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FILED
AUG 17 1999
DEPARTMENT OF REAL ESTATE
By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ALAN LOUIS FASNACHT,) NO. H-28014 LA
Respondent.)

ORDER STAYING EFFECTIVE DATE

On July 15, 1999, a Decision was rendered in the above-entitled matter to become effective August 17, 1999.

IT IS HEREBY ORDERED that the effective date of the Decision of July 15, 1999 is stayed for a period of thirty (30) days.

The Decision of July 15, 1999, shall become effective at 12 o'clock noon on September 16, 1999.

DATED: August 17, 1999

JOHN R. LIBERATOR
Acting Real Estate Commissioner

By: *[Signature]*
RANDOLPH BRENDIA
Regional Manager

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Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982

FILED
JUL 28 1999
DEPARTMENT OF REAL ESTATE
by *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ALAN LOUIS FASNACHT,)
Respondent.)

NO. H-28014 LA
L-1999020357
STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondent ALAN LOUIS FASNACHT and his attorney of record, Lawrence H. Lackman, Esq., and the Complainant, acting by and through Darlene Averetta, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on February 3, 1999, in this matter.

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

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

5 3. On February 22, 1999, Respondent filed a Notice of
6 Defense pursuant to Section 11506 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense, Respondent
11 will thereby waive his right to require the Commissioner to prove
12 the allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA and that he will waive
14 other rights afforded to him in connection with the hearing, such
15 as the right to present evidence in defense of the allegations in
16 the Accusation and the right to cross-examine witnesses.

17 4. This Stipulation and Agreement ("Stipulation") is
18 based on the factual allegations contained in the Accusation filed
19 in this proceeding. In the interest of expedience and economy,
20 Respondent chooses not to contest these factual allegations, but
21 to remain silent and understands that, as a result thereof, these
22 factual statements, without being admitted or denied, will serve
23 as a prima facie basis for the disciplinary action stipulated to
24 herein. This Stipulation and Respondent's decision not to contest
25 the Accusation are hereby expressly limited to this proceeding and
26 made for the sole purpose of reaching an agreed disposition of
27 this proceeding. Respondent's decision not to contest the factual



1 allegations is made solely for the purpose of effectuating this
2 Stipulation and is intended by Respondent to be non-binding upon
3 him in any actions against Respondent by third parties. The
4 Real Estate Commissioner shall not be required to provide further
5 evidence to prove such allegations.

6 5. This Stipulation and any Order made pursuant to
7 this Stipulation shall have no collateral estoppel or res judicata
8 effect in any proceedings in which the Respondent and the
9 Department (or the Department's representative) are not parties.
10 This Stipulation is made by Respondent and received by the
11 Commissioner and the Department with the express understanding and
12 agreement that it is for the purpose of settling these proceedings
13 only, and that this Stipulation is not intended as, and shall not
14 be deemed, used, or accepted as an acknowledgment or admission of
15 fact in any other judicial, administrative or other proceeding to
16 which the Department is not party.

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

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

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations and waivers and
9 solely for the purpose of settlement of the pending Accusation
10 without a hearing, it is stipulated and agreed that the following
11 determination of issues shall be made:

12 The conduct, acts and/or omissions of Respondent
13 ALAN LOUIS FASNACHT, as set forth in the Accusation, constitute
14 cause to suspend or revoke Respondent's real estate licenses and
15 license rights under the provisions of Business and Professions
16 Code Section 10177(d) for violation of Business and Professions
17 Code Section 10145 and Title 10, Chapter 6, California Code of
18 Regulations, Section 2832.1.

19 ORDER

20 WHEREFORE, THE FOLLOWING ORDER is hereby made:

21 All licenses and licensing rights of Respondent
22 ALAN LOUIS FASNACHT under the Real Estate Law are revoked;
23 provided, however, a restricted real estate broker license
24 shall be issued to Respondent pursuant to Section 10156.5 of
25 the Business and Professions Code if:

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1 1. Respondent makes application therefor and pays
2 to the Department of Real Estate the appropriate fee for the
3 restricted license within 90 days from the effective date of
4 this Decision.

5 2. Respondent provides proof satisfactory to the Real
6 Estate Commissioner, prior to the effective date of this Decision,
7 that the trust fund shortage set forth in the Accusation has been
8 cured.

9 The restricted license issued to Respondent shall be
10 subject to all of the provisions of Section 10156.7 of the
11 Business and Professions Code and to the following limitations,
12 conditions and restrictions imposed under authority of Section
13 10156.6 of that Code:

14 1. The restricted license issued to Respondent shall
15 be suspended for thirty (30) days from any restricted real estate
16 broker license issued to Respondent; provided, however, that if
17 Respondent petitions, said suspension (or a portion thereof) shall
18 be stayed upon condition that:

19 a. Respondent pays a monetary penalty pursuant to
20 Section 10175.2 of the Business and Professions Code at the
21 rate of \$100 for each day of the suspension for a total monetary
22 penalty of \$3,000.

23 b. Said payment shall be in the form of a cashier's
24 check or certified check made payable to the Recovery Account of
25 the Real Estate Fund. Said check must be delivered to the
26 Department prior to the effective date of the Decision in this
27 matter.



1 c. No further cause for disciplinary action against the
2 real estate license of Respondent occurs within one (1) year from
3 the effective date of the Decision in this matter.

4 d. If Respondent fails to pay the monetary penalty in
5 accordance with the terms and conditions of the Decision, the
6 Commissioner may, without a hearing, order the immediate execution
7 of all or any part of the stayed suspension in which event the
8 Respondent shall not be entitled to any repayment nor credit,
9 prorated or otherwise, for money paid to the Department under the
10 terms of this Decision.

11 e. If Respondent pays the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 license of Respondent occurs within one year from the effective
14 date of the Decision, the stay hereby granted shall be permanent.

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

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

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1 4. Respondent shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations or restrictions
4 of a restricted license until one (1) year has elapsed from the
5 effective date of this Decision.

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

17 6. Respondent shall, within six months from the
18 effective date of this Decision, take and pass the Professional
19 Responsibility Examination administered by the Department
20 including the payment of the appropriate examination fee. If
21 Respondent fails to satisfy this condition, the Commissioner may
22 order suspension of Respondent's license until Respondent passes
23 the examination.

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7. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost 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. The Commissioner's reasonable costs shall in no event exceed \$5,890.

a. Respondent shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

b. Notwithstanding the provisions of any other paragraph herein, if Respondent fails to pay the costs set forth above for an audit, 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.

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The foregoing Stipulation and Agreement is hereby
adopted as my Decision and Order and shall become effective
at 12 o'clock noon on August 17, 1999.

IT IS SO ORDERED July 15, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator



SACTO.
Flag

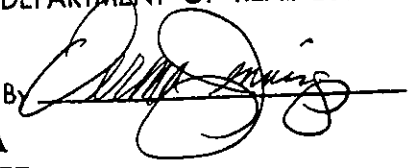
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR - 1 1999
DEPARTMENT OF REAL ESTATE

* * * *

In the Matter of the Accusation of)
)
ALAN LOUIS FASNACHT,)
)
Respondent.)

Case No. H-28014 LA
OAH No. L-1999020357

By: 

NOTICE OF CONTINUED 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, 320 West Fourth Street, Suite 630, Los Angeles, California 90013, on June 2, 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 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.

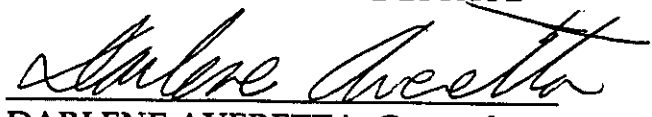
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented 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.

Dated: April 1, 1999.

cc: Alan Louis Fasnacht
Lawrence H. Lackman, Esq.
Danio Fajardo
Lisa Kwong
Sacto.
OAH

DEPARTMENT OF REAL ESTATE
By: 
DARLENE AVERETTA, Counsel

Sacto
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

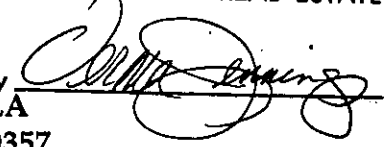
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FILED
MAR 11 1999
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
ALAN LOUIS FASNACHT,)
)
Respondent.)

Case No. H-28014 LA
OAH No. L-1999020357

By



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, 320 West Fourth Street, Suite 630, Los Angeles, California 90013, on May 27, 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 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.

Dated: March 11, 1999.

cc: Alan Louis Fasnacht
Lawrence H. Lackman, Esq.
Danio Fajardo
Sacto.
OAH
Lisa Kwong

DEPARTMENT OF REAL ESTATE

By:


DARLENE AVERETTA, Counsel

SACD.
Flg

1 DARLENE AVERETTA, Counsel
State Bar No. 159969
2 Department of Real Estate
107 South Broadway, Room 8107
3 Los Angeles, California 90012
4 (213) 897-3937

FILED
FEB - 3 1999
DEPARTMENT OF REAL ESTATE
By *[Signature]*

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-28014 LA
13 ALAN LOUIS FASNACHT,) ACCUSATION
14 Respondent.)
15 _____)

16 The Complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, for cause of accusation
18 against ALAN LOUIS FASNACHT is informed and alleges as follows:

19 1.

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

23 2.

24 ALAN LOUIS FASNACHT (hereinafter "Respondent") is
25 presently licensed and/or has license rights under the Real
26 Estate Law, Part 1 of Division 4 of the California Business and
27 Professions Code (hereinafter "Code"), as a real estate broker.

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3.

At all times material herein, Respondent was licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a real estate broker.

4.

All further references to "Respondent", unless otherwise specified, include the party identified in Paragraphs 2 and 3, above, and also include the employees, agents and real estate licensees employed by or associated with said party, who at all times material herein were engaged in the furtherance of the business or operations of said party and who were acting within the course and scope of their authority, agency or employment.

5.

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Section 10131(a) and/or 10131(b), for another or others, for or in expectation of compensation. Said activity included the operation and conduct of:

(a) a real estate sale business with the public, wherein Respondent sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity;

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1 (b) property management business with the public
2 wherein Respondent leased or rented or offered for lease or rent,
3 or placed for rent, or solicited listings of places for rent, or
4 solicited for prospective tenants, or negotiated the sale,
5 purchase or exchange of leases on real property, or a business
6 opportunity, or collected rents from real property, or
7 improvements thereon, or from business opportunities.

8 6.

9 On or about December 9, 1998, the Department completed
10 an examination of Respondent's books and records, pertaining to
11 the real estate activities described in Paragraph 5, above,
12 covering a period from approximately December 1, 1996, through
13 October 31, 1998. The examination revealed the information set
14 forth below.

15 7.

16 At all times material herein, in connection with the
17 activities described in Paragraph 5, above, Respondent accepted
18 or received funds, including funds in trust ("trust funds") from
19 or on behalf of parties to transactions requiring a real estate
20 license, handled by Respondent and thereafter made deposits
21 and/or disbursements of such funds. From time to time herein
22 mentioned, said trust funds were deposited and/or maintained
23 by Respondent in a bank account, including but not necessarily
24 limited to, Account Number 0502120231, "Advantage Property
25 Management, Inc." (hereinafter "Trust Account"), at Pacific
26 Century Bank (formerly named California United Bank), 2633 Cherry
27 Ave., Signal Hill, California 90806.

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In the course of activities described in Paragraphs 5 and 7, above, and during the examination period described in Paragraph 6, Respondent acted in violation of the Code and Title 10, Chapter 6, California Code of Regulations ("Regulations"), as follows:

(a) As of October 31, 1998, the Trust Account had a shortage in the amount of approximately Ninety-One Thousand Four Hundred Seven Dollars and Sixteen Cents (\$91,407.16). Respondent caused, permitted and/or allowed the withdrawal or disbursement of trust funds from the Trust Account, without the prior written consent of every principal who then was an owner of funds in the account, thereby reducing the balance of funds in the said account to an amount less than the existing aggregate trust fund liability of the broker to all owners of said trust funds, in violation of Code Section 10145 and Regulation 2832.1.

(b) Respondent did not obtain a branch office license from the Department for an office located at 4425 Atlantic Ave., Suite B-10, Long Beach, California, where he conducted his property management business, in violation of Code Section 10163 and Regulation 2715.

(c) Trust funds were deposited into the broker's general account and commingled with the broker's funds, in violation of Code Section 10145 and Regulation 2835.

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1 (d) Respondent did not reconcile and maintain a record
2 of a monthly reconciliation of the columnar record and the total
3 balance of separate records for the trust account after April,
4 1998, in violation of Code Section 10145 and Regulation 2835.

5 (e) The Trust Account was not in the broker's name as
6 trustee and was not designated as a trust account. The Trust
7 Account was in the name of Advantage Property Management, Inc.

8 Additionally, Respondent failed to forward the
9 buyers' earnest money deposits to the escrow companies within
10 three (3) business days after acceptance of the offer, without
11 the buyers' written authorization, in violation of Code Section
12 10145 and Regulation 2832.

13 (f) Respondent caused, permitted and/or allowed Dave
14 McClintock, who was neither licensed by the Department, nor
15 covered by a fidelity bond, to be a signatory on the Trust
16 Account and withdraw trust funds, in violation of Regulation
17 2834.

18 (g) Respondent used the unlicensed fictitious business
19 name "Advantage Property Management Company, Inc." in his
20 property management business and he used the unlicensed
21 fictitious business names, "Century 21 Landmark Properties" and
22 "Century 21 Opportunity" in his residential resale business,
23 in violation of Regulation 2731.

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The conduct, acts and/or omissions of Respondent, as described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
6	8(a)	Code Section 10145 and Regulation 2832.1
7	8(b)	Code Section 10163 and Regulations 2715
8	8(c)	Code Section 10145 and Regulation 2835
10	8(d)	Code Section 10145 and Regulation 2835
11	8(e)	Code Section 10145 and Regulation 2832
12	8(f)	Regulation 2834
13	8(g)	Regulation 2731

Each of the foregoing violations constitutes cause for the suspension or revocation of Respondent's real estate licenses and license rights under the provisions of Code Section 10176(e) and/or 10177(d).

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of ALAN LOUIS
5 FASNACHT under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.
8 Dated at Los Angeles, California
9 this 3rd day of February, 1999.


Deputy Real Estate Commissioner

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cc: Alan Louis Fasnacht
LA Audit Section
Thomas McCrady
Sacto.
JM