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FILED
JUN 26 2008
DEPARTMENT OF REAL ESTATE

K. McLeod

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-27998 LA
BILLY LEROY MILLER,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On February 23, 2000, a Decision was rendered herein revoking Respondent's real estate broker license, but granting Respondent the right to apply for and be issued a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on March 21, 2000.

On September 8, 2005, Respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

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1 I have considered Respondent's petition and the
2 evidence and arguments in support thereof. Respondent has
3 failed to demonstrate to my satisfaction that Respondent has
4 undergone sufficient rehabilitation to warrant the issuance
5 to Respondent of an unrestricted real estate broker license,
6 in that:
7

8 I

9 In the Decision which revoked Respondent's real
10 estate broker license, there were determination of issues
11 made that there was cause to revoke Respondent's license for
12 numerous violations of the Real Estate Law revealed during
13 an audit of Respondent's books and records. Said violations
14 included a trust account shortage in the amount of
15 approximately \$121,087.91 and conversion of trust funds.
16

17 II

18 The burden of proving rehabilitation rests with the
19 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).
20 A petitioner is required to show greater proof of honesty and
21 integrity than an applicant for first time licensure. The
22 proof must be sufficient to overcome the prior adverse judgment
23 on the applicant's character (Tardiff v. State Bar (1980) 27
24 Cal. 3d 395).
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1 The Department has developed criteria in Title 10,
2 Chapter 6, California Code of Regulations ("Regulation") Section
3 2911, to assist in evaluating the rehabilitation of an applicant
4 for reinstatement of a license. Among the criteria relevant in
5 this proceeding are:

6 Regulation 2911(a) - Additional time is needed to
7 assess Respondent's rehabilitation, given Respondent's history
8 of substantially related acts and conduct.

9 Regulation 2911(k) - Respondent has not shown
10 correction of business practices resulting in injury to others
11 or with the potential to cause such injury. Respondent has not
12 worked independently as a real estate broker since his license
13 was revoked.

14 Given the fact that Respondent has not established
15 that Respondent has met the criteria of Regulations 2911(a) and
16 2911(k), I am not satisfied that Respondent is sufficiently
17 rehabilitated to receive a plenary real estate broker license.

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

21
22 I am satisfied, however, that it will not be against
23 the public interest to issue a restricted real estate broker
24 license to Respondent.

25 ///

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1 A restricted real estate broker license shall
2 be issued to Respondent pursuant to Code Section 10156.5
3 if Respondent within twelve (12) months from the date hereof:

4 (a) takes and passes the written examination required
5 to obtain a real estate broker license.

6 (b) makes application therefor and pays the
7 appropriate fee for said license.

8 The restricted license issued to Respondent shall be
9 subject to all of the provisions of Code Section 10156.7 and to
10 the following limitations, conditions and restrictions imposed
11 under authority of Code Section 10156.6:

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

17 2. The restricted license issued to Respondent
18 may be suspended prior to hearing by Order of the Real Estate
19 Commissioner on evidence satisfactory to the Commissioner that
20 Respondent has violated provisions of the California Real
21 Estate Law, the Subdivided Lands Law, Regulations of the Real
22 Estate Commissioner or conditions attaching to the restricted
23 license.

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1 3. Respondent shall not be eligible to apply
2 for the issuance of an unrestricted real estate license
3 nor for the removal of any of the conditions, limitations
4 or restrictions of a restricted license until two (2) years
5 from the date of issuance of any restricted license.
6

7 This Order shall become effective at 12 o'clock noon
8 on JUL 16 2008.

9 DATED: 6-18-08.

10 Jeff DAVI
11 Real Estate Commissioner
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FILED

FEB 24 2000

DEPARTMENT OF REAL ESTATE

By *Quiriel Ziri*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
BILLY LEROY MILLER,
and ELLEN MARK KAUL,
Respondents.

)
) No. H-27998 LA
)
) L-1999020326
)
)
)

DECISION AFTER REJECTION

The matter came on for hearing before Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings in Los Angeles, California, on May 13, 1999.

Elliott MacLennan, Counsel, represented the Complainant. Respondent BILLY LEROY MILLER was personally present throughout the hearing and represented by Lawrence H. Lackman, Esq. Respondent ELLEN MARK KAUL was personally present throughout the hearing and represented herself.

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

On September 15, 1999, the Administrative Law Judge submitted two Proposed Decisions, one for each respondent, which I

1 declined to adopt as my Decisions herein pursuant to Section
2 11517(c) of the Government Code of the State of California.
3 Respondents were served with a Notice of my determination not to
4 adopt the Proposed Decisions of the Administrative Law Judge along
5 with a copy of said Proposed Decisions. Respondents were notified
6 that the case would be decided by me upon the record including the
7 transcript of proceedings held on May 13, 1999, and upon any
8 written argument offered by Respondents.

9 Written argument has been submitted on behalf of
10 Respondents MILLER and KAUL.

11 After further consideration of the matter, the following
12 shall constitute the Decision of the Real Estate Commissioner in
13 the above-entitled matter:

14 FINDINGS OF FACT

15 The Factual Findings as set forth in the Proposed
16 Decisions dated September 15, 1999, of the Administrative Law
17 Judge, are hereby adopted as the Findings of Fact of the Real
18 Estate Commissioner in the above-entitled matter.

19 DETERMINATION OF ISSUES

20 The conclusions of law of the Administrative Law Judge
21 as set forth in the Proposed Decisions dated September 15, 1999,
22 are hereby adopted as the Determination of Issues of the Real
23 Estate Commissioner in this matter. However, the Orders, as set
24 forth in said Proposed Decisions, are not adopted as my Order
25 herein.

26 Contrary to the determination of the Administrative Law
27 Judge, I believe that the Findings of Fact and Conclusions of Law

1 warrant a more severe penalty by each Respondent. I do not
2 believe that there are adequate facts or sufficient mitigating
3 circumstances to permit Respondent KAUL to retain her real estate
4 license. Also, the facts showing Respondent MILLER's abdication
5 of his responsibility to supervise the activities of Respondent
6 KAUL also warrant the revocation of his real estate broker
7 license. However, I find that there are sufficient mitigating
8 circumstances relating to Respondent MILLER's conduct to permit
9 Respondent MILLER to act as a restricted real estate salesperson
10 pursuant to the terms and conditions set forth below.

11 Based on the foregoing, the following Order is hereby
12 made:

13 ORDER

- 14 1. All licenses and license rights of Respondent ELLEN
15 MARK KAUL under the Real Estate Law are hereby revoked.
- 16 2. All licenses and license rights of Respondent BILLY
17 LEROY MILLER, under the Real Estate Law are revoked; provided
18 however, a restricted real estate salesperson license shall be
19 issued to Respondent MILLER pursuant to Section 10156.5 of the
20 Business and Professions Code if Respondent makes application
21 therefor and pays to the Department of Real Estate the appropriate
22 fee for the restricted license within 90 days from the effective
23 date of this Decision. The restricted license issued to
24 Respondent shall be subject to all of the provisions of Section
25 10156.7 of the Business and Professions Code and to the following
26 limitations, conditions and restrictions imposed under authority
27 of Section 10156.7 of that Code:

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

6 (b) The restricted license issued to Respondent may be
7 suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate
10 Law, the Subdivided Lands Law, Regulations of the Real Estate
11 Commissioner or conditions attaching to the restricted license.

12 (c) Respondent shall not be eligible to apply for the
13 issuance of an unrestricted real estate license nor for the
14 removal of any of the conditions, limitations or restrictions of a
15 restricted license until three (3) years have elapsed from the
16 effective date of this Decision.

17 (d) Respondent shall submit with any application for
18 license under an employing broker, or any application for transfer
19 to a new employing broker, a statement signed by the prospective
20 employing real estate broker on a form approved by the Department
21 of Real Estate which shall certify:

22 (1) That the employing broker has read the
23 Decision of the Commissioner which granted the right to a
24 restricted license; and

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

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

15 This Decision shall become effective at 12 o'clock noon
16 on March 21, 2000

17 IT IS SO ORDERED Feb 23, 2000

18 PAULA REDDISH-ZINNEMANN
19 Real Estate Commissioner

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FILED
OCT 4 1999
DEPARTMENT OF REAL ESTATE

By *Lawrence Miller*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-27998 LA
)	
BILLY LEROY MILLER,)	L-1999020326
)	
)	
)	
Respondent.)	

NOTICE

TO: BILLY LEROY MILLER, Respondent

and

LAWRENCE H. LACKMAN, his counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 15, 1999, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 15, 1999, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition



1 of this case will be determined by me after consideration of
2 the record herein including the transcript of the proceedings
3 held on May 13, 1999, and any written argument hereafter
4 submitted on behalf of respondent and complainant.

5 Written argument of respondent to be considered by
6 me must be submitted within 15 days after receipt of the
7 transcript of the proceedings of May 13, 1999, at the
8 Los Angeles Office of the Department of Real Estate unless an
9 extension of the time is granted for good cause shown.

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

15 DATED: September 28, 1999.

16 JOHN R. LIBERATOR
17 Acting Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
of:)	
)	
BILLY LEROY MILLER,)	
)	No. H-027998 LA
)	OAH No. L-1999020326
Respondent.)	
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PROPOSED DECISION

This matter was heard in a consolidated hearing on May 13, 1999, by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles. Complainant was represented by Elliott MacLennan, Counsel. Respondent Billy Leroy Miller was present and represented by Lawrence H. Lackman, Attorney at Law.

During the hearing, complainant moved to amend the Accusation to correct errors or to conform the pleading to the evidence. Respondents did not object. Accordingly, the Accusation was amended as follows: at page 2, line 12, the word "father" was substituted for the word "husband"; on page 4, line 24, and page 5, line 1, the word "Omni" was substituted for "his"; on page 4 and 5, paragraphs 7(f) and 7(g) were deleted and moved or made part of paragraph 13 at page 8; on page 6, lines 16 and 17, references to Business and Professions Code Sections 10176(e) and 10176(i) were deleted; on page 7, line 21, the name "Henry" was corrected to "Harry"; on page 8, lines 2 and 8, the name "Miller" was deleted and the name "Kaul" substituted in place thereof; and on page 8, line 9, reference was added to Business and Professions Code Section 10176(i).

Oral and documentary evidence having been presented and the matter submitted for decision, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on January 20, 1999, the Accusation was made and filed by Thomas McCrady in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. (A) On or about March 26, 1992, the Department issued real estate broker's license no. 00885354 to respondent Billy Leroy Miller (hereinafter Miller or respondent Miller). Said broker's license expires on March 25, 2000, and is in full force and effect. Miller's main office address is 4904 Lakewood Boulevard, Top Floor, Lakewood.

(B) At all times relevant herein, Miller has been doing business as a real estate broker under the fictitious business name of Omni Real Property Services with offices located at 1891 Freeman Avenue in Long Beach.

(C) At all times relevant herein, respondent Miller has also been employed as a real estate broker with one or more real estate firms in the Long Beach area.

3. (A) On July 31, 1992, pursuant to Business and Professions Code (hereinafter BPC) Section 10153.4, the Department issued conditional real estate salesperson's license no. 01142418 to Ellen Mark Kaul (hereinafter Kaul). Said license was issued to Kaul with Miller as the employing broker.

(B) On January 31, 1994, Kaul's real estate salesperson's license expired and was suspended indefinitely under the provisions of BPC Section 10153.4(c). On July 30, 1996, said real estate salesperson's license expired.

(C) On October 17, 1998, the Department reissued said conditional real estate salesperson's license to Kaul pursuant to BPC Section 10153.4. Said conditional real estate license was issued to Kaul with Miller as the employing broker and expires on April 17, 2000.

4. (A) At all times relevant herein, respondent Miller and Kaul were issued and/or held licenses and licensing rights under the

Real Estate Law. Jurisdiction continues to exist in this matter under BPC Section 10103.

(B) At all times relevant herein, respondent Miller, doing business as Omni Real Property Services (hereinafter also Omni), acted as a real estate broker within the meaning of BPC Section 10131(b) by operating a property management business for or in expectation of compensation. Respondent Miller, doing business as Omni, leased, rented, or offered to lease or rent residences; placed residences for rent; solicited listings of places for rent; solicited for prospective tenants for residences; and collected rents from real property or improvements thereon.

5. (A) In May 1992, respondent Miller hired Kaul to manage the day-to-day business of Omni. As compensation, Kaul was to receive 80 percent of the net profits of the business. Miller was to retain the remaining 20 percent. As such, respondent Miller was the licensed employing real estate broker for the business and Kaul became the licensed real estate salesperson under Miller's supervision. Kaul hoped she might be able to purchase the Omni business from Miller in the future if she obtained a real estate broker's license.

(B) In May 1992, respondent Miller ostensibly gave control and management of Omni to Kaul. He did not provide her with any guidance, training, or supervision. When Kaul undertook the management of Omni, said property management business had recently suffered losses from unprofitable rental properties, bad checks written by tenants, and a \$9,200 write-off for a loan Miller had given to friend with debt problems. Respondent Miller determined he would repay Omni the \$9,200 write-off by foregoing his 20 percent of the net profits each month.

(C) In addition, respondent Miller gave Kaul the single bank account of Omni which was used and continued to be used as both a trust fund account for rents received and an expense and disbursement account for the payment of Omni operating expenses.

(D) From in or about May 1992 and until November 1998, or for six and one-half years, Kaul operated Omni as its sole general manager and office administrator without the supervision and assistance of the employing real estate broker Miller. With Miller's consent, Kaul treated Omni as her own business. Kaul solicited tenants for client's properties, accepted rental checks from tenants,

paid the client owners and their liabilities on their properties, and managed and repaired clients' properties. Kaul also performed bookkeeping functions for Omni and paid the expenses of the business, including her salary. She hired her father Harry Kaul to operate the office computer, answer the telephone, input bookkeeping data, and post entries to undetermined books and records. Harry Kaul, in turn, made loans to Omni to help his daughter keep the business afloat.

(E) Kaul paid herself each month but did not at any time determine the net profit of the business, calculate the amount of any shortage in the Omni bank account, or maintain any control record or separate records for trust account purposes. Kaul was not aware that she was required to maintain such separate control records.

(F) For his part, respondent Miller did not have any managerial role customary of an owner of the business. He did not ask for any accounting or financial statements, did not report any profit or loss for income tax purposes, did not write any checks on the Omni bank account, and did not receive any compensation. Respondent Miller was working at his full-time job as a sales manager and training supervisor and broker for a Long Beach real estate firm.

6. (A) Beginning on October 28, 1998, and continuing until November 20, 1998, the Department conducted a routine audit of respondent Miller, doing business as Omni Real Property Services, to determine whether respondent Miller was complying with the Real Estate Law and regulations for the handling of trust funds and other real estate activities in connection with Omni's property management business.

(B) The audit period was from October 1, 1995, until September 30, 1998. The Department's auditor made field visits to Omni's office at 1891 Freeman Avenue in Long Beach, reviewed books and records provided by Kaul, and interviewed both respondents. On November 24, 1998, the Department's auditor produced an Audit Report Transmittal and Audit Report which have been admitted into evidence as Exhibit 4.

7. At all times relevant herein, respondent Miler, doing business as Omni Real Property Services, accepted or received funds belonging to others in connection with said real property management business. As the owner and employing broker, respondent Miller accepted or received funds from or on behalf of actual or prospective

lessors and lessees, owners and tenants, and subsequently made dispositions of such trust funds. Respondent Miller maintained a bank account at the Pacific Century Bank in Signal Hill which was used as the so-called trust account for the depository of said trust funds.

8. During the audit period, respondent Miller, doing business as Omni Real Property Services, committed trust fund and other violations of the Real Estate Law and rules and regulations in the use and management of said single Omni bank trust account as follows:

a. Respondent Miller allowed Kaul to disburse trust funds from the Omni trust account such that, on September 30, 1998, there was a shortage of \$121,087.91 in the trust account. Said shortage was due, in part, to conversion of rental receipts, overdrawn accounts, and bank charges. As such, respondent Miller as the employing broker failed to obtain the written consent of every principal who was an owner of the funds in the trust account prior to disbursements that reduced the balance of funds in the trust account to an amount less than the existing aggregate trust fund liability of the broker to said owners in violation of BPC Section 10145 and Title 22, California Code of Regulations (hereinafter 22 CCR), Section 2832.1. [Para. 7(a)]

b. Respondent Miller as the broker failed to keep a record of all trust funds received by Omni. Respondent Miller failed to maintain an adequate control record in the form of a columnar record in chronological order of all trust funds received in violation of BPC Section 10145 and 22 CCR Section 2831. [Para. 7(b)]

c. Respondent Miller as the broker for Omni failed to keep a separate record for each beneficiary or transaction in order to account for all trust funds received, deposited, and disbursed from the trust account in violation of BPC Section 10145 and 22 CCR Section 2831.1. Respondent Miller allowed Kaul to disburse funds from the trust account that were not posted to such separate records. [Para. 7(c)]

d. Respondent Miller failed to perform monthly reconciliations of the balance of separate beneficiary or transaction records with the control record of all trust funds received and disbursed in violation of BPC Section 10145 and 22 CCR Section 2831.2. [Para. 7(d)]

e. Respondent Miller accepted trust funds on behalf of the owners of the funds and failed to place the trust funds into a neutral escrow depository or into a trust fund account in his name as broker, or in his business fictitious name, as trustee at a bank or other financial institution in violation of BPC Section 10145 and 22 CCR 2832. Respondent Miller allowed Kaul to deposit trust funds into Omni's general bank account that was used as both a trust account and account for paying Omni operating expenses. [Para. 7(e)]

f. Respondent Miller permitted licensed salesperson Kaul and unlicensed Omni employee Harry Kaul to be signatories and to make withdrawals from the trust fund account without his prior written authorization in violation of BPC Section 10145 and 22 CCR Section 2834. In addition, respondent Miller failed to obtain fidelity bond coverage for Kaul when her license was suspended or expired and she became in effect an unlicensed employee. Both respondent Kaul and Harry Kaul had access to the trust fund account. [Para. 7(h)]

g. Respondent Miller permitted \$287.30 of interest earned from the interest-bearing trust account, which amount was due to obligors, to be paid or inured, directly or indirectly, to the benefit of Omni Real Property Services and himself as owner and broker for Omni in violation of BPC Section 10145 and 22 CCR Section 2830.1. [Para. 7(i)]

9. During the audit period, respondent Miller failed to have a written agreement, which included aspects of supervision of licensed activities and duties, with licensed real estate salesperson Kaul in violation of 22 CCR Section 2726. Respondent Miller's failure to have such written agreement demonstrates that he did not exercise reasonable supervision over the activities of his salesperson Kaul. [Para. 9]

10. During the audit period, respondent Miller changed the address of his principal place of business for real estate brokerage activities to 1891 Freeman Avenue in Long Beach but failed to notify the Department of the change in his principal place of business in violation of BPC Section 10162 and 22 CCR Section 2715. [Para. 10]

11. During the audit examination from October 28, 1998, until November 20, 1998, respondent Miller failed to make available for examination by Department's auditor the books, accounts, and records, including trust records, for any real property management transactions for which he needed a real estate broker's license in violation of BPC Section 10148. Specifically, respondent Miller failed to retain and produce invoices for disbursements from the trust fund; salesperson Kaul forwarded original invoices for trust fund disbursements to property owners without keeping copies. Kaul was not aware such documents were required to be retained for three years under BPC Section 10148. [Para. 11]

12. It was not established that respondent Miller failed to properly delegate to salesperson Kaul the responsibility and authority to supervise and control of the activities of nonlicensee Harry Kaul or failed to enter into a written agreement with respect to the delegation of responsibility under 22 CCR Section 2724. No evidence was presented on this allegation. [Para. 12]

13. During the audit period, Kaul committed trust fund and other violations of the Real Estate Law and pertinent regulations in the use and management of the single Omni trust fund account as follows:

a. Kaul commingled with her own money or that of Omni the money or other property of others which was received and held by her in violation of BPC Section 10176(e). Kaul commingled trust funds by depositing funds belonging to client-owners into a single bank account which was then used to pay the operating expenses of Omni, including her salary or commission, payroll, payroll taxes, mortgage payments, rents, or utilities.

b. Kaul converted trust funds by issuing checks from the single general business and trust account of Omni in order to pay her own salary and commission, other payroll expenses, payroll taxes, rents and mortgage payments, or utilities. Kaul made such disbursements to herself without reconciling the trust account, balancing Omni's operating expenses and fees or income, or determining any shortage in the trust account. As such, Kaul's conduct constituted dishonest dealing.

14. On or about January 27, 1998, Kaul commingled the money of others which was received and held by her and Omni with her own money in violation of BPC Section 10176(e). Kaul obtained

\$8,000 from her father Harry Kaul and deposited said sum into the Omni account which was used as a general operating account and trust account. Said sum of \$8,000 was a loan to Omni in order to facilitate Kaul and Omni to continue operating as a property management company. By depositing the loan to Omni into the single bank account, Kaul allowed the commingling of Omni funds with those being held for clients and property owners. [Para. 13]

15. During the audit period, Kaul acted in the capacity of a real estate salesperson under the employ of Omni and brokerage license of respondent Miller while her real estate salesperson's license was suspended in violation of BPC Section 10130. Kaul's license expired and was suspended from on or about January 31, 1994, until October 17, 1998, when it was reissued as a conditional license.

16. (A) Based on Findings 2 - 15 above, respondent Miller demonstrated negligence in performing acts for which he is required to hold a real estate broker's license.

(B) It was not established that respondent Miller demonstrated incompetence in performing acts for which he is required to hold a real estate license.

17. (A) Respondent Miller has been a real estate broker since 1985. He has no prior disciplinary history. He is currently employed as a sales manager for a real estate company where he trains new sales agents and supervises their activities.

(B) Respondent Miller admits he failed to supervise Kaul's activities while she managed Omni. He assumed Kaul was managing the business well and without any problems because she did not ask for any assistance and he received no complaints from clients. He also assumed Kaul was working to obtain her broker's license and would eventually purchase the business.

(C) There were no complaints or reported losses suffered by the clients or owners whose properties were managed by Omni. Respondent Miller has not claimed any income tax gains, losses, or deductions from the business of Omni since he hired Kaul to manage the company.

(D) Since the Department's audit, respondent Miller has re-assumed management and control of Omni. He has deposited approximately \$25,000 into Omni's trust account for which he is the

sole signatory. He hopes to obtain a \$63,000 loan and to repay the remainder of the shortage in the Omni trust account.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to revoke or suspend respondent Miller's real estate broker's license pursuant to Business and Professions Code Section 10177(d) in that respondent Miller willfully disregarded or violated provisions of the Real Estate Law or its rules or regulations as follows:

a. Business and Professions Code Section 10145 and Title 22, California Code of Regulations, Section 2832.1, as set forth in Finding 8a above;

b. Business and Professions Code Section 10145 and Title 22, California Code of Regulations, Section 2831, as set forth in Finding 8b above;

c. Business and Professions Code Section 10145 and Title 22, California Code of Regulations, Section 2831.1, as set forth in Finding 8c above;

d. Business and Professions Code Section 10145 and Title 22, California Code of Regulations, Section 2831.2, as set forth in Finding 8d above;

e. Business and Professions Code Section 10145 and Title 22, California Code of Regulations, Section 2832, as set forth in Finding 7e above;

f. Business and Professions Code Section 10145 and Title 22, California Code of Regulations, Section 2834, as set forth in Finding 8f above;

g. Business and Professions Code Section 10145 and Title 22, California Code of Regulations, Section 2830.1, as set forth in Finding 8g above;

h. Title 22, California Code of Regulations, Section 2726, as set forth in Finding 9 above;

i. Business and Professions Code Section 10162 and Title 22, California Code of Regulations, Section 2715, as set forth in Finding 10 above; and

j. Business and Professions Code Section 10148, as set forth in Finding 11 above.

2. Grounds exist to permanently revoke or temporarily suspend respondent Miller's real estate broker's license pursuant to Business and Professions Code Section 10165 in that respondent Miller violated Business and Professions Code Section 10162, as set forth in Finding 10 above.

3. Grounds exist to revoke or suspend respondent Miller's real estate broker's license pursuant to Business and Professions Code Section 10177(h) in that respondent Miller failed to exercise reasonable supervision over the activities of his salesperson Kaul, as set forth in Findings 8, 9, and 13 - 15 above.

4. Grounds exist to revoke or suspend respondent Miller's real estate broker's license pursuant to Business and Professions Code Section 10177(g) in that respondent Miller demonstrated negligence in performing real estate activities for which he is required to hold a real estate broker's license, as set forth in Finding 16(A) above.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

Not adopted

All licenses and licensing rights of respondent Billy L. Miller 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 the authority of Section 10156.6:

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 licensee.

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 (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 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.

5. 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.

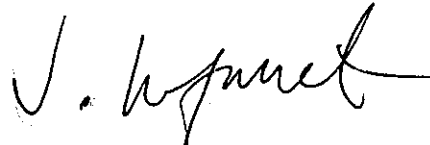
Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

6. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable costs for an audit to determine if respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work.

Respondent shall pay such costs within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

*not
adopted* { 7. After the passage of three (3) years, respondent's real
estate broker's license will be fully restored.

DATED: 9-15-99



VINCENT NAFARRETE
Administrative Law Judge
Office of Administrative Hearings

VN:lp

By Laura B. Davis

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-27998 LA
ELLEN MARK KAUL,) L-1999020326
Respondent.)

NOTICE

TO: ELLEN MARK KAUL

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 15, 1999, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 15, 1999, 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 the record herein including the transcript of the proceedings

1 held on May 13, 1999, and any written argument hereafter
2 submitted on behalf of respondent and complainant.

3 Written argument of respondent to be considered by
4 me must be submitted within 15 days after receipt of the
5 transcript of the proceedings of May 13, 1999, at the
6 Los Angeles Office of the Department of Real Estate unless an
7 extension of the time is granted for good cause shown.

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

13 DATED: September 28, 1999.

14 JOHN R. LIBERATOR
15 Acting Real Estate Commissioner

16
17 John R. Liberator
18

19
20 lbo



During the hearing, complainant moved to amend the Accusation to correct errors or to conform the pleading to the evidence. Respondents did not object. Accordingly, the Accusation was amended as follows: at page 2, line 12, the word "father" was substituted for the word "husband"; on page 4, line 24, and page 5, line 1, the word "Omni" was substituted for "his"; on page 4 and 5, paragraphs 7(f) and 7(g) were deleted and moved or made part of paragraph 13 at page 8; on page 6, lines 16 and 17, references to Business and Professions Code Sections 10176(e) and 10176(i) were deleted; on page 7, line 21, the name "Henry" was corrected to "Harry"; on page 8, lines 2 and 8, the name "Miller" was deleted and the name "Kaul" substituted in place thereof; and on page 8, line 9, reference was added to Business and Professions Code Section 10176(j).

Oral and documentary evidence having been presented and the matter submitted for decision, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on January 20, 1999, the Accusation was made and filed by Thomas McCrady in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. (A) On or about March 26, 1992, the Department issued real estate broker's license no. 00885354 to Billy Leroy Miller (hereinafter Miller). Said broker's license expires on March 25, 2000, and is in full force and effect. Miller's main office address is 4904 Lakewood Boulevard, Top Floor, Lakewood.

(B) At all times relevant herein, Miller has been doing business as a real estate broker under the fictitious business name of Omni Real Property Services with offices located at 1891 Freeman Avenue in Long Beach.

(C) At all times relevant herein, Miller has also been employed as a real estate broker with one or more real estate firms in the Long Beach area.

3. (A) On July 31, 1992, pursuant to Business and Professions Code (hereinafter BPC) Section 10153.4, the Department issued conditional real estate salesperson's license no. 01142418 to respondent Ellen Mark Kaul (hereinafter Kaul or respondent Kaul). Said license was issued to Kaul with Miller as the employing broker.

(B) On January 31, 1994, respondent Kaul's real estate salesperson's license expired and was suspended indefinitely under the provisions of BPC Section 10153.4(c). On July 30, 1996, said real estate salesperson's license expired.

(C) On October 17, 1998, the Department reissued said conditional real estate salesperson's license to Kaul pursuant to BPC Section 10153.4. Said conditional real estate license was issued to respondent Kaul with Miller as the employing broker and expires on April 17, 2000.

4. (A) At all times relevant herein, respondent Kaul and Miller were issued and/or held licenses and licensing rights under the Real Estate Law. Jurisdiction continues to exist in this matter under BPC Section 10103.

(B) At all times relevant herein, Miller, doing business as Omni Real Property Services (hereinafter also Omni), acted as a real estate broker within the meaning of BPC Section 10131(b) by operating a property management business for or in expectation of compensation. Miller, doing business as Omni, leased, rented, or offered to lease or rent residences; placed residences for rent; solicited listings of places for rent; solicited for prospective tenants for residences; and collected rents from real property or improvements thereon.

5. (A) In May 1992, Miller hired respondent Kaul to manage the day-to-day business of Omni. As compensation, Kaul was to receive 80 percent of the net profits of the business. Miller was to retain the remaining 20 percent. As such, Miller was the licensed employing real estate broker for the business and Kaul became the licensed real estate salesperson under Miller's supervision. Kaul hoped she might be able to purchase the Omni business from Miller in the future if she obtained a real estate broker's license.

(B) In May 1992, Miller ostensibly gave control and management of Omni to respondent Kaul without providing her any guidance, training, or supervision. When Kaul undertook the management of Omni, said property management business had recently suffered losses from unprofitable rental properties, bad checks written by tenants, and a \$9,200 write-off for a loan Miller had given to friend with debt problems. Miller determined he would repay Omni the \$9,200 write-off by foregoing his 20 percent of the net profits each month.

(C) In addition, Miller gave Kaul the single bank account of Omni which was used and continued to be used as both a trust fund account for rents received and an expense and disbursement account for the payment of Omni operating expenses.

(D) From in or about May 1992 and until November 1998, or for six and one-half years, respondent Kaul operated Omni Real Property Services as its sole general manager and office administrator without the supervision and assistance of the

employing real estate broker Miller. With Miller's consent, respondent Kaul treated Omni as her own business. Kaul solicited tenants for client's properties, accepted rental checks from tenants, paid the client owners and their liabilities on their properties, and managed and repaired clients' properties. Kaul also performed bookkeeping functions for Omni and paid the expenses of the business, including her salary. She hired her father Harry Kaul to operate the office computer, answer the telephone, input bookkeeping data, and post entries to undetermined books and records. Harry Kaul, in turn, made loans to Omni to help his daughter keep the business afloat.

(E) Respondent Kaul paid herself each month but did not at any time determine the net profit of the business, calculate the amount of any shortage in the Omni bank account, or maintain any control record or separate records for trust account purposes. Respondent Kaul was not aware that she was required to maintain such separate control records.

(F) For his part, Miller took no role in the Omni business; he did not have the customary managerial role expected of an owner of the business. He did not ask for any accounting or financial statements, did not report any profit or loss for income tax purposes, did not write any checks on the Omni bank account, and did not receive any compensation. Miller was busy working at his full-time job as a sales manager and training supervisor and broker for a Long Beach real estate firm.

6. (A) Beginning on October 28, 1998, and continuing until November 20, 1998, the Department conducted a routine audit of Miller, doing business as Omni Real Property Services, to determine whether Miller was complying with the Real Estate Law and regulations for the handling of trust funds and other real estate activities in connection with Omni's property management business.

(B) The audit period was from October 1, 1995, until September 30, 1998. The Department's auditor made field visits to Omni's office at 1891 Freeman Avenue in Long Beach, reviewed books and records provided by respondent Kaul, and interviewed both Kaul and Miller. On November 24, 1998, the Department's auditor produced an Audit Report Transmittal and Audit Report which have been admitted into evidence as Exhibit 4.

7. At all times relevant herein, Miller, doing business as Omni Real Property Services, accepted or received funds belonging to

others in connection with said real property management business. As the owner and employing broker, Miller accepted or received funds from or on behalf of actual or prospective lessors and lessees, owners and tenants, and subsequently made dispositions of such trust funds. Miller maintained a bank account at the Pacific Century Bank in Signal Hill which was used as the so-called trust account for the depository of said trust funds.

8. During the audit period, Miller, doing business as Omni Real Property Services, committed trust fund and other violations of the Real Estate Law and rules and regulations in the use and management of said single Omni bank trust account as follows:

a. Miller allowed Kaul to disburse trust funds from the Omni trust account such that, on September 30, 1998, there was a shortage of \$121,087.91 in the trust account. Said shortage was due, in part, to conversion of rental receipts, overdrawn accounts, and bank charges. As such, Miller as the employing broker failed to obtain the written consent of every principal who was an owner of the funds in the trust account prior to disbursements that reduced the balance of funds in the trust account to an amount less than the existing aggregate trust fund liability of the broker to said owners in violation of BPC Section 10145 and Title 22, California Code of Regulations (hereinafter 22 CCR), Section 2832.1. [Para. 7(a)]

b. Miller as the broker failed to keep a record of all trust funds received by Omni. Miller failed to maintain an adequate control record in the form of a columnar record in chronological order of all trust funds received in violation of BPC Section 10145 and 22 CCR Section 2831. [Para. 7(b)]

c. Miller as the broker for Omni failed to keep a separate record for each beneficiary or transaction in order to account for all trust funds received, deposited, and disbursed from the trust account in violation of BPC Section 10145 and 22 CCR Section 2831.1. Miller allowed Kaul to disburse funds from the trust account that were not posted to such separate records. [Para. 7(c)]

d. Miller failed to perform monthly reconciliations of the balance of separate beneficiary or transaction records with the control record of all trust funds received and disbursed in violation of BPC Section 10145 and 22 CCR Section 2831.2. [Para. 7(d)]

e. Miller accepted trust funds on behalf of the owners of the funds and failed to place the trust funds into a neutral escrow depository or into a trust fund account in his name as broker, or in his business fictitious name, as trustee at a bank or other financial institution in violation of BPC Section 10145 and 22 CCR 2832. Miller allowed Kaul to deposit trust funds into Omni's general bank account that was used as both a trust account and account for paying Omni operating expenses. [Para. 7(e)]

f. Miller permitted licensed salesperson Kaul and unlicensed Omni employee Harry Kaul to be signatories and to make withdrawals from the trust fund account without his prior written authorization in violation of BPC Section 10145 and 22 CCR Section 2834. In addition, Miller failed to obtain fidelity bond coverage for Kaul when her license was suspended or expired and she became in effect an unlicensed employee. Both respondent Kaul and Harry Kaul had access to the trust fund account. [Para. 7(h)]

g. Miller permitted \$287.30 of interest earned from the interest-bearing trust account, which amount was due to obligors, to be paid or inured, directly or indirectly, to the benefit of Omni Real Property Services and himself as owner and broker for Omni in violation of BPC Section 10145 and 22 CCR Section 2830.1. [Para. 7(i)]

9. During the audit period, Miller failed to have a written agreement, which included aspects of supervision of licensed activities and duties, with licensed real estate salesperson Kaul in violation of 22 CCR Section 2726. Miller's failure to have such written agreement demonstrates that he did not exercise reasonable supervision over the activities of his salesperson Kaul.
[Para. 9]

10. During the audit period, Miller changed the address of his principal place of business for real estate brokerage activities to 1891 Freeman Avenue in Long Beach but failed to notify the Department of the change in his principal place of business in violation of BPC Section 10162 and 22 CCR Section 2715. [Para. 10]

11. During the audit examination from October 28, 1998, until November 20, 1998, Miller failed to make available for examination by Department's auditor the books, accounts, and records, including trust records, for any real property management

transactions for which he needed a real estate broker's license in violation of BPC Section 10148. Specifically, Miller failed to retain and produce invoices for disbursements from the trust fund; salesperson Kaul forwarded original invoices for trust fund disbursements to property owners without keeping copies. Kaul was not aware such documents were required to be retained for three years under BPC Section 10148. [Para. 11]

12. It was not established that Miller failed to properly delegate to salesperson Kaul the responsibility and authority to supervise and control of the activities of nonlicensee Harry Kaul or failed to enter into a written agreement with respect to the delegation of responsibility under 22 CCR Section 2724. No evidence was presented on this allegation. [Para. 12]

13. During the audit period, respondent Kaul committed trust fund and other violations of the Real Estate Law and pertinent regulations in the use and management of the single Omni trust fund account as follows:

a. Respondent Kaul commingled with her own money or that of Omni the money or other property of others which was received and held by her in violation of BPC Section 10176(e). Respondent Kaul commingled trust funds by depositing funds belonging to client-owners into a single bank account which was then used to pay the operating expenses of Omni, including her salary or commission, payroll, payroll taxes, mortgage payments, rents, or utilities.

b. Respondent Kaul converted trust funds by issuing checks from the single general business and trust account of Omni in order to pay her own salary and commission, other payroll expenses, payroll taxes, rents and mortgage payments, or utilities. Respondent Kaul made such disbursements to herself without reconciling the trust account, balancing Omni's operating expenses and fees or income, or determining any shortage in the trust account. As such, respondent Kaul's conduct constituted dishonest dealing.

14. On or about January 27, 1998, respondent Kaul commingled the money of others which was received and held by her and Omni with her own money in violation of BPC Section 10176(e). Respondent Kaul obtained \$8,000 from her father Harry Kaul and deposited said sum into the Omni account which was used as a general operating account and trust account. Said sum of \$8,000 was

a loan to Omni in order to facilitate Kaul and Omni to continue operating as a property management company. By depositing the loan to Omni into the single bank account, respondent Kaul allowed the commingling of Omni funds with those being held for clients and property owners. [Para. 13].

15. During the audit period, respondent Kaul acted in the capacity of a real estate salesperson under the employ of Omni and brokerage license of Miller while her real estate salesperson's license was suspended in violation of BPC Section 10130. Respondent Kaul's license expired and was suspended from on or about January 31, 1994, until October 17, 1998, when it was reissued as a conditional license.

16. (A) Based on Findings 2 - 15 above, respondent Kaul with respect to managing Omni Real Property Services demonstrated negligence in performing acts for which she is required to hold a real estate salesperson's license.

(B) It was not established that Miller or Kaul demonstrated incompetence in performing acts for which they are required to hold real estate licenses.

17. (A) Respondent Kaul demonstrates remorse for her violations. She was not aware of the requirement for a separate trust account for Omni or for control records and recordkeeping. She indicates Omni now has two separate bank accounts, a trust account for which Miller is the signatory and a general operating account. In addition, Omni now has control records and she is keeping copies of all documents and invoices.

(B) Respondent Kaul further admits she overpaid herself but intends to repay Omni for any overpayments through monthly deductions from her paychecks. She knew there was a shortage in the Omni trust account although not the amount of the shortage. She did not keep accurate track of business expenses, including advances or payments on behalf of owner-clients. She figured the shortage would be repaid with the growth of the property management business of Omni.

18. Respondent Kaul was not an experienced real estate salesperson when hired by Miller to operate and manage Omni's property management business. Before being licensed by the Department, she had worked as a manager in the aerospace industry.

After being hired by Miller, she did not receive any guidance or supervision from him. Miller allowed respondent Kaul to treat Omni as her own venture and she was ill-equipped to handle the real estate business in accordance with the Real Estate Law. Kaul still hopes to manage Omni for Miller in the future and buy the business from him.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to revoke or suspend respondent Kaul's real estate salesperson's license pursuant to Business and Professions Code Section 10176(e) in that respondent Kaul commingled the money of others which was received and held by her with her own money, as set forth in Findings 13a and 14 above.

2. Grounds exist to revoke or suspend respondent Kaul's real estate salesperson's license pursuant to Business and Professions Code Section 10176(i) in that respondent Kaul was guilty of dishonest dealing, as set forth in Finding 13b above.

3. Grounds exist to revoke or suspend respondent Kaul's real estate salesperson's license pursuant to Business and Professions Code Section 10177(d) in that respondent Kaul willfully disregarded or violated provisions of the Real Estate Law or its rules or regulations, to wit: Business and Professions Code Section 10130, as set forth in Finding 15 above.

4. Grounds exist to revoke or suspend respondent Kaul's real estate salesperson's license pursuant to Business and Professions Code Section 10177(g) in that respondent Kaul demonstrated negligence in her management of Omni Real Property Services, as set forth in Finding 16(A) above.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

Not adopted

All licenses and licensing rights of respondent Ellen Mark Kaul under the Real Estate Law are revoked; provided, however, a 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 of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under the 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 Commission 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 three (3) 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 license relating to activities for which a real estate license is required.

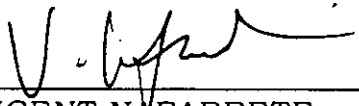
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education 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. 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.

7. Respondent's original real estate salesperson license was issued subject to the provisions of Section 10153.4 of the Business and Professions Code, and the restricted real estate salesperson license issued to respondent shall be similarly limited, to wit: Respondent shall, within eighteen (18) months of the issuance of respondent's original real estate salesperson license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be

not adopted { automatically suspended effective eighteen (18) months after issuance of respondent's original real estate salesperson license. Said suspension shall not be lifted until respondent has submitted the required evidence of course completion and the commissioner has given written notice to the respondent of lifting of the suspension.

DATED: 9-15-99



VINCENT NAFARRETE
Administrative Law Judge
Office of Administrative Hearings

VN:lp

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILE
MAR - 4 1999
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. H-27998 LA
) OAH No. L- 1999020326
BILLY LEROY MILLER,)
and ELLEN MARK KAUL,)
)
Respondents.)

By Laura B. Cron

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on MAY 13, 1999, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of 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.

Dated: MAR - 4 1999

DEPARTMENT OF REAL ESTATE

By: E. J. L.
ELLIOTT MACLENNAN, Counsel

cc: Billy Leroy Miller
Ellen Mark Kaul
Sacto., OAH, Audit Section

RE 501 (Rev. 8/97)

1 ELLIOTT MAC LENNAN, Counsel
2 State Bar No. 66674
3 Department of Real Estate
4 107 South Broadway, Room 8107
5 Los Angeles, California 90012
6
7
8 Telephone (213) 897-3937
9

FILED
JAN 20 1999
DEPARTMENT OF REAL ESTATE

By Laura B. Cline

THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

11 In the Matter of the Accusation of)

12 BILLY LEROY MILLER)
13 and ELLEN MARK KAUL,)
14)
15)
16)
17)

No. H-27998 LA

A C C U S A T I O N

Respondents.

18 The Complainant, Thomas McCrady, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against BILLY LEROY MILLER and ELLEN MARK KAUL operating under the
21 fictitious business name of Omni Real Property Services (Omni) is
22 informed and alleges in his official capacity as follows:

1

24 BILLY LEROY MILLER (MILLER) and ELLEN MARK KAUL (KAUL)
25 are presently licensed and/or have license rights under the Real
26 Estate Law (Part 1 of Division 4 of the California Business and
27 Professions Code).

At all times mentioned, MILLER and ELLEN MARK KAUL were licensed or had license rights issued by the Department of Real Estate (Department). MILLER was initially licensed by the Department on March 26, 1992, as a real estate broker. KAUL was initially licensed by the Department on July 31, 1992, as a real estate salesperson. She was employed by MILLER as a real estate salesperson until January 31, 1994, when her conditional license was suspended. From January 31, 1994 to October 17, 1998, she was not licensed by the Department. In or about May 1992, MILLER delegated his personal participation in Omni's property management business to KAUL and her husband Harry Kaul but remained as Omni's broker of record. KAUL's was re-issued a conditional real estate salesperson license on October 17, 1998.

3

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.

4

At all times mentioned, in the City of Lakewood, Los Angeles County, MILLER acted as a real estate broker within the meaning of Section 10131(b) of the Code including the operation and conduct of a property management business with the public, Omni Real Property Services, wherein, for or in expectation of compensation he leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real



1 property, or improvements thereon.

2 5

3 On November 24, 1998, the Department completed an audit
4 examination of the books and records of MILLER dba Omni Real
5 Property Services pertaining to the activities described in
6 Paragraph 4. The audit examination covered the period of time
7 beginning on November 1, 1995 and ending on September 30, 1998.
8 The audit examination revealed the following violations of the
9 Code and the Regulations.

10 6

11 At all times mentioned, in connection with the property
12 management activities described in Paragraph 4, MILLER accepted or
13 received funds in trust (trust funds) from or on behalf of actual
14 or prospective lessors and lessees, owners and tenants, and
15 thereafter made disposition of such funds. MILLER maintained the
16 following trust account as the depository of said funds at Pacific
17 Century Bank of California, Signal Hill, California:

18 "Omni Real Property Services
19 Account Number 0505013631"

20 7

21 With respect to the trust funds referred to in Paragraph
22 4, it is alleged that MILLER:

23 (a) Permitted, allowed or caused the disbursement of
24 trust funds from the trust account where the disbursement of said
25 funds reduced the total of aggregate funds in the trust account,
26 to an amount which, on September 30, 1998, was \$121,087.91 less
27 than the existing aggregate trust fund liability of MILLER to



1 every principal who was an owner of said funds, without first
2 obtaining the prior written consent of the owners of the funds, as
3 required by Section 10145 of the Code and Section 2832.1 of the
4 Regulations;

5 (b) Failed to maintain an adequate control record in
6 the form of a columnar record in chronological order of all trust
7 funds received, as required by Sections 2831 of the Regulations;

8 (c) Failed to maintain a separate record for each
9 beneficiary or transaction, thereby failing to account for all
10 trust funds received, deposited into, and disbursed from the trust
11 account, as required by Section 2831.1 of the Regulations.
12 Specifically, the separate records were not complete in that
13 disbursements were made from the trust account that were not
14 posted to the separate records;

15 (d) Failed to perform a monthly reconciliation of the
16 balance of all separate beneficiary or transaction records
17 maintained pursuant to Section 2831.1 of the Regulations with the
18 record of all trust funds received and disbursed by the trust
19 account, as required by Section 2831.2 of the Regulations;

20 (e) Failed to maintain the trust account in the name of
21 the broker, as required by Section 2832 of the Regulations;

22 (f) Commingled trust funds by issuing checks from the
23 trust account and depositing those trust fund checks into his
24 general account and into his personal account in order to pay his
25 office and personal expenses including payroll and payroll taxes,
26 mortgage payments, rents, credit card payments and utilities;

27 (g) Converted trust funds by issuing checks from the



1 trust account and depositing those trust fund checks into his
2 general account and into his personal account in order to pay his
3 office and personal expenses including payroll and payroll taxes,
4 mortgage payments, rents, credit card payments and utilities; and,

5 (h) Permitted an unlicensed person who was not bonded,
6 Harry Kaul, to be a signatory on the trust account though not
7 specifically authorized. Permitted an unlicensed, unbonded
8 person ELLEN MARK KAUL, to be a signatory on the trust account in
9 violation of Section 2834 of the Regulations.

10 (i) Paid interest to himself that was due to an obligor
11 in the amount of \$287.30 from the interest-bearing trust account,
12 in violation of Section 2830.1 of the Regulations.

13 8

14 The conduct of MILLER, described in Paragraph 7,
15 violated the Code and the Regulations as set forth below:

16 PARAGRAPH

PROVISIONS VIOLATED

17 7(a)

18 Section 10145 of the Code and
19 Section 2832.1 of the Regulations

20 7(b)

21 Section 10145 of the Code and
22 Section 2831 of the Regulations

23 7(c)

24 Section 10145 of the Code and
25 Section 2831.1 of the Regulations

26 7(d)

27 Section 10145 of the Code and



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7(e)

Section 2831.2 of the Regulations
Section 10145 of the Code and

Section 2832 of the Regulations

7(f)

Section 10176(e) of the Code

7(g)

Section 10176(i) of the Code

7(h)

Section 10145 of the Code and

Section 2834 of the Regulations

7(i)

Section 10145 of the Code and

Section 2830.1 of the Regulations

Each of the foregoing violations separately constitutes cause for the suspension or revocation of the real estate license and license rights of MILLER under Section 10177(d), 10176(e) or 10176(i) of the Code as indicated.

9

The audit examination also revealed that MILLER failed to initiate and maintain a written Broker-Salesperson agreement with MILLER's sole salesperson ELLEN MARK KAUL, in violation of Regulation 2726. This conduct and violation are also cause to suspend or revoke MILLER's licenses and license rights under Sections 10177(d) and 10177(h) of the Code.

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MILLER failed to notify the Department of his whereabouts, as described in Paragraph 4. This conduct constitutes a violation of Section 10162 of the Code and Regulation 2715 and is cause to suspend or revoke MILLER's real estate license and license rights under Sections 10165 and 10177(d) of the Code.

During the audit field work, October 28, 1998 and November 20, 1998, the Department attempted to complete a field audit examination of the books and records of MILLER pertaining to the activities described in Paragraph 4, above, for the audit period beginning on November 1, 1995 and ending on September 30, 1998. Respondent failed to produce or maintain all the records of his activity, including trust fund disbursements during this period requiring a real estate license in violation of Section 10148 of the Code.

MILLER failed to properly delegate to ELLEN MARK KAUL by written agreement the responsibility and authority to supervise and control the activities of an unlicensed person, to wit, Henry Kaul, in violation of Section 2724 of the Regulations. This violation is cause to suspend or revoke MILLER's real estate license and license rights under Section 10177(d) of the Code.

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2 The conduct of respondent MILLER in depositing a loan in
3 the amount of \$8,000 from Harry Kaul into Omni Real Property
4 Services general account and in mixing his funds with those of
5 Omni Real Property Service's that were held for its clients,
6 constitutes commingling of trust and broker-owned funds. Said
7 conduct and violation are cause to suspend or revoke the real
8 estate license and license rights of respondent MILLER pursuant to
9 Section 10176(e).

10
11 The overall conduct of MILLER, constitutes negligence
12 or incompetence. This conduct and these violations are cause for
13 the suspension or revocation of the real estate license and
14 license rights of MILLER under Section 10177(g) of the Code.

15
16 The overall conduct of KAUL with respect to the actual
17 management of Omni Real Property Services constitutes negligence
18 or incompetence. This conduct and these violations are cause for
19 the suspension or revocation of the real estate license and
20 license rights of KAUL under Section 10177(g) of the Code.

21
22 The overall conduct of MILLER, constitutes a failure to
23 exercise reasonable supervision over the acts of his salesperson
24 KAUL. This conduct and violation are cause for the suspension or
25 revocation of the real estate license and license rights of MILLER
26 under the provisions of Section 10177(h) of the Code.



The conduct of KAUL in performing licensed acts throughout the audit period with regard to property management transactions for Omni while her real estate salesperson license was suspended, as described in Paragraph 2, is in violation of Section 10130 of the Code. this conduct and violation is cause to suspend or revoke her license and license rights under Section 10177(d) or 10177(f) and 10103 of the Code.

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 license and license rights of BILLY LEROY MILLER and ELLEN MARK KAUL 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 20th day of January, 1999.


Deputy Real Estate Commissioner

cc Billy Leroy Miller
Ellen Mark Kaul
c/o Omni Real Property Services
Sacto
DH
TM

