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DEPARTMENT OF REAL ESTATE

Paula B. Uno

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-28454 LA
) L-2000040325
APEX PROPERTY MANAGEMENT, INC.,)
and CLARK SMITH BEARDSLEE,)
)
Respondents.)

ORDER STAYING EFFECTIVE DATE

On October 29, 2002, a Decision was rendered in the above-entitled matter to become effective November 21, 2002.

IT IS HEREBY ORDERED that the effective date of the Decision of October 29, 2002, is stayed for a period of 30 days.

The Decision of October 29, 2002, shall become effective at 12 o' clock noon on December 20, 2002.

DATED: November 19, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

By: *Dolores Ramos*

DOLORES RAMOS
Regional Manager

lbo

1 Department of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, California 90013
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FILED
NOV 1 2002
DEPARTMENT OF REAL ESTATE

Janice B. Allen

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-28454 LA
)
APEX PROPERTY MANAGEMENT, INC.,) STIPULATION AND AGREEMENT
and CLARK SMITH BEARDSLEE,)
)
Respondents.)

It is hereby stipulated by and between APEX PROPERTY MANAGEMENT, INC. and CLARK SMITH BEARDSLEE, (sometimes referred to as Respondents), and their attorney Lawrence H. Lackman, and the Complainant, acting by and through James R. Peel, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on March 23, 2000, in this matter.

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

1 hearing was to be held in accordance with the provisions of the
2 Administrative Procedure Act (APA), shall instead and in place
3 thereof be submitted solely on the basis of the provisions of
4 this Stipulation and Agreement.

5 2. Respondents have received, read and understand the
6 Statement to Respondent, the Discovery Provisions of the APA
7 and the Accusation filed by the Department of Real Estate in
8 this proceeding.

9 3. On April 10, 2000, Respondents filed a Notice of
10 Defense, pursuant to Section 11506 of the Government Code for
11 the purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notice of Defense. Respondents acknowledge that they
14 understand that by withdrawing said Notice of Defense they will
15 thereby waive their right to require the Commissioner to prove
16 the allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that they will
18 waive other rights afforded to them in connection with the
19 hearing, such as the right to present evidence in defense of the
20 allegations in the Accusation and the right to cross-examine
21 witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, although not admitting or denying the truth of the
24 allegations, will not contest the factual allegations contained
25 in the Accusation filed in this proceeding and the Real Estate
26 Commissioner shall not be required to provide further evidence
27 of such allegations.

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

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

18 7. This Stipulation is entered into by each party with
19 the express understanding and agreement that it is to be used for
20 the purposes of settling these proceedings only and that this
21 Stipulation shall not be deemed, used, or accepted as an
22 acknowledgment or stipulation in any other civil or
23 administrative proceeding to which this Department is not a
24 party.

25 DETERMINATION OF ISSUES

26 By reason of the foregoing stipulations and waivers and
27 solely for the purpose of settlement of the pending Accusation

1 without a hearing, it is stipulated and agreed that the following
2 determination of issues shall be made:

3 I

4 The conduct of Respondents, APEX MANAGEMENT, INC. AND
5 CLARK SMITH BEARDSLEE, as alleged in the Accusation, may be
6 grounds for the suspension or revocation of all of the real
7 estate licenses and license rights of Respondents pursuant
8 Section 10177(d) of the Business and Professions Code for
9 violation of Sections 2831, 2832, 2832.1, Title 10, Chapter 6,
10 California Code of Regulations, and Code Section 10145.

11 ORDER

12 All licenses and licensing rights of Respondents APEX
13 PROPERTY MANAGEMENT, INC. and CLARK SMITH BEARDSLEE under the
14 Real Estate Law are revoked; provided, however, a restricted real
15 estate broker license shall be issued to Respondents APEX
16 PROPERTY MANAGEMENT, INC. and CLARK SMITH BEARDSLEE pursuant to
17 Section 10156.5 of the Business and Professions Code if
18 Respondents make application therefor and pay to the Department
19 of Real Estate the appropriate fee for the restricted license
20 within 90 days from the effective date of this Decision. The
21 restricted license issued to Respondents shall be subject to all
22 of the provisions of Section 10156.7 of the Business and
23 Professions Code and to the following limitations, conditions and
24 restrictions imposed under authority of Section 10156.6 of that
25 Code:

26 ///

27 ///

1 A. All licenses and licensing rights of Respondents
2 APEX PROPERTY MANAGEMENT, INC. and CLARK SMITH BEARDSLEE under
3 the Real Estate Law are suspended for a period of ninety (90)
4 days from the effective date of this Decision; provided, however,
5 that sixty (60) days of said suspension shall be stayed for two
6 (2) years upon the following terms and conditions:

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

10 2. That no final subsequent determination be made,
11 after hearing or upon stipulation, that cause for disciplinary
12 action occurred within two (2) years of the effective date of
13 this Decision. Should such a determination be made, the
14 Commissioner may, in her discretion, vacate and set aside the
15 stay order and reimpose all or a portion of the stayed
16 suspension. Should no such determination be made, the stay
17 imposed herein shall become permanent.

18 3. Provided, however, that if Respondents petition,
19 the remaining thirty (30) days of said 90 day suspension shall be
20 stayed upon condition that:

21 a. Respondents pay a monetary penalty pursuant to
22 Section 10175.2 of the Business and Professions
23 Code at the rate of \$166.66 for each day of the
24 suspension for a total monetary penalty of \$5,000
25 for each Respondent. (Total \$10,000 for both
26 Respondents).

- 1 b. Said payment shall be in the form of a cashier's
2 check or certified check made payable to the
3 Recovery Account of the Real Estate Fund. Said
4 check must be received by the Department prior to
5 the effective date of the Decision in this matter.
- 6 c. No further cause for disciplinary action against
7 the real estate license of Respondents occurs
8 within two years from the effective date of the
9 Decision in this matter.
- 10 d. If Respondents fail to pay the monetary penalty in
11 accordance with the terms and conditions of the
12 Decision, the Commissioner may, without a hearing,
13 order the immediate execution of all or any part of
14 the stayed suspension in which event the
15 Respondents shall not be entitled to any repayment
16 nor credit, prorated or otherwise, for money paid
17 to the Department under the terms of this Decision.
- 18 e. If Respondents pay the monetary penalty and if no
19 further cause for disciplinary action against the
20 real estate license of Respondents occurs within
21 two years from the effective date of the Decision,
22 the stay hereby granted shall become permanent.

23 B. Respondent BEARDSLEE shall, prior to and as a
24 condition of the issuance of said restricted license, submit
25 proof satisfactory to the Commissioner of having taken and
26 completed at an accredited institution the continuing education
27 course on trust fund accounting and handling specified in

1 paragraph (3) of subdivision (a) of Section 10170.5 of the
2 Business and Professions Code. Said course must have been
3 completed within 120 days prior to the effective date of the
4 Order herein.

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

10 D. The restricted license issued to Respondents may be
11 suspended prior to hearing by Order of the Real Estate
12 Commissioner on evidence satisfactory to the Commissioner that
13 Respondents have violated provisions of the California Real
14 Estate Law, the Subdivided Lands Law, Regulations of the Real
15 Estate Commissioner or conditions attaching to the restricted
16 license.

17 E. Respondents shall not be eligible to apply for the
18 issuance of an unrestricted real estate license nor the removal
19 of any of the conditions, limitations or restrictions of a
20 restricted license until two (2) years have elapsed from the
21 effective date of this Decision.

22 F. Respondent BEARDSLEE shall, within nine (9) months
23 from the effective date of this Decision, present evidence
24 satisfactory to the Real Estate Commissioner that Respondent has,
25 since the most recent issuance of an original or renewal real
26 estate license, taken and successfully completed the continuing
27 education requirements of Article 2.5 of Chapter 3 of the Real

1 Estate Law for renewal of a real estate license. If Respondent
2 fails to satisfy this condition, the Commissioner may order the
3 suspension of the restricted license until Respondent presents
4 such evidence. The Commissioner shall afford Respondent the
5 opportunity for a hearing pursuant to the Administrative
6 Procedure Act to present such evidence.

7 G. Respondent BEARDSLEE shall, within six months from
8 the effective date of this Decision, take and pass the
9 Professional Responsibility Examination administered by the
10 Department including the payment of the appropriate examination
11 fee. If Respondent fails to satisfy this condition, the
12 Commissioner may order suspension of Respondent's license until
13 Respondent passes the examination.

14 H. Pursuant to Section 10148 of the Business and
15 Professions Code, Respondents shall pay the Commissioner's
16 reasonable cost for: a) the audit which led to this disciplinary
17 action and, b) a subsequent audit (cost not to exceed \$5,500) to
18 determine if Respondents have corrected the trust fund
19 violation(s) found in paragraph I of the Determination of Issues.
20 In calculating the amount of the Commissioner's reasonable cost,
21 the Commissioner may use the estimated average hourly salary for
22 all persons performing audits of real estate brokers, and shall
23 include an allocation for travel time to and from the auditor's
24 place of work. Respondents shall pay such cost within 60 days of
25 receiving an invoice from the Commissioner detailing the
26 activities performed during the audit and the amount of time
27 spent performing those activities. The Commissioner may suspend

1 the restricted license issued to Respondents pending a hearing
2 held in accordance with Section 11500, et seq., of the Government
3 Code, if payment is not timely made as provided for herein, or as
4 provided for in a subsequent agreement between the Respondents
5 and the Commissioner. The suspension shall remain in effect
6 until payment is made in full or until Respondent enters into an
7 agreement satisfactory to the Commissioner to provide for
8 payment, or until a decision providing otherwise is adopted
9 following a hearing held pursuant to this condition.

10 I. No restricted license shall be issued until
11 Respondents have submitted satisfactory evidence to the
12 Department of Real Estate of having cured all trust account
13 shortages.

14 Petition for reinstatement of a revoked real estate
15 license is controlled by Section 11522 of the Government Code.
16 A copy of Section 11522 is attached hereto for the information of
17 Respondents.

18 If and when application is made for a real estate
19 license through a petition for reinstatement, all competent
20 evidence of rehabilitation presented by the Respondent will be
21 considered by the Real Estate Commissioner. A copy of the
22 Commissioner's Criteria of Rehabilitation is attached hereto.

23
24 DATED: Oct 7, 2002

James R. Peel
JAMES R. PEEL
Counsel for Complainant

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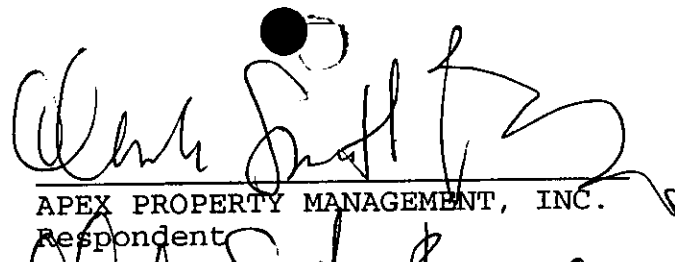
I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government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

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondents, to the Department at the following telephone/fax number (213) 576-6917. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of his or her actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

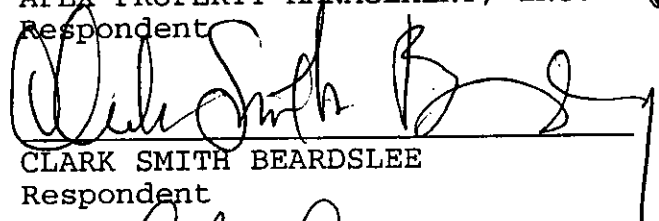
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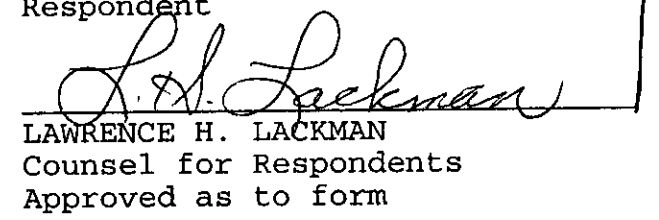
DATED: 9.30.02


APEX PROPERTY MANAGEMENT, INC.
Respondent

DATED: 9.30.02


CLARK SMITH BEARDSLEE
Respondent

DATED: 10.02.02

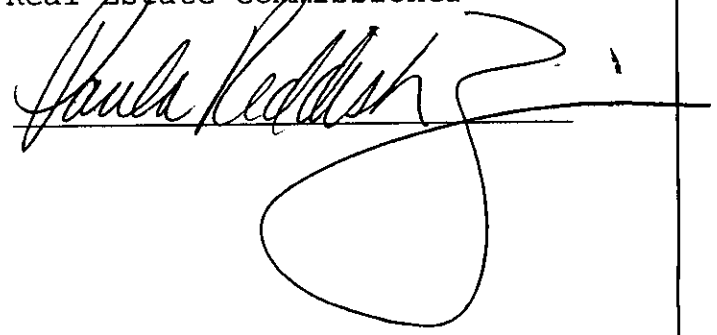

LAWRENCE H. LACKMAN
Counsel for Respondents
Approved as to form

* * * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision in this matter and shall become effective
at 12 o'clock noon on November 21, 2002.

IT IS SO ORDERED October 29, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



*Sacto
Flag*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
JUL 16 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation)
APEX PROPERTY MANAGEMENT, INC.)
AND CLARK SMITH BEARDSLEE,)
Respondent(s).)

Case No. H-28454 LA)
OAH No. L-2000040325)

Janina B. ...

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 the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on SEPTEMBER 27 & 30, 2002, 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: July 16, 2002

DEPARTMENT OF REAL ESTATE
By: *James R. Peel*
JAMES R. PEEL, Counsel

cc: Apex Property Management, Inc.
Clark Smith Beardslee
Lawrence H. Lackman, Esq.
Sacto., OAH

FILED
 FEB 13 2002

DEPARTMENT OF REAL ESTATE

Jana B. Clark

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
 APEX PROPERTY MANAGEMENT, INC.,) DRE NO. H-28454 LA
 and CLARK SMITH BEARDSLEE,) OAH NO. L-2000040325
)
 Respondent.)

ORDER SETTING ASIDE DECISION
AFTER REMAND FROM SUPERIOR
COURT CASE NO. BS 00CC09124

TO: APEX PROPERTY MANAGEMENT, INC. and CLARK SMITH BEARDSLEE
 Respondents and to the Attorney of Record Barry G. Coleman:

On or about July 6, 2000, in a Decision effective
 August 2, 2000, the licenses of respondents were revoked.

Respondents filed a petition for the issuance of a Writ
 of Administrative Mandamus in the Superior Court of the State of
 California, County of Orange, in Case No. 00CC09124. A hearing
 was held in Department C9 of said Superior Court on September 6,
 2001.

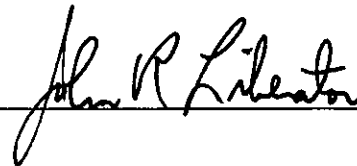
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1 After hearing the arguments of counsel and
2 consideration of the administrative record, the court ruled
3 granting the Writ of Administrative Mandamus. A Peremptory Writ
4 of Mandate was issued ordering the Department of Real Estate to
5 vacate it's Decision revoking Respondents' California real
6 estate brokers licenses. In addition, the matter was remanded
7 to the Department for further proceedings in accordance with the
8 Decision of the Court.

9 NOW, THEREFORE, IT IS HEREBY ORDERED, that the
10 Decision of July 6, 2000, revoking the real estate broker
11 licenses of Respondents is set aside, and in accordance with
12 Section 11517(c) of the Government Code, that this case be
13 referred to the Office of Administrative Hearings for a hearing
14 de novo.

15 DATED: February 8, 2002

16 PAULA REDDISH ZINNEMANN
17 Real Estate Commissioner

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AUG - 4 2000
DEPARTMENT OF REAL ESTATE

By *K. Medeiros*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-28454 LA
APEX PROPERTY MANAGEMENT, INC.,)	
and CLARK SMITH BEARDSLEE,)	
Respondents.)	

DECISION DENYING RECONSIDERATION

On July 6, 2000, a Decision was rendered herein by the Real Estate Commissioner which revoked the real estate broker license and license rights of Respondents APEX PROPERTY MANAGEMENT, INC., and CLARK SMITH BEARDSLEE. Said Decision is to become effective on August 2, 2000. On July 19, 2000, respondents petitioned for reconsideration of the said Decision of July 6, 2000.

I have considered the petition of Respondents and have concluded that no good cause has been presented for reconsidering this matter therefore it is ordered that reconsideration be



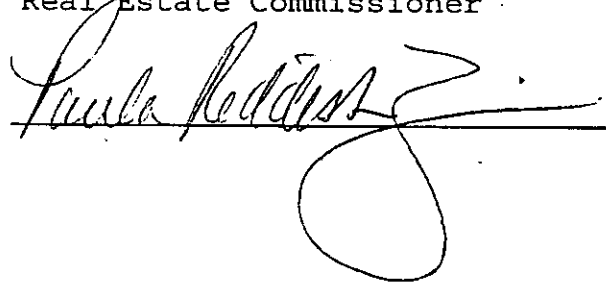
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denied.

The Decision of July 6, 2000, shall become effective at 12 o'clock noon on August 2, 2000.

IT IS SO ORDERED August 1, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



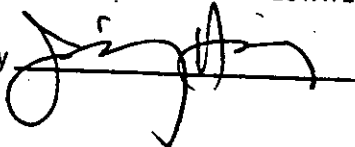
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FILED
JUL 13 2000

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Accusation of)
APEX PROPERTY MANAGEMENT, INC.,)
and CLARK SMITH BEARDSLEE,)
Respondents.)

No. H-28454 LA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on June 23, 2000, and the findings of facts set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence

FINDINGS OF FACT

I

On June 23, 2000, because respondents failed to appear at the hearing in this matter, respondents' default was entered herein.

II

APEX PROPERTY MANAGEMENT, INC. and CLARK SMITH BEARDSLEE (hereinafter referred to as respondents) are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code").

III

At all times herein mentioned, respondent APEX PROPERTY MANAGEMENT, INC., was licensed by the Department of Real Estate of the State of California as a corporate real estate broker, and respondent CLARK SMITH BEARDSLEE was licensed as the designed broker officer of said corporation, and ordered, authorized or participated in the illegal conduct of respondent APEX PROPERTY MANAGEMENT, INC., as found in this decision. Respondents were previously disciplined in Case No. H-895 SA, effective February 13, 1991, whereby their real estate broker licenses were revoked

and restricted. The licenses were subsequently reinstated to unrestricted status.

IV

At all times herein mentioned, respondent APEX PROPERTY MANAGEMENT, INC., 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(b) of the Code, including soliciting owners and renters and collecting rents from real property.

V

During 1998 and 1999, in connection with the aforesaid real estate brokerage activities, respondent APEX PROPERTY MANAGEMENT, INC., accepted or received funds from owners and renters and thereafter made disbursements of such funds. Respondent maintained trust account No. 1890816380, Commerce Bank-California, 611 Anton Blvd., Costa Mesa.

VI

In connection with respondents' activities as a real estate broker as described above, respondents APEX PROPERTY MANAGEMENT, INC., and CLARK SMITH BEARDSLEE, acted in violation of the Real Estate Law, Business and Professions Code (hereinafter Code), and California Code of Regulations (hereinafter Regulations), Title 10, Chapter 6, as follows:

1. Violated Section 10145(a) of the Code and Regulation 2832.1 by maintaining a shortage in the trust account as of September 30, 1999, in the amount of \$20,063.60.
2. Violated Sections 10145(a), 10176(e), and 10176(i), of the Code by removing trust funds from the trust account on numerous occasions and depositing the funds into private accounts with Merrill Lynch and Fidelity Investments thereby commingling the trust funds with respondents' personal funds and converting the trust funds to the use of respondents without the permission of the owners of the trust funds.
3. Violated Regulation 2832 by failing to deposit on several occasions trust funds into a trust account no later than 3 business days after receiving the trust funds from the principals.
4. Violated Regulations 2831 in that the columnar record failed to include recordation of all receipts and disbursements.

5. Violated Regulation 2831.2 by failing to maintain complete and accurate monthly trust account reconciliations.

6. Violated Section 10161.8 of the Code by failing to notify the Department of Real Estate when salespersons were terminated.

DETERMINATION OF ISSUES

I

The conduct of respondent APEX PROPERTY MANAGEMENT, INC., as found above, subjects its real estate license and license rights to suspension or revocation pursuant to Sections 10177(d), 10176(e), 10176(i), and 10177(g) of the Code.

II

The conduct of respondent CLARK SMITH BEARDSLEE, as found above, as the responsible broker, by allowing and permitting respondent APEX PROPERTY MANAGEMENT, INC., to engage in the conduct specified in paragraph VI above, subjects his real estate licenses and license rights to suspension or revocation pursuant to Sections 10177(d), 10176(e), 10176(i), and 10177(h) of the Code.

III

The standard of proof applied was clear and convincing proof to a reasonable certainty.

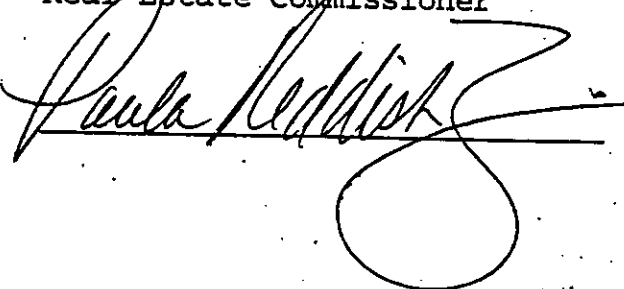
ORDER

All licenses and license rights of respondent APEX PROPERTY MANAGEMENT, INC., and CLARK SMITH BEARDSLEE, under the provisions of Part 1 of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on August 2nd., 2000

DATED: July 6, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



FILED
JUN 23 2000
DEPARTMENT OF REAL ESTATE

By R. Medichols

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-28454 LA
APEX PROPERTY MANAGEMENT, INC.,)	<u>DEFAULT ORDER</u>
and CLARK SMITH BEARDSLEE,)	
Respondent.)	

The above-named Respondents failed to appear at the hearing in this matter and are now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED JUN 23 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

By: Randolph Brendia
RANDOLPH BRENDIA
Regional Manager

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

Sacto

In the Matter of the Accusation of)
APEX PROPERTY MANAGEMENT INC.,)
et al.,)
Respondent(s).)

Case No. H-28454 LA
OAH No. L-2999940325

FILED
MAY 10 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION *R. Nields*

To the above-named Respondent(s):

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, 6th Floor, Suite 630, Los Angeles, California, on JUNE 7, 2000, 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 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 10 2000

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL, Counsel

cc: Apex Property Management, Inc.
Clark Smith Beardslee
Sacto.
OAH MLB
Larry Rothman, Esq.

SALTO

1 JAMES R. PEEL, Counsel
2 Department of Real Estate
3 320 W. 4th St., Room 350
4 Los Angeles, California 90013
5 State Bar 47055
6
7
8 (213) 576-6913
9

FILED
MAR 23 2000
DEPARTMENT OF REAL ESTATE

By J. J. [Signature]

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

11 In the Matter of the Accusation of) NO. H-28454 LA
12 APEX PROPERTY MANAGEMENT, INC.,)
13 and CLARK SMITH BEARDSLEE,) A C C U S A T I O N
14 Respondents.)

15
16 The Complainant, Thomas McCrady, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against APEX PROPERTY MANAGEMENT, INC. and CLARK
19 SMITH BEARDSLEE, alleges as follows:

I

20
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 APEX
24 PROPERTY MANAGEMENT, INC. and CLARK SMITH BEARDSLEE.

II

25
26 APEX PROPERTY MANAGEMENT, INC. and CLARK SMITH
27 BEARDSLEE (hereinafter referred to as respondents) are

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

4
5 III

6 At all times herein mentioned, respondent APEX
7 PROPERTY MANAGEMENT, INC. was licensed by the Department of
8 Real Estate of the State of California as a corporate real
9 estate broker, and respondent CLARK SMITH BEARDSLEE was
10 licensed as the designated broker officer of said corporation,
11 and ordered, authorized or participated in the illegal conduct
12 of respondent APEX PROPERTY MANAGEMENT, INC., as alleged in
13 this Accusation. Respondents were previously disciplined in
14 Case No. H-895 SA, effective February 13, 1991, whereby their
15 real estate broker licenses were revoked and restricted. The
16 licenses were subsequently reinstated to unrestricted status.

17 IV

18 At all times herein mentioned, respondent APEX
19 PROPERTY MANAGEMENT, INC., on behalf of others in expectation
20 of compensation, engaged in the business, acted in the
21 capacity of, advertised or assumed to act as a real estate
22 broker in the State of California within the meaning of
23 Section 10131(b) of the Code, including soliciting owners and
24 renters and collecting rents from real property.

25 V

26 During 1998 and 1999, in connection with the
27 aforesaid real estate brokerage activities, respondent APEX
PROPERTY MANAGEMENT, INC. accepted or received funds from



1 owners and renters and thereafter made disbursements of such
2 funds. Respondent maintained trust account No. 1890816380,
3 Commerce Bank-California, 611 Anton Blvd., Costa Mesa.

4 VI

5 In connection with respondents' activities as a real
6 estate broker as described above, respondents APEX PROPERTY
7 MANAGEMENT, INC. and CLARK SMITH BEARDSLEE, acted in violation
8 of the Real Estate Law, Business and Professions Code
9 (hereinafter Code), and California Code of Regulations
10 (hereinafter Regulations), Title 10, Chapter 6, as follows:

11 1. Violated Section 10145(a) of the Code and
12 Regulations 2832.1 and 2835 by maintaining a shortage in the
13 trust account as of September 30, 1999, in the amount of
14 \$20,063.60, and a overage in the trust account as of September
15 30, 1999, in the amount of \$7,372.13.

16 2. Violated Sections 10145(a), 10176(e), and
17 10176(i), of the Code by removing trust funds from the trust
18 account on numerous occasions and depositing the funds into
19 private accounts with Merril Lynch and Fidelity Investments
20 thereby commingling the trust funds with respondents' personal
21 funds and converting the trust funds to the use of respondents
22 without the permission of the owners of the trust funds.

23 3. Violated Regulation 2832 by failing to deposit on
24 several occasions trust funds into a trust account no later
25 than 3 business days after receiving the trust funds from the
26 principals.

27



1 4. Violated Regulation 2831 in the columnar record
2 failed to include recordation of all receipts and
3 disbursements.

4 5. Violated Regulation 2831.2 by failing to
5 maintain complete and accurate monthly trust account
6 reconciliations.

7 6. Violated Section 10161.8 of the Code by failing
8 to notify the Department of Real Estate when salespersons were
9 terminated.

10 VII

11 The conduct of respondent APEX PROPERTY MANAGEMENT,
12 INC., as alleged above, subjects its real estate license and
13 license rights to suspension or revocation pursuant to
14 Sections 10177(d), 10176(e), 10176(i), and 10177(g) of the
15 Code.

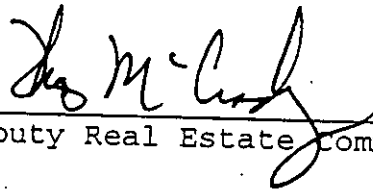
16 VIII

17 The conduct of respondent CLARK SMITH BEARDSLEE, as
18 alleged above, as the responsible broker, by allowing and
19 permitting respondent APEX PROPERTY MANAGEMENT, INC. to engage
20 in the conduct specified in paragraph VI above, subjects his
21 real estate licenses and license rights to suspension or
22 revocation pursuant to Sections 10177(d), 10176(e), 10176(i),
23 and 10177(h) of the Code.

24 WHEREFORE, complainant prays that a hearing be
25 conducted on the allegations of this Accusation and, that upon
26 proof thereof, a decision be rendered imposing disciplinary
27 action against all licenses and licensing rights of

1 respondents APEX PROPERTY MANAGEMENT, INC. and CLARK SMITH
2 BEARDSLEE under the Real Estate Law (Part 1 of Division 4 of
3 the Business and Professions Code) and for such other and
4 further relief as may be proper under other applicable
5 provisions of law.

6 Dated at Los Angeles, California this
7 this 23rd day of March, 2000.

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9 
10 Deputy Real Estate Commissioner

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27

Cc: Apex Property Management Inc.
Clark Smith Beardslee
Sacto.
Audit Section
MLB
TM