

Mac Lennan

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

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

FILED
FEB - 4 2004
DEPARTMENT OF REAL ESTATE

By *R. Y. Grederholt*

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

DRE No. H-29736 LA

12 JARCO COMMERCIAL REAL ESTATE INC.,)
and, JASON GABRIEL RADFORD,)
13 individually and as designated)
Officer of Jarco Commercial)
14 Real Estate Inc.)

STIPULATION
AND
AGREEMENT

15)
16 Respondent.)

17 It is hereby stipulated by and between JARCO COMMERCIAL
18 REAL ESTATE INC., and JASON GABRIEL RADFORD individually and as
19 designated officer of Jarco Commercial Real Estate Inc.,
20 (sometimes collectively referred to as "Respondents"),
21 represented by Richard C. Leonard, Esq., and the Complainant,
22 acting by and through Elliott Mac Lennan, Counsel for the
23 Department of Real Estate, as follows for the purpose of settling
24 and disposing of the Accusation filed on October 18, 2002, in
25 this matter:
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement (Stipulation).

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

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

24 4. This Stipulation is based on the allegations
25 contained in the Accusation. In the interest of expedience and
26 economy, Respondents choose not to contest these allegations, but
27 to remain silent and understand that, as a result thereof, these

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

5 5. This Stipulation is based on Respondents decision
6 not to contest the allegations set forth in the Accusation as a
7 result of the agreement negotiated between the parties. The
8 admissions herein, and the decision not to contest the
9 Accusation, are made for the sole purpose of reaching an agreed
10 disposition of this proceeding and are expressly limited to this
11 proceeding and any other proceeding or case in which the
12 Department of Real Estate ("Department") or another licensing
13 agency of this state, another state or if the federal government
14 is involved, and otherwise shall not be admissible in any other
15 criminal or civil proceedings.

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

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

9 8. This Stipulation and the order made pursuant to
10 this Stipulation shall have no collateral estoppel or res
11 judicata effect in any proceeding(s) in which JARCO COMMERCIAL
12 REAL ESTATE INC., and JASON GABRIEL RADFORD and the Department
13 are not parties. This Stipulation is made and accepted with the
14 express understanding and agreement that it is for the purpose of
15 settling these proceedings only, and is not intended as, nor
16 shall be it be deemed, used, argued, or accepted as an
17 acknowledgement or admission of fact in any other judicial,
18 administrative, or other proceeding in which the Department or
19 another licensing agency of this state, another state or if the
20 federal government is not a party.

21 9. Respondents understand that by agreeing to this
22 Stipulation, Respondents agree to pay, pursuant to Business and
23 Professions Code Section 10148, the cost of the audit of JARCO
24 Commercial Real Estate Inc. which led to this disciplinary
25 action. The amount of said cost is \$2,096.60.
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1 with the Real Estate Law during the time that he was the officer
2 designated by a corporate broker licensee, in violation of Code
3 Section 10159.2. This conduct is a basis for the suspension or
4 revocation of Respondent's broker license and license rights
5 pursuant to Business and Professions Code Section 10177(h).

6 ORDER.

7 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT
8 TO THE WRITTEN STIPULATION OF THE PARTIES:

9 I.

10 All licenses and licensing rights of Respondents
11 JARCO COMMERCIAL REAL ESTATE INC., and JASON GABRIEL RADFORD
12 under the Real Estate Law are suspended for a period of sixty
13 (60) days from the effective date of this Decision; provided,
14 however, that all sixty (60) days of said suspension shall be
15 stayed for two (2) years upon the following terms and conditions:
16

17 1. Prior to the effective date of this Decision
18 Respondents provide evidence satisfactory to the Commissioner
19 that the trust fund deficits set forth in Audit Report LA 010354,
20 in the combined amount of \$57,691.88, has been cured, including
21 the identity of the source of funds used to cure it.

22 2. All licenses and licensing rights of Respondent
23 JASON GABRIEL RADFORD are indefinitely suspended unless or until
24 Respondent provides proof satisfactory to the Commissioner, of
25 having taken and successfully completed the continuing education
26 course on trust fund accounting and handling specified in
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1 paragraph (3) of subdivision (a) of Section 10170.5 of the
2 Business and Professions Code. Proof of satisfaction of this
3 requirement includes evidence that Respondent has successfully
4 completed the trust fund account and handling continuing
5 education course within 120 days prior to the effective date of
6 the Decision in this matter.

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

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

18 5. Pursuant to Section 10148 of the Business and
19 Professions Code, Respondents shall pay the Commissioner's
20 reasonable cost for (a) the audit which led to this disciplinary
21 action and (b) a subsequent audits to determine if Respondent
22 JARCO COMMERCIAL REAL ESTATE INC. are now in compliance with the
23 Real Estate Law. The cost of the audit which led to this
24 disciplinary action is \$2,096.60. In calculating the amount of
25 the Commissioner's reasonable cost, the Commissioner may use the
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1 estimated average hourly salary for all persons performing audits
2 of real estate brokers, and shall include an allocation for
3 travel time to and from the auditor's place of work. Said amount
4 for the prior and subsequent audits shall not exceed \$4,193.20.

5 Respondents shall pay such cost within 60 days of
6 receiving an invoice from the Commissioner detailing the
7 activities performed during the audit and the amount of time
8 spent performing those activities.

9 The Commissioner may suspend the license of Respondents
10 pending a hearing held in accordance with Section 11500, et seq.,
11 of the Government Code, if payment is not timely made as provided
12 for herein, or as provided for in a subsequent agreement between
13 the Respondents and the Commissioner. The suspension shall
14 remain in effect until payment is made in full or until
15 Respondents enter into an agreement satisfactory to the
16 Commissioner to provide for payment, or until a decision
17 providing otherwise is adopted following a hearing held pursuant
18 to this condition.
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21 DATED: 1-21-04

EL
22 ELLIOTT MAC LENNAN, Counsel for
23 the Department of Real Estate

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1 * * *

2 We have read the Stipulation and Agreement, and have
3 discussed it with our counsel. Its terms are understood by us
4 and are agreeable and acceptable to us. We understand that we
5 are waiving rights given to us by the California Administrative
6 Procedure Act (including but not limited to Sections 11506,
7 11508, 11509 and 11513 of the Government Code), and we willingly,
8 intelligently and voluntarily waive those rights, including the
9 right of requiring the Commissioner to prove the allegations in
10 the Accusation at a hearing at which we would have the right to
11 cross-examine witnesses against us and to present evidence in
12 defense and mitigation of the charges.
13

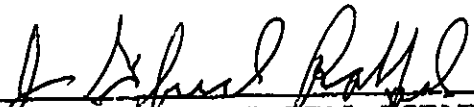
14 Respondents can signify acceptance and approval of the
15 terms and conditions of this Stipulation and Agreement by faxing
16 a copy of its signature page, as actually signed by Respondents,
17 to the Department at the following telephone/fax number: (213)
18 576-6917, Attention: Elliott Mac Lennan. Respondents agree,
19 acknowledge and understand that by electronically sending to the
20 Department a fax copy of Respondents' actual signatures as they
21 appear on the Stipulation and Agreement, that receipt of the
22 faxed copy by the Department shall be as binding on Respondents
23 as if the Department had received the original signed Stipulation
24 and Agreement.
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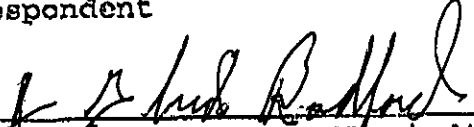
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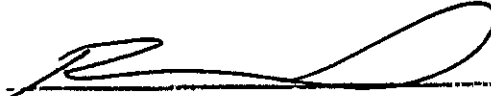
DATED: 1.22.04


JARCO COMMERCIAL REAL ESTATE INC.
BY: JASON GABRIEL RADFORD, D.O.,
Respondent

DATED: 1.22.04


JASON GABRIEL RADFORD, individually
and as designated officer of JARCO
Commercial Real Estate Inc.
Respondent

DATED: 1.22.04


Richard C. Leonard, Attorney for
Respondents
Approved as to form

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and Order and shall become effective at 12
o'clock noon on _____.

IT IS SO ORDERED _____.

JOHN R. LIBERATOR
Chief Deputy Commissioner

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DATED: _____

JARCO COMMERCIAL REAL ESTATE INC.
BY: JASON GABRIEL RADFORD, D.O.,
Respondent

DATED: _____

JASON GABRIEL RADFORD, individually
and as designated officer of JARCO
Commercial Real Estate Inc.
Respondent

DATED: _____

Richard C. Leonard, Attorney for
Respondents
Approved as to form

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and Order and shall become effective at 12
o'clock noon on MAR - 5 2004.

IT IS SO ORDERED January 30, 2004.

JOHN R. LIBERATOR
Chief Deputy Commissioner

John R. Liberator

*Sacto
File*

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

FILED
SEP - 2 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JARCO COMMERCIAL REAL ESTATE, ET AL

By K. Weidinger

Case No. H-29736 LA

OAH No. L-2003070659

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}

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 320 W. Fourth Street, Ste. 630, Los Angeles, CA on **February 13, 2004**, 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: SEP - 2 2003

By

[Signature]
ELLIOTT MAC LENNAN, Counsel

cc: Jarco Commerical Real Estate/Jason Gabriel Radford
Richard C. Leonard, Esq.
Sacto/OAH/JP

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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)

FILED
OCT 18 2002
DEPARTMENT OF REAL ESTATE

By *K. W. ...*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-29736 LA
JARCO COMMERCIAL REAL ESTATE INC.;)	<u>A C C U S A T I O N</u>
and, JASON GABRIEL RADFORD,)	
individually and as designated)	
officer of Jarco Commercial Real)	
Estate Inc.)	
Respondents.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JARCO COMMERCIAL REAL ESTATE INC., and JASON GABRIEL RADFORD, individually and as designated officer of Jarco Commercial Real Estate Inc., alleges as follows:

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1. 1

2 The Complainant, Maria Suarez, acting in her official
3 capacity as a Deputy Real Estate Commissioner of the State of
4 California makes this Accusation against JARCO COMMERCIAL REAL
5 ESTATE INC., ("JCREI") and JASON GABRIEL RADFORD ("RADFORD").

2. 6

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

3. 10

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

4. 15

16 At all mentioned times, RADFORD was licensed by the
17 Department as designated officer of JCREI to qualify JCREI and to
18 act for JCREI as a real estate broker and, as provided by Section
19 10159.2 of the Code, was responsible for the supervision and
20 control of the activities conducted on JCREI's behalf by JCREI's
21 officers, managers and employees as necessary to secure full
22 compliance with the provisions of the Real Estate Law including
23 the supervision of the salespersons licensed to the corporation
24 in the performance of acts for which a real estate license is
25 required. RADFORD was originally licensed as a real estate
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1 broker on August 24, 2001. JCREI was originally licensed as a
2 corporate real estate broker on June 15, 1984.

3 5.

4 Whenever reference is made in an allegation in the
5 Accusation to an act or omission of JCREI such allegation shall
6 be deemed to mean that the officers, directors, managers,
7 employees, agents and real estate licensees employed by or
8 associated with JCREI including RADFORD committed such act or
9 omission while engaged in the furtherance of JCREI's business or
10 operation and while acting within the course and scope of JCREI's
11 corporate authority, agency and employment.

12 6.

13 At all times mentioned, in the City of Santa Monica,
14 Los Angeles County, JCREI acted as a real estate broker, within
15 the meaning of Section 10131(b) of the Code by operating a
16 commercial property management brokerage. JCREI manages thirteen
17 partnership commercial properties for one-hundred owners/partners
18 collecting a monthly average of \$400,000 in rents. JCREI's
19 founder and owner, J. Allen Radford, acts as the general partner
20 for the thirteen partnerships.

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2 FIRST CAUSE OF ACTION

3 (Audit violations)

4 7.

5 On May 15, 2002, the Department completed an audit
6 examination of the books and records of JCREI pertaining to the
7 commercial property management activities described in Paragraph
8 6 that require a real estate license. The audit examination
9 covered a period of time beginning on November 1, 2001 through
10 March 31, 2002. The audit examination revealed violations of the
11 Code and the Regulations as set forth in the following
12 paragraphs, and more fully discussed in Audit Report LA 010354
13 and the exhibits and workpapers attached to said audit report.
14

15 8.

16 At all times mentioned, in connection with the
17 activities described in Paragraph 6, above, JCREI accepted or
18 received funds in trust (trust funds) from or on behalf of
19 owner/partners and tenants of the partnerships' various
20 commercial properties and thereafter made disposition of such
21 funds. JCREI maintained twenty-three (23) trust accounts during
22 the audit period of which five (5) were reviewed for this audit
23 and into which were deposited certain of these funds at the First
24 Republic Bank, 1888 Century Park East, Los Angeles, California:

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1 "Ralco-Orange
2 Account No. 924-0000-8784" (B/A #1)

3 "Ralco-Orange Money Market Account
4 Account No. 924-0000-8792" (B/A #2)

5 "76 Market Street
6 Account No. 924-0000-8495" (B/A #3)

7 "Jar-Hilltop
8 Account No. 924-0000-8628" (B/A #4)

9 "Jar-Hilltop Money Market Account
10 Account No. 924-0000-8644" (B/A #5)

11 9.

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

14 (a) Permitted, allowed or caused the disbursement of
15 trust funds from trust account B/A #1 and B/A #4, where the
16 disbursement of funds reduced the total of aggregate funds in the
17 said trust accounts, to an amount which, on March 31, 2002, was
18 overdrawn by \$35,496.52 and \$22,195.36 respectively, less than
19 the existing aggregate trust fund liability of JCREI to every
20 principal who was an owner of said funds, without first obtaining
21 the prior written consent of the owners of said funds, as
22 required by Code Section 10145 and Regulation 2832.1.

23
24 (b) Deposited trust funds into B/A #1 and B/A #5,
25 which were an interest-bearing accounts, without first obtaining
26

27

1 the prior written consent of the owner/partners of said trust
2 funds, in violation of Code Section 10145.

3 (c) Failed to maintain an adequate and complete control
4 record in the form of a columnar record in chronological order of
5 all trust funds received in B/A #1, B/A #2, B/A #3, B/A #4 and
6 B/A #5, as required by Code Section 10145 and Regulation 2831.

7 (d) Failed to place funds accepted on behalf of
8 owner/partners in the form of rents from tenants for B/A #1, B/A
9 #2, B/A #3, B/A #4 and B/A #5, into a trust fund account in the
10 name of the broker as trustee, as required by Code Section 10145
11 and Regulation 2832.

12 (e) (1) RADFORD could not sign on B/A #1, B/A #2, B/A
13 #3, B/A #4 or B/A #5, in violation of Code Section 10145 and
14 Regulation 2834; and

15 (e) (2) Permitted non-licensed persons, J. Allen
16 Radford, Carol Taylor and Madelen Capiro, who was not bonded, to
17 be authorized signatories on B/A #1, B/A #2, B/A #3, B/A #4 and
18 B/A #5 trust accounts, in violation of Code Section 10145 and
19 Regulation 2834.
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10.

The conduct of Respondent JCREI, described in Paragraph 9 violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9 (a)	Code Section 10145 and Regulation 2832.1
9 (b)	Code Section 10145
9 (c)	Code Section 10145 and Regulation 2831
9 (d)	Code Section 10145 and Regulation 2832.
9 (e)	Code Section 10145 and Regulation 2834

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of JCREI under the provisions of Code Section 10177(d) and/or 10177(g).

SECOND CAUSE OF ACTION

(Failure to supervise)

11.

The overall conduct of RADFORD constitutes a failure on his part, as officer designated by a corporate broker licensee, responsible for the supervision and control over the activities conducted on behalf of RADFORD by its officers, managers and

1 employees as necessary to secure full compliance with the
2 provisions of the Real Estate Law including the supervision of
3 the salespersons licensed to the corporation in the performance
4 of acts for which a real estate license is required. This
5 conduct is cause for the suspension or revocation of the real
6 estate license and license rights of RADFORD pursuant to the
7 provisions of Code Sections 10177(h), 10177(d) and/or 10177(g).

8 WHEREFORE, Complainant prays that a hearing be
9 conducted on the allegations of this Accusation and that upon
10 proof thereof, a decision be rendered imposing disciplinary
11 action against the license and license rights of Respondents
12 JARCO COMMERCIAL REAL ESTATE INC., and JASON GABRIEL RADFORD,
13 individually and as designated officer of Jarco Commercial Real
14 Estate Inc., under the Real Estate Law (Part 1 of Division 4 of
15 the Business and Professions Code) and for such other and further
16 relief as may be proper under other applicable provisions of law.
17

18 Dated at Los Angeles, California

19 this *17th* day of *October* 2000.
20

21
22 
23 Deputy Real Estate Commissioner

24 cc: Jarco Commercial Real Estate Inc.
25 cc: Jason Gabriel Radford
26 Sacto
27 JP
MS
Audits