

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6911 (direct)
5 -or- (213) 576-6982 (office)

FILED
SEP 27 2002
DEPARTMENT OF REAL ESTATE

By *R. Velez*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-29006 LA
12	VPM MANAGEMENT INC.; and,)	
13	PHILIP HAROLD MCNAMEE,)	<u>STIPULATION</u>
14	individually and as designated)	<u>AND</u>
15	officer of VPM Management Inc.,)	<u>AGREEMENT</u>
16	Respondents.)	

17
18 It is hereby stipulated by and between VPM MANAGEMENT
19 INC. and PHILIP HAROLD MCNAMEE, individually and as designated
20 officer of VPM Management, Inc. (sometimes collectively referred
21 to as "Respondents"), represented by Michael D'Angelo, Attorney
22 At Law and the Complainant, acting by and through Elliott Mac
23 Lennan, Counsel for the Department of Real Estate, as follows for
24 the purpose of settling and disposing of the Accusation filed on
25 April 3, 2001, in this matter:

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

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

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

10 3. On February 28, 2002, Respondents filed a Notice of
11 Defense pursuant to Section 11506 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondents hereby freely and voluntarily withdraw
14 said Notice of Defense. Respondents acknowledge that they
15 understand that by withdrawing said Notice of Defense they
16 thereby waive their right to require the Commissioner to prove
17 the allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that they will
19 waive other rights afforded to them in connection with the
20 hearing such as the right to present evidence in their defense of
21 the allegations in the Accusation and the right to cross-examine
22 witnesses.

23 4. This Stipulation is based on the allegations
24 contained in the Accusation. In the interest of expedience and
25 economy, Respondents choose not to contest these allegations, but
26 to remain silent and understand that, as a result thereof, these
27 allegations, without being admitted or denied, will serve as a

1 prima facie basis for the disciplinary action stipulated to
2 herein. The Real Estate Commissioner shall not be required to
3 provide further evidence to prove said allegations.

4 5. This Stipulation is based on Respondents decision
5 not to contest the allegations set forth in the Accusation as a
6 result of the agreement negotiated between the parties. This
7 Stipulation is expressly limited to this proceeding and any
8 further proceeding initiated by or brought before the Department
9 of Real Estate based upon the facts and circumstances alleged in
10 the Accusation, and is made for the sole purpose of reaching an
11 agreed disposition of this proceeding without a hearing. The
12 decision of Respondents not to contest the allegations is made
13 solely for the purpose of effectuating this Stipulation. It is
14 the intent and understanding of the parties that this Stipulation
15 shall not be binding or admissible against Respondents in any
16 actions against Respondents by third parties.

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

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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusation against Respondents herein.

9 8. This stipulation and the order made pursuant to
10 this stipulation shall have no collateral estoppel or res
11 judicata effect in any proceeding(s) in which VPM MANAGEMENT INC.
12 and PHILIP HAROLD MCNAMEE and the Department are not parties.
13 This stipulation is made and accepted with the express
14 understanding and agreement that it is for the purpose of
15 settling these proceedings only, and is not intended as, nor
16 shall be it be deemed, used, argued, or accepted as an
17 acknowledgement or admission of fact in any other judicial,
18 administrative, or other proceeding in which the Department is
19 not a party.

20 9. Respondents have already paid the cost of the audit
21 which led to this disciplinary action and imposed pursuant to
22 Business and Professions Code Section 10148. The amount of said
23 paid cost was \$2,500.41. Respondents have received, read, and
24 understand the "Notice Concerning Costs of Subsequent Audit".
25 Respondents further understand that by agreeing to this
26 Stipulation, the findings set forth below in the Determination of
27

1 Issues become final, and the Commissioner may charge Respondents
2 for the cost of any subsequent audit conducted pursuant to
3 Business and Professions Code Section 10148 to determine if the
4 violations have been corrected. The maximum cost of the
5 subsequent audit will not exceed \$2,500.41.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, it is stipulated
8 and agreed that the following determination of issues shall be
9 made:

10 1.

11 The conduct, acts and/or omissions of VPM MANAGEMENT
12 INC. as described in Paragraph 4, is in violation of Sections
13 10145 of the Business and Professions Code (Code) and Sections
14 2731 and 2832 of Title 10, Chapter 6 of the California Code of
15 Regulations (Regulations) and is a basis for the suspension or
16 revocation of Respondent's license and license rights as a
17 violation of the Real Estate Law pursuant to Code Sections
18 10177(d).

19 2.

20 The conduct, acts and/or omissions of PHILIP HAROLD
21 MCNAMEE, as described in Paragraph 4, constitutes a failure to
22 ensure VPM MANAGEMENT INC. was in compliance with the Real Estate
23 Law and to exercise reasonable supervision over the activities of
24 VPM MANAGEMENT INC. for which a real estate license is required,
25 in violation of Code Sections 10159.2. This conduct is cause for
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1 the suspension or revocation of PHILIP HAROLD MCNAMEE's license
2 and license rights pursuant to Code Section 10177(d).

3 ORDER

4 WHEREFORE THE FOLLOWING ORDER IS MADE

5 I.

6 All licenses and licensing rights of Respondents
7 VPM MANAGEMENT INC. and PHILIP HAROLD MCNAMEE under the Real
8 Estate Law are suspended for a period of sixty (60) days from the
9 effective date of this Decision. Thirty (30) days of said
10 suspension shall be stayed for two (2) years upon the terms and
11 conditions set forth in paragraph numbers A and B provided
12 however, all licenses and licensing rights of Respondents are
13 indefinitely suspended unless or until Respondent PHILIP HAROLD
14 MCNAMEE provides proof satisfactory to the Commissioner, of
15 having taken, within thirty (30) days prior to this Order or any
16 time after said date, the trust fund accounting and handling
17 course specified on paragraph (3) of subdivision (a) of Section
18 10170.5 of the Business and Professions Code.

19
20 A. Respondents shall obey all laws, rules and
21 regulations governing the rights, duties and responsibilities
22 of a real estate licensee in the State of California.

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

5 C. If Respondents petition, the remaining thirty (30)
6 days of said sixty (60) day suspension shall be stayed upon
7 condition that:

8 1. Respondents pay a monetary penalty pursuant to
9 Section 10175.2 of the Code at the rate of sixteen dollars and
10 sixty-six cents (\$16.66) per day or a total of \$500 per
11 respondent for a total monetary penalty of \$1,000).

12 2. Said payment shall be in the form of a cashier's
13 check or certified check made payable to the Recovery Account of
14 the Real Estate Fund. Said check must be received
15 by the Department prior to the effective date of the Decision
16 in this matter.

17 3. No further cause for disciplinary action against
18 the real estate license of Respondents occur within two (2) years
19 from the effective date of the Decision in this matter.

20 4. If Respondents fail to pay the monetary penalty in
21 accordance with the terms and conditions of the Decision, the
22 Commissioner may, without a hearing, order the immediate
23 execution of all or any part of the stayed suspension in which
24 event Respondents shall not be entitled to any repayment nor
25 credit, prorated or otherwise, for money paid to the Department
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1 under the terms of this Decision.

2 5. If Respondents pay the monetary penalty and if no
3 further cause for disciplinary action against the real estate
4 licenses of Respondents occur within two (2) years from the
5 effective date of the Decision, the stay hereby granted shall
6 become permanent.

7 II.

8 Pursuant to Section 10148 of the Business and
9 Professions Code, Respondents VPM MANAGEMENT INC. and PHILIP
10 HAROLD MANAMEE have paid the Commissioner's reasonable cost for
11 the audit which led to this disciplinary action. Additionally,
12 Respondents may be required to pay the cost of a subsequent audit
13 to determine if Respondents are now in compliance with the Real
14 Estate Law. The cost of the audit which led to this disciplinary
15 action was \$2,500.41. In calculating the amount of the
16 Commissioner's reasonable cost, the Commissioner may use the
17 estimated average hourly salary for all persons performing audits
18 of real estate brokers, and shall include an allocation for
19 travel time to and from the auditor's place of work. Said amount
20 for the subsequent audit shall not exceed \$2,500.41.

22 Respondents shall pay such cost within 60 days of
23 receiving an invoice from the Commissioner detailing the
24 activities performed during the audit and the amount of time
25 spent performing those activities.

26 ///

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

11
12 DATED: 8-28-82

67.1
13 ELLIOTT MAC LENNAN, Counsel for
14 the Department of Real Estate

15 * * *

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

27

~~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, Attention: Elliott Mac Lennan. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondents' actual signatures as they appear 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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1 DATED:

8/26/02

Philip Harold McNamee

VPM MANAGEMENT INC.

BY: PHILIP HAROLD MCNAMEE,
Respondent

2 DATED:

8/26/02

Philip Harold McNamee
PHILIP HAROLD MCNAMEE, individually
and as designated officer of VPM
Management, Inc., Respondent

3 DATED:

8/26/02

Michael D'Angelo, Esq.
MICHAEL D'ANGELO, ESQ.
PALMIERI, TYLER, WIENER, WILHEIM &
WALDRON LLP,
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby

adopted as my Decision and Order and shall become effective at 12

o'clock noon on October 28, 2002.

IT IS SO ORDERED September 19, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

Sacto

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 13 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

VPM MANAGEMENT INC., ET AL.,

By *K. M. ...*

Case No. H-29006 LA

OAH No. L-2002020572

}

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 Office of Administrative Hearings, 320 West Fourth Street, Ste. 630, Los Angeles, CA on June 27, 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 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: March 13, 2002

By

Elliott MacLennan
ELLIOTT MAC LENNAN, Counsel

cc: VPM Management Inc.
Philip Harold McNamee
Patrick A. Hennessey, Esq./Sacto/OAH

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FILED
MAR - 1 2002
DEPARTMENT OF REAL ESTATE
By *K. Niederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-29006 LA
)	
VPM MANAGEMENT INC., and,)	
PHILIP HAROLD McNAMEE,)	
)	
)	
)	
Respondents.)	

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On January 10, 2002, a Default Order was filed.

Thereafter, on February 8, 2002, a Decision was rendered revoking the real estate broker licenses of Respondents VPM MANAGEMENT INC., and PHILIP HAROLD McNAMEE, effective March 6, 2002.

On February 19, 2002, good cause was presented to set aside the Default Order of January 10, 2002, and to vacate the Decision of February 8, 2002, and to have the matter remanded to the Office of Administrative Hearings as a contested matter.

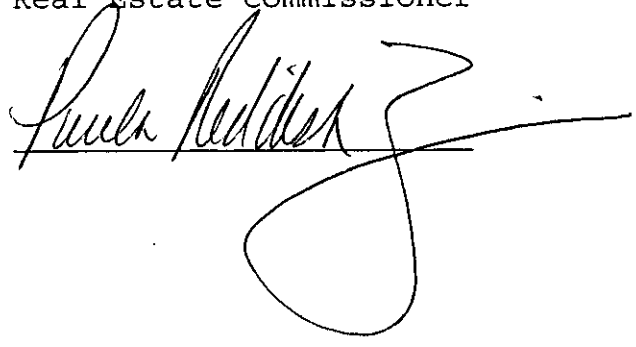
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NOW, THEREFORE, IT IS ORDERED that the Default Order of January 10, 2002, is set aside and the Decision of February 8, 2002, is vacated and that the Matter of the Accusation filed on April 3, 2001, be remanded to the Office of Administrative Hearings.

This Order shall be effective immediately.

DATED: February 27, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED
FEB 14 2002
DEPARTMENT OF REAL ESTATE

* * *

By *R. Hederholt*

In the Matter of the Accusation of)

VPM MANAGEMENT INC., and,)
PHILLIP HAROLD McNAMEE,)

Respondents.)

NO. H-29006 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 January 10, 2002, and the findings of fact 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

1.

On April 3, 2001, Thomas McCrady made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondents VPM MANAGEMENT INC., (VPM) and PHILLIP HAROLD McNAMEE (McNAMEE) last known mailing address on file with the Department on April 3, 2001, and May 21, 2001.

2.

On January 10, 2002, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondents default was entered herein.

3.

VPM MANAGEMENT INC., and PHILLIP HAROLD McNAMEE, (hereinafter sometimes 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).

PRIOR DISCIPLINE

4.

On April 20, 2000, in Case No. H-28515 LA, an ORDER TO DESIST AND REFRAIN was filed against Respondents VPM MANAGEMENT INC. and PHILIP HAROLD McNAMEE under Section 10086 of the Code (Engaging in Prohibited Activity, Order to Desist and Refrain) for violations of Business and Professions Code ("Code") Sections 10137, 10145, 10176(f) and Title 10, Chapter 6, California Code of Regulations ("Regulations") Sections 2731 and 2832.

5.

At all times mentioned, in the City of Irvine, Orange County, VPM acted as a real estate broker, within the meaning of Section 10131(b) of the Code, including conducting licensed activities as a property management business. McNAMEE was originally licensed as a real estate broker on August 19, 1969. At all times mentioned, McNAMEE was licensed by the Department as designated officer of VPM to qualify VPM and to act for VPM as a real estate broker as provided by Section 10159.2 of the Business and Professions Code (Code).

6.

On November 27, 2000, the Department completed a follow up audit examination of the books and records of VPM pertaining to property management activities requiring a real estate license as described in Finding 5. This audit was conducted to determine if VPM was in compliance with the Real Estate Law with respect to the violations found in prior audit LA 990115 as further described in Finding 4, above. The audit examination in the current case covered a period of time beginning on April 10, 2000 and terminating on September 29, 2000. The audit examination revealed violations of the Code and the Regulations as set forth in the following Findings.

At all times mentioned, in connection with the activities described in Finding 5, above, VPM accepted or received funds in trust (trust funds) from or on behalf of property owners and tenants in the form of rents and security deposits and thereafter made disposition of such funds. Respondents maintained the following trust accounts during the audit period into which were deposited certain of these funds at the Pacific Mercantile Bank, Newport Beach, California:

"VPM Management Inc.
In Trust for Sierra Vista
Account No. 1119148"
(Checking Account)

"VPM Management Inc.
In Trust for Sierra Vista
Account No. 1119197"
(Money Market Account)

"VPM Management Inc.
In Trust for Village Avocado Crest
Account No. 1119122"
(Checking Account)

"VPM Management Inc.
In Trust for Village Avocado Crest
Account No. 1119130"
(Money Market Account)

"VPM Management Inc.
In Trust for Cobblestone II L.P.
Account No. 1122977"
(Checking Account)

"VPM Management Inc.
In Trust for Granite Emerald Gardens L.P.
Account No. 1122951"
(Checking Account)

"VPM Management Inc.
In Trust for Granite Emerald Gardens L.P
Account No. 1122969"
(Money Market Account)

8.

The audit examination (including Audit Report No. 000080 and its referenced workpapers) revealed violations of the Regulations as set forth in the following findings.

9.

With respect to the trust funds referred to in Finding 7, VPM failed to place trust funds, including rents and security deposits received in certain property management transactions, into the hands of the owner of the funds, a neutral escrow or into a trust fund account, within three business days following receipt of the funds. This omission was in violation of Code Section 10145 and Regulation 2832(a).

10.

The audit examination also revealed that VPM used the fictitious name of "VPM Inc." to conduct licensed activities on behalf of VPM without holding a license bearing said fictitious business name. The conduct of VPM, in failing to obtain a license for use of the aforesaid name, is in violation of Regulation 2731.

11.

The overall conduct of Respondent McNAMEE, constitutes a failure on his part, as the officer designated by a corporate broker licensee pursuant to Code Section 10159.2. McNAMEE was responsible for the supervision and control over the activities conducted on behalf of VPM by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

DETERMINATION OF ISSUES

1.

The conduct, acts and/or omissions of Respondent VPM, described in Findings 9 and 10, constitutes cause for the suspension or revocation of the real estate license and license rights of VPM under the provisions of Code Sections 10177(d) and 10177(g).

2.

The conduct and acts of Respondent McNAMEE, described in Finding 11, constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent McNAMEE pursuant to the provisions of Code Section 10177(d).

3.

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

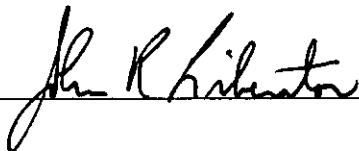
ORDER

The license and license rights of Respondents VPM MANAGEMENT INC. and PHILLIP HAROLD McNAMEE under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on MAR - 6, 2002.

DATED: February 8, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



FILED
JAN 10 2002

DEPARTMENT OF REAL ESTATE

By K. Stuberholz

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-29006 LA
VPM MANAGEMENT INC.; and)
PHILLIP HAROLD McNAMEE,)
Respondents.)

DEFAULT ORDER

Respondents VPM MANAGEMENT INC., and PHILLIP HAROLD McNAMEE, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, are now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED JAN 10 2002

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

M. Dolores Ramos

By: M. DOLORES RAMOS
Regional Manager

facts plus

1 ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
2 320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105
3
4 Telephone: (213) 576-6911 (direct)
-or- (213) 576-6082 (office)

FILED
APR - 3 2001
DEPARTMENT OF REAL ESTATE
By *K. Kuehnelt*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-29006 LA
12 VPM MANAGEMENT INC., doing) ACCUSATION
business as Village Investments,)
13 and PHILIP HAROLD McNAMEE,)
individually and as designated)
14 officer of VPM Management Inc.,)
15 Respondents.)

17 The Complainant, Thomas McCrady, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against VPM MANAGEMENT INC. dba Village Investments and PHILIP
20 HAROLD McNAMEE, individually and as designated officer of VPM
21 Management Inc., alleges as follows:

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2 The Complainant, Thomas McCrady, acting in his official
3 capacity as a Deputy Real Estate Commissioner of the State of
4 California makes this Accusation against VPM MANAGEMENT INC.
5 (VPM) and PHILIP HAROLD McNAMEE (McNAMEE).

6 2

7 All references to the "Code" are to the California
8 Business and Professions Code and all references to "Regulations"
9 are to Title 10, Chapter 6, California Code of Regulations.

10 3

11 VPM and McNAMEE, (hereinafter referred to as
12 Respondents) are presently licensed and/or have license rights
13 under the Real Estate Law (Part 1 of Division 4 of the Business
14 and Professions Code).

15 4

16 At all mentioned times, McNAMEE was licensed by the
17 Department as designated officer of VPM to qualify VPM and to act
18 for VPM as a real estate broker and, as provided by Section
19 10159.2 of the Code, was responsible for the supervision and
20 control of the activities conducted on behalf of VPM by its
21 officers, managers and employees as necessary to secure full
22 compliance with the provisions of the Real Estate Law including
23 the supervision of the salespersons licensed to the corporation
24 in the performance of acts for which a real estate license is
25 required. McNAMEE was originally licensed as a real estate
26 broker on August 19, 1969.

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Whenever reference is made in an allegation in the Accusation to an act or omission of VPM such allegation shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with VPM including McNAMEE committed such act or omission while engaged in the furtherance of its business or operation and while acting within the course and scope of its corporate authority, agency and employment.

At all times mentioned, in the City of Irvine, Orange County, VPM acted as a real estate broker, within the meaning of Section 10131(b) of the Code, including conducting licensed activities as a property management business.

On November 27, 2000, the Department completed a follow up audit examination of the books and records of VPM pertaining to property management activities requiring a real estate license as described in Paragraph 6, to determine if VPM was in compliance with the real estate law with respect to the violations found in prior audit LA 990115 as further described in Paragraph 15, below. The audit examination covered a period of time beginning on April 10, 2000 and terminating on September 29, 2000. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs.

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1
2 At all times mentioned, in connection with the
3 activities described in Paragraph 6, above, VPM accepted or
4 received funds in trust (trust funds) from or on behalf of
5 property owners and tenants in the form of rents and security
6 deposits and thereafter made disposition of such funds.
7 Respondent maintained the following trust accounts during the
8 audit period into which were deposited certain of these funds at
9 the Pacific Mercantile Bank, Newport Beach, CA 92660:

10 "VPM Management Inc.
11 In Trust for Sierra Vista
12 Account No. 1119148"
(Checking Account)

13 "VPM Management Inc.
14 In Trust for Sierra Vista
15 Account No. 1119197"
(Money Market Account)

16 "VPM Management Inc.
17 In Trust for Village Avocado Crest
18 Account No. 1119122"
(Checking Account)

19 "VPM Management Inc.
20 In Trust for Village Avocado Crest
21 Account No. 1119130"
(Money Market Account)

22 "VPM Management Inc.
23 In Trust for Cobblestone II L.P..
24 Account No. 1112977"
(Checking Account)

25 "VPM Management Inc.
26 In Trust for Cobblestone II L.P
27 Account No. 112969"
(Money Market Account)

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On November 27, 2000, the Department completed an audit examination of the books and records of VPM pertaining to the activities described in Paragraph 6 that require a real estate license. The audit examination covered a period of time beginning on April 10, 2000 and terminating on September 29, 2000. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs.

With respect to the trust funds referred to in Paragraph 8, it is alleged that VPM:

(a) Failed to place funds, including rents and security deposits received in certain property management transactions, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson, in violation of Regulation 2832(a). This failure occurred throughout all trust accounts described in Paragraph 8.

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The conduct of Respondent VPM, described in Paragraph 10, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10(a)	Code Section 10145 and Regulation 2832

The foregoing violation constitutes cause for the suspension or revocation of the real estate license and license rights of VPM under the provisions of Code Section 10177(d).

The audit examination also revealed that Respondent VPM used the fictitious name of "VPM Inc." to conduct licensed activities on behalf of VPM without holding a license bearing said fictitious business name. The conduct of VPM, in failing to obtain a license for use of the aforesaid name, is in violation of Regulation 2731 and is cause to suspend or revoke VPM's real estate license and license rights under Code Section 10177(d).

The overall conduct of Respondent McNAMEE, constitutes a failure on his part, as officer designated by a corporate broker licensee, responsible for the supervision and control over the activities conducted on behalf of VPM by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in

1 the performance of acts for which a real estate license is
2 required. This conduct is cause for the suspension or revocation
3 of the real estate license and license rights of McNAMEE pursuant
4 to the provisions of Code Sections 10159.2 and 10177(d).

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6 The overall conduct of Respondent VPM constitutes
7 negligence or incompetence. This conduct and violation are cause
8 for the suspension or revocation of his real estate license and
9 license rights under Code Section 10177(g).

10 PRIOR DISCIPLINE

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12 On April 20, 2000, in Case No. H-28515 LA, an ORDER TO
13 DESIST AND REFRAIN was filed against Respondents VPM MANAGEMENT
14 INC. and PHILIP HAROLD McNAMEE under Section 10086 of the Code
15 (Engaging in Prohibited Activity, Order to Desist and Refrain)
16 for violations of Code Sections 10137, 10145, 10176(f) and
17 Regulations 2731 and 2832.

18 WHEREFORE, Complainant prays that a hearing be
19 conducted on the allegations of this Accusation and that upon
20 proof thereof, a decision be rendered imposing disciplinary
21 action against the license and license rights of Respondents VPM
22 MANAGEMENT INC. dba Village Investments and PHILIP HAROLD
23 McNAMEE, individually and as designated officer of VPM Management
24 Inc., under the Real Estate Law (Part 1 of Division 4 of the
25 Business and Professions Code) and for such other and further
26 relief as may be proper under other applicable provisions of law.
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1 Dated at Los Angeles, California

2 this 3rd day of April, 2001.

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THOMAS MC CRADY

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Deputy Real Estate Commissioner

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cc: VPM Management Inc.
c/o Philip Harold McNamee
Sacto
BSV

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