

By K. Wiederholt

* * * * *

Respondent (s) .

This Decision shall become effective at 12 o'clock noon on March 16, 1999

IT IS SO ORDERED February 8, 1999

John R Liberator

1. Thomas McCrady, Complainant, is a Deputy Real Estate Commissioner of the State of California, and filed the accusation herein while acting solely in his official capacity.
2. Respondent is presently licensed as a broker and has license rights under the Real Estate Law; with the exception of a ten day lapse due to clerical errors, he has been continuously so licensed since 1978.
3. The parties have timely filed and served on one another all pleadings, notices and other papers in accordance with law.
4. During the period July 1997 through March 1998, respondent operated a property management business under authority of his license. In connection with that business, he obtained tenants for the property of client-owners, and collected rents from such tenants on their behalf. He maintained a trust account on behalf of his clients and made disbursements in the ordinary course of his business. Such disbursements included payment of routine expenses

(\$300.00 or less), his 9% commission on funds collected, and periodic payments of the remainder to the owner.

5. An audit conducted by Department on May 22, 1998, covering the period July 1, 1997 through March 31, 1998, revealed the following:

- a. As of March 31, 1998, respondent had without the consent of the owners, so managed the trust account as to cause a shortage of \$15,733.65 in such account;
- b. Respondent commingled trust funds with his personal monies and converted trusted to his personal use;
- c. Control records and separate records for each beneficiary were neither complete nor accurate;
- d. Respondent failed to revoke the authority of a sales person to sign checks when such sales person left respondent's employ;
- e. Respondent used an unlicensed fictitious business name on his business card.

6. Evidence presented by respondent revealed the following:

- a. Respondent has a good reputation in the community as a reputable real estate broker who conduct his affairs truthfully and honestly;
- b. Respondent, in the mid-90's, encountered financial reverses, caused by a combination of factors. He had over-extended his business, employing 33 agencies in two offices with a monthly overhead in excess of \$16,000.00. Because of this, when respondent, his wife and his daughter all became seriously ill,¹ and respondent temporarily totally disabled, there was no one on hand to manage his business, and it became chaotic. As a result, respondent's income stream dried up. Faced with the demands of his creditors, and the financial constraints added by active divorce litigation, respondent was forced to file bankruptcy.
- c. During the time these circumstances mounted up, respondent made a series of serious errors in judgement, by using his clients' monies to pay his personal debt. In effect, he embezzled trust funds.
- d. To his credit, respondent has fully cured the shortages and reimbursed the trust funds. No one appears to have been hurt by his misconduct.
- e. Respondent fully cooperated with the Department in its investigation of his financial affairs, and has been honest and forthcoming, both during the investigation and at the time of his hearing.

¹ Respondent had multiple kidney stones, ultimately requiring hospitalization and surgery; the passage of kidney stones is known to be one of the most painful ailments known to mankind.

f. Respondent has taken measures designed to prevent circumstances recurring which would pressure him to repeat his mistakes. He has reduced his practice to a single, small office, with two full-time and three part-time agents. His practice now consists of approximately 15 property management clients, a tax business, and a residential real estate practice, from which he netted \$60,000.00 last year. His monthly overhead is now \$3,500.00. During the past seven months, no discrepancies have been found in his books and records.

g. Finally, respondent appears to have a good record. Other than the instant proceeding, there have been no criminal or civil actions against him nor any other administrative disciplinary proceedings. Peripherally, his business was named as a party to an arbitration proceeding between one of his agents and an agent employed by another office arising from conflicting claims to shares in a commission. No claims have been made against any errors and omissions policies carried by him, nor have there been any actions against any of his bonds.

Conclusions of Law

By reason of the facts set forth in Find 4 above, it is determined that respondent has violated the following laws and regulations:

<u>B & PC §10145</u> <u>CCR § 2382.1²</u>	Trust fund shortage
<u>B & PC §10176(I)</u> <u>CCR § 2835</u>	Commingling funds
<u>CCR §2831, and</u> <u>§2831.1</u>	Inaccurate control and beneficiary records
<u>CCR §2834</u>	Inaccurate signatory records
<u>CCR §2731</u>	Use of unlicensed dba name

It is concluded from respondent's history of rapid business expansion and subsequent problems of heavy, catastrophic personal expenses, that he made a serious error in judgement by failing to create a management team whereby other trusted key employees could run the business in his absence. He tried to do the whole thing alone, and did not take into account his possible inability to carry on in the face of disabling illness. He put all his eggs in one basket, and when he fell, the result was chaotic.

Notwithstanding respondent's serious misconduct, it is determined that public interest will be adequately protected by issuance of a disciplinary order granting respondent a restricted broker's license under the provisions of Section 10156.5 of the Business and Professions Code.

² "B&PC" means "Business and Professions Code", while "CCR" refers to Title 10, Chapter 6, California Code of Regulations

It is determined that he learned the lesson described in the paragraph immediately preceding, and that it is unlikely that this mistake will ever be repeated by him.

ORDER

All licenses and licensing rights of Respondent Robert William Edwards 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 therefore and pays to the Department of Real Estate the appropriate fee for 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 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 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 3 years 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 successful 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.
- 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 passed the examination.

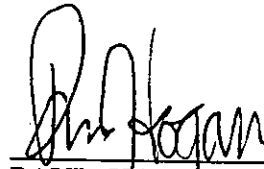
within 90 days, and

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

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

Dated: _____

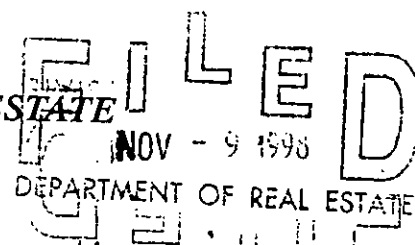
25 Jan 99



PAUL HOGAN
Administrative Law Judge
Office of Administrative Hearings

Sacto
gls

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA



In the Matter of the Accusation of

ROBERT WILLIAM EDWARDS,

Case No. H-27832 LA

OAH No. L-1998100353

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 December 31, 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: November 9, 1998

cc: Robert William Edwards
Sacto
OAH
CW

By Matthia Gnolet Counsel

File

MARTHA J. ROSETT, Counsel
State Bar # 142072
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
SEP. 16 1993
DEPARTMENT OF REAL ESTATE

By K. Kiedersfeld

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of	)	No. H- 27832 LA
	)	
ROBERT WILLIAM EDWARDS, dba "ERA Bob	)	<u>A C C U S A T I O N</u>
Edwards Realty," and	)	
"ERA Edwards Realty,"	)	
	)	
Respondent.	)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ROBERT WILLIAM EDWARDS, dba, "ERA Bob Edwards Realty," and "ERA Edwards Realty," 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.

II

Respondent ROBERT WILLIAM EDWARDS, dba "ERA Bob Edwards Realty," and "ERA Edwards Realty," (hereinafter "Respondent,") is presently licensed and/or has license rights under the Real Estate



1 Law, Part 1 of Division 4 of the California Business and
2 Professions Code (hereinafter "Code"), as a real estate broker.

3 III

4 All further references to "Respondent," unless otherwise
5 specified, include the party identified in Paragraph II above, and
6 also include the employees, agents and real estate licensees
7 employed by or associated with said party, who at all times
8 material herein were engaged in the furtherance of the business or
9 operations of said party and who were acting within the course and
10 scope of their authority, agency or employment.

11 IV

12 At all times material herein, Respondent engaged in the
13 business of, acted in the capacity of, advertised or assumed to
14 act as a real estate broker in the State of California, within the
15 meaning of Code Sections 10131(b) for another or others, for or in
16 expectation of compensation. Said activity included the operation
17 and conduct of a property management business with the public
18 wherein he leased or rented, or offered to lease or rent.
19 solicited prospective tenants, or collected rents from real
20 property on behalf of another or others.

21 V

22 During 1997 and 1998, in connection with the aforesaid
23 real estate brokerage activities, Respondent accepted or received
24 funds from renters and owners and thereafter made disbursements of
25 such funds. Respondent maintained a trust account at Home Savings
26 of America, in Oxnard, California, account number 486-331267-6 and
27 used for the receipt and disbursement of rents collected from

1 tenants on behalf of the owners.

2 VI

3 On or about May 22, 1998, the Department completed an
4 audit of Respondent's books and records, pertaining to the real
5 estate activities described in Paragraphs IV and V above, covering
6 a period from approximately July 1, 1997 through March 31, 1998,
7 which examination revealed violations of the Code and of Title 10,
8 Chapter 6, California Code of Regulations ("Regulations"), as set
9 forth below.

10 VII

11 In the course of activities described in Paragraphs IV
12 and V above, and during the examination period described in
13 Paragraph VI, Respondent acted in violation of the Code and the
14 Regulations in that:

15 (a) There was a shortage in the trust account
16 maintained by Respondent at Home Savings as the depository of
17 rents collected by him for owners, account number 486-331267-6. As
18 of March 31, 1998, there was a shortage in the amount of
19 \$15,733.65, and a shortage as of February 28, 1998 of \$15,358.52.
20 Respondent did not obtain the written consent of every principal
21 owner of funds in the account prior to each disbursement that
22 reduced the balance of funds to an amount less than the existing
23 aggregate trust fund liability, indicating improper handling of
24 the trust account, in violation of section 10145 of the Code and
25 of Regulation 2832.1;

26 (b) trust funds from the trust account were commingled
27 with Respondent's general and personal accounts and were converted



1 by Respondent to his own use, in violation of Regulation 2835 and
2 Section 10176(i) of the Code;

3 (c) the control records for the trust account were not
4 complete or accurate, in violation of Regulation 2831;

5 (d) the separate records for the trust account of each
6 beneficiary or transaction were not complete or accurate, in
7 violation of Regulation 2831.1;

8 (e) a salesperson no longer licensed under Respondent's
9 broker license, Charles Hall, was a signatory, authorized to make
10 withdrawals on the trust account, with no in violation of
11 Regulation 2834; and

12 (f) Respondent used the unlicensed fictitious business
13 name of "Edwards Realty Assoc.," on his business card, in
14 violation of Regulation 2731.

15 Each of the foregoing violations constitute cause for
16 the suspension or revocation of Respondent's real estate licenses
17 and license rights of under the provisions of Code Section
18 10177(d).

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

8 Dated at Los Angeles, California
9 this 16th day of September, 1998.

THOMAS MC CRADY

Deputy Real Estate Commissioner

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21 cc: ROBERT WILLIAM EDWARDS
22 Sacto.
23 CW
24 Audits
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