

FILED
MAY 22 2003
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

By *Michael*

In the Matter of the Accusation of)
)
DAVID JAMES UTTERBACK and)
JUDITH LOUISE WILLIAMS,)
)
Respondent(s).)
_____)

No. H-29949 LA
L-2002090243

DECISION

The Proposed Decision dated March 11, 2003, 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.

Pursuant to Section 11517(b)(3) of the Government Code, the following correction is made:

Preamble, page 1, third paragraph "ser" shall read
"set".

This Decision shall become effective at 12 o'clock
noon on JUN 11 2003.

IT IS SO ORDERED

May 15, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID JAMES UTTERBACK AND
JUDITH LOUISE WILLIAMS,

Respondents.

CASE No. H-29449 LA

OAH No. L2002090243

PROPOSED DECISION

On January 27, 2003, in Los Angeles, California, John D. Wagner, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Elliott Mac Lennan, Real Estate Counsel, Department of Real Estate.

Respondent failed to appear at the time and place ^{SET} ~~set~~ for hearing, though notice thereof was given as required by law. *3 AMENDED*

Complainant's motion to strike paragraph 12 of the Accusation was granted.

Evidence was received, the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. Complainant Maria Suarez made the Accusation against David James Utterback and respondent Judith Louise Williams ("Respondent") in her official capacity as a Deputy Real Estate Commissioner, of the State of California.

2. At all times mentioned herein, David James Utterback ("Utterback"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On May 1, 1980, Utterback was originally licensed as a real estate broker. As a result of discipline resulting from this accusation, his broker license was revoked with a right to a restricted license on September 13, 2002. He is not a party in this matter.

3. At all times mentioned herein, in the City of Long Beach, County of Los Angeles, Utterback acted as a real estate broker and conducted licensed activities within the meaning of Section 10131(b) of the Business and Professions Code ("Code") in that Utterback operated a property management business known as Castles and Cottages.

4. At all times mentioned herein, respondent Judith Louise Williams was licensed or had license rights issued by the Department of Real Estate as a real estate salesperson. On October 1, 1980, she was originally licensed as a real estate salesperson. Respondent is the owner of Castles and Cottages, a real property management business. From June 14, 1999 to September 13, 2002, she was employed by Utterback as a real estate salesperson.

5. On September 12, 2001, the Department completed an audit examination of the books and records of Utterback, dba Castles & Cottages property Management Co., pertaining to the activities described in finding 3 that require a real estate license. The audit examination covered the period of time January 1, 2000, through April 30, 2001. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs.

6. At all times mentioned, in connection with the activities described in finding 5, Utterback accepted or received funds in trust from or on behalf of landlords and tenants. Thereafter, Utterback made disposition of such funds. Utterback maintained the following trust accounts into which he deposited certain of these funds at the Pacific Century Bank located in Signal Hill, California:

"Castles & Cottages Property Management Co. Trust 1
Account No. 0514003268" (T/A #1)

"Castles & Cottages Property Management Co. Trust 2
Account No. 0514002773" (T/A #2)

"Castles & Cottages Property Management Co. W.I.V.
Account No. 013286981" (T/A #3)

7. With respect to the licensed activities referred to in finding 3, the audit examination referred to in finding 5 found that:

- (a) Utterback permitted, allowed or caused the disbursement of trust funds from T/A #1 where the disbursement of said funds reduced the total of aggregate funds, to an amount which, on April 30, 2001, was \$23,060.73 less than the existing aggregate trust fund liability of Utterback to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and section 2832.1, Title 10, of the California Code of Regulations ("Regulation").

- (b) Utterback failed to maintain an adequate control record on the form of a columnar record in chronological order of trust funds received for T/A #1 and T/A #2, as required by Code Section 10145 and Regulation 2831.
- (c) Utterback failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited into, and disbursed from T/A #1 and T/A #2, as required by Code Section 10145 and Regulation 2831.1
- (d) With respect to T/A #1 and T/A #2, Utterback failed to place funds, including funds received in certain property management transactions such as rents collected from tenants, into a trust fund account in the name of the broker as 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, as required by Code Section 10145 and Regulation 2832. Utterback used the unlicensed fictitious business name of Castles & Cottages Management Co., in lieu of using his own name.
- (e) Utterback permitted respondent, a real estate salesperson employed by Utterback and the owner and true operator of Castles and Cottages, to be an authorized signatory on all trust accounts without specific written authorization from Utterback, in violation of Code Section 10145 and Regulation 2834.
- (f) Utterback failed to obtain written authorization in the form of management agreements from property owners prior to disbursing trust funds on their behalf for trust accounts T/A #1 and T/A #2, in violation of Code Section 10145 (a) (1).
- (g) Utterback failed to establish a system by which to exercise reasonable supervision over the real estate activities of respondent, as required by Regulation 2725 and Code Section 10177 (h). Utterback was not a signatory on any of the three trust accounts for Castles and Cottages.
- (h) Utterback failed to obtain a license to use the fictitious name of "Castles & Cottages" to conduct property management activities, as required by Regulation 2731.
- (i) Utterback commingled trust funds in the amount of \$21,526, from T/A #1 by depositing said sum into the general account for Castles & Cottages. Utterback deposited into the general account for Castles and Cottages rents received from tenants, from the eighty-two properties managed by Castles and Cottages, in violation of Code Section 10176 (e).

- (j) Utterback converted trust funds in the amount of \$21,526, from T/A #1 by depositing rentals received from tenants into the general account for Castles and Cottages, in violation of Code Section 10176 (i).

8. With respect to the licensed activities referred to in finding 3, and the audit examination referred to in finding 5:

- a. Respondent commingled trust funds in the amount of \$21,526, from T/A #1 by depositing said sum into the general account for Castles and Cottages owned by Williams. Williams deposited into the general account for Castles and Cottages rents she received from tenants, from the eighty-two properties managed by Castles and Cottages
- b. Respondent converted trust funds in the amount of \$21,526, from T/A #1 by depositing rents she received from tenants into the general account for Castles and Cottages.

9. No substantial evidence of extenuation, mitigation or rehabilitation was received, except that on July 10, 2001, one day after the audit began, respondent transferred funds totaling \$21,631.00 from the general account to T/A #1 to cure the majority of the net shortage in the amount of \$23,060.73 as of April 30, 2001. However, some of the trust funds totaling \$21,526.00 that were deposited in the general account had been used to pay for business expenses. Further, the majority of the trust funds that were transferred to the general account had been transferred by May 1, 2000, fourteen months prior to the transfer of funds to cure the shortage. Respondent's attempt to cure came very late and did not occur until after the audit had begun.

LEGAL CONCLUSIONS

1. Cause for discipline of respondent's salesperson license was established pursuant to sections 10177(d)(Willful violation of Real Estate Law), and 10177(g)(Negligence or incompetence) of the Code for violation of section 10176(e)(commingling) of the Code, by reason of finding 8(a).

2. Said cause was established pursuant to said Code sections for violation of section 10176(i)(Fraud or dishonest dealing) of the Code, by reason of finding 8(b).

3. In view of the very seriousness of these violations and the minimal mitigation set forth in finding 9, respondent's license should be revoked.

ORDER

Wherefore, the following order is hereby made:

All licenses and license rights issued to Judith Louise Williams under the Real Estate Law are revoked.

Dated: March 11, 2003


JOHN D. WAGNER
Administrative Law Judge
Office of Administrative Hearings

*back
gus*

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
DEC 20 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DAVID JAMES UTTERBACK and
JUDITH LOUISE WILLIAMS,

By *R. Mederholz*

} Case No. H-29449 LA

} OAH No. L-2002090243

Respondent

**CONTINUED
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 **January 27, 2003**, 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: December 17, 2002

By

E. L. Lennan
ELLIOTT MAC LENNAN, Counsel

cc: Judith Louise Williams
Sacto/OAH/RJ

Handwritten: Sacto

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
SEP 30 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DAVID JAMES UTTERBACK and
JUDITH LOUISE WILLIAMS,

By *K. Wiederholt*

Case No. H-29449 LA

OAH No. L-2002090243

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 November 19, 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: September 30, 2002

By

Elliott MacLennan
ELLIOTT MAC LENNAN, Counsel

cc: Judith Louise Williams
Sacto/OAH/RJ

1 ELLIOTT MAC LENNAN, Counsel (SBN 66674)
2 Department of Real Estate
3 320 W. 4TH Street, Suite 350
4 Los Angeles, CA 90013-1105

5 Telephone: (213) 576-6982 (Office)
6 -or- (213) 576-6911 (Direct)

FILED
AUG 15 2002
DEPARTMENT OF REAL ESTATE

By K. H. H. H. H.

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DAVID JAMES UTTERBACK, and)
13 JUDITH LOUISE WILLIAMS,)
14 Respondents.)

No. H-29449 LA

STIPULATION

AND AGREEMENT

15 It is hereby stipulated by and between Respondent
16 DAVID JAMES UTTERBACK (sometimes referred to herein as
17 "Respondent") and the Complainant, acting by and through Elliott
18 Mac Lennan, Counsel for the Department of Real Estate, as follows
19 for the purpose of settling and disposing of the Accusation filed
20 on April 11, 2002, in this matter.

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

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement ("Stipulation").

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

7 3. Respondent filed a Notice of Defense pursuant to
8 Section 11506 of the Government Code for the purpose of
9 requesting a hearing on the allegations in the Accusation.
10 Respondent hereby freely and voluntarily withdraws said Notice of
11 Defense. Respondent acknowledges that he understands that by
12 withdrawing said Notice of Defense, he will thereby waive his
13 right to require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that he will waive other rights
16 afforded to him in connection with the hearing, such as the right
17 to present evidence in defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.
19

20 4. This Stipulation and Agreement is based on the
21 factual allegations contained in the Accusation filed in this
22 proceeding. In the interest of expedience and economy,
23 Respondent chooses not to contest these factual allegations, but
24 to remain silent and understands that, as a result thereof, these
25 factual statements, without being admitted or denied, will serve
26 as a prima facie basis for the disciplinary action stipulated to
27

1 herein. This Stipulation and Respondent's decision not to
2 contest the Accusation are hereby expressly limited to this
3 proceeding and made for the sole purpose of reaching an agreed
4 disposition of this proceeding. Respondent's decision not to
5 contest the factual allegations is made solely for the purpose of
6 effectuating this Stipulation and is intended by Respondent to be
7 non-binding upon Respondent in any actions against Respondent by
8 third parties. The Real Estate Commissioner shall not be
9 required to provide further evidence to prove such allegations.

10 5. This Stipulation and any Order made pursuant to
11 this Stipulation shall have no collateral estoppel or res
12 judicata effect in any proceedings in which the Respondent and
13 the Department (or the Department's representative) are not
14 parties. This Stipulation is made by Respondent and received
15 by the Commissioner and the Department, with the express
16 understanding and agreement that it is for the purpose of
17 settling these proceedings only, and that this Stipulation is
18 not intended as, and shall not be deemed, used, or accepted as
19 an acknowledgment or admission of fact in any other judicial,
20 administrative, or other proceeding to which the Department is
21 not a party.

23 6. It is understood by the parties that the Real
24 Estate Commissioner may adopt the Stipulation as her decision
25 in this matter, thereby imposing the penalty and sanctions on
26 Respondent's real estate license and license rights as set forth
27

1 in the below "Order." In the event that the Commissioner in her
2 discretion does not adopt the Stipulation, the Stipulation shall
3 be void and of no effect, and Respondent shall retain the right
4 to a hearing on the Accusation under all the provisions of the
5 APA and shall not be bound by any stipulation or waiver made
6 herein.

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

13 8. Respondent understands that by agreeing to this
14 Stipulation, Respondent agrees to pay, pursuant to Business and
15 Professions Code Section 10148, the cost of the audit which led
16 to this disciplinary action. The amount of said cost is
17 \$5,391.86.
18

19 9. Respondent has received, read, and understands the
20 "Notice Concerning Costs of Subsequent Audit". Respondent
21 further understands that by agreeing to this Stipulation, the
22 findings set forth below in the Determination of Issues become
23 final, and the Commissioner may charge Respondent for the cost of
24 any subsequent audit conducted pursuant to Business and
25 Professions Code Section 10148 to determine if the violations
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1 have been corrected. The maximum cost of the subsequent audit
2 will not exceed \$5,391.86.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations and waivers and
5 solely for the purpose of settlement of the pending Accusation
6 without a hearing, it is stipulated and agreed that the following
7 determination of issues shall be made:

8 The conduct, acts and/or omissions of Respondent
9 DAVID JAMES UTTERBACK, as set forth in the Paragraph 4,
10 constitutes cause to suspend or revoke the real estate broker
11 license and license rights of Respondent under the provisions of
12 Code Section 10177(d) of the Business and Professions Code for
13 violation of Section 10145 of said Code and Sections 2725, 2731,
14 2831, 2831.1, 2832, 2832.1 and 2834 of Title 10, Chapter 6,
15 California Code of Regulations.

16 ORDER

17 WHEREFORE, THE FOLLOWING ORDER is hereby made:

18 I.

19 The real estate broker license and licensing rights of
20 Respondent DAVID JAMES UTTERBACK, under the Real Estate Law are
21 revoked; provided, however, a restricted real estate broker
22 license shall be issued to Respondent DAVID JAMES UTTERBACK,
23 pursuant to Section 10156.5 of the Business and Professions Code,
24 if Respondent:
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26
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1 (A) makes application thereof and pays to the
2 Department of Real Estate the appropriate fee for the restricted
3 license within ninety (90) days from the effective date of this
4 Decision.

5 (B) Respondent shall, prior to and as a condition of
6 the issuance of said restricted license, submit proof
7 satisfactory to the Commissioner of having taken and completed at
8 an accredited institution the continuing education course on
9 trust fund accounting and handling specified on paragraph (3) of
10 subdivision (a) of Section 10170.5 of the Business and
11 Professions Code. Said course must have been completed within
12 120 days prior to the effective date of the order herein.

13 (C) Prior to the issuance of any restricted license,
14 Respondent shall first provide evidence satisfactory to the
15 Commissioner that the trust fund deficit set forth in the
16 Accusation and in Audit Report LA 000480, in the amount of
17 \$23,060.73, as of April 30, 2001, has been cured, including the
18 identification of the source of funds used to cure the deficit.
19 The restricted license issued to Respondent shall be subject to
20 all of the provisions of Section 10156.7 of the Code and the
21 following limitations, conditions and restrictions imposed under
22 authority of Section 10156.6 of that Code:

23 1. The restricted license issued to Respondent may be
24 suspended prior to hearing by Order of the Real Estate
25 Commissioner in the event of Respondent's conviction or plea of
26
27

1 nolo contendere to a crime which is substantially related to
2 Respondent's fitness or capacity as a real estate licensee.

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

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

14 4. Respondent shall, within nine (9) months from the
15 effective date of this Decision, present evidence satisfactory to
16 the Real Estate Commissioner that Respondent has, since the most
17 recent issuance of an original or renewal real estate license,
18 taken and successfully completed the continuing education
19 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
20 for renewal of a real estate license. If Respondent fails to
21 satisfy this condition, the Commissioner may order the suspension
22 of the restricted license until the Respondent presents such
23 evidence. The Commissioner shall afford Respondent the
24 opportunity for a hearing pursuant to the Administrative
25 Procedure Act to present such evidence.
26
27

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

8 6. Pursuant to Section 10148 of the Business and
9 Professions Code, Respondent shall pay the Commissioner's
10 reasonable cost for: (a) the audit which led to this
11 disciplinary action and (b) a subsequent audit to determine if
12 Respondent is now in compliance with the Real Estate Law. The
13 cost of the audit which led to this disciplinary action is
14 \$5,391.86. In calculating the amount of the Commissioner's
15 reasonable cost, the Commissioner may use the estimated average
16 hourly salary for all persons performing audits of real estate
17 brokers, and shall include an allocation for travel time to and
18 from the auditor's place of work. Said amount for the prior and
19 subsequent audits shall not exceed \$10,783.72.

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

24 The Commissioner may suspend the license of Respondents
25 pending a hearing held in accordance with Section 11500, et seq.,
26
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1 of the Government Code, if payment is not timely made as provided
2 for herein, or as provided for in a subsequent agreement between
3 the Respondents and the Commissioner. The suspension shall
4 remain in effect until payment is made in full or until a
5 Respondent enters into an agreement satisfactory to the
6 Commissioner to provide for payment, or until a decision
7 providing otherwise is adopted following a hearing held pursuant
8 to this condition.

9
10
11 DATED: 7-24-02

ELLIOTT MAC LENNAN
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

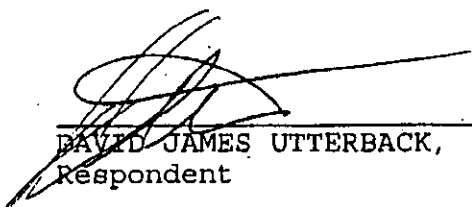
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14 * * *

15 EXECUTION OF THE STIPULATION

16 I have read the Stipulation and Agreement. Its terms
17 are understood by me and are agreeable and acceptable to me. I
18 understand that I am waiving rights given to me by the California
19 Administrative Procedure Act (including but not limited to
20 Sections 11506, 11508, 11509 and 11513 of the Government Code),
21 and I willingly, intelligently and voluntarily waive those
22 rights, including the right of requiring the Commissioner to
23 prove the allegations in the Accusation at a hearing at which I
24 would have the right to cross-examine witnesses against me and to
25 present evidence in defense and mitigation of the charges.
26
27

FACSIMILE TRANSMISSION

Respondent 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 Respondent, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED: 7/23/02

DAVID JAMES UTTERBACK,
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent DAVID JAMES UTTERBACK, and shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED _____

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

FACSIMILE TRANSMISSION

Respondent 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 Respondent, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED: _____

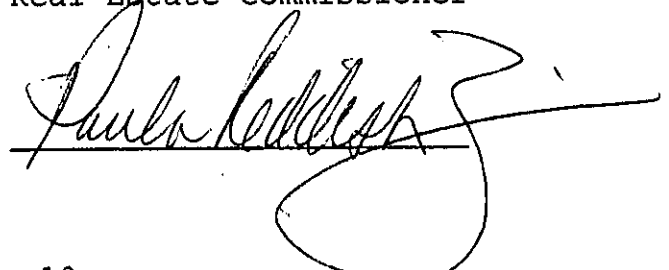
DAVID JAMES UTTERBACK,
Respondent

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent DAVID JAMES UTTERBACK,
and shall become effective at 12 o'clock noon
on September 13, 2002.

IT IS SO ORDERED

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



Sacto

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY - 9 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DAVID JAMES UTTERBACK, ET AL.,

By *K. Oredunbolu*

Case No. H-29449 LA

OAH No. L-2002040759

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 **August 1, 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: May 9, 2002

By

Elliott MacLennan

ELLIOTT MAC LENNAN,, Counsel

cc: David James Utterback.

Sacto

OAH/RJ/Audits

facts

FILED
APR 11 2002
DEPARTMENT OF REAL ESTATE

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

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

By *K. Kuderhult*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-29449 LA
	)	
DAVID JAMES UTTERBACK, and JUDITH	)	
LOUISE WILLIAMS,	)	<u>A C C U S A T I O N</u>
	)	
Respondents.	)	
	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for cause of Accusation against DAVID JAMES UTTERBACK dba Castles & Cottages Property Management Co. ("Castles & Cottages"), and JUDITH LOUISE WILLIAMS, is informed and alleges as follows:

1.

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

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2.

At all times mentioned, DAVID JAMES UTTERBACK ("UTTERBACK"), was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On May 1, 1980, UTTERBACK was originally licensed as a real estate broker.

3.

At all times mentioned, JUDITH LOUISE WILLIAMS ("WILLIAMS") was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate salesperson. On September 30, 1986, WILLIAMS was originally licensed as a real estate salesperson. WILLIAMS is the owner of Castles and Cottages real property management business. From June 14, 1999 to present, WILLIAMS has been employed by UTTERBACK as a real estate salesperson.

PRIOR DEPARTMENTAL ACTION

4.

On October 26, 1987, in Case No. H-23097 LA, an ORDER TO DESIST AND REFRAIN was filed against JUDITH LOUISE WILLIAMS under Section 10086 of the Code (Engaging in Prohibited Activity, Order to Desist and Refrain) for violations of Section 10130 of the Code.

5.

At all times mentioned, in the City of Long Beach, County of Los Angeles, UTTERBACK acted as real estate broker and conducted licensed activities within the meaning of Code Section 10131(b) of the Code in that UTTERBACK operated a property

1 management business known as Castles and Cottages.

2 6.

3 On September 12, 2001, the Department completed an
4 audit examination (Audit Report LA 000480 and the exhibits and
5 workpapers attached to said audit report) of the books and
6 records of UTTERBACK dba Castles & Cottages Property Management
7 Co., pertaining to the activities described in Paragraph 4 that
8 require a real estate license. The audit examination covered a
9 period of time beginning on January 1, 2000 through April 30,
10 2001. The audit examination revealed violations of the Code and
11 the Regulations as set forth in the following paragraphs.
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13 7.

14 At all times mentioned, in connection with the
15 activities described in Paragraph 5, UTTERBACK accepted or
16 received funds in trust (trust funds) from or on behalf of
17 landlords and tenants. Thereafter UTTERBACK made disposition of
18 such funds. UTTERBACK maintained the following trust accounts
19 into which he deposited certain of these funds at the Pacific
20 Century Bank located in Signal Hill, California:
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22 "Castles & Cottages Property Management Co. Trust 1
23 Account No. 0514003268" (T/A #1)

24 "Castles & Cottages Property Management Co. Trust 2
25 Account No. 0514002773" (T/A #2)
26
27

1 "Castles & Cottages Property Management Co. W.I.V. Account
Account No. 013286981" (T/A #3)

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3 8.

4 With respect to the licensed activities referred to in
5 Paragraph 5, and the audit examination including the exhibits and
6 workpapers referred to in Paragraph 6, it is alleged that:

7 (a) UTTERBACK permitted, allowed or caused the
8 disbursement of trust funds from T/A #1 where the disbursement of
9 said funds reduced the total of aggregate funds, to an amount
10 which, on April 30, 2001, was \$23,060.73, less than the existing
11 aggregate trust fund liability of UTTERBACK to every principal
12 who was an owner of said funds, without first obtaining the prior
13 written consent of the owners of said funds, as required by Code
14 Section 10145 and Regulation 2832.1.

15 (b) UTTERBACK failed to maintain an adequate control
16 record in the form of a columnar record in chronological order of
17 trust funds received for T/A # 1 and T/A #2, as required by Code
18 Section 10145 and Regulation 2831.

19 (c) UTTERBACK failed to maintain a separate record for
20 each beneficiary or transaction, thereby failing to account for
21 all trust funds received, deposited into, and disbursed from T/A
22 #1 and T/A #2, as required by Code Section 10145 and Regulation
23 2831.1.
24

25 (d) With respect to T/A #1 and T/A #2, UTTERBACK failed
26 to place funds, including funds received in certain property
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1 management transactions such as rents collected from tenants,
2 into a trust fund account in the name of the broker as trustee at
3 a bank or other financial institution not later than three
4 business days following receipt of the funds by the broker or by
5 the broker's salesperson, as required by Code Section 10145 and
6 Regulation 2832. UTTERBACK used the unlicensed fictitious
7 business name of Castles & Cottages Management Co., in lieu of
8 using his own name.

9 (e) UTTERBACK permitted Judith Williams, a real estate
10 salesperson employed by UTTERBACK and the owner and true operator
11 of Castles and Cottages, to be an authorized signatory on all
12 trust accounts without specific written authorization from
13 UTTERBACK, in violation of Code Section 10145 and Regulation
14 2834.

15 (f) UTTERBACK failed to obtain written authorization in
16 the form of management agreements from property owners prior to
17 disbursing trust funds on their behalf for trust accounts T/A #1
18 and T/A #2, in violation of Code Section 10145(a)(1).

19 (g) UTTERBACK failed to establish a system by which to
20 exercise reasonable supervision over the activities of real
21 estate salesperson WILLIAMS, as required by Regulation 2725 and
22 Code Section 10177(h). Nor was UTTERBACK a signatory on any of
23 the three trust accounts for Castles and Cottages.
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1 (h) UTTERBACK failed to obtain a license to use the
2 fictitious name of "Castles & Cottages" to conduct property
3 management activities, as required by Regulation 2731.

4 (i) UTTERBACK commingled trust funds in the amount of
5 \$21,536, from T/A #1 by depositing said sum into the general
6 account for Castles and Cottages. UTTERBACK deposited into the
7 general account for Castles and Cottages rents received from
8 tenants, from the eighty-two properties managed by Castles and
9 Cottages, in violation of Code Section 10176(e); and,

10 (j) UTTERBACK converted trust funds in the amount of
11 \$21,536, from T/A #1 by depositing rentals received from tenants
12 into the general account for Castles and Cottages, in violation
13 of Code Section 10176(i).

14 9.

15 The conduct of Respondent UTTERBACK, described in
16 Paragraph 7, above, violated the Code and the Regulations as set
17 forth below:
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19
20 PARAGRAPH

PROVISIONS VIOLATED

21 8(a)

Code Section 10145 and
22 Regulation 2832.1

23
24 8(b)

Regulation 2831

1	8(c)	Regulation 2831.1
2		
3	8(d)	Code Section 10145 and
4		Regulation 2832
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6	8(e)	Code Section 10145 and
7		Regulation 2834
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9	8(f)	Code Section 10145(a)(1) and
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11	8(g)	Regulation 2725 and Code Section
12		10177(h)
13		
14	8(h)	Regulation 2731
15		
16	8(i)	Code Section 10176(e), and
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18	8(j)	Code Section 10176(i)
19		
20		

21 Each of the foregoing violations constitute cause for the
22 suspension or revocation of the real estate license and license
23 rights of UTTERBACK under the provisions of Code Sections
24 10176(e), 10176(i), 10177(d) and/or 10177(g) and 10177(h).

25 10.

26 With respect to the licensed activities referred to in
27 Paragraph 4, and the audit examination including the exhibits and

workpapers referred to in Paragraph 5, it is alleged that:

(a) WILLIAMS commingled trust funds in the amount of \$21,536, from T/A #1 by depositing said sum into the general account for Castles and Cottages owned by WILLIAMS. WILLIAMS deposited into the general account for Castles and Cottages rents she received from tenants, from the eighty-two properties managed by Castles and Cottages, in violation of Code Section 10176(e); and,

(b) WILLIAMS converted trust funds in the amount of \$21,536, from T/A #1 by depositing rentals received from tenants into the general account for Castles and Cottages, in violation of Code Section 10176(i).

11.

The conduct of Respondent WILLIAMS, described in Paragraph 9, above, violated the Code and the Regulations as set Forth below:

PARAGRAPH

PROVISIONS VIOLATED

10(a)

Code Section 10176(e), and

10(b)

Code Section 10176(i)

Each of the foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of WILLIAMS under the provisions of Code Sections 10176(e), 10176(i), 10177(d) and/or 10177(g).

12.

2 Additionally, the conduct of WILLIAMS in accepting
3 trust funds for T/A #1, in the form of \$21,631 in rents received
4 on behalf the broker under whom she was licensed, and for failing
5 to deliver said trust funds into the hands of the broker, into a
6 neutral escrow depository or into the broker's trust fund
7 account, as described in Paragraph 6, above, constitutes a
8 violation of Section 10145(c). This conduct and violation are
9 cause to suspend or revoke the real estate license and license
10 rights of WILLIAMS pursuant to Code Section 10177(d).

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondents
5 DAVID JAMES UTTERBACK and JUDITH LOUISE WILLIAMS, under the Real
6 Estate Law (Part 1 of Division 4 of the Business and Professions
7 Code) and for such other and further relief as may be proper
8 under other applicable provisions of law.
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10 Dated at Los Angeles, California
11 this 11th day of April, 2002
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14 Deputy Real Estate Commissioner
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23 cc: David James Utterback
24 Judith Louise Williams
25 Maria Suarez
26 Sacto
27 RLJ
Audits