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FILED
MAR 21 2002

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-29385 LA
)	
THOMAS HENRY BYMA,)	
)	
)	
Respondent.)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On February 5, 2002, an Accusation was filed in this mater against Respondent THOMAS HENRY BYMA .

On February 25, 2002, Respondent, petitioned the Commissioner to voluntarily surrender his restricted real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent THOMAS HENRY BYMA'S petition for voluntary surrender of his restricted real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated February

1 25, 2002 (attached as Exhibit "A" hereto). Respondent's license
2 certificate(s), pocket card(s) and any branch office license
3 certificate shall be sent to the below listed address so that
4 they reach the Department on or before the effective date of this
5 Order:

6 Department of Real Estate
7 Atten: Licensing Flag Section
8 P.O. Box 187000
9 Sacramento, CA 95818-7000

10 This Order shall become effective at 12 o'clock noon on
11 April 10, 2002

12 DATED: March 18, 2002

13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-29385 LA
THOMAS HENRY BYMA,)	
)	
)	
Respondent.)	

DECLARATION

My name is THOMAS HENRY BYMA. I currently hold a restricted real estate broker license.

I am representing myself in this matter. In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) I wish to voluntarily surrender my restricted real estate license which was issued to me on December 17, 1991, under the terms and conditions of the Stipulation and Agreement in Accusation H-24186 LA, pursuant to Business and Professions Code Section 10100.2.

1 I understand that by so voluntarily surrendering my
2 license, that it can only be reinstated in accordance with the
3 provisions of Section 11522 of the Government Code. I also
4 understand that by so voluntarily surrendering my restricted
5 broker license, I agree to the following:

6 The filing of this Declaration shall be deemed as my
7 petition to voluntary surrender my restricted real estate broker
8 license. It shall be deemed to be an understanding and agreement
9 by me that, I waive all rights I have to require the Commissioner
10 to prove the allegations contained in the Accusation filed in
11 this matter at hearing in accordance with the provisions of the
12 Administrative Procedures Act (Government Code Sections 11400 et
13 seq.), and that I also waive other rights afforded to me in
14 connection with the hearing such as the right to discovery, the
15 right to present evidence in defense of the allegations in the
16 Accusation and the right to cross-examine witnesses. I further
17 agree that upon acceptance by the Commissioner, as evidenced by
18 an appropriate order, all affidavits and all relevant evidence
19 obtained by the Department in this matter prior to the
20 Commissioner's acceptance, and all allegations contained in the
21 Accusation filed by the Department in Case No. H-29385 LA, may be
22 considered by the Department to be true and correct for the
23 purpose of deciding whether or not to grant reinstatement of my
24 license pursuant to Government Code Section 11522.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that I freely and voluntarily surrender my license and all license rights attached thereto.

2-25-02 BELLFLOWER
Date and Place

Thomas Henry Byma
THOMAS HENRY BYMA

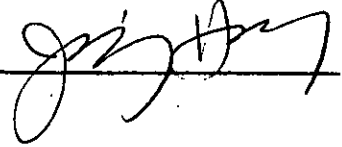
SP10

MARY E. WORK, Counsel
State Bar No. 175887
Department of Real Estate
320 W. 4th St., Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982
-Direct- (213) 576-6916

FILED
FEB 05 2002

DEPARTMENT OF REAL ESTATE

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
THOMAS HENRY BYMA)	NO. H- 29385 LA
Respondent.)	<u>ACCUSATION</u>

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against THOMAS HENRY BYMA, doing business as "Far West Property Management," individually, is informed and alleges in her official capacity as follows:

2.

At all times mentioned herein, THOMAS HENRY BYMA (hereinafter referred to as "Respondent") was and still is licensed by the Department of Real Estate of the State of California ("Department") as a restricted real estate broker.

////

3.

1
2 At all times material herein, Respondent engaged in
3 the business of, acted in the capacity of, advertised or
4 assumed to act as a real estate broker in the State of
5 California, within the meaning of Sections 10131(b) of the
6 Code, including the operation and conduct of real estate
7 property management with the public wherein Respondent, among
8 other acts, solicited prospective tenants, negotiated rental
9 agreements for and collected rents from real properties owned
10 by another or others, for or in expectation of compensation.

11 4.

12 During the period between April 1, 1998 through April
13 30, 2001, in connection with the activities described in
14 paragraph 3, above, Respondent accepted or received funds in
15 trust (hereinafter "trust funds") from or on behalf of property
16 owners and tenants and thereafter made deposits and or
17 disbursements of such funds. From time to time herein
18 mentioned, said trust funds were deposited and/or maintained by
19 Respondent, in bank accounts, including but not limited to,
20 Account No. 5405094519 (hereinafter "Trust Account") at First
21 Bank & Trust located at 100 Oceangate, Long Beach, California.

22
23 PRIOR DISCIPLINE

24 5.

25 Desist and Refrain Order

26 On May 17, 1990, an Order to Desist and Refrain was
27 filed against Respondent pursuant to H-24123 LA. Said Desist

1 and Refrain Order was based on Respondent's violations of
2 Business and Professions Code (hereinafter "Code") Sections
3 10145 and 10176(e) and violations of Title 10, Chapter 6,
4 California Code of Regulations (hereinafter "Regulations")
5 2830, 2831, 2831.1 and 2832.1.

6 6.

7 Accusation

8 On or about August 10, 1990, an Accusation, H-24186
9 LA, was filed against Respondent. Said Accusation alleged that
10 Respondent violated Regulations 2830, 2831, 2831.1 and 2832.1
11 and Section 10145 of the Code and was thus subject to
12 discipline under Section 10177(d) of the Code. The Accusation
13 also alleged grounds for discipline under 10176(e) of the Code.

14 Said Accusation was resolved by Stipulation and
15 Agreement that revoked Respondent's real estate broker license
16 with the right to a restricted broker license. Said
17 Stipulation and Agreement became the Decision and Order of the
18 Real Estate Commissioner effective December 17, 1991.

19 Among the terms and conditions of the restricted
20 license was a condition requiring Respondent to submit a Trust
21 Fund Position Statement (from time to time hereinafter
22 "Statement") to the Real Estate Commissioner as of the last day
23 of the months of March, June, September and December (that is
24 quarterly) for so long as said restricted license shall remain
25 in effect. (The requirements regarding said Trust Fund
26 Position Statements are set forth at page 6, paragraph 7 of H-
27 24186 LA *Stipulation and Agreement In Settlement and Order.*)

1 7.

2 FIRST CAUSE OF ACTION: AUDIT NO.S LA 000278 and LA 000378

3 On or about December 7, 2000, Respondent submitted to
4 the Department, Trust Fund Position Statements for the quarters
5 ending June 30, 1998, September 30, 1998, and December 31,
6 1998. The submission of said Statements did not comply with the
7 time requirements set forth in Decision/Order No. H-24186. On
8 March 21, 2001, the Department completed a review of said
9 Statements and related trust fund records of Respondent. This
10 review, contained in Audit Numbers LA 000278 and LA 000378,
11 revealed violations of the Code and Regulations as set forth
12 below.

13 8.

14 In the course of activities described in Paragraphs 3
15 and 4 above, and during the examination period described in
16 Paragraph 7, Respondent acted in violation of the Code and the
17 Regulations in that:

18 a) The Trust Account had a shortage of \$10,395.65 as
19 of June 30, 1998, in violation of Code Section 10145 and
20 Regulation 2832.1;

21 b) The Trust Account had a shortage of \$1,080.43 as
22 of September 30, 1998, in violation of Code Section 10145 and
23 Regulation 2832.1;

24 c) The Trust Account had a shortage of \$7,256.60 as
25 of December 31, 1998, in violation of Code Section 10145 and
26 Regulation 2832.1;

27

1 d) The Trust Fund Records to be maintained were
2 incomplete and inaccurate, in violation of Regulation 2831;

3 e) Separate records were not maintained for each
4 beneficiary or transaction in violation of Regulation 2831.1;

5 f) Monthly reconciliation records, as of December
6 31, 1998, were inaccurate, in violation of Regulation of
7 2831.2;

8 g) The Trust Fund Position Statements for the
9 periods ending June 30, 1998, September 30, 1998, and December
10 31, 1998, failed to comply with Decision/Order No. H-24186 LA
11 as they were not submitted timely. DRE did not receive said
12 Statements until December 7, 2000, in violation of Section
13 10177(k) of the Code.

14 The foregoing violations constitute cause for the
15 suspension or revocation of Respondent's real estate license
16 under the provisions of Code Sections 10177(d), 10177(k) and/or
17 10177(g).

18 SECOND CAUSE OF ACTION: AUDIT NO. LA 000430

19 9.

20 Complainant incorporates by reference the Preamble
21 and all of the allegations contained in Paragraphs 1 through 8
22 above.

23 10.

24 On or about April 13, 2001, Respondent submitted to
25 the Department, Trust Fund Position Statements for the quarters
26 ending March 31, 1999 and June 30, 1999. The submission of said
27 Statements did not comply with the time requirements set forth

1 in Stipulation and Agreement H-24186 LA. On June 22, 2001, the
2 Department completed a review of the Trust Fund Position
3 Statement and related trust fund records of Respondent. This
4 review, Audit Number LA 000430, revealed violations of the Code
5 and Regulations as set forth below.

6 11.

7 In the course of activities described in Paragraphs 3
8 and 4 above, and during the examination period described in
9 Paragraph 10, Respondent acted in violation of the Code and the
10 Regulations in that:

11 a) As of the period ending March 31, 1999, the
12 Trust Fund Account had a shortage of \$22,296.05, in violation
13 of Code Section 10145 and Regulation 2832.1;

14 b) The Trust Fund Position Statements for the
15 periods ending March 31, 1999 and June 30, 1999, failed to
16 comply with Decision/Order No. H-24186 LA as they were not
17 submitted timely. DRE did not receive said Statements until
18 April 13, 2001, in violation of Section 10177(k) of the Code.

19 The foregoing violations constitute cause for the
20 suspension or revocation of Respondent's real estate license
21 under the provisions of Code Sections 10177(d), 10177(k) and/or
22 10177(g).

23 THIRD CAUSE OF ACTION: AUDIT NO. LA 000420

24 12.

25 Complainant incorporates by reference the Preamble
26 and all of the allegations contained in Paragraphs 1 through 11
27 above.

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On or about July 25, 2001, the Department completed an audit of Respondent's books and records, pertaining to the real estate activities described in Paragraphs 3 and 4 above, covering a period from approximately September 1, 1998 to March 31, 2001. The primary purpose of the audit was to determine Respondent's compliance with the Decision/Order in Case No. H-24186 LA. The Audit, No. LA 000420, revealed violations of the Code and of the Regulations, as set forth below.

(a) As of the period ending April 30, 2001, the Trust Fund Account had a shortage of \$61.71, in violation of Code Section 10145 and regulation 2832.1, this was corrected in June 2001, with a deposit from the general account;

(b) The Trust Fund Position Statements for the periods ending August 31, 1999, December 31, 1999, March 31, 2000, June 30, 2000, August 31, 2000, December 31, 2000, and March 31, 2001, failed to comply with Decision/Order No. H-24186 LA. The Statements were not submitted timely. The seven (7) delinquent Statements were received by the Department's auditor while Audit No. LA 000420 was conducted. The failure to submit the Statements in compliance with the terms of Decision/Order No. H-24186 LA, is in violation of Section 10177(k) of the Code;

(c) As of April 30, 2001, the Trust Fund records to be maintained were incomplete and inaccurate, in violation of Code Section 10145 and Regulation 2831;

1 (d) As of April 30, 2001, separate records were not
2 maintained in accordance with Code Section 10145 and Regulation
3 2831.1 and thus in violation of the Real Estate Law.

4 (e) The account used to deposit trust funds was not
5 designated as a trust account in the name of the Broker
6 (Respondent) as trustee, in violation of Code Section 10145 and
7 Regulation 2832.

8 The foregoing violations constitute cause for the
9 suspension or revocation of Respondent's real estate license
10 under the provisions of Code Sections 10177(d), 10177(k) and/or
11 10177(g).

12 WHEREFORE, Complainant prays that a hearing be
13 conducted on the allegations of this Accusation and that upon
14 proof thereof, a decision be rendered imposing disciplinary
15 action against all licenses and/or license rights of THOMAS
16 HENRY BYMA under the Real Estate Law and for such other and
17 further relief as may be proper under applicable provisions of
18 law.

19
20 Dated at Los Angeles, California.

21 this 5th day of February, 2002

22 
23 _____
24 Deputy Real Estate Commissioner

25 cc: Thomas Henry Byma
26 Maria Suarez
27 SACTO
AW