists for the Order which follows by reason of the violations of the Business and Professions Code and violations of the Regulations as set forth in the Combined Findings of Fact/Conclusions of Law.

DETERMINATION OF ISSUES

ORDER

1

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

1. 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 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. 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.

3. 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 two (2) year(s) have elapsed from the effective date of this Decision.

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

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All licenses and licensing rights and restricted license rights of respondent Marjorie A. Hodges under the Real Estate Law are revoked; provided, however, a new restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all 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:

1. 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.

2. 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 restrictive license.

3. 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 three years have elapsed from the effective date of this Decision.

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

(a) That the employing broker has read the Decision of the commissioner which granted the right to a restricted license; and

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

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


6. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 60 days from the date of issuance of said restricted license.

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

3

All licenses and licensing rights of respondent Apollo Business Systems, Inc. under the Real Estate Law are revoked.

Dated: 30 November 1998


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:lp

By K. Niederholt

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-27664 LA
APOLLO BUSINESS SYSTEM, INC.,)	
RICHARD JOSEPH SLAVIN, SR.,)	L-1998060477
individually and as)	
designated officer of Apollo)	
Business System, Inc., and)	
MARJORIE A. HODGES,)	
Respondents.)	

NOTICE

TO: APOLLO BUSINESS SYSTEMS, INC., RICHARD JOSEPH SLAVIN, SR., and MARJORIE A. HODGES, Respondents, and Frank M. Buda, Esq., Attorney for MARJORIE A. HODGES

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 30, 1998, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 30, 1998, is attached hereto 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

1 the record herein including the transcript of the proceedings
2 held on November 2, 1998, and any written argument hereafter
3 submitted on behalf of respondent and complainant.

4 Written argument for respondent to be considered by
5 me must be submitted within 15 days after receipt of the
6 transcript of the proceedings of November 2, 1998, at the Los
7 Angeles office of the Department of Real Estate unless an
8 extension of the time is granted for good cause shown.

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

14 DATED: January 15, 1999

16 JOHN R. LIBERATOR
17 Acting Real Estate Commissioner

18 John R. Liberator

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the matter of the Accusation)	Case No. H-27664 LA
Against:)	
)	OAH No. L-1998060477
APOLLO BUSINESS SYSTEM, INC.;)	
RICHARD JOSEPH SLAVIN, SR.,)	
Individually and as)	
Designated officer of Apollo)	
Business System, Inc., and)	
MARJORIE A. HODGES,)	
)	
Respondents.)	

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on November 2, 1998.

Elliott Mac Lennan, Staff Counsel, represented the complainant.

Respondent Slavin appeared in person and represented himself.

Respondent Hodges appeared and was represented by Frank Buda, Attorney at Law.

Respondent Apollo did not appear despite all due and proper notice and process.

Oral and documentary evidence and evidence by way of stipulation and official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, determines, and orders as follow:

PARTIES AND JURISDICTION

1

(A) The Complainant, Thomas McCrady, filed the accusation acting in his official capacity as a Deputy Real Estate Commissioner of the State of California.

(B) Apollo Business Systems, Inc. (ABSI), Richard Joseph Slavin Sr. (Slavin), and Marjorie A. Hodges, 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).

2

(A) 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.

(B) All prehearing jurisdictional requirements have been met. Jurisdiction for this proceeding exists.

3

At all times mentioned, ABSI was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker by and through Slavin as designated officer. ABSI was first licensed by the Department on October 31, 1991. The fictitious business names of Apollo Realty and Apollo Property Management were licensed under ABSI until September 1996, at which time said names and activities conducted thereunder were transferred to the individual real estate broker license of Slavin.

4

At all times mentioned, Slavin was licensed by the Department as designated officer of ABSI to qualify ABSI and to act for ABSI as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision, operation and control of the activities conducted on behalf of ABSI 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. Slavin was licensed as ABSI's designated officer on March 10, 1995.

5

At all times mentioned, Slavin was individually licensed or had license rights issued by the Department as a real estate broker. Slavin was originally licensed by the Department on February 24, 1995, as a real state broker.

6

At all times mentioned, Hodges was licensed or had license rights issued by the Department as a real estate salesperson. Hodges was originally licensed by the Department on June 26, 1990, as a real estate salesperson. Effective August 1, 1994, Hodges, pursuant to the discipline imposed by Department Case No. H-1688 SA referenced in Finding 25, was licensed as a restricted real estate salesperson. At no time mentioned was Hodges legally employed by or legally affiliated with either ABSI or Slavin.

2

Whenever reference is made in an Finding to an act or omission of ABSI, such reference shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with ABSI, including Slavin, committed such act or omission while engaged in the furtherance of the business or operation of ABSI and while acting within the course and scope of its corporate authority, agency and employment.

At all times mentioned, ABSI and Slavin were acting as the agent or employee of the other and within the course and scope of such agency or employment.

COMBINED FINDINGS OF FACT/
CONCLUSIONS OF LAW

At all times mentioned, in the City of Perris, Riverside County, respondents ABSI and Slavin acted as real estate brokers, within the meaning of:

(A) Section 10131(a) of the Code in that they operated a commercial and residential real estate resale business with the public wherein, on behalf of others and for compensation or in expectation of compensation, respondents, sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property; and

(B) Section 10131(b) of the Code including the operation and conduct of a property management business with the public wherein, for or in expectation of compensation, for another or others, respondent leased or rented or offered to lease or rent, or placed for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

On May 20, 1997, the Department completed a field audit examination of the books and records pertaining to the activities of Slavin described in Finding/Conclusion 9 and which also included the licensed activities of ABSI up to an including September 26, 1996. The audit examination covered a period of time beginning on January 1, 1996 and ending on March 31, 1997. The audit examination, competent and credible, revealed violations of the Code and the Regulations as set forth in the following Findings/Conclusions.

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In connection with the aforesaid real estate activities described in Finding/Conclusion 9, ABSI and Slavin, accepted or received funds in trust (trust funds) from or on behalf of actual or prospective buyers and sellers and actual or prospective lessors and lessees and thereafter made disbursements of such funds. Respondents maintained the following trust accounts (T/A) into which they deposited certain of these funds:

Apollo Property Management Account Number: 3312239 Valley Bank Perris, CA 92570	T/A #1
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Apollo Property Management Account Number: 3311320 Valley Bank Perris, CA 92570	T/A #2
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Keith C. Ratner DBA Apollo Realty Trust Account Account Number: 1888036381 Great Western Bank Moreno Valley, CA 92553	T/A #3
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Apollo Realty Commercial Division Trust Account Number: 1888067956 Great Western Bank Moreno Valley, CA 92553	T/A #4
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With respect to the trust funds referred to in Finding/Conclusion 9, ABSI and Slavin:

(A) Permitted, allowed or caused the disbursement of trust funds from T/A #1 and T/A #2 where the disbursement of said funds reduced the total of aggregate funds in T/A #1 and T/A #2, to an amount which, on March 31, 1997, was \$1,329.09 less than the existing aggregate trust fund liability of ABSI and Slavin to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Section 10145 of the Code and Section 2832.1 of the Regulations.

(B) Deposited trust funds of TA #2 into an interest-bearing account wherein a total of \$11.59 in interest was earned and accumulated for the period beginning on January 1, 1995 and ending on December 30, 1995. In maintaining this account, ABSI and Slavin failed to meet the conditions set forth in Section 10145(d) of the Code.

(C) Failed to maintain an accurate and complete columnar record of the daily balance of the receipt and disposition of all trust funds in T/A #1 and T/A #2 received, as required by Section 2831 of the Regulations. Deposits recorded on the control record for T/A #1 did not specify the amount of trust funds deposited for each property. Additionally, BSI and Slavin also failed to maintain a record of trust funds received but not placed in T/A #1 for funds deposited directly to a property owner's personal account.

(D) Failed to maintain a separate and accurate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited in and disbursed from T/A #1, T/A #2 and T/A #3, as required by Section 2831.1 of the Regulations. Moreover, some owner statements did not disclose the amount of security deposits or reserves held by the broker and other owner statements did not disclose the transactions that occurred in the accounts.

(E) Failed to perform a monthly reconciliation of all trust funds received from T/A #1, T/A #2 and T/A #3, with the balance of all separate or beneficiary records, as required by Section 2831.2 of the Regulations.

(F) Failed to maintain T/A # 1, T/A #2 and T/A #4 in the name of the broker as trustee, as required by Section 2832 of the Regulations.

(G) Permitted an unlicensed person who was not bonded, Keith C. Ratner, to be an authorized signatory on T/A #3 and T/A #4 in violation of Section 2834 of the Regulations.

(H) Permitted respondent to be an authorized signatory on the T/A #1 and T/A #2 without written authorization, in violation of Section 2834 of the Regulations.

(I) Permitted Nadine Raymond to be an authorized signatory on the T/A #3 and T/A #4 without written authorization, in violation of Section 2834 of the Regulations.

(J) Commingled funds of ABSI and Slavin funds with trust funds by using trust funds in T/A #2 to pay Apollo Property Management's business expenses, in violation of Section 10176(e) of the Code and Section 2835 of the Regulations. T/A #2 was used for security deposits and reserves held of the respective property owners, but was also used as a general account for property management activities where consequently trust funds and broker-owned funds were consequently trust funds and broker-owned funds were commingled.

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The conduct of respondents ABSI and Slavin, described in Finding/Conclusion 12, violated the Code and the Regulations as set forth:

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FINDING/CONCLUSION

SECTIONS VIOLATED

12(A)	Section 10145 & 10159.2 of the Code, and Section 2832.1 of the Regulations
12(B)	Section 10145(d) & 10159.2 of the Code
12(C)	Section 10145 & 10159.2 of the Code, and Section 2831 of the Regulations
12(D)	Section 10145 & 10159.2 of the Code, and Section 2831.1 of the Regulations
12(E)	Section 10145 & 10159.2 of the Code, and Section 2831.2 of the Regulations
12(F)	Section 10145 & 10159.2 of the Code, and Section 2832 of the Regulations
12(G)	Section 10145 & 10159.2 of the Code, and Section 2834 of the Regulations
12(H)	Section 10145 & 10159.2 of the Code, and Section 2834 of the Regulations
12(I)	Section 10145 & 10159.2 of the Code, and Section 2834 of the Regulations
12(J)	Section 10176(e) of the Code, and Section 2835 of the Regulations,

Each of said violations separately constitutes cause for the suspension or revocation of the real estate licenses and license rights of respondents ABSI and Slavin under Section 10177(d) of the Code.

The audit examination further revealed that respondent Slavin used the fictitious names of "Apollo Realty" and "Apollo Property Management" to conduct licensed activities on behalf of Slavin without holding a license bearing these fictitious business names. The conduct of respondent Slavin, in failing to obtain licenses of use of said names, is in violation of Regulation 2731 and is cause to suspend or revoke respondent's real estate license and license rights under Section 10177(d) of the Code.

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The audit examination also revealed that Slavin failed to initiate and maintain written Broker-Salesperson agreements with Slavin's salesperson, Hodges, in violation of Regulation 2726. This conduct and violation are cause to suspend or revoke Slavin's license and license rights under Sections 10177(d) and 10177(h) of the Code. This conduct and violation are also cause to suspend or revoke Slavin's license and license rights under Section 10177(d) of the Code.

17

The audit examination revealed that respondent Slavin, with full knowledge that Hodges, a salesperson licensed by the Department but not legally employed by Slavin, compensated her for performing acts for which a real estate license is required including negotiating loans secured by liens on real property and specifically including the E. 2nd Street properties and the 1021 Johns property. This conduct and violation are cause to suspend or revoke the license and license rights of respondent Slavin under Section 10137 of the Code.

18

The audit examination revealed that respondent Hodges, a salesperson licensed by the Department but not legally employed by Slavin, accepted compensation from Slavin for performing acts for which a real estate license is required including property management activities and specifically including the E. 2nd Street properties and the 1021 Johns property. This conduct and violation are cause to suspend or revoke the license and license rights of respondent Hodges under Section 10137 of the Code.

19

The conduct of respondent Hodges in negotiating real property management agreements with owners and leases and rental agreements with tenants, during a period between March 9, 1995 and March 31, 1997, when she was not affiliated with a real estate broker, as described in Finding/Conclusion 18, is in violation of Section 10130 of the Code and is cause to suspend or revoke her license and license rights under Section 10177(d).

20

The conduct of respondent Hodges in accepting trust funds in the form of advance fees for property management services and rental payments from tenants from leases and rental agreements negotiated by Hodges on behalf of the broker under whom she was licensed, Slavin, and in depositing only the net amount of the said trust funds after disbursing to herself property management fees constitutes a violation of Sections 10145(c) and 10176(g). For example at the following properties: 1682 Wilson, 1021 Johns, and at E. 2nd Street properties, Hodges took her property management fees out in cash or check without first depositing the total collected rents into T/A #1 her trust account, thereby only depositing the net amount of trust funds. This conduct and violation are cause to suspend or revoke the real estate license and license rights of respondent Hodges pursuant to Section 10177(d) of the Code.

The audit examination moreover revealed that in connection with the 1827 Teak Street property owned by Elizabeth Will, Hodges collected an advance fee within the meaning of Section 10026 of the Code in the form of a one-time set up fee in the amount of \$300.00 from the said owner. Said advance fee collected from the said owner and other similar advance fees for another owners were collected by each would-be owner when submitting a management agreement where the property was vacant at the time of entering into the management agreement, which constitutes an advance fee agreement within the meaning of Sections 10026 and 10085 of the Code and Section 2970 of the Regulations. The failure of Hodges to submit an advance fee agreement to the Commissioner of Real Estate ten days prior to its use is a violation of Section 10085 of the Code and Section 2970 of the Regulations and is cause to suspend or revoke the license and license rights of the respondent Hodges under Section 10177(d) of the Code.

The overall conduct of respondents ABSI, Slavin and Hodges set forth in the Findings/Conclusions does constitutes negligence and incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents ABSI, Slavin and Hodges under Section 10177(g) of the Code.

The conduct of Respondent Slavin, constitutes a failure on his part, as officer designated by a corporate broker licensee, to keep it in compliance with the Real Estate Law, is cause for discipline of the real estate license and license rights of Slavin under Section 10159.2 of the Code.

The overall conduct of respondent Slavin constitutes a failure to exercise reasonable supervision over the acts of his salesperson Hodges. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of respondent Slavin under Section 10177(h) of the Code.

FINDINGS IN AGGRAVATION

(A) On December 14, 1993, in Department Case No. H-1688 SA, an accusation was filed against respondent Hodges that resulted in discipline of said respondent for violations of Sections 490 and 10177(b) of the Code, effective August 1, 1994. Respondent's license was revoked, the revocation was stayed and respondent's license was placed on a restricted probationary status.

(B) The underlying cause for that said discipline was a petty theft committed by Hodges. The crime was a crime of dishonesty and of moral turpitude.

26

(A) Respondent Hodges is still a restricted licensee. Condition (C) of said restricted license states:

Respondent shall obey all laws of the United States and of the State of California and its subdivisions, and further obey and comply with all rules and regulations of the Real Estate Commissioner.

(B) By her conduct as set forth in the Findings/Conclusions respondent has violated said condition.

27

SUPPLEMENTAL FINDINGS

(A) Respondent Hodges has been, since 1990, licensed as a real estate salesperson. Her experience includes transactions involving resale, residential and property management.

(B) Respondent Hodges worked for ABSI until a transfer of ownership on or about March, 1996. Respondent acted with knowledge of the "business workings" of ABSI and acted as the de facto manager of property management for ABSI. The subject audit arose from a consumer complaint involving property management for ABSI.

(C) Said respondent's conduct caused risk of loss to the public.

28

(A) Respondent Slavin, 77 years of age, has held licensure as a real estate salesperson since 1987 and has held licensure as a real estate broker since 1995. Neither license has suffered prior discipline. Respondent, presently, is a sole broker operating from his home in Perris, California.

(B) Respondent Slavin, only recently licensed as a real estate broker became - at the behest of others - the designated officer of ABSI; he became so without sufficient knowledge of the "business workings" of ABSI and was so during the subject audit. The negligent conduct of respondent Slavin was in substantial part due to that said lack of knowledge.

(C) Respondent Slavin's conduct caused risk of loss to the public.

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DETERMINATION OF ISSUES

Cause exists for the Order which follows by reason of the violations of the Business and Professions Code and violations of the Regulations as set forth in the Combined Findings of Fact/Conclusions of Law.

DETERMINATION OF ISSUES

ORDER

1

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

1. 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 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. 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.

3. 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 two (2) year(s) have elapsed from the effective date of this Decision.

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

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All licenses and licensing rights and restricted license rights of respondent Marjorie A. Hodges under the Real Estate Law are revoked; provided, however, a new restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all 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:

Not adopted

1. 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.

2. 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 restrictive license.

3. 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 three years have elapsed from the effective date of this Decision.

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

(a) That the employing broker has read the Decision of the commissioner which granted the right to a restricted license; and

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

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

6. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 60 days from the date of issuance of said restricted license.

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

3

All licenses and licensing rights of respondent Apollo Business Systems, Inc. under the Real Estate Law are revoked.

Dated:

30 November 1998



RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:lp

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 21 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

APOLLO BUSINESS SYSTEMS, INC.,
et al.,

}

By *K. Niederhelt*

Case No. H-27664 LA

OAH No. L-1998060477

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, 107 South Broadway, Second Floor
Los Angeles, CA 90012

on November 2, 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. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: October 21, 1998

By *ei. y. i.* Counsel

cc: Apollo Business Systems Inc.
Richard J. Slavin, Sr.
Marjorie A. Hodges
Frank M. Buda, Esq.

RE 501 (Rev. 8/97) Sacto OAH
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 10 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

APOLLO BUSINESS SYSTEMS INC.,
RICHARD JOSEPH SLAVIN, SR., and
MARJORIE A. HODGES,

}

Case No. H-27664 LA

OAH No. L-1998060477

W. R. Mederholt

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, 107 South Broadway, Second Floor
Los Angeles, CA 90012

on August 18, 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. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: July 10, 1998

By *W. R. Mederholt* Counsel

cc: Apollo Business Systems Inc.
Richard Slavin, Sr.
Marjorie A. Hodges
Sacto OAH

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 12 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

APOLLO BUSINESS SYSTEMS, INC.,
et al.,

}

By *K. Medel*

Case No. H-27664 LA

OAH No. L-1998060477

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, 107 South Broadway, Second Floor
Los Angeles, CA 90012

on September 21, 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. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: August 12, 1998

By *W. U.*
Counsel

cc: Apollo Business Systems Inc.
Richard Joseph Slavin, Sr.
Marjorie A. Hodges
Frank M. Buda, Esq.
Sacto OAH

Handwritten signature/initials

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ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

Telephone (213) 897-3937

FILED
MAY 13 1998
DEPARTMENT OF REAL ESTATE

by R. H. ...

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
APOLLO BUSINESS SYSTEMS, INC.;)
RICHARD JOSEPH SLAVIN, SR.,)
individually and as)
designated officer of Apollo)
Business Systems, Inc., and)
MARJORIE A. HODGES,)

Respondents.)

No. H-27664 LA
A C C U S A T I O N

The Complainant, Thomas McCrady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against APOLLO BUSINESS SYSTEMS, INC., formerly doing business as Apollo Property Management and Apollo Realty; RICHARD JOSEPH SLAVIN, SR., doing business as Apollo Property Management and Apollo Realty, individually and as designated officer of Apollo Business Systems, Inc., and MARJORIE A. HODGES, is informed and alleges as follows:

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APOLLO BUSINESS SYSTEMS, INC. (ABSI), RICHARD JOSEPH SLAVIN, SR. (SLAVIN), and MARJORIE A. HODGES, 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).

2

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.

3

At all times mentioned, ABSI was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker by and through SLAVIN as designated officer. ABSI was first licensed by the Department on October 31, 1991. The fictitious business names of Apollo Realty and Apollo Property Management were licensed under ABSI until September 1996, at which time said names and activities conducted thereunder were transferred to the individual real estate broker license of SLAVIN.

4

At all times mentioned, SLAVIN was licensed by the Department as designated officer of ABSI to qualify ABSI and to act for ABSI 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 ABSI by its officers, managers and employees as necessary to secure full

1 compliance with the provisions of the Real Estate Law including
2 the supervision of the salespersons licensed to the corporation in
3 the performance of acts for which a real estate license is
4 required. SLAVIN was licensed as ABSI's designated officer on
5 March 10, 1995.

6 5

7 At all times mentioned, SLAVIN was individually licensed
8 or had license rights issued by the Department as a real estate
9 broker. SLAVIN was originally licensed by the Department on
10 February 24, 1995, as a real estate broker.

11 6

12 At all times mentioned, HODGES was licensed or had
13 license rights issued by the Department as a real estate
14 salesperson. HODGES was originally licensed by the Department on
15 June 26, 1990, as a real estate salesperson. Effective August 1,
16 1994, HODGES, pursuant to the discipline imposed by H-1688 SA set
17 forth below in "Prior Discipline" of Paragraph 25, was licensed as
18 a restricted real estate salesperson. At no time mentioned was
19 HODGES employed by or affiliated with either ABSI or SLAVIN.

20 7

21 Whenever reference is made in an allegation in the
22 accusation to an act or omission of ABSI such allegation shall be
23 deemed to mean that the officers, directors, managers, employees,
24 agents and real estate licensees employed by or associated with
25 ABSI, including SLAVIN, committed such act or omission while
26 engaged in the furtherance of the business or operation of ABSI
27



1 and while acting within the course and scope of its corporate
2 authority, agency and employment.

3 8

4 At all times mentioned, ABSI and SLAVIN were acting as
5 the agent or employee of the other and within the course and scope
6 of such agency or employment.

7 9

8 At all times mentioned, in the City of Perris, San
9 Bernardino County, Respondents ABSI and SLAVIN acted as real
10 estate brokers, within the meaning of:

11 A. Section 10131(a) of the Code in that they
12 operated a commercial and residential real estate resale business
13 with the public wherein, on behalf of others and for compensation
14 or in expectation of compensation, Respondents, sold or offered to
15 sell, bought or offered to buy, solicited prospective sellers or
16 purchasers of, solicited or obtained listings of, or negotiated
17 the purchase, sale or exchange of real property; and

18 B. Section 10131(b) of the Code including the operation
19 and conduct of a property management business with the public
20 wherein, for or in expectation of compensation, for another or
21 others, Respondent leased or rented or offered to lease or rent,
22 or placed for rent, or solicited listings of places for rent, or
23 solicited for prospective tenants, or collected rents from real
24 property, or improvements thereon.

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2 On May 20, 1997, the Department completed a field audit
3 examination of the books and records pertaining to the activities
4 of SLAVIN described in Paragraph 9 and which also included the
5 licensed activities of ABSI up to an including September 26, 1996.
6 The audit examination covered a period of time beginning on
7 January 1, 1996 and ending on March 31, 1997. The audit
8 examination revealed violations of the Code and the Regulations as
9 set forth in the following paragraphs.

11

11 In connection with the aforesaid real estate activities
12 described in Paragraph 9, ABSI and SLAVIN, accepted or received
13 funds in trust (trust funds) from or on behalf of actual or
14 prospective buyers and sellers and actual or prospective lessors
15 and lessees and thereafter made disbursements of such funds.
16 Respondents maintained the following trust accounts into which
17 they deposited certain of these funds:

18 Apollo Property Management T/A #1
19 Account Number: 3312239
20 Valley Bank
21 Perris, CA 92570

22 Apollo Property Management T/A #2
23 Account Number:3312320
24 Valley Bank
25 Perris, CA 92570

26 Keith C. Ratner DBA Apollo Realty Trust Account T/A #3
27 Account Number:1888036381
Great Western Bank
Moreno Valley, CA 92553

Apollo Realty Commercial Division Trust T/A #4
Account Number:1888067956
Great Western Bank
Moreno Valley, CA 92553



1
2 With respect to the trust funds referred to in Paragraph
3 9, ABSI and SLAVIN:

4 (a) Permitted, allowed or caused the disbursement of
5 trust funds from T/A # 1 and T/A #2 where the disbursement of said
6 funds reduced the total of aggregate funds in T/A #1 and T/A #2,
7 to an amount which, on March 31, 1997, was \$1,329.09 less than the
8 existing aggregate trust fund liability of ABSI and SLAVIN to
9 every principal who was an owner of said funds, without first
10 obtaining the prior written consent of the owners of said funds,
11 as required by Section 10145 of the Code and Section 2832.1 of the
12 Regulations;

13 (b) Deposited trust funds of TA #2 into an interest-
14 bearing account wherein a total of \$11.59 in interest was earned
15 and accumulated for the period beginning on January 1, 1995 and
16 ending on December 30, 1995. In maintaining this account, ABSI
17 and SLAVIN failed to meet the conditions set forth in Section
18 10145(d) of the Code;

19 (c) Failed to maintain an accurate and complete
20 columnar record for the daily balance of the receipt and
21 disposition of all trust funds in T/A #1 and T/A #2 received, as
22 required by Section 2831 of the Regulations. Deposits recorded on
23 the control record for T/A #1 did not specify the amount of trust
24 funds deposited for each property. Additionally, ABSI and SLAVIN
25 also failed to maintain a record of trust funds received but not
26 placed in T/A #1 for funds deposited directly to an property
27 owner's personal account;



1 (d) Failed to maintain a separate an accurate record
2 for each beneficiary or transaction, thereby failing to account
3 for all trust funds received, deposited in and disbursed from T/A
4 #1, T/A #2 and T/A #3, as required by Section 2831.1 of the
5 Regulations. Moreover, some owner statements did not disclose the
6 amount of security deposits or reserves held by the broker and
7 other owner statements did not disclose the transactions that
8 occurred in the accounts;

9 (e) Failed to perform a monthly reconciliation of all
10 trust funds received from T/A #1, T/A #2 and T/A #3, with the
11 balance of all separate or beneficiary records, as required by
12 Section 2831.2 of the Regulations;

13 (f) Failed to maintain T/A #1, T/A #2 and T/A #4 in the
14 name of the broker as trust, as required by Section 2832 of the
15 Regulations;

16 (g) Permitted an unlicensed person who was not bonded,
17 Keith C. Ratner, to be an authorized signatory on T/A #3 and T/A
18 #4, in violation of Section 2834 of the Regulations;

19 (h) Permitted Marjorie A. Hodges to be an authorized
20 signatory on the T/A #1 and T/A #2 without written authorization,
21 in violation of Section 2834 of the Regulations;

22 (i) Permitted Nadine Raymond, to be an authorized
23 signatory on the T/A #3 and T/A #4 without written authorization,
24 in violation of Section 2834 of the Regulations;

25 (j) Commingled ABSI's' and SLAVIN's funds with trust
26 funds, by using trust funds in T/A #2 to pay Apollo Property
27 Management's business expenses, in violation of Section 10176(e)



1 of the code and Section 2835 of the Regulations. T/A #2 was used
2 for security deposits and reserves held for the respective
3 property owners, but was also used as a general account for
4 property management activities where consequently trust funds and
5 broker-owned funds were commingled.

7 The conduct of Respondents ABSI and SLAVIN, described in
8 Paragraph XII, violated the Code and the Regulations as set forth:

9	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10	XII(a)	Section 10145 & 10159.2 of the Code, and
11		Section 2832.1 of the Regulations
12	XII(b)	Section 10145(d) & 10159.2 of the Code
13		
14	XII(c)	Section 10145 & 10159.2 of the Code, and
15		Section 2831 of the Regulations
16	XII(d)	Section 10145 & 10159.2 of the Code, and
17		Section 2831.1 of the Regulations
18		
19	XII(e)	Section 10145 & 10159.2 of the Code, and
20		Section 2831.2 of the Regulations
21	XII(f)	Section 10145 & 10159.2 of the Code, and
22		Section 2832 of the Regulations
23		
24	XII(g)	Section 10145 & 10159.2 of the Code, and
25		Section 2834 of the Regulations
26	XII(h)	Section 10145 & 10159.2 of the Code, and
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Section 2834 of the Regulations

XII(i) Section 10145 & 10159.2 of the Code, and
Section 2834 of the Regulations

XII(j) Section 10176(e) of the Code, and
Section 2835 of the Regulations,

Each of the foregoing violations separately constitutes cause for the suspension or revocation of the real estate licenses and license rights of Respondents ABSI and SLAVIN under Section 10177(d) of the Code.

14

The audit examination further revealed that Respondent SLAVIN used the fictitious names of "Apollo Realty" and "Apollo Property Management" to conduct licensed activities on behalf of SLAVIN without holding a license bearing these fictitious business names. The conduct of Respondent SLAVIN, in failing to obtain licenses for use of the aforesaid names, is in violation of Regulation 2731 and is cause to suspend or revoke Respondent's real estate license and license rights under Section 10177(d) of the Code.

15

The audit examination also revealed that SLAVIN failed to initiate and maintain written Broker-Salesperson agreements with SLAVIN's salesperson, HODGES, in violation of Regulation 2726. This conduct and violation are also cause to suspend or

1 revoke SLAVIN's license and license rights under Sections 10177(d)
2 and 10177(h) of the Code.

3 16

4 The audit examination revealed that Respondent SLAVIN
5 employed and compensated HODGES to perform licensed acts in
6 property management without notifying the Department of her
7 employment, as required by Section 10161.8 of the Code. This
8 conduct and violation are also cause to suspend or revoke SLAVIN's
9 license and license rights under Section 10177(d) of the Code.

10 17

11 The audit examination revealed that Respondent SLAVIN,
12 with full knowledge that HODGES, a salesperson licensed by the
13 Department but not employed by SLAVIN, compensated her for
14 performing acts for which a real estate license is required
15 including negotiating loans secured by liens on real property and
16 specifically including the E. 2nd Street properties and the 1021
17 Johns property. This conduct and violation are cause to suspend
18 or revoke the license and license rights of Respondent SLAVIN
19 under Section 10137 of the Code.

20 18

21 The audit examination revealed that Respondent HODGES, a
22 salesperson licensed by the Department but not employed by SLAVIN,
23 accepted compensation from SLAVIN for performing acts for which a
24 real estate license is required including property management
25 activities and specifically including the E. 2nd Street properties
26 and the 1021 Johns property. This conduct and violation are cause
27

1 to suspend or revoke the license and license rights of Respondent
2 HODGES under Section 10137 of the Code.

3 19

4 The conduct of HODGES in negotiating real property
5 management agreements with owners and leases and rental agreements
6 with tenants, during a period between March 9, 1995 and March 31,
7 1997, when she was not affiliated with a real estate broker, as
8 described in Paragraph 18, is in violation of Section 10130 of the
9 Code and is cause to suspend or revoke her license and license
10 rights under Section 10177(d).

11 20

12 The conduct of HODGES in accepting trust funds in the
13 form of advance fees for property management services and rental
14 payments from tenants from leases and rental agreements negotiated
15 by HODGES on behalf of the broker under whom she was licensed,
16 SLAVIN, and in depositing only the net amount of the aforesaid
17 trust funds after disbursing to herself property management fees
18 constitutes a violation of Sections 10145(c) and 10176(g). For
19 example at the following properties: 1682 Wilson, 1021 Johns, and
20 at E. 2nd Street properties, HODGES took her property management
21 fees out in cash or check without first depositing the total
22 collected rents into T/A #1 her trust account, thereby only
23 depositing the net amount of trust funds. This conduct and
24 violation are cause to suspend or revoke the real estate license
25 and license rights of Respondent HODGES pursuant to Section
26 10177(d) of the Code.

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2 The audit examination moreover revealed that in
3 connection with the 1827 Teak Street property owned by Elizabeth
4 Will, HODGES collected an advance fee within the meaning of
5 Section 10026 of the Code in the form of a one-time set up fee in
6 the amount of \$300.00 from the aforesaid owner. Said advance fee
7 collected from the aforesaid owner and other similar advance fees
8 from other owners were collected by each would-be owner when
9 submitting a management agreement where the property was vacant at
10 the time of entering into the management agreement, which
11 constitutes an advance fee agreement within the meaning of
12 Sections 10026 and 10085 of the Code and Section 2970 of the
13 Regulations. The failure of HODGES to submit an advance fee
14 agreement to the Commissioner of Real Estate ten days prior to its
15 use is a violation of Section 10085 of the Code and Section 2970
16 of the Regulations and is cause to suspend or revoke the license
17 and license rights of the HODGES by Section 10177(d) of the Code.

18
19 The overall conduct of Respondents ABSI, SLAVIN and
20 HODGES constitutes negligence or incompetence. This conduct and
21 violation are cause for the suspension or revocation of the real
22 estate license and license rights of Respondents ABSI, SLAVIN and
23 HODGES under Section 10177(g) of the Code.

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The conduct of Respondent SLAVIN, constitutes a failure on his part, as officer designated by a corporate broker licensee, to keep it in compliance with the Real Estate Law, is cause for the suspension or revocation of the real estate license and license rights of SLAVIN under Section 10159.2 of the Code.

The overall conduct of Respondent SLAVIN constitutes a failure to exercise reasonable supervision over the acts of his salesperson HODGES. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondent SLAVIN under Section 10177(h) of the Code.

PRIOR DISCIPLINE

On December 14, 1993, in Case No. H-1688 SA, an Accusation was filed against Respondent HODGES that resulted in discipline for said Respondent for violations of Sections 490 and 10177(b) of the Code, effective August 1, 1994.

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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 the licenses and license rights of Respondents APOLLO BUSINESS SYSTEMS, INC., RICHARD JOSEPH SLAVIN, SR., individually and as designated officer of Apollo Business Systems, Inc., and MARJORIE A. HODGES, 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 13th day of May, 1998.

THOMAS MC CRADY
Deputy Real Estate Commissioner

cc Richard Joseph Slavin Sr.
Apollo Business Systems, Inc.
Marjorie A. Hodges
RW
Sacto.