

*Sachs*  
*Jay*

**FILED**  
NOV 4 2002  
DEPARTMENT OF REAL ESTATE

*Laura B. Brown*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-28257 LA  
BENJAMIN DONEL, )  
Respondent. )

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: BENJAMIN DONEL  
3815 Alonzo Avenue  
Encino, CA 91316

On April 17, 2002, a restricted real estate salesperson license was issued by the Department of Real Estate to respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Order of October 22, 2001, in case No. H-28257 LA, effective November 15, 2001. The Order granted respondent the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business and Professions Code and to enumerated additional terms, conditions and restrictions imposed under authority of

1 Section 10156.6 of said Code. Among those terms, conditions and  
2 restrictions, respondent was required to take and successfully  
3 complete the continuing education requirements of Article 2.5 of  
4 Chapter 3 of the Real Estate Law within nine months from November  
5 15, 2001. The Commissioner has determined that as of August 15,  
6 2002, respondent has failed to satisfy this condition, and as  
7 such, is in violation of Section 10177(k) of the Business and  
8 Professions Code. Respondent has no right to renew the  
9 restricted license if this condition isn't satisfied by the date  
10 of its expiration. (Section 10156.7 of the Business and  
11 Professions Code.)

12 NOW, THEREFORE, IT IS ORDERED under authority of  
13 Section 10156.7 of the Business and Professions Code of the State  
14 of California that the restricted real estate salesperson license  
15 heretofore issued to respondent and the exercise of any  
16 privileges thereunder is hereby suspended until such time as you  
17 provide proof satisfactory to the Department of compliance with  
18 the "condition(s)" referred to above, or pending final  
19 determination made after hearing (see "Hearing Rights" set forth  
20 below)."

21 IT IS FURTHER ORDERED that all license certificates and  
22 identification cards issued by Department which are in the  
23 possession of respondent be immediately surrendered by personal  
24 delivery or by mailing in the enclosed, self-addressed envelope  
25 to:

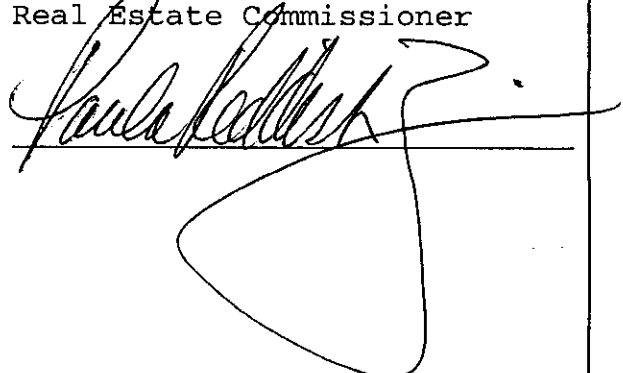
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1 Department of Real Estate  
2 Attn: Flag Section  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 HEARING RIGHTS: Pursuant to the provisions of Section  
6 10156.7 of the Business and Professions Code, you have the right  
7 to a hearing to contest the Commissioner's determination that you  
8 are in violation of Section 10177(k). If you desire a hearing,  
9 you must submit a written request. The request may be in any  
10 form, as long as it is in writing and indicates that you want a  
11 hearing. Unless a written request for a hearing, signed by or on  
12 behalf of you, is delivered or mailed to the Department at 320  
13 West Fourth Street, Suite 350, Los Angeles, California 90013,  
14 within 20 days after the date that this Order was mailed to or  
15 served on you, the Department will not be obligated or required  
16 to provide you with a hearing.

17 This Order shall be effective immediately.

18 DATED: October 29, 2002

19 PAULA REDDISH ZINNEBANN  
20 Real Estate Commissioner  
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23  
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*gets  
2/20/01*

**FILED**  
OCT 26 2001  
DEPARTMENT OF REAL ESTATE

By *Paula B. [Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-28257 LA  
BENJAMIN DONEL, )  
Respondent. )

ORDER DENYING REINSTATEMENT OF LICENSE

On November 3, 1999, a Decision was rendered herein  
revoking the real estate salesperson license of Respondent, but  
granting Respondent the right to apply for and be issued a  
restricted real estate salesperson license. However,  
Respondent did not apply for a restricted real estate  
salesperson license.

On February 21, 2001, Respondent petitioned for  
reinstatement of said license and the Attorney General of the  
State of California has been given notice of the filing of the  
petition.

1 I have considered Respondent's petition and  
2 the 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  
5 reinstatement of Respondent's real estate salesperson license,  
6 in that:  
7

8 I

9 In the Decision which revoked the real estate license  
10 of Respondent there was a Determination of Issues made that  
11 there was cause to revoke Respondent's real estate license  
12 pursuant to Business and Professions Code ("Code") Sections 498  
13 and 10177(a).  
14

15 Respondent had failed to disclose a conviction, on  
16 his application for a real estate salesperson license. In 1994  
17 Respondent was convicted of a violation of Penal Code Section  
18 602(j) (Trespass: Injure Property). The conviction was the  
19 result of Respondent stealing two compact discs from a store  
20 and pleading guilty to the reduced charge of Trespass.  
21 Respondent's conduct involved moral turpitude and was  
22 substantially related to the qualifications, functions and  
23 duties of a licensee.  
24

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II

On May 30, 2001, Respondent was interviewed by a Deputy Real Estate Commissioner ("Deputy"). During the interview, the Deputy asked Respondent about the circumstances which led to his conviction. The Deputy stated that Respondent's description of the circumstances was substantially different than that in the investigative file. Respondent stated that a store cashier told him he could make an even exchange; whereas, the court records state that Respondent was charged with a violation of Penal Code Section 484(A) (Theft of Property), and that he plead nolo contendere to the reduced charge of Trespass.

The Deputy further stated that Respondent did not appear to be remorseful or take responsibility for his actions. Respondent told the Deputy that he believed that he was wrongly accused and unjustly convicted. He also stated that no rehabilitation was necessary, because he had not done anything wrong. In reference to his failure to disclose the conviction, Respondent stated that he believed it was a minor infraction and not a criminal conviction.

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1 Respondent's statements to the Deputy Real Estate  
2 Commissioner evidence a lack of change in attitude. This is  
3 cause to deny Respondent's petition pursuant to Regulation  
4 2911(m) (1) .

5  
6 I am satisfied, however, that it would not be against  
7 the public interest to issue a restricted real estate  
8 salesperson license to Respondent.

9 NOW, THEREFORE, IT IS ORDERED that Respondent's  
10 petition for reinstatement of Respondent's real estate  
11 salesperson license is denied.

12  
13 A restricted real estate salesperson license shall  
14 be issued to Respondent pursuant to Business and Professions  
15 Code ("Code") Section 10156.5 if Respondent makes application  
16 therefor and pays the appropriate fee for said license within  
17 nine (9) months from the date hereof.

18  
19 The restricted license issued to Respondent shall be  
20 subject to all of the provisions of Code Section 10156.7 and to  
21 the following limitations, conditions and restrictions imposed  
22 under authority of Code Section 10156.6:

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

1                    2. The restricted license issued to Respondent  
2 may be suspended prior to hearing by Order of the Real Estate  
3 Commissioner on evidence satisfactory to the Commissioner that  
4 Respondent has violated provisions of the California Real  
5 Estate Law, the Subdivided Lands Law, Regulations of the Real  
6 Estate Commissioner or conditions attaching to the restricted  
7 license.  
8

9                    3. Respondent shall not be eligible to apply for the  
10 issuance of an unrestricted real estate license nor for the  
11 removal of any of the conditions, limitations or restrictions  
12 of a restricted license until two (2) years have elapsed from  
13 the effective date of this Decision.  
14

15                    4. Respondent shall submit with any application for  
16 license under an employing broker, or with any application for  
17 transfer to a new employing broker, a statement signed by the  
18 prospective employing real estate broker on a form approved by  
19 the Department which shall certify:  
20

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

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

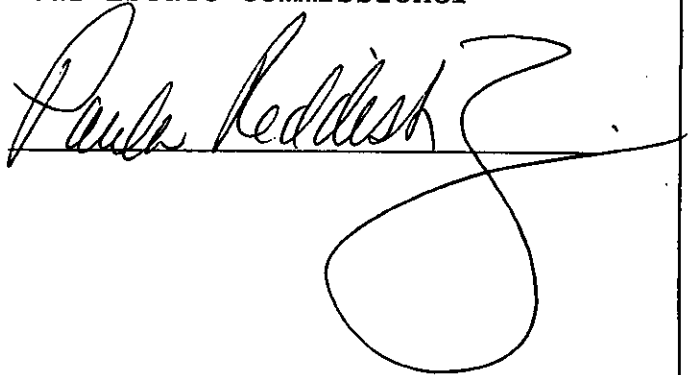


1                   5. Respondent shall within nine (9) months from the  
2                   date hereof, submit evidence satisfactory to the Real Estate  
3                   Commissioner that Respondent has, since Respondent's license  
4                   was revoked, taken and successfully completed the continuing  
5                   education requirements of Article 2.5 of Chapter 3 of the Real  
6                   Estate Law for renewal of a real estate license. If Respondent  
7                   fails to satisfy this condition, the Commissioner may order the  
8                   suspension of the restricted license until the Respondent  
9                   presents such evidence. The Commissioner shall afford  
10                   Respondent the opportunity for a hearing pursuant to the  
11                   Administrative Procedure Act to present such evidence.

12                   This Order shall become effective at 12 o'clock noon  
13                   on November 15, 2001.

14                   DATED: October 22, 2001.

15                   PAULA REDDISH ZINNEMANN  
16                   Real Estate Commissioner

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20                     
21                     
22                     
23                     
24                     
25                   

26 cc: Benjamin Donel  
27       3815 Alonza Ave.  
      Encino, CA 91316

1 Department of Real Estate  
320 West 4th Street, Suite 350  
2 Los Angeles, California 90013-1105  
3 Telephone: (213) 576-6982  
4  
5  
6  
7

FILED  
NOV 10 1999  
DEPARTMENT OF REAL ESTATE

By C-31

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA  
10

\* \* \*

11 In the Matter of the Accusation of ) No. H-28257 LA  
12 BENJAMIN DONEL, )  
13 Respondent. ) STIPULATION AND AGREEMENT  
14

15 It is hereby stipulated by and between BENJAMIN DONEL  
16 (sometimes referred to herein as "Respondent"), and the  
17 Complainant, acting by and through Darlene Averetta, Counsel for  
18 the Department of Real Estate, as follows for the purpose of  
19 settling and disposing of the Accusation filed on September 29,  
20 1999, in this matter:

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

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

5           3. On October 5, 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,  
11    Respondent will thereby waive his right to require the  
12    Commissioner to prove the allegations in the Accusation at a  
13    contested hearing held in accordance with the provisions of the  
14    APA and that Respondent will waive other rights afforded to him  
15    in connection with the hearing such as the right to present  
16    evidence in defense of the allegations in the Accusation and the  
17    right to cross-examine witnesses.

18           4. Respondent, pursuant to the limitations set forth  
19    below, hereby admits that the factual allegations of the  
20    Accusation are true and correct and the Real Estate Commissioner  
21    shall not be required to provide further evidence of such  
22    allegations.

23    ///

24    ///

25    ///

26    ///

27    ///



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

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

17 DETERMINATION OF ISSUES

18 By reason of the foregoing stipulations, admissions and  
19 waivers and solely for the purpose of settlement of the pending  
20 Accusation without a hearing, it is stipulated and agreed that  
21 the following Determination of Issues shall be made:

22 The conduct, acts and/or omissions of Respondent  
23 BENJAMIN DONEL, as set forth in Paragraph VII of the Accusation,  
24 is grounds for suspension or revocation of all of the real estate  
25 licenses and license rights of Respondent under the provision of  
26 Sections 498 and 10177(a) of the Business and Professions Code.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent BENJAMIN DONEL 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 Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for said restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

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1           3. Respondent shall not be eligible to apply for  
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           4. Respondent shall submit with any application for  
7 license under an employing broker, or any application for  
8 transfer to a new employing broker, a statement signed by the  
9 prospective employing broker on a form approved by the Department  
10 of Real Estate which shall certify:

11               (a) That the employing broker has read the  
12 Decision of the Commissioner which granted the right to a  
13 restricted license; and

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

18           5. Respondent's original real estate salesperson  
19 license was issued subject to the provisions of Section 10153.4  
20 of the Business and Professions Code, and the restricted real  
21 estate salesperson license issued to Respondent shall be  
22 similarly limited, to wit: Respondent shall, within eighteen  
23 (18) months of the issuance of Respondent's original real estate  
24 salesperson license under the provisions of Section 10153.4 of  
25 the Business and Professions Code, submit evidence satisfactory  
26 to the Real Estate Commissioner of successful completion, at an  
27 accredited institution, of two of the courses listed in Section  
10153.2, other than real estate principles, advanced legal



1 aspects of real estate, advanced real estate finance or advanced  
2 real estate appraisal. If Respondent fails to present  
3 satisfactory evidence of successful completion of said courses,  
4 the restricted license shall be automatically suspended effective  
5 eighteen (18) months after issuance to Respondent's original real  
6 estate salesperson license. Said suspension shall not be lifted  
7 until Respondent has submitted the required evidence of course  
8 completion and the Commissioner has given written notice to the  
9 Respondent of lifting of the suspension.

10 DATED: October 27, 1999

Darlene Averetta

DARLENE AVERETTA, Counsel for  
the Complainant, the Department  
of Real Estate

13 \* \* \*

14 I have read the Stipulation and Agreement and its terms  
15 are understood by me and are agreeable and acceptable to me. I  
16 understand that I am waiving rights given to me by the California  
17 Administrative Procedure Act (including but not limited to  
18 Sections 11506, 11508, 11509 and 11513 of the Government Code),  
19 and I willingly, intelligently and voluntarily waive those  
20 rights, including the right of requiring the Commissioner to  
21 prove the allegations in the Accusation at a hearing at which I  
22 would have the right to cross-examine witnesses against me and to  
23 present evidence in defense and mitigation of the charges.

24 DATED: 10-15-99

BENJAMIN DONEL  
BENJAMIN DONEL, Respondent



\* \* \*

1 The foregoing Stipulation and Agreement is hereby  
2 adopted as my Decision in this matter and shall become effective  
3 at 12 o'clock noon on November 30, 1999  
4

5 IT IS SO ORDERED November 3, 1999.

6 JOHN R. LIBERATOR  
7 Acting Real Estate Commissioner

8 John R. Liberator  
9



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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of )  
BENJAMIN DONEL, )  
Respondent(s)

Case No. H-28257 LA

OAH No. L-1999100160

FILED  
OCT 20 1999  
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

By C. [Signature]

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on THURSDAY, DECEMBER 2, 1999, at the hour of 1:30 P.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: October 20, 1999

By

[Signature]  
DARLENE AVERETTA, Counsel

cc: Benjamin Donel  
Century 21 Albert Foulad Realty Corp.  
Sacto.  
OAH

SAC

DARLENE AVERETTA, Counsel  
State Bar No. 159969  
Department of Real Estate  
320 W. Fourth St., Suite 350  
Los Angeles, California 90013

Telephone: (213) 576-6982  
(Direct) (213) 576-6904

FILED  
SEP 29 1999  
DEPARTMENT OF REAL ESTATE

By C. B.

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-28257 LA  
BENJAMIN DONEL, )  
Respondent. )  
\_\_\_\_\_ )  
ACCUSATION

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BENJAMIN DONEL (hereinafter "Respondent"), alleges as follows:

I

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

II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code"), as a real estate salesperson subject to Code Section 10153.4.

III

Respondent, pursuant to the provisions of Code Section 10153.3, made application to the Department of Real Estate of the State of California (hereinafter "Department"), for a real estate salesperson license on or about March 8, 1999, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Code Section 10153.4.

IV

Respondent was originally licensed by the Department as a conditional real estate salesperson on April 13, 1999. Respondent's conditional real estate salesperson license was to be suspended if the education requirement pursuant to Code Section 10153.4 had not been met by October 13, 2000.

V

In response to Question 25 on Respondent's application, to wit: "Have you ever been convicted of any violation of law? (You may omit convictions for drunk driving, reckless driving and minor traffic citations which do not constitute a misdemeanor or felony offense)", Respondent marked the answer box denoting "No", and thereafter failed to reveal the following conviction.

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VI

On or about December 14, 1994, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, State of California, Respondent was convicted on his plea of nolo contendere of violating Penal Code Section 602(j) ("Trespass:Injure Property"). Said crime or underlying conduct involves moral turpitude and bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

VII

Respondent's failure to reveal the conviction against him as set forth in Paragraph VI, above, constitutes the procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact, knowing misrepresentation of a material fact, or by knowingly omitting to state a material fact, in his application for a real estate license, which constitutes cause under Code Sections 498 and/or 10177(a) for the suspension or revocation of Respondent's license and license rights under the Real Estate Law.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and, that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondent, BENJAMIN DONEL, 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 29th day of September, 1999.

THOMAS MCCRADY  
Deputy Real Estate Commissioner

cc: Benjamin Donel  
Thomas McCrady  
Sacto.  
J. Ponce