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FILED
JUL 30 2003
DEPARTMENT OF REAL ESTATE

By R. Kiederholt

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) DRE No. H-29666 LA
)
) JUNIUS JOHNSON JR., dba) OAH No. L-2002100292
) LA City Properties and Allstar)
) Property Management,)
) Respondent.)

DECISION AFTER REJECTION

Michael C. Cohn, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on January 29, 2003.

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

Respondent JUNIUS JOHNSON JR. ("Respondent") was present and represented himself.

Oral and documentary evidence was received and argument made.

1 The record was closed and the matter submitted on
2 January 29, 2003.

3
4 On February 7, 2003, the Administrative Law Judge
5 submitted a Proposed Decision which I declined to adopt as my
6 Decision herein. Pursuant to Section 11517(c) of the Government
7 Code of the State of California, Respondent was served with
8 notice of my determination not to adopt the Proposed Decision of
9 the Administrative Law Judge along with a copy of said Proposed
10 Decision. On March 14, 2003, Respondent was notified that the
11 case would be decided by me upon the record, the transcript of
12 proceedings held on January 29, 2003, and upon written argument
13 offered by Respondent.

14 I have given careful consideration to the record in
15 this case, including the transcript of the proceedings of
16 January 29, 2003.

17 Respondent has not submitted written argument. Written
18 argument was submitted by Complainant on June 11, 2003.

19 After further consideration of the matter, the
20 following shall constitute the Decision of the Real Estate
21 Commissioner in the above-entitled matter:
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FACTUAL FINDINGS

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2 1. The Accusation was made and filed by Maria Suarez,
3 in her official capacity as a Deputy Real Estate Commissioner,
4 Department of Real Estate, State of California ("Department").

5 Stipulated Findings:

6 The following facts were stipulated as true, except
7 Finding 5(f).

8 2. On April 3, 1979, the Department issued Respondent
9 a real estate broker license. At all times mentioned, Respondent
10 was licensed or held license rights as a real estate broker.

11 Respondent was first licensed by the Department of Real
12 Estate ("Department") as a real estate salesperson in 1970.
13 Except for a three-year period (1985 to 1988) when Respondent was
14 living in Texas, he has been active in real estate in California
15 for over 30 years. He has not previously been disciplined by the
16 Department.

17
18 3. At all times mentioned herein, Respondent acted as
19 a real estate broker and conducted licensed activities within the
20 meaning of California Business and Professions Code ("Code")
21 Sections 10131(a) by operating a residential and commercial
22 resale brokerage and Section 10131(b) in that he operated a
23 property management business. Respondent conducted his resale
24 business under the fictitious business name of "LA City
25 Properties." Respondent conducted his property management
26 business under the fictitious business name of "Allstar Property
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1 Management."

2 Allstar Property Management Audit

3 4. On January 16, 2002, the Department completed an
4 audit (LA 010123) of the books and records of Respondent dba
5 Allstar Property Management. The audit covered the period
6 October 19, 2001, through November 16, 2001. Respondent accepted
7 and received funds in trust from or on behalf of landlords and
8 tenants including rents. Those funds were deposited into the
9 following bank account used for that purpose (hereinafter "trust
10 account") maintained by Respondent at the Bank of America in
11 Inglewood, California: "Allstar Property Management Account No.
12 1891102277".

13 5. The audit revealed the following statutory and
14 regulatory violations, each of which constitutes cause for
15 discipline of Respondent's license:

16 (a) Respondent, without first obtaining the prior
17 written consent of the owners of the trust funds as required by
18 Code Section 10145 and Section 2832.1, Title 10, Chapter 6,
19 California Code of Regulations ("Regulations"), permitted,
20 allowed or caused the disbursement of trust funds from the trust
21 account where the total of aggregate funds in the trust account
22 on November 16, 2001, was \$1,269.32 less than the existing
23 aggregate trust fund liability on that date.

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1 Respondent admitted that it was his failure to
2 properly track trust funds that caused the shortage of \$1,269.32,
3 that existed on November 16, 2001.

4 (b) Respondent failed to maintain an adequate control
5 record in the form of a columnar record in chronological order of
6 trust funds received as required by Code Section 10145 and
7 Regulation 2831.

8 (c) Respondent failed to maintain a separate record
9 for each beneficiary or transaction, thereby failing to account
10 for all trust funds received, deposited into and disbursed from
11 the bank account as required by Code Section 10145 and Regulation
12 2831.1.

13 (d) Respondent failed to perform a monthly
14 reconciliation of the balance of all separate beneficiary or
15 transaction records with the record of all trust funds received
16 and disbursed from the trust account as required by Code Section
17 10145 and Regulation 2831.2.

18 (e) Respondent failed to place funds, including funds
19 received in certain property management transactions, including
20 rents collected from tenants, into a trust fund account in the
21 name of the broker as required by Code Section 10145 and
22 Regulation 2832.

23 The trust account was not designated as a trust
24 account, to wit, "Allstar Property Management".
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1 (f) At the hearing Respondent stipulated to the
2 violations set forth in the Accusation except for Paragraph 6(f),
3 page 4, the conversion allegation pursuant to Code Section
4 10176(i). At the hearing, the Accusation was amended to
5 substitute Code Section 10177(g) in place of Code Section
6 10176(i).

7 Respondent used trust funds, in the form of collected
8 rents, to pay the salary of his bookkeeper and his property
9 manager, Francis Toliver. This is cause for discipline pursuant
10 to Code Section 10177 (g).

11 (g) Respondent failed to initiate and maintain a
12 written broker-salesperson agreement with Kimberly Smith, as
13 required by Regulation 2726.

14 LA City Properties Audit

15 6. On February 1, 2002, the Department completed an
16 audit (LA 010209) of the books and records of Respondent dba LA
17 City Properties. The audit covered the period January 1, 2001,
18 through December 31, 2001. Respondent accepted or received funds
19 in trust in the form of rents and security deposits. Respondent
20 did not maintain a trust account during the audit period.

21 7. (a) Respondent failed to maintain an adequate
22 control record in the form of a columnar record in chronological
23 order of trust funds, as required by Code Section 10145 and
24 Regulation 2831.

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1 (b) Respondent failed to place funds into a trust
2 account not later than three business days following receipt of
3 trust funds, in the form of rents, by Respondent or one of his
4 salespeople, as required by Code Section 10145 and Regulation
5 2832.

6 Additional General Findings:

7 8. Respondent accepted responsibility for violations
8 cited in the Accusation including the errors in his trust fund
9 handling procedures for LA City Properties and Allstar Property
10 Management.

11 9. Respondent testified that he acquired Allstar
12 Property Management around October 1999. Before that, his
13 career had been confined to residential and commercial resale
14 transactions. Respondent conceded he did not have the proper
15 training to correctly manage this new property management
16 business. Respondent testified after the Department's audit, he
17 divested himself of Allstar Property Management on July 1, 2002,
18 and returned to his long-time core business of residential and
19 commercial sales and leases.
20

21 10. Respondent admitted that he used rents received
22 from tenants to directly pay listing agents and the property
23 manager out of the trust account. He testified that he understood
24 from the language of the standard property management agreement
25 he inherited from Allstar Property Management's former owner that
26 he was entitled to do this. He testified that he now knows this
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is wrong.

LEGAL CONCLUSIONS

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3 1. Cause exists for discipline pursuant to Code
4 Section 10145 and Regulation 2832.1, as set forth in Finding
5 5(a), because Respondent had a \$1,269.32, deficit in the Allstar
6 Property Management trust account on November 16, 2001.

7
8 2. Cause exists for discipline pursuant to Code
9 Section 10145 and Regulation 2831, as set forth in Finding 5(b),
10 because Respondent failed to maintain a columnar control record
11 in chronological order containing all the information required of
12 all trust funds received and disbursed for the Allstar Property
13 Management trust account.

14 3. Cause exists for discipline pursuant to Code
15 Section 10145 and Regulation 2831.1, as set forth in Finding
16 5(c), because Respondent failed to maintain a separate record for
17 each beneficiary or transaction thereby failing to account for
18 all trust funds received, deposited into, and disbursed from the
19 Allstar Property Management trust account.

20 4. Cause exists for discipline pursuant to Code
21 Section 10145 and Regulation 2831.2, as set forth in Finding
22 5(d), because Respondent failed to keep and maintain a record of
23 the monthly reconciliation of the balance for all separate
24 beneficiary or transaction records maintained pursuant to
25 Regulation Section 2831.1, with the record of all trust funds
26 received and disbursed by the Allstar Property Management trust
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1 account, as required by Regulation Section 2831.2.

2 Reconciliation requires (1) an accurate and complete
3 columnar control record in chronological order and (2) a separate
4 record for each beneficiary in addition to (3) bank statements.
5 Absent either an accurate and complete control record or separate
6 record, reconciliation cannot be accomplished.

7 5. Cause exists for discipline pursuant to Code
8 Section 10145 and Regulation 2832, as set forth in Finding 5(e),
9 because the Allstar Property Management trust account was not
10 designated in the name of the broker as trustee or as a trust
11 account.

12 6. Cause exists for discipline pursuant to Code
13 Section 10177(g), as set forth in Finding 5(f), because
14 Respondent negligently paid operating expenses including paying a
15 property manager and bookkeeper from the trust account Respondent
16 used to collect trust funds in the form of rents.

17 7. Cause exists for discipline pursuant to Regulation
18 2726, as set forth in Finding 5(g), because Respondent failed to
19 initiate and maintain a written broker-salesperson agreement with
20 salesperson Kimberly Smith.

21 8. Cause exists for discipline pursuant to Code
22 Section 10145 and Regulation 2831, as set forth in Finding 7(a),
23 because Respondent failed to maintain an adequate control record
24 in the form of a columnar record in chronological order of trust
25 funds for LA City Properties.
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1 9. Cause exists for discipline pursuant to Code
2 Section 10145 and Regulation 2832, as set forth in Finding 7(b),
3 because Respondent failed to place trust funds into the LA City
4 Properties trust account not later than three business days
5 following receipt of the trust funds by Respondent or one of his
6 salespeople.

7 10. Cause exists for discipline of Respondent's real
8 estate broker license and license rights pursuant to Code
9 Sections 10177(d) and 10177(g).

10 11. All evidence presented as mitigation and
11 rehabilitation has been considered.

12 Contrary to the opinion of the Administrative Law
13 Judge, protection of the public interest warrants additional
14 discipline.

15 Numerous trust fund record keeping and other violations
16 revealed by the audits of Allstar Property Management and LA City
17 Properties were stipulated to at the hearing including Code
18 Section 10145 and Regulations 2726, 2831, 2831.1, 2831.2, 2832,
19 2832.1. Additionally Respondent negligently paid operating
20 expenses from the bank account used to collect rents.

21 The violations resulted from Respondent's business
22 procedures and failure to comply with the Real Estate Law. In
23 addition, Respondent's conduct constitutes negligence or
24 incompetence.
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1 Proper handling of a trust account and complying with
2 trust fund recording keeping is fundamental to conducting
3 licensed activities.

4 It has not been shown that said violations will not
5 reoccur. Protection of the public interest requires warrants
6 additional discipline against Respondent's license.

7 12. The objective of an administrative proceeding
8 relating to discipline, if any, is to protect the public, and to
9 determine whether a license holder has exercised his privilege in
10 derogation of the public interest. Such proceedings are not for
11 the primary purpose of punishment. *Famy v. MBC* (1995) 38 Cal.
12 App.4th 810, 817).

13 13. The Real Estate Commissioner is empowered to
14 enforce the provisions of the Real Estate Law "in a manner which
15 achieves the maximum protection for the purchasers of real
16 property and those persons dealing with real estate licensees".
17 (Business and Professional Code Section 10050; *Handeland v.*
18 *Department of Real Estate* (1976) 58 Cal App. 3rd 513).

20 The discipline imposed below is to accomplish this end.

21 Based on the above Factual Findings and Legal
22 Conclusions, I have determined that the Order of the Proposed
23 Decision of the Administrative Law Judge dated February 7, 2003,
24 is not appropriate and that it would not be in the public
25 interest to adopt the Order recommended by the Administrative Law
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1 Judge in his Proposed Decision and therefore said Order is not
2 adopted.

3 ORDER

4 WHEREFORE, THE FOLLOWING ORDER is hereby made.

5 I.

6 All licenses and licensing rights of Respondent JUNIUS
7 JOHNSON JR. under the Real Estate Law suspended for a period of
8 thirty (30) days from the effective date of this Decision;
9 provided, however, that if Respondent petitions, the initial
10 fifteen (15) days of said suspension (or a portion thereof) shall
11 be stayed upon condition that:

12 1. Respondent pays a monetary penalty pursuant to
13 Section 10175.2 of the Business and Professions Code at the rate
14 of \$150 per day for each day of the suspension for a total
15 monetary penalty of \$2,250.

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

21 3. No further cause for disciplinary action against
22 the real estate license of Respondent occurs within one (1) year
23 from the effective date of the Decision in this matter.

24 4. If Respondent fails to pay the monetary penalty in
25 accordance with the terms of the Decision, the Commissioner may,
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1 without a hearing, order the immediate execution of all or any
2 part of the stayed suspension, in which event the Respondent
3 shall not be entitled to any repayment nor credit, prorated or
4 otherwise, for money paid to the Department under the terms of
5 this Decision.

6 5. If Respondent pays the monetary penalty and if no
7 further cause for disciplinary action against the real estate
8 license of Respondent occurs within one year from the effective
9 date of the Decision, the stay hereby granted shall become
10 permanent

11 II

12 The remaining fifteen (15) days of the thirty (30) day
13 suspension shall be stayed for one (1) year upon the following
14 terms and conditions:

- 15 1. Respondent shall obey all laws, rules and
16 regulations governing the rights, duties and responsibilities
17 of a real estate licensee in the State of California; and
18 2. That no final subsequent determination be made
19 after hearing or upon stipulation, that cause for disciplinary
20 action occurred within one (1) year of the effective date of this
21 Decision. Should such a determination be made, the Commissioner
22 may, in her discretion, vacate and set aside the stay order and
23 reimpose all or a portion of the stayed suspension. Should no
24 such determination be made, the stay imposed herein shall become
25 permanent.
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III

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2 All licenses and licensing rights of Respondent JUNIUS
3 JOHNSON JR. are indefinitely suspended unless or until Respondent
4 submits proof satisfactory to the Commissioner of having taken
5 and successfully completed the continuing education course on
6 trust fund accounting and handling specified in subdivision (a),
7 paragraph (3) of Section 10170.5 of the Business and Professions
8 Code. Proof of satisfaction of this requirement includes
9 evidence that Respondent has successfully completed the trust
10 fund accounting and handling continuing education course within
11 120 days prior to the effective date of the order herein.
12

IV

13 Pursuant to Section 10148 of the Business and
14 Professions Code, Respondent shall pay the Commissioner's
15 reasonable cost for: (a) the audit which led to this disciplinary
16 action and (b) a subsequent audit to determine if Respondent is
17 now in compliance with the Real Estate Law. The cost of the
18 audits which led to this disciplinary action is \$5,778.21. In
19 calculating the amount of the Commissioner's reasonable cost, the
20 Commissioner may use the estimated average hourly salary for all
21 persons performing audits of real estate brokers, and shall
22 include an allocation for travel time to and from the auditor's
23 place of work. Said amount for the prior and subsequent audits
24 shall not exceed \$11,556.42.
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1 Respondent shall pay such cost within 60 days of
2 receiving an invoice from the Commissioner detailing the
3 activities performed during the audit and the amount of time
4 spent performing those activities.

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

14 This Decision shall become effective at 12 o'clock noon
15 on September 1, 2003

16 July 28, 2003.
17 IT IS SO ORDERED

18 PAULA REDDISH ZINNEMANN
19 Real Estate Commissioner
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Handwritten initials/signature

FILED
MAR 14 2003

DEPARTMENT OF REAL ESTATE

By *K. Kneiderholt*

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

In the Matter of the Accusation of)	No. H-29666 LA
JUNIUS JOHNSON, JR.,)	L-2002100292
Respondent.)	

NOTICE

TO: JUNIUS JOHNSON, JR., Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated February 7, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated February 7, 2003, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on January 29, 2003, and any written argument hereafter submitted on behalf of Respondent and Complainant.

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Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of January 29, 2003, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: March 13, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JUNIUS JOHNSON JR., dba
LA City Properties and
Allstar Property Management,

Respondent.

Case No. H-29666-LA

OAH No. L2002100292

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Los Angeles, California on January 29, 2003.

Complainant Maria Suarez, Deputy Real Estate Commissioner, State of California, was represented by Elliott MacLennan, Counsel, Department of Real Estate.

Respondent Junius Johnson Jr. represented himself.

The matter was submitted on January 29, 2003.

FACTUAL FINDINGS

Stipulated Findings

The following facts were stipulated as true:

1. Junius Johnson Jr. (respondent) was originally licensed by the Department of Real Estate (Department) as a real estate broker on April 3, 1979. At all times mentioned, respondent was licensed or held license rights as a real estate broker.

2. At all times mentioned, respondent acted as a real estate broker and conducted licensed activities within the meaning of Business and Professions Code section 10131(a) in that he operated a residential and commercial resale brokerage dba LA City Properties, and within the meaning of Business and Professions Code section 10131(b) in that he operated a property management business dba Allstar Property Management. Respondent manages 20 residential properties totaling 40 units for 20 owners.

Allstar Property Management Audit

3. On January 16, 2002, the Department completed an audit of the books and records of respondent dba Allstar Property Management. The audit covered the period October 19, 2001, through November 16, 2001. Respondent accepted and received funds in trust from or on behalf of landlords and tenants. Those funds were deposited into the following trust account maintained by respondent at the Bank of America: Allstar Property Management Account No. 1891102277.

4. As to this account, the audit revealed the following statutory and regulatory violations, each of which constitutes cause for discipline of respondent's license:

(a) Respondent, without first obtaining the prior written consent of the owners of the funds as required by Business and Professions Code section 10145 and title 10, California Code of Regulations section 2832.1, permitted, allowed or caused the disbursement of trust funds from the account to the point that the total of aggregate funds in the account on November 16, 2001 was \$1,269.32 less than the existing aggregate trust fund liability on that date.

(b) Respondent failed to maintain an adequate control record in the form of a columnar record in chronological order of trust funds received as required by Business and Professions Code section 10145 and title 10, California Code of Regulations section 2831.

(c) Respondent 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 the account as required by Business and Professions Code section 10145 and title 10, California Code of Regulations section 2831.1.

(d) Respondent failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records with the record of all trust funds received and disbursed from the account as required by Business and Professions Code section 10145 and title 10, California Code of Regulations 2831.2.

(e) Respondent 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 required by Business and Professions Code section 10145 and title 10, California Code of Regulations section 2832.

(f) Respondent failed to initiate and maintain written broker-salesperson agreements with his salespeople, including Kimberly Smith, as required by title 10, California Code of Regulations section 2726.

LA City Properties Audit

5. On February 1, 2002, the Department completed an audit of the books and records of respondent dba LA City Properties. The audit covered the period January 1, 2001, through December 31, 2001. Respondent accepted or received in trust earnest money deposits.* Respondent did not maintain a trust account during the audit period.

6. The audit revealed the following statutory and regulatory violations, each of which constitutes cause for discipline of respondent's license:

(a) Respondent failed to maintain an adequate control record in the form of a columnar record in chronological order of trust funds as required by Business and Professions Code section 10145 and title 10, California Code of Regulations section 2831.

(b) Respondent failed to place funds into a trust account not later than three business days following receipt of the funds by respondent or one of his salespeople as required by Business and Professions Code section 10145 and title 10, California Code of Regulations section 2832.

Additional Findings

The following facts were found to be true:

7. Respondent was first licensed by the Department as a real estate salesperson in 1970. Except for about a three-year period (1985 to 1988) when respondent was living in Texas, he has been active in real estate in California for over 30 years. He has not previously been disciplined by the Department.

8. Respondent acquired Allstar Property Management around October 1999. Before that, his career had been confined to sales. Respondent readily concedes he did not have the proper training to correctly manage this new business. After the Department's audit, respondent chose to sell Allstar Property Management. He divested himself of the business on July 1, 2002.

9. Respondent admits that he used rents received from tenants to directly pay, out of the trust account, listing agents and the property manager. He understood from the language of the standard property management agreement he inherited from Allstar Property Management's former owner that he was entitled to do this. He now knows this is wrong.

* Although the allegation of the accusation the parties stipulated to stated respondent "accepted or received funds in trust (trust funds) from or on behalf of landlords and tenants," this appears to have been a typographical error. It mirrors identical language in the accusation pertaining to the Allstar Property Management trust funds. The audit report shows that the trust funds in question pertaining to LA City Properties were earnest money deposits.

Although the Department originally charged respondent with fraud and dishonest dealing for paying expenses, including payroll, directly from the trust account, at the hearing the auditor conceded that respondent's actions were rooted in negligence, not fraud. As a result, the accusation was amended at the hearing to reduce the charges.

10. Respondent has been cooperative with the Department since the audits began. He has repeatedly taken full responsibility for the errors he made in handling the trust account and has stated that there was no excuse for those errors. In recording trust funds, respondent had used a single form, the California Association of Realtors' Form TAP-11 (Trust Bank Account Record for Each Property Managed). As a result of the audit, he learned he should have been using a columnar record as well. After the audit he began also using such a form (RE 4522—Columnar Record of All Trust Funds Received and Paid Out). Respondent asserts, and the Department's auditor confirms, that it was this failure to properly track trust assets that caused the shortage that existed on November 16, 2001. Respondent also learned as a result of the audit that he needed to transfer trust funds into his operating account before paying salaries and property management-related expenses. Respondent believes the audits have actually benefited him since it caused him to better manage trust funds, to use the proper forms and to ensure that his staff is properly trained in these areas.

11. Regarding the failure to maintain a written broker-salesperson agreement with Kimberly Smith, respondent testified this is his daughter and he admits he did not have an agreement in her file. He has since corrected that oversight.

12. Respondent also takes full responsibility for the errors in handling the LA City Properties trust funds. Again, he credits the audit for improving his procedures. Since the audit he has begun using California Association of Realtors' Form TF-11 (Trust Funds Received and Released (Not Placed in Trust Bank Account)) to ensure that funds are properly handled in accordance with the three-day rule of title 10, California Code of Regulations section 2832.

13. Since he divested himself of Allstar Property Management, respondent has returned to his long-time core business of residential and commercial sales and leases. (He still manages properties, but they are ones he owns.) Respondent generally handles properties valued between \$200,000 and \$1,600,000. Including himself, the business has nine employees, six of whom are licensed. He operates out of a single office.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 10177(d) provides that the Department may suspend or revoke the license of a real estate licensee who has willfully disregarded or violated the Real Estate Law or the commissioner's regulations. Section 10177(g) provides that the Department may suspend or revoke the license of a real estate licensee who has demonstrated negligence or incompetence in performing acts for which a

license is required. The matters set forth in Findings 4 and 6 establish that cause exists under each of those sections to suspend or revoke respondent's license.

2. Respondent understands that his conduct merits discipline. He asks only that leniency be shown and that, rather than being given a restricted license, he be allowed to pay a monetary penalty in lieu of a suspension of his license.

3. Respondent has been a real estate licensee for more than 30 years. He has been a broker for more than 20 years. His license has never been disciplined in that time. From the outset of this proceeding, respondent has been cooperative with the Department and has taken full responsibility for the violations found during the audit. He has taken steps to correct each of those violations. He has sold the property management business that generated most of the problems. Respondent's trust fund violations were the result of inadequately tracking trust fund receipts and expenditures. Since the audit he has begun using new forms that allow him to properly track those funds. It is undoubtedly true that as a long-time broker respondent "should have known better." But he has not only acknowledged that was true, but he has used the audits as a learning experience. Considering all the evidence presented, it is determined that protection of the public interest does not demand that respondent's license be revoked and that he be issued a restricted license. The public will be sufficiently protected if respondent's license is suspended for a brief time, with the opportunity that he petition for a monetary penalty in lieu of that suspension.

ORDER

All licenses and licensing rights of respondent Junius Johnson Jr. under the Real Estate Law are suspended for a period of five (5) days from the effective date of this Decision; provided, however, that if respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:


1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$150 for each day of the suspension for a total monetary penalty of \$750.
2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.
3. No further cause for disciplinary action against respondent's real estate license occurs within one year from the effective date of the Decision in this matter.
4. If respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event respondent shall not be entitled to any repayment nor credit,

NOT APPROVED

prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If respondent pays the monetary penalty and if no further cause for disciplinary action against respondent's real estate license occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

DATED: February 7, 2003


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

Sacto JP

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

FILED
JAN 17 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By *R. Millerholt*

JUNIUS JOHNSON, JR.,

Case No. H-29666 LA

OAH No. L-2002100292

Respondent

**AMENDED
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 29, 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: January 17, 2003

By *Elliott MacLennan*
ELLIOTT MAC LENNAN, Counsel

cc: Junius Johnson, Jr.
Sacto/OAH/JP

Back 2/03

FILED
OCT 29 2002
DEPARTMENT OF REAL ESTATE

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

In the Matter of the Accusation of

By *R. Underholt*

JUNIUS JOHNSON, JR.,

}
}

Case No. H-29666 LA

OAH No. L-2002100292

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 January 28 & 29, 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: October 29, 2003

By *ELI*
ELLIOTT MAC LENNAN, Counsel

cc: Junius Johnson, Jr.
Sacto/OAH/JP

backing

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

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

FILED
SEP - 4 2002
DEPARTMENT OF REAL ESTATE

By *K. Muesel*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-29666 LA
)	
12 JUNIUS JOHNSON JR., dba)	
13 LA City Properties and Allstar)	<u>A C C U S A T I O N</u>
14 Property Management,)	
)	
15 Respondent.)	

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, acting in her official
18 capacity, for cause of Accusation against JUNIUS JOHNSON JR. dba
19 LA City Properties and Allstar Property Management ("JOHNSON"),
20 is informed and alleges as follows:

21 1.

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

25 2.

26 At all times mentioned, JOHNSON was licensed or had
27 license rights issued by the Department of Real Estate

1 (Department) as a real estate broker. On April 3, 1979, JOHNSON
2 was originally licensed as a real estate broker.

3 3.

4 At all times mentioned, in the City of Inglewood,
5 County of Los Angeles, JOHNSON acted as real estate broker and
6 conducted licensed activities within the meaning of:

7 A. Code Section 10131(a) of the Code in that JOHNSON
8 operated a residential resale and a commercial resale brokerage
9 dba LA City Properties; and,

10 B. Code Section 10131(b) of the Code in that JOHNSON
11 operated a property management business dba Allstar Property
12 Management. JOHNSON manages twenty residential properties
13 totaling forty units for twenty owners.

14 ALLSTAR PROPERTY MANAGEMENT AUDIT

15 4.

16 On January 16, 2002, the Department completed an audit
17 examination of the books and records of JOHNSON dba Allstar
18 Property Management pertaining to the activities described in
19 Paragraph 3.B that require a real estate license. (Audit Report
20 LA 010123 and the exhibits and workpapers attached to said audit
21 report). The audit examination covered a period of time
22 beginning on October 19, 2001 through November 16, 2001. The
23 audit examination revealed violations of the Code and the
24 Regulations as set forth in the following paragraphs.

25
26 ///

5.

1
2 At all times mentioned, in connection with the
3 activities described in Paragraph 3.B, JOHNSON accepted or
4 received funds in trust (trust funds) from or on behalf of
5 landlords and tenants. Thereafter JOHNSON made disposition of
6 such funds. JOHNSON maintained a trust account into which he
7 deposited certain of these funds at the Bank of America at 330 E.
8 Manchester Blvd, in Inglewood, California:

9 "Allstar Property Management
10 Account No. 1891102277"
11 (B/A #1)

6.

12 With respect to the licensed activities referred to in
13 Paragraph 3.B, and the audit examination including the exhibits
14 and workpapers referred to in Paragraph 4, it is alleged that
15 JOHNSON:

16 (a) Permitted, allowed or caused the disbursement of
17 trust funds from B/A #1 below where the disbursement of said
18 funds reduced the total of aggregate funds as set forth below, to
19 an amount which, on November 16, 2001 was \$1,269.32, less than
20 the existing aggregate trust fund liability of JOHNSON to every
21 principal who was an owner of said funds, without first obtaining
22 the prior written consent of the owners of said funds, as
23 required by Code Section 10145 and Regulation 2832.1.

24 (b) Failed to maintain an adequate control record in
25 the form of a columnar record in chronological order of trust
26 funds received for B/A #1, as required by Code Section 10145 and
27 Regulation 2831.

1 (c) Failed to maintain a separate record for each
2 beneficiary or transaction, thereby failing to account for all
3 trust funds received, deposited into, and disbursed from B/A #1,
4 as required by Code Section 10145 and Regulation 2831.1.

5 (d) Failed to perform a monthly reconciliation of the
6 balance of all separate beneficiary or transaction records
7 maintained pursuant to Regulation 2831.1 with the record of all
8 trust funds received and disbursed by B/A #1, as required by Code
9 Section 10145 and Regulation 2831.2.

10 (e) Failed to place funds, including funds received in
11 certain property management transactions such as rents collected
12 from tenants, into a trust fund account in the name of the
13 broker, as required by Code Section 10145 and Regulation 2832.

14 (f) Converted trust funds by using trust funds to pay
15 his operating expenses, including but not limited to, salary paid
16 to JOHNSON's bookkeeper Lopez, and payments to JOHNSON's
17 salesperson Francis Toliver. This is cause for discipline
18 pursuant to Code Section 10176(i); and

19 (g) Failed to initiate and maintain written Broker-
20 Salesperson agreements with JOHNSON'S salespeople, including
21 Kimberly Smith, as required by Regulation 2726.
22

23 ///

24 ///

25 ///

26 ///

27

7.

The conduct of Respondent JOHNSON, described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
6 (a)	Code Section 10145 and Regulation 2832.1
6 (b)	Code Section 10145 and Regulation 2831
6 (c)	Code Section 10145 and Regulation 2831.1
6 (d)	Code Section 10145 and Regulation 2831.2
6 (e)	Code Section 10145 and Regulation 2832
6 (f)	Code Section 10176 (i)
6 (g)	Regulation 2726

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

///

1
2 LA CITY PROPERTIES AUDIT

3 8.

4 On February 1, 2002, the Department completed an audit
5 examination of the books and records of JOHNSON dba LA City
6 Properties pertaining to the residential sales activities
7 described in Paragraph 3.A that require a real estate license.
8 (Audit Report LA 010209 and the exhibits and workpapers attached
9 to said audit report). The audit examination covered a period of
10 time beginning on January 1, 2001 through December 31, 2001. The
11 audit examination revealed violations of the Code and the
12 Regulations as set forth in the following paragraphs.
13

14 9.

15 At all times mentioned, in connection with the
16 activities described in Paragraph 3.A, JOHNSON accepted or
17 received funds in trust (trust funds) from or on behalf of
18 landlords and tenants. Thereafter JOHNSON made disposition of
19 such funds. JOHNSON did not maintain a trust account during the
20 audit period.
21

22 10.

23 With respect to the licensed activities referred to in
24 Paragraph 3.A, and the audit examination including the exhibits
25 and workpapers referred to in Paragraph 9, it is alleged that
26 JOHNSON:

27 ///

1 (a) Failed to maintain an adequate control record in
2 the form of a columnar record in chronological order of trust
3 funds, as required by Code Section 10145 and Regulation 2831.

4 (b) Failed to place funds, including funds received in
5 certain property management transactions such as rents collected
6 from tenants, into a trust fund account in the name of the broker
7 as trustee at a bank or other financial institution not later
8 than three business days following receipt of the funds by the
9 broker or by the broker's salesperson, as required by Code
10 Section 10145 and Regulation 2832.

11 11.

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

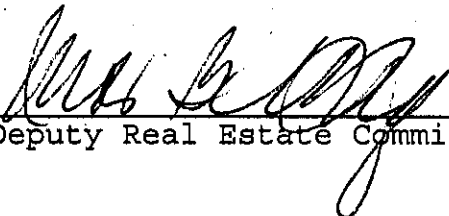
15	16	17
	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
18	10(a)	Code Section 10145 and
19		Regulation 2831
20	10(b)	Code Section 10145 and
21		Regulation 2832
22		

23 Each of the foregoing violations constitute cause for the
24 suspension or revocation of the real estate license and license
25 rights of JOHNSON under the provisions of Code Section 10177(d)
26 and/or 10177(g).
27

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 Respondent
5 JUNIUS JOHNSON JR. under the Real Estate Law (Part 1 of Division
6 4 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable provisions
8 of law.

9
10 Dated at Los Angeles, California

11 this *22nd* day of August 2002.

12
13 
14 Deputy Real Estate Commissioner

15
16
17
18
19
20
21
22 cc: Junius Johnson Jr.
23 Sacto
24 Maria Suarez
25 JP
26 Audits
27