

FILED
JUN 13 2001
DEPARTMENT OF REAL ESTATE

By Jana B. Brown

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-28331 LA
)	L-2000020167
DARWAL CORPORATION and)	
JOHN JOSEPH O'CONNOR,)	DECISION AFTER REMAND
)	FROM SUPERIOR COURT
Respondent(s))	CASE NO. 198362
)	

On July 27, 2000, the Real Estate Commissioner ("Commissioner") of the Department of Real Estate of the State of California ("Department") rendered a Decision revoking the real estate broker license of respondents DARWAL CORPORATION and JOHN JOSEPH O'CONNOR, but granting respondents the right to issuance of a restricted broker license subject to terms and conditions. The Decision was effective on August 24, 2000.

Respondent JOHN JOSEPH O'CONNOR thereafter filed a petition for Writ of Administrative Mandamus from the Department's Decision in the Superior Court of California, County of Ventura Case No. 198362 ("Superior Court").

///

1 On April 6, 2001, the Superior Court filed an Order
2 Granting Petition For Writ of Administrative Mandate ("writ") as
3 to four (4) charges and denying the writ as to one (1) charge.
4 Said Order directed the Commissioner to reconsider the Decision.
5 Specifically, the Superior Court ordered the Department to set
6 aside its Decision dated July 27, 2000, insofar as it pertains to
7 petitioner on charges 2, 3, 4, and 5, and to reconsider its
8 action on the penalty imposed on petitioner as to charge 1, and
9 to take any further action consistent with the court's decision.

10 In accordance with the Court's Decision, the Department
11 makes the following Decision in this matter as to petitioner JOHN
12 JOSEPH O'CONNOR.

13 1. The portions of the Decision dated July 27, 2000,
14 insofar as it pertains to petitioner on charges 2, 3, 4 and 5,
15 (Legal Conclusions H, I, J, K) are hereby set aside, and the
16 penalty imposed on petitioner as to charge 1 (Legal Conclusions
17 (G) and (L) has been reconsidered. All other portions of the
18 Decision of July 27, 2000, are hereby adopted.

19 2. Additional Factual Findings shall be added as
20 follows:

21 A. Based on the fact that Gomez was the sole owner of
22 Darwal, and the fact that O'Connor relied so heavily on Gomez in
23 conducting the business of Darwal, evidences that O'Connor was in
24 effect "renting" his license and did not actively oversee the
25 licensed activities of Darwal or it's employees.

26 ///

27 ///

1 B. The fact that Gomez did the solicitation and
2 negotiation which should have been done by licensed personnel,
3 put the consuming public at risk.

4 3. Additional Legal Conclusions shall be added as
5 follows:

6 A. The conduct, acts and omissions of respondent
7 O'Connor, as the responsible broker, by allowing and permitting
8 Darwal Corporation to violate the real estate law, constitutes
9 the failure to exercise reasonable supervision over the
10 activities of Darwal Corporation. Thereby posing a risk to the
11 consuming public.

12 B. As the court said in Handeland v. Department of
13 Real Estate (1976) 58 Cal. App. 3d 513, 518: "Disciplinary
14 procedures provided for in the Business and Professions
15 Code...are to protect the public not only from (1) conniving real
16 estate salesmen but also from (2) the uninformed, negligent, or
17 unknowledgeable salesman." (numbers added).

18 C. In consideration of the public interest, the fact
19 that Legal Conclusions H, I, J, K are hereby set aside and the
20 violation of the Real Estate Law found against Respondent as set
21 forth in Legal Conclusions G and L, the order which follows is
22 consistent with the public interest, and supported by the above
23 considerations.

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

A. All licenses and licensing rights of Respondent JOHN JOSEPH O'CONNOR under the Real Estate Law are suspended for a period of One Hundred and Twenty Days (120) days from the effective date of this Decision;

1. provided, however, that ninety (90) days of said suspension shall be stayed for three (3) years upon the following terms and conditions:

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

(b) That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within three (3) years of the effective date of this Decision. Should such determination be made, the Commissioner may, in her 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.

2. The initial thirty (30) day portion of said suspension shall commence on the effective date of this Decision; provided, however, that if Respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

1 (a) Respondent pays a monetary penalty pursuant to
2 Section 10175.2 of the Business and Professions Code at the rate
3 of \$100.00 for each day of the suspension for a total monetary
4 penalty of \$3,000.

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

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

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

20 (e) If Respondent pays the monetary penalty and
21 if no further cause for disciplinary action against the real
22 estate licenses of Respondent occurs within three (3) years from
23 the effective date of the Decision, the stay hereby granted shall
24 become permanent.

1 3. Respondent shall, within six months from the
2 effective date of this Decision, take and pass the Professional
3 Responsibility Examination administered by the Department
4 including the payment of the appropriate examination fee. If
5 Respondent fails to satisfy this condition, the Commissioner may
6 order suspension of Respondent's license until Respondent passes
7 the examination.

8 The Decision herein shall become effective
9 immediately.

10 IT IS SO ORDERED

June 12, 2001.

11 PAULA REDDISH ZINNEMANN
12 Real Estate Commissioner

13 *Paula Reddish Zinnemann*
14

15 Per RTW, effective
16 date is 6-13-01
17 (filed date).
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FILED
AUG - 4 2000

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Krederholt

* * * * *

In the Matter of the Accusation of)
)
DARWAL CORPORATION and)
JOHN JOSEPH O'CONNOR,)
)
Respondent(s).)

No. H-28331 LA

L-2000020167

DECISION

The Proposed Decision dated July 12, 2000,
of the Administrative Law Judge of the Office of
Administrative Hearings, is hereby adopted as the Decision
of the Real Estate Commissioner in the above-entitled matter
with the following exception:

Condition 4 as to Respondent DARWAL CORPORATION is
not adopted and shall not be a part of the Decision.

This Decision shall become effective at 12 o'clock
noon on August 24, 2000.

IT IS SO ORDERED July 27, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Darwal Corporation
And John Joseph O'Connor,

Respondents.

Case No. H-28331 LA

OAH No. L-2000020167

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Oxnard, California, on June 19 and 20, 2000.

James Peel, Department Counsel, represented the complainant.

Respondent John Joseph O'Connor, Attorney at Law, represented himself.

Respondent Darwal Corporation was represented by Michael Morrow, Attorney at Law.

Oral and documentary evidence and evidence by way of stipulation and official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, determines, and orders as follows:

PARTIES AND JURISDICTION

1

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California brought the Accusation in that official capacity.

2

Darwal Corporation, and John Joseph O'Connor, (hereinafter referred to as, jointly or separately, respondent Darwal and respondent O'Conner) respondents, are presently licensed

and have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code" or "BPC").

3

All prehearing jurisdictional requirements have been met. Jurisdiction for this proceeding does exist.

FACTUAL FINDINGS
RE
ACCUSATION

4

At all times herein mentioned, respondent Darwal, was licensed by the Department of Real Estate of the State of California as a corporate real estate broker, and respondent O'Connor, was licensed as the designated broker officer of said corporation, and ordered, authorized or participated in the conduct of respondent Darwal Corporation set forth hereinafter.

5

At all times herein mentioned, respondent Darwal, on behalf of others in expectation of compensation, engaged in the business, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(a) of the Code, including soliciting buyers and sellers and negotiating the sale of real property.

6

During 1997 and 1998, in connection with the aforesaid real estate brokerage activities, respondent Darwal accepted or received funds from buyers and sellers and thereafter made disbursements of such funds.

7

In connection with respondents' activities as a real estate broker as set forth in Findings 4, 5, and 6, respondent Darwal, and respondent O'Connor, engaged in the following conduct:

(A) The employment of Darwin Escudero Gomez, who was not licensed as a real estate salesperson or broker, to solicit and negotiate sales and loans of real property as set forth below. These activities require a real estate license under Section 10131(a) of the Code.

2

(1) The sale of 2639 Captains Ave., Port Hueneme, California to Charles M. Duke and Margarita Duke.

(2) The sale of 142 W. Iris Street, Oxnard, California to Marcelino C. Segovia and Eleonor Segovia.

(3) The sale of 1500 Visalia, Oxnard, California to Jose Sereno Villasenor and Andrea Sereno.

(B) Deposited funds belonging to Charles M. Duke and Margarita Duke into a bank account which was not a trust account, and maintain the funds in a trust account until disbursed in accordance with instructions from the person entitled to the funds. Said conduct constitutes commingling respondents' own money with the money of others.

(C) Did not maintain a record of all trust funds received and not placed into a trust account.

(D) Did not forward all earnest money deposits received from buyers to escrow within 3 business days after acceptance of the offer.

(E) Did not provide all borrowers with a Mortgage Loan Disclosure Statement. In some instances, the disclosure statement was not signed by the broker or his representative.

8

The conduct of respondent Darwal set forth in Finding 7 does constitute willful disregard of the real estate law, and does constitute negligence.

9

The conduct of respondent O'Connor, as the responsible broker, by allowing and permitting respondent Darwal, to engage in the conduct set forth in Finding 7, constitutes willful disregard of the real estate law, and does constitute the failure to exercise reasonable supervision over the activities of respondent Darwal.

10

All factual allegations of the parties not hereinbefore found to be established are found to be unproved.

11

All motions and arguments not affirmed or denied herein, or on the record, are found not to be established by the facts or the law and are accordingly denied.

3

SUPPLEMENTAL FINDING

12

(A) Darwal's type of business, as set forth in the *Statement by Domestic Stock Corporation* filed with the Secretary of State is: "mortgage loan and real estate transactions". Darwin Gomez is there listed as the Chief Financial Officer. He is the majority shareholder of Darwal.

(B) Respondent O'Conner is not fluent in the Spanish language. The three pairs of participants in the transactions set forth in Finding 7 – and many other prospective buyers or sellers serviced by Darwal – are not fluent in the American English Language. Accordingly, respondent O'Conner and respondent Darwal relied on Darwin Gomez – fluent in both of said languages – to do that solicitation and negotiation which should have been done by licensed personnel.

(C) The practical and legal effect of the relationship of respondents Darwal and O'Conner and Darwal and Gomez was the evasion of certain of the laws and regulations of the Department. At a minimum certain of those laws and regulations are set forth in the Legal Conclusions.

FINDINGS
IN MITIGATION

13

(A) Respondent O'Conner, an Attorney at Law, was licensed for practice of law in California in 1968. Over the years, prior to his involvement with Darwal, he provided legal services to various cities (Glendale, Beverly Hills, Huntington Beach) as a Deputy City Attorney, Assistant City Attorney, or Special Counsel and after retirement from same in 1988 he engaged in the private practice of law. Since licensure, and over the period of his continuous law career, he has never suffered discipline of that license.

(B) Respondent O'Conner has been a long term licensee of the Department and has suffered no discipline. Respondent Darwal has suffered no discipline.

14

At or about the time of the filing of the Accusation respondent O'Conner amicably terminated his association with Darwal. During that association, in pertinent sum, respondent failed to provide all necessary and required supervision. The conduct of respondent O'Conner was not the result of intent or dishonest dealing but was inadvertent. It was not established, as the result of that conduct, that any person suffered actual loss or damage.

LEGAL CONCLUSIONS

1

The pertinent statutes concerning licensure and regulation of real estate brokers are found in the Real Estate Law of the Business and Professions Code (BPC). BPC Section 10000 ("This part may be cited as the Real Estate Law") *et seq.* The regulations pertinent herein are found in California Code of Regulations, Title 10, Chapter 6 (CCR) and empower the Real Estate Commissioner to administer and enforce the Real Estate Law.

2

Cause exists for discipline of respondents as follows:

(A) Respondent Darwal, for violations of BPC sections 10137 and 10131(a) and (d) by reason of Finding 7(A).

(B) Respondent Darwal for violations of BPC Sections 10145(a) and 10176(e) by reason of Finding 7(B).

(C) Respondent Darwal for violation of CCR Section 2831 by reason of Finding 7(C).

(D) Respondent Darwal for violation of CCR Section 2832 by reason of Finding 7(D).

(E) Respondent Darwal for violation of BPC Section 10240 by reason of Finding 7(E).

(F) Respondent Darwal for violations of BPC Sections 10137, 10177(d) and 10177(g) by reason of Finding 9.

(G) Respondent O'Conner for violation of BPC Sections 10137 and 10131(a) and (d) by reason of Finding 7(A).

(H) Respondent O'Conner for violation of BPC Sections 10145(a) and 10176(e) by reason of Finding 7(B).

(I) Respondent O'Conner for violation of CCR Section 2831 by reason of Finding 7(C).

(J) Respondent O'Conner for violation of CCR Section 2832 by reason of Finding 7(D).

Set aside

5

Set aside
- (K) Respondent O'Conner for violation of BPC Section 10240 by reason of Finding 7(E).

(L) Respondent O'Conner for violation of BPC Sections 10137, 10177(d) and 10177(h) by reason of Finding 9.

3

(A) The objective of an administrative proceeding relating to discipline, if any, is to protect the public; to determine whether a license holder has exercised that privilege in derogation of the public interest. Such proceedings are not for the primary purpose of punishment: *Fahmy v. MBC* (1995) 38 Cal. App. 4th 810,817; *Ex Parte Brounsell* (1778) 2 Cowp. 829, 98 Eng. Rep. 1385.

(B) In consideration of the public interest and in consideration of the number of violations set forth in Legal Conclusions 2 the order which follows is consistent with the public interest.

ORDER

1

All licenses and licensing rights of Respondent Darwal Corporation under the Real Estate Law are revoked; provided, however, a restricted corporate real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application thereof 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 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.

6

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 2 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's designated broker 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.

NOT ADAPTED

All licenses and licensing rights of Respondent John Joseph O'Conner 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 thereof 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 authority of Section 10156.6 of that Code:

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

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

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

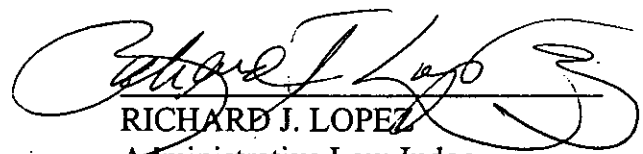
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education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

6. 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 Darwal has corrected the trust fund violations found in Finding 7. 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 cost 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.

Dated: 12 July 2000


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:sp

facts

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 14 2000
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DARWAL CORPORATION, et al.,

} By *R. Weiderhelf*
Case No. H-28331 LA
OAH No. L-200020167

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Law Office of Rosenmund, Baio & Morrow, 162 S. A Street, Oxnard, CA on June 19 & 20, 2000, at the hour of 9:30 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: June 14, 2000

By *James R. Peel*
Counsel

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, California 90013

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
MAY 17 2000
DEPARTMENT OF REAL ESTATE

By K. Medeholt

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-28331 LA
12)
13 DARWAL CORPORATION) FIRST AMENDED
14 and JOHN JOSEPH O'CONNOR,) A C C U S A T I O N
15 Respondents.)

16 The Complainant, Thomas McCrady, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against DARWAL CORPORATION, and JOHN JOSEPH
19 O'CONNOR, alleges as follows:

20 I

21 The Complainant, Thomas McCrady, acting in his
22 official capacity as a Deputy Real Estate Commissioner of the
23 State of California makes this Accusation against DARWAL
24 CORPORATION, and JOHN JOSEPH O'CONNOR.

25 II

26 DARWAL CORPORATION, and JOHN JOSEPH O'CONNOR,
27 (hereinafter referred to as respondents) are presently

Photo Log

1 licensed and/or have license rights under the Real Estate Law
2 (Part 1 of Division 4 of the Business and Professions Code,
3 hereinafter "Code").

4 III

5
6 At all times herein mentioned, respondent DARWAL
7 CORPORATION, was licensed by the Department of Real Estate of
8 the State of California as a corporate real estate broker, and
9 respondent JOHN JOSEPH O'CONNOR, was licensed as the
10 designated broker officer of said corporation, and ordered,
11 authorized or participated in the illegal conduct of
12 respondent DARWAL CORPORATION, as alleged in this Accusation.

13 IV

14 At all times herein mentioned, respondent DARWAL
15 CORPORATION, dba Continental Financial of Southern California,
16 on behalf of others in expectation of compensation, engaged in
17 the business, acted in the capacity of, advertised or assumed
18 to act as a real estate broker in the State of California
19 within the meaning of Sections 10131(a) and (d) of the Code,
20 including soliciting buyers and sellers and negotiating the
21 sale of real property, and soliciting borrowers and lenders
22 and negotiating loans on real property.

23 V

24 During 1997 and 1998, in connection with the
25 aforesaid real estate brokerage activities, respondent DARWAL
26 CORPORATION accepted or received funds from buyers and
27



1 sellers, and borrowers and lenders, and thereafter made
2 disbursements of such funds.

3 VI

4 In connection with respondents' activities as a real
5 estate broker as described above, respondents DARWAL
6 CORPORATION, and JOHN JOSEPH O'CONNOR, acted in violation of
7 the Real Estate Law, Business and Professions Code
8 (hereinafter Code), and California Code of Regulations
9 (hereinafter Regulations), Title 10, Chapter 6, as follows:

10 1. Violated Section 10137 of the Code by employing
11 Darwin Escudero Gomez, who was not licensed as a real estate
12 salesperson or broker, to solicit and negotiate sales of real
13 property, and solicit and negotiate loans on real property, as
14 set forth below. These activities require a real estate
15 license under Sections 10131(a) and (d) of the Code.

- 16 a. The sale of 2639 Captains Ave., Port
17 Hueneme, Cal., to Charles M. and Margarita
18 Duke.
- 19 b. The sale of 142 W. Iris St., Oxnard, Cal.,
20 to Marcelino C. and Eleonor Segovia.
- 21 c. The sale of 1500 Visalia, Oxnard, Cal.,
22 to Jose Sereno Villasenor and Andrea Sereno.
- 23 d. The sale of 1229 S. Normandie Ave., Los
24 Angeles, Cal., to Gerald L. Burns.

25 In addition, Gomez solicited and negotiated
26 a loan on the property to enable the buyer
27 to purchase the property.



1 pursuant to Sections 10137, 10177(d), and 10177(h) of the
2 Code.

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7 /

8 WHEREFORE, complainant prays that a hearing be
9 conducted on the allegations of this Accusation and, that upon
10 proof thereof, a decision be rendered imposing disciplinary
11 action against all licenses and licensing rights of
12 respondents DARWAL CORPORATION, and JOHN JOSEPH O'CONNOR,
13 under the Real Estate Law (Part 1 of Division 4 of the
14 Business and Professions Code) and for such other and further
15 relief as may be proper under other applicable provisions of
16 law.

17 Dated at Los Angeles, California this
18 this 17th day of May, 2000.

19
20 THOMAS MC CRADY
21 Deputy Real Estate Commissioner

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23
24
25 cc: Darwal Corporation
26 John Joseph O'Connor
27 Sacto
MA
TM



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 1 2000

In the Matter of the Accusation of) Case No. H-28331 LA
) OAH No. L-2000020167
DARWAL CORPORATION, et al.,)
)
)
Respondents.)

By Laure B. Dion

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 JUNE 19 & 20, 2000, 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: MAY 1 2000

DEPARTMENT OF REAL ESTATE

By:

James R. Peel
JAMES R. PEEL, Counsel

cc: Darwal Corporation
John Joseph O'Connor
Sacto.
OAH

Sacto. Flay

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
MAR - 2 2000
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
DARWAL CORPORATION, et al.,)
)
Respondents.)

Case No. H-28331 LA
OAH No. L-2000020167

By *[Signature]*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondents:

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, on **April 11 and 12, 2000**, 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 2, 2000.

cc: Darwal Corporation
John Joseph O'Connor
John O'Connor, Esq.
Danio Fajardo
Vaughn Weaver
Sacto.
OAH

DEPARTMENT OF REAL ESTATE

By: *[Signature]*
JAMES R. PEEL, Counsel

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Hay

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DEPARTMENT OF REAL ESTATE

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, California 90013
5
6
7 Telephone: (213) 576-6982
8 -or- (213) 576-6913 (Direct)

By *Julia B. Irons*

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-28331 LA
12 DARWAL CORPORATION)
13 and JOHN JOSEPH O'CONNOR,) A C C U S A T I O N
14 Respondents.)
_____)

15 The Complainant, Thomas McCrady, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against DARWAL CORPORATION, and JOHN JOSEPH O'CONNOR, alleges as
18 follows:

19 I

20 The Complainant, Thomas McCrady, acting in his
21 official capacity as a Deputy Real Estate Commissioner of the
22 State of California makes this Accusation against DARWAL
23 CORPORATION, and JOHN JOSEPH O'CONNOR.

24 II

25 DARWAL CORPORATION, and JOHN JOSEPH O'CONNOR,
26 (hereinafter referred to as respondents) are presently
27

1 licensed and/or have license rights under the Real Estate Law
2 (Part 1 of Division 4 of the Business and Professions Code,
3 hereinafter "Code").

4 III

5 At all times herein mentioned, respondent DARWAL
6 CORPORATION, was licensed by the Department of Real Estate of
7 the State of California as a corporate real estate broker, and
8 respondent JOHN JOSEPH O'CONNOR, was licensed as the designated
9 broker officer of said corporation, and ordered, authorized or
10 participated in the illegal conduct of respondent DARWAL
11 CORPORATION, as alleged in this Accusation.

13 IV

14 At all times herein mentioned, respondent DARWAL
15 CORPORATION, on behalf of others in expectation of compensation,
16 engaged in the business, acted in the capacity of, advertised or
17 assumed to act as a real estate broker in the State of
18 California within the meaning of Section 10131(a) of the Code,
19 including soliciting buyers and sellers and negotiating the sale
20 of real property.

21 V

22 During 1997 and 1998, in connection with the aforesaid
23 real estate brokerage activities, respondent DARWAL CORPORATION
24 accepted or received funds from buyers and sellers and
25 thereafter made disbursements of such funds.

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2 In connection with respondents' activities as a real
3 estate broker as described above, respondents DARWAL
4 CORPORATION, and JOHN JOSEPH O'CONNOR, acted in violation of the
5 Real Estate Law, Business and Professions Code (hereinafter
6 Code), and California Code of Regulations (hereinafter
7 Regulations), Title 10, Chapter 6, as follows:

8 1. Violated Section 10137 of the Code by employing
9 Darwin Escudero Gomez, who was not licensed as a real estate
10 salesperson or broker, to solicit and negotiate sales of real
11 property as set forth below. These activities require a real
12 estate license under Section 10131(a) of the Code.

- 13 a. The sale of 2639 Captains Ave., Port Hueneme,
14 Cal., to Charles M. and Margarita Duke.
15 b. The sale of 142 W. Iris St., Oxnard, Cal.,
16 to Marcelino C. and Eleonor Segovia.
17 c. The sale of 1500 Visalia, Oxnard, Cal.,
18 to Jose Sereno Villasenor and Andrea Sereno.
19 d. The sale of 1229 S. Normandie Ave., Los
20 Angeles, Cal., to Gerald L. Burns.

21 2. Violated Sections 10145(a) and 10176(e) of the
22 Code by depositing funds belonging to Charles M. and Margarita
23 Duke into a bank account which was not a trust account and
24 maintain the funds in a trust account until disbursed in
25 accordance with instructions from the person entitled to the
26 funds.

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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 all licenses and licensing rights of respondents DARWAL CORPORATION, and JOHN JOSEPH O'CONNOR, 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
November 30, 1999

~~Thomas Mc Grady~~ by
Deputy Real Estate Commissioner
Edward Thant

cc: Darwal Corporation
John Joseph O'Conner
Sacto.
MA
TM