

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982

FILED
JAN 26 2000
DEPARTMENT OF REAL ESTATE

By C. B. [Signature]

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 TROOP REAL ESTATE, INC. and)
14 BRIAN CURTIS TROOP, individually,)
15 doing business as Aspen Mortgage)
16 and as designated officer of)
Troop Real Estate, Inc.,)
Respondents.)

NO. H-28184 LA
L-1999070451

STIPULATION AND AGREEMENT

17 It is hereby stipulated by and between Respondents
18 TROOP REAL ESTATE, INC. and BRIAN CURTIS TROOP, individually,
19 formerly doing business as Aspen Mortgage and as designated
20 officer of Troop Real Estate, Inc., and their attorney of record,
21 James G. Allen, Esq., and the Complainant, acting by and through
22 Darlene Averetta, Counsel for the Department of Real Estate, as
23 follows for the purpose of settling and disposing of the
24 Accusation filed on July 12, 1999, in this matter.

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1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents 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.

2. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate ("Department") in this proceeding.

3. On July 20, 1999, Respondents filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense, they will thereby waive their right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that they will waive other rights afforded to them in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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1 4. This Stipulation and Agreement ("Stipulation") is
2 based on the factual allegations contained in the Accusation
3 filed in this proceeding. In the interest of expedience and
4 economy, Respondents choose not to contest these factual
5 allegations, but to remain silent and understand that, as a
6 result thereof, these factual statements, without being admitted
7 or denied, will serve as a prima facie basis for the disciplinary
8 action stipulated to herein. This Stipulation and Respondents'
9 decision not to contest the Accusation are hereby expressly
10 limited to this proceeding and made for the sole purpose of
11 reaching an agreed disposition of this proceeding. Respondents'
12 decision not to contest the factual allegations is made solely
13 for the purpose of effectuating this Stipulation and is intended
14 by Respondents to be non-binding upon them in any actions against
15 Respondents by third parties. The Real Estate Commissioner shall
16 not be required to provide further evidence to prove such
17 allegations.

18 5. This Stipulation and any Order made pursuant to
19 this Stipulation shall have no collateral estoppel or res
20 judicata effect in any proceedings in which the Respondents and
21 the Department (or the Department's representative) are not
22 parties. This Stipulation is made by Respondents and received
23 by the Commissioner and the Department with the express
24 understanding and agreement that it is for the purpose of
25 settling these proceedings only, and that this Stipulation is
26 not intended as, and shall not be deemed, used, or accepted as
27 an acknowledgment or admission of fact in any other judicial,



1 administrative, or other proceeding to which the Department is
2 not party.

3 6. It is understood by the parties that the Real
4 Estate Commissioner may adopt the Stipulation as his decision
5 in this matter thereby imposing the penalty and sanctions on
6 Respondents' real estate licenses and license rights as set forth
7 in the below "Order". In the event that the Commissioner in his
8 discretion does not adopt the Stipulation, the Stipulation shall
9 be void and of no effect, and Respondents shall retain the right
10 to a hearing on the Accusation under all the provisions of the
11 APA and shall not be bound by any stipulation or waiver made
12 herein.

13 7. The Order or any subsequent Order of the Real
14 Estate Commissioner made pursuant to this Stipulation shall
15 not constitute an estoppel, merger or bar to any further
16 administrative or civil proceedings by the Department of Real
17 Estate with respect to any matters which were not specifically
18 alleged to be causes for accusation in this proceeding.

19 8. Respondents have received, read, and understand
20 the "Notice Concerning Costs of Subsequent Audit". Respondents
21 further understand that by agreeing to this Stipulation, the
22 findings set forth below in the DETERMINATION OF ISSUES become
23 final, and the Commissioner may charge Respondents for the costs
24 of any subsequent audit conducted pursuant to Business and
25 Professions Code Section 10148 to determine if the violations
26 have been corrected. The maximum cost of said audit will not
27 exceed \$5,000.



1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations and waivers and
3 solely for the purpose of settlement of the pending Accusation
4 without a hearing, it is stipulated and agreed that the following
5 determination of issues shall be made:

6 I

7 The conduct, acts and/or omissions of Respondent,
8 TROOP REAL ESTATE, INC., as set forth in the Accusation,
9 constitute cause to suspend or revoke the real estate licenses
10 and license rights of Respondent, TROOP REAL ESTATE, INC., under
11 the provisions of Business and Professions Code ("Code") Section
12 10177(d) for violation of Code Section 10145 and Section 2832.1
13 of Title 10, Chapter 6, California Code of Regulations.

14 II

15 The conduct, acts and/or omissions of Respondent,
16 BRIAN CURTIS TROOP, as set forth in the Accusation, constitute
17 cause to suspend or revoke the real estate licenses and license
18 rights of Respondent, BRIAN CURTIS TROOP, under the provisions
19 of Business and Professions Code ("Code") Section 10177(h) for
20 violation of Code Section 10159.2.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondents, TROOP REAL ESTATE, INC. and BRIAN CURTIS TROOP, under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

3. The initial thirty (30) day portion of said suspension shall commence on the effective date of this Decision; provided, however, that if Respondents petition, said suspension, shall be stayed upon condition that:

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1 (a) Respondents each pay a monetary penalty pursuant to
2 Section 10175.2 of the Business and Professions Code of \$5,000,
3 for a total monetary penalty of \$10,000.

4 (b) Said payment shall be in the form of a cashier's
5 check or certified check made payable to the Recovery Account
6 of the Real Estate Fund. Said check must be received by the
7 Department prior to the effective date of the Decision in this
8 matter.

9 (c) No further cause for disciplinary action against
10 the real estate licenses of Respondents occur within one (1) year
11 from the effective date of the Decision in this matter.

12 (d) If Respondents fail to pay the monetary penalty in
13 accordance with the terms and conditions of the Decision, the
14 Commissioner may without a hearing order the immediate execution
15 of all or any part of the stayed suspension in which event
16 Respondents shall not be entitled to any repayment nor credit,
17 prorated or otherwise, for money paid to the Department under the
18 terms of this Decision.

19 (e) If Respondents pay the monetary penalty and if no
20 further cause for disciplinary action against the real estate
21 licenses of Respondents occur within one (1) year from the
22 effective date of the Decision, the stay hereby granted shall
23 become permanent.

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1 4. Pursuant to Section 10148 of the Business and
2 Professions Code, Respondents, TROOP REAL ESTATE, INC. and
3 BRIAN CURTIS TROOP, jointly or severally, shall pay the
4 Commissioner's reasonable cost for a subsequent audit to
5 determine if Respondents have corrected the trust fund violations
6 set forth above in Paragraph I of the Determination of Issues.
7 In calculating the amount of the Commissioner's reasonable cost
8 for the subsequent audit, the Commissioner may use the estimated
9 average hourly salary for all persons performing audits of real
10 estate brokers, and shall include an allocation for travel costs,
11 including mileage to and from the auditor's place of work and per
12 diem. Said amount for the subsequent audit shall not exceed
13 \$5,000.

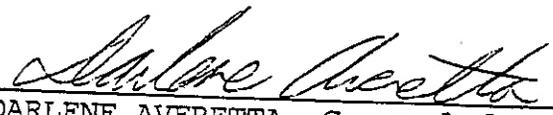
14 (a) Respondents shall pay such cost prior to the
15 effective date of this Decision and Order. If the cost of said
16 audit is determined to be less than \$5,000, the difference shall
17 be refunded to Respondents.

18 (b) Notwithstanding the provisions of any other
19 Paragraph herein, if Respondents fail to pay the costs set forth
20 above for an audit to determine if Respondents are now in
21 compliance with the Real Estate Law, prior to the effective date
22 of this Decision, the Commissioner may order the suspension of
23 Respondents' real estate licenses and license rights pending a
24 hearing held in accordance with Section 11500, et seq., of the
25 Government Code. The suspension shall remain in effect until
26 payment is made in full, until Respondents enter into an
27 agreement satisfactory to the Commissioner to provide for such



1 payment (the Commissioner may impose further reasonable
2 disciplinary terms and conditions upon Respondents' real estate
3 licenses and license rights as part of any such agreement) or
4 until a decision providing otherwise is adopted following a
5 hearing held pursuant to this condition.

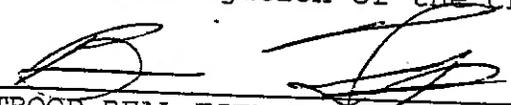
6 DATED: December 3, 1999


DARLENE AVERETTA, Counsel for
the Department of Real Estate

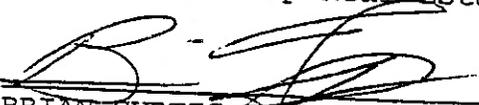
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9 We have read the Stipulation and Agreement, and have
10 discussed it with our counsel, and its terms are understood by
11 us and are agreeable and acceptable to us. We understand that
12 we are waiving rights given to us by the California
13 Administrative Procedure Act (including but not limited to
14 Sections 11506, 11508, 11509 and 11513 of the Government Code),
15 and we willingly, intelligently and voluntarily waive those
16 rights, including the right of requiring the Commissioner to
17 prove the allegations in the Accusation at a hearing at which
18 we would have the right to cross-examine witnesses against us
19 and to present evidence in defense and mitigation of the charges.

20 DATED: 10/17/99


TROOP REAL ESTATE, INC., Respondent
by Brian Curtis Troop, designated
officer of Troop Real Estate, Inc.

23 DATED: 11/17/99


BRIAN CURTIS TROOP, Respondent
individually, formerly doing
business as Aspen Mortgage and
as designated officer of Troop
Real Estate, Inc.

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DATED: 12/2/99

James G. Allen
JAMES G. ALLEN, Counsel for
Respondents Troop Real Estate,
Inc. and Brian Curtis Troop,
Approved as to Form

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and Order as to Respondents TROOP REAL
ESTATE, INC.; and BRIAN CURTIS TROOP, individually, formerly
doing business as Aspen Mortgage, and as designated officer of
Troop Real Estate, Inc. and shall become effective at 12 o'clock
noon on February 15, 2000.

IT IS SO ORDERED January 14, 2000.

PAULA REDDISH LINNEMANN
Real Estate Commissioner
Paula Reddish

SACD
file

FILED
JUL 12 1999
DEPARTMENT OF REAL ESTATE

By [Signature]

1 DARLENE AVERETTA, Counsel
(SBN 159969)
2 Department of Real Estate
320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982
(Direct) (213) 576-6904
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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-28184 LA
12 TROOP REAL ESTATE, INC.; and)
13 BRIAN CURTIS TROOP, individually,) A C C U S A T I O N
14 doing business as Aspen Mortgage,)
15 and as designated officer of)
Troop Real Estate, Inc.,)
16 Respondents.)

17 The Complainant, Thomas McCrady, a Deputy Real Estate
18 Commissioner of the State of California, for cause of accusation
19 against TROOP REAL ESTATE, INC.; and BRIAN CURTIS TROOP,
20 individually, doing business as Aspen Mortgage, and as designated
21 officer of Troop Real Estate, Inc., is informed and alleges as
22 follows:

23 1.

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

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2.

TROOP REAL ESTATE, INC. ("TROOP REAL ESTATE"); and
BRIAN CURTIS TROOP ("TROOP"), individually, doing business as
Aspen Mortgage, and as designated officer of Troop Real Estate,
Inc., sometimes collectively referred to herein as "Respondents",
are presently licensed and/or have license rights under the
Real Estate Law, Part 1 of Division 4 of the California Business
and Professions Code ("Code").

3.

At all times material herein, TROOP REAL ESTATE
was, and currently is, licensed by the Department of Real Estate
of the State of California ("Department") as a corporate real
estate broker by and through TROOP as the designated officer
and broker responsible pursuant to Code Section 10159.2 for
supervising the activities requiring a real estate license
conducted on behalf of TROOP REAL ESTATE by TROOP REAL ESTATE's
officers, agents and employees.

4.

At all times material herein, TROOP was licensed by
the Department, individually, as a real estate broker and as the
designated broker-officer of TROOP REAL ESTATE. As a designated
broker-officer, TROOP is and was responsible, pursuant to the
provisions of Code Section 10159.2, for the supervision and
control of the activities requiring a real estate license
conducted on behalf of TROOP REAL ESTATE by their officers,
agents and employees as necessary to secure full compliance with
the provisions of the Real Estate Law.



1 5.

2 All further references to "Respondents", unless
3 otherwise specified, include the parties identified in
4 Paragraphs 2 through 4, above, and also include the officers,
5 directors, managers, employees, agents and real estate licensees
6 employed by or associated with said parties, who at all times
7 herein mentioned were engaged in the furtherance of the business
8 or operations of said parties and who were acting within the
9 course and scope of their authority, agency or employment.

10 FIRST CAUSE OF ACCUSATION

11 6.

12 On or about April 12, 1999, the Department completed
13 an examination of Respondents' books and records pertaining to
14 the real estate and trust fund handling activities described in
15 Paragraphs 7 and 8, below, covering a period from approximately
16 January 1, 1998, through January 31, 1999. Said examination
17 revealed violations of Title 10, Chapter 6, California Code of
18 Regulations ("Regulations"), as set forth below.

19 7.

20 At all times material herein, Respondents engaged in
21 the business of, acted in the capacity of, advertised or assumed
22 to act as real estate brokers in the State of California within
23 the meaning of Code Section 10131(b). Said activity included the
24 operation and conduct of a property management business with the
25 public wherein Respondents, for another or others, and for or in
26 expectation of compensation, leased or rented or offered to lease
27 or rent, or placed for rent, or solicited listings of places for



1 rent, or solicited for prospective tenants, or negotiated the
2 sale, purchase or exchange of leases, or collected rents from
3 real property, or improvements, or from business opportunities.

4 8.

5 At all times material herein, in connection with the
6 activities described in Paragraph 7, above, Respondents accepted
7 or received funds, including funds in trust ("trust funds"), from
8 or on behalf of parties to transactions handled by Respondents.
9 Thereafter, Respondents made deposits and/or disbursements of
10 such funds. From time to time herein mentioned, said trust funds
11 were deposited and/or maintained by Respondents in a bank account
12 at First Western Bank located at 1475 Los Angeles Avenue,
13 Simi Valley, California 93065 ("First Western Bank"). Said
14 bank account included, but was not necessarily limited to,
15 the following: Account No. 001-025678, "Troop Real Estate Inc.
16 Trust Account (Property Management)" ("T/A #1").

17 9.

18 In the course of activities described in Paragraphs 7
19 and 8, above, and during the examination period described in
20 Paragraph 6, Respondents acted in violation of the Code and the
21 Regulations as follows:

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1 (a) As of January 31, 1999, T/A #1 had a shortage in
2 the amount of approximately Fifty-Two Dollars and Fifty-One Cents
3 (\$52.51). Respondents caused, permitted and/or allowed the
4 withdrawal or disbursement of trust funds from the T/A #1,
5 without the prior written consent of every principal who then was
6 an owner of funds in the account, thereby reducing the balance of
7 funds in the said account to an amount less than the existing
8 aggregate trust fund liability of the broker to all owners of the
9 trust funds, in violation of Code Section 10145 and Regulation
10 2832.1.

11 (b) Respondents failed to maintain a monthly
12 reconciliation of the columnar record to the total of all the
13 separate records for T/A #1, during the audit period, in
14 violation of Regulation 2831.2.

15 10.

16 The conduct, acts and/or omissions of Respondents
17 TROOP REAL ESTATE and TROOP, as described in Paragraph 9, above,
18 constitute cause for the suspension or revocation of Respondents'
19 real estate licenses and license rights under the provisions of
20 Code Section 10177(d) and/or 10177(g).

21 SECOND CAUSE OF ACCUSATION

22 11.

23 Complainant incorporates herein by reference the
24 Preamble and the allegations of Paragraphs 1 through 10,
25 inclusive, herein above.

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12.

On or about April 23, 1999, the Department completed an examination of Respondents' books and records pertaining to the real estate activities described in Paragraphs 13, 14 and 15, below, covering a period from approximately January 1, 1998, through January 31, 1999. Said examination revealed violations of the Code and Regulations, as set forth below.

13.

At all times material herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California within the meaning of Code Section 10131(a). Said activity included the operation and conduct of a real estate sale business with the public wherein Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity.

14.

In connection with the above-described real estate sale business, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as escrow holder, servicer and/or agent and thereby acted or assumed to act under the exemption from the provisions of the Escrow Law as provided by Section 17006(a)(4) of the California Financial Code.

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At all times material herein, in connection with the activities described in Paragraphs 13 and 14, above, Respondents accepted or received trust funds from or on behalf of parties to transactions handled by Respondents. Thereafter, Respondents made deposits and/or disbursements of such funds. From time to time herein mentioned, said trust funds were deposited and/or maintained by Respondents in bank accounts including, but not necessarily limited to, the following accounts at First Western Bank:

(a) Account No. 001-059 "Troop Real Estate Trust Account" ("Account 1");

(b) Account No. 001-028 "Troop Real Estate Escrow Division Trust Account" ("Account 2");

(c) Account No. 001-061 "Troop Real Estate Inc." ("Account 3");

(d) Account No. 001-059 "Troop Real Estate Trust Account" ("Account 4");

(e) Account No. 001-054 "Troop Real Estate Trust Account" ("Account 5").

In the course of activities described in Paragraphs 13, 14 and 15, above, and during the examination period described in Paragraph 12, Respondents acted in violation of the Code and the Regulations as follows:

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1 (a) As of January 31, 1999, Trust Account 1 had a
2 shortage in the amount of approximately One Hundred Three
3 Thousand Six Hundred Eighty-Two Dollars and Twenty-Four Cents
4 (\$103,682.24), and Trust Account 4 had a shortage in the amount
5 of approximately Two Hundred Eighty-Two Thousand Nine Hundred
6 Sixty-Eight Dollars and Seventy-Four Cents (\$282,968.74).
7 Respondents caused, permitted and/or allowed the withdrawal or
8 disbursement of trust funds from Trust Accounts 1 and 4, without
9 the prior written consent of every principal who then was an
10 owner of funds in the account, thereby reducing the balance of
11 funds in the said account to an amount less than the existing
12 aggregate trust fund liability of the broker to all owners of the
13 trust funds, in violation of Code Section 10145 and Regulation
14 2832.1.

15 (b) Respondents failed to maintain complete and
16 accurate control records. Various reconciling items were not
17 posted to the bookkeeping system, some entries were not recorded
18 or not recorded correctly, and a control record of trust funds
19 received and placed in the trust account was not maintained for
20 Account 5, in violation of Regulation 2831.

21 (c) Respondents failed to maintain accurate separate
22 records for each beneficiary or transaction. Reconciled items
23 were not adjusted on the bookkeeping system to reflect accurate
24 balances, and entries were not always posted to the separate
25 records or were posted incorrectly resulting in inaccurate daily
26 balances and inaccurate book balances, in violation of Regulation
27 2831.1.



1 (d) Respondents failed to maintain a complete monthly
2 reconciliation of the control record of all trust funds received
3 and disbursed with the separate records for each beneficiary or
4 transaction, in violation of Regulation 2831.2.

5 (e) Respondents caused, permitted and/or allowed
6 people who at the time were neither licensed by the Department
7 nor covered by an adequate fidelity bond as signatories on
8 Accounts 1 and 4, in violation of Regulation 2834.

9 17.

10 The conduct, acts and/or omissions of TROOP REAL ESTATE
11 and TROOP, as described in Paragraph 16, above, constitute cause
12 for the suspension or revocation of Respondents' real estate
13 licenses and license rights under the provisions of Code Section
14 10177(d) and/or 10177(g).

15 THIRD CAUSE OF ACCUSATION

16 (Violation of Code Section 10159.2)

17 18.

18 Complainant incorporates herein by reference the
19 Preamble and the allegations of Paragraphs 1 through 17,
20 inclusive, herein above.

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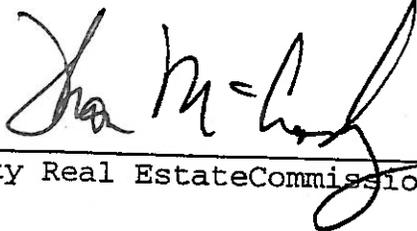
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2 The conduct, acts and/or omissions of Respondent TROOP
3 in causing, allowing, or permitting Respondent TROOP REAL ESTATE
4 to violate the Real Estate Law, as described herein above,
5 constitute failure on the part of Respondent TROOP, as the
6 officer designated by a corporate broker licensee, to exercise
7 the reasonable supervision and control over the licensed
8 activities of Respondent TROOP REAL ESTATE, as required by Code
9 Section 10159.2. Said conduct is cause to suspend or revoke
10 the real estate licenses and license rights of Respondent TROOP,
11 pursuant to the provisions of Code Sections 10177(d), 10177(g)
12 and/or 10177(h).

13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof, a decision be rendered imposing disciplinary
16 action against all licenses and license rights of Respondents
17 TROOP REAL ESTATE, INC.; and BRIAN CURTIS TROOP, individually,
18 doing business as Aspen Mortgage, and as designated officer of
19 Troop Real Estate, Inc., under the Real Estate Law (Part 1 of
20 Division 4 of the Business and Professions Code) and for such
21 other and further relief as may be proper under other applicable
22 provisions of law.

23 Dated at Los Angeles, California
24 this 12th day of July, 1999.


Deputy Real Estate Commissioner

25 cc: Troop Real Estate, Inc.
26 Brian Curtis Troop
27 LA Audits/Martha Gallardo
Thomas McCrady
SACTO
JP

