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FILED
SEP 11 2008
DEPARTMENT OF REAL ESTATE

S. R. Niederholt

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-29925 LA
)	
OSCAR O. LAM,)	
)	
Respondent.)	
)	

ORDER DENYING REINSTATEMENT OF LICENSE

On May 30, 2003, a Decision was rendered herein revoking Respondent's real estate salesperson license.

On or about June 16, 2005, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the

1 reinstatement of Respondent's real estate salesperson license,
2 in that;

3
4 I

5 In the Decision which revoked the real estate license
6 of Respondent a Determination of Issues was made that there
7 was cause to revoke Respondent's real estate license pursuant
8 to Business and Professions Code ("Code") Section 10177(d).

9 The underlying facts were that, in 2000, when
10 Respondent was not licensed by the Department of Real Estate,
11 Respondent negotiated the sale of real property in violation
12 of Code Section 10130.

13 II

14 On his Petition Application, Respondent failed to
15 reveal the following:

16 In response to question number 4. of the Petition
17 Application, to wit: "Have you ever been a defendant in any
18 civil court litigation, including small claims court?",
19 Respondent checked the box denoting "Yes" and wrote "I believe
20 over 10 years ago for a delinquent credit card debt".

21 Respondent failed to disclose a 1997 small claims
22 court case against him and a 2002 civil case in which a judgment
23 was rendered against him in the amount of approximately \$6,000.

24 III

25 The burden of proving rehabilitation rests with the
26 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).
27 A petitioner is required to show greater proof of honesty and
integrity than an applicant for first time licensure. The proof

1 must be sufficient to overcome the prior adverse judgment on the
2 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
3 395).

4 The Department has developed criteria in Section 2911,
5 Title 10, Chapter 6, California Code of Regulations
6 ("Regulations") to assist in evaluating the rehabilitation of an
7 applicant for reinstatement of a license. Among the criteria
8 relevant in this proceeding are:

9 2911(j) - Respondent has not submitted proof that the
10 2002 judgment against him was discharged or that he has made
11 bona fide efforts to discharge said judgment.

12 2911 (n) (1) - Respondent has not evidenced a change in
13 attitude from that which existed at the time of the conduct in
14 question, as evidenced by the following:

15 (a) Respondent's failure to disclose material
16 information on his Petition Application, as set forth in
17 Paragraph II, above.

18 (b) Respondent failed respond to a request to provide
19 undated information during the petition review process.

20 The failure to disclose relevant information on the
21 Petition Application prevents or hinders a full investigation
22 into the extent of rehabilitation. Information regarding civil
23 actions and judgments reflect on Respondent's rehabilitation,
24 business practices and qualifications for a real estate license.
25 A failure to disclose material facts shows a lack of candor and
26 diligence expected of a licensee, is a dishonest act and is
27

1 additional cause pursuant to Code Section 10177(a) to deny
2 Respondent's petition application.

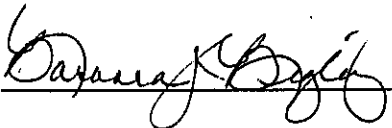
3 Given the fact that Respondent has not established
4 that Respondent has complied with Regulations 2911(j) and
5 2911(n)(1), and is in violation of Code Section 10177(a), I am
6 not satisfied that Respondent is sufficiently rehabilitated to
7 receive a real estate salesperson license.
8

9 NOW, THEREFORE, IT IS ORDERED that Respondent's
10 petition for reinstatement of Respondent's salesperson license
11 is denied.

12 This Order shall become effective at 12 o'clock noon
13 OCT - 1 2008
14 on _____.

15 DATED: 8/20/08

16 JEFF DAVI
17 Real Estate Commissioner

18 
19 _____

20 BY: Barbara J. Bigby
21 Chief Deputy Commissioner

22
23
24
25
26
27

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013

4 (213) 576-6913

FILED
JUL 11 2003
DEPARTMENT OF REAL ESTATE

Laura B. Jones

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 SILVERCREST REALTY, INC.,)
13 dba Prudential California)
14 Realty; RICHARD DAVID)
15 COSNER, individually and)
16 as designated officer of)
17 Silvercrest Realty, Inc.;)
18 and OSCAR O. LAM,)
19 Respondents.)

No. H-29925 LA

STIPULATION AND AGREEMENT

18 It is hereby stipulated by and between SILVERCREST
19 REALTY, INC., and RICHARD DAVID COSNER (sometimes referred to as
20 Respondents), and their attorney, Rose Pothier, Esq., and the
21 Complainant, acting by and through James R. Peel, Counsel for the
22 Department of Real Estate, as follows for the purpose of settling
23 and disposing of the Accusation filed on January 30, 2003, in
24 this matter.

25 ///

26 ///

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.

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. On February 11, 2003, Respondents filed a Notice of
13 Defense pursuant to Section 11506 of the Government Code for the
14 purpose of requesting a hearing on the allegations in the
15 Accusation. Respondents hereby freely and voluntarily withdraw
16 said Notice of Defense. Respondents acknowledge that they
17 understand that by withdrawing said Notice of Defense they will
18 thereby waive their right to require the Commissioner to prove
19 the allegations in the Accusation at a contested hearing held in
20 accordance with the provisions of the APA and that they will
21 waive other rights afforded to them in connection with the
22 hearing, such as the right to present evidence in defense of the
23 allegations in the Accusation and the right to cross-examine
24 witnesses.

25 ///

26 ///

1 4. Respondents, although not admitting the truth of
2 the allegations and pursuant to the limitations set forth below,
3 understand that the factual allegations set forth in the
4 Accusation, without being admitted, will serve as the basis for
5 the disciplinary action stipulated to herein. This Stipulation is
6 hereby expressly limited to this proceeding and is made by
7 Respondents and received by the Commissioner and the Department
8 with the express understanding and agreement that it is for the
9 purpose of settling these proceedings only. This Stipulation is
10 intended by Respondents to be non-binding upon them in any
11 actions against Respondents by third parties. This Stipulation is
12 not intended as, and shall not be deemed, used or accepted as an
13 acknowledgment or stipulation in any other judicial,
14 administrative, or other proceeding to which this Department is
15 not a party.

16 5. It is understood by the parties that the Real
17 Estate Commissioner may adopt the Stipulation and Agreement as
18 her decision in this matter thereby imposing the penalty and
19 sanctions on Respondents' real estate licenses and license rights
20 as set forth in the "Order". In the event that the Commissioner
21 in her discretion does not adopt the Stipulation and Agreement,
22 it shall be void and of no effect, and Respondents shall retain
23 the right to a hearing and proceeding on the Accusation under all
24 the provisions of the APA and shall not be bound by any
25 stipulation or waiver made herein.
26
27

1 ORDER

2 All licenses and licensing rights of Respondents
3 SILVERCREST REALTY, INC., and RICHARD DAVID COSNER under the Real
4 Estate Law are suspended for a period of ninety (90) days from
5 the effective date of this Decision; provided, however, that
6 sixty (60) days of said suspension shall be stayed for two (2)
7 years upon the following terms and conditions:

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

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

19 Provided, however, that if Respondents petition,
20 the remaining thirty (30) days of said ninety (90)-day suspension
21 shall be stayed upon condition that:

- 22 (1) Respondent SILVERCREST REALTY, INC. pays a
23 monetary penalty pursuant to Section 10175.2
24 of the Business and Professions Code at the
25 rate of \$50.00 for each day of the suspension
26 for a total monetary penalty of \$1,500.
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(2) Respondent RICHARD DAVID COSNER pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.

(3) 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 received by the Department prior to the effective date of the Decision in this matter.

(4) No further cause for disciplinary action against the real estate licenses of Respondents occur within two (2) years from the effective date of the Decision in this matter.

(5) If Respondents fail 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 the Respondents shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

///

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

7
8 DATED: MAY 20, 2003

James R. Peel
9 JAMES R. PEEL
Counsel for Complainant

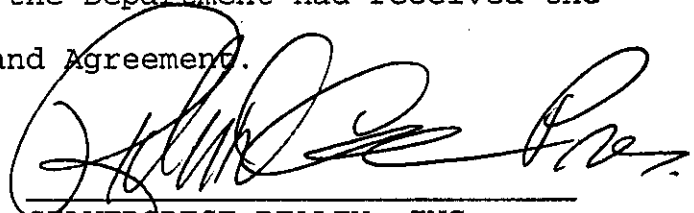
10 * * * *

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

22 Respondents can signify acceptance and approval of the
23 terms and conditions of this Stipulation and Agreement by faxing
24 a copy of its signature page, as actually signed by Respondents,
25 to the Department at the following telephone/fax number (213)
26 576-6917. Respondents agree, acknowledge and understand that by
27

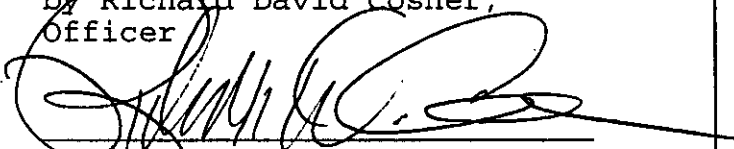
1 electronically sending to the Department a fax copy of their
2 actual signatures as it appears on the Stipulation and Agreement
3 that receipt of the faxed copy by the Department shall be as
4 binding on Respondents as if the Department had received the
5 original signed Stipulation and Agreement.

6
7 DATED: 4-28-03



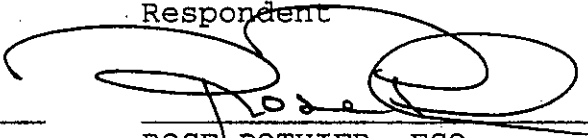
SILVERCREST REALTY, INC.
Respondent
by Richard David Cosner,
Officer

10 DATED: 4-28-03



RICHARD DAVID COSNER,
Respondent

13 DATED: 5/5/03



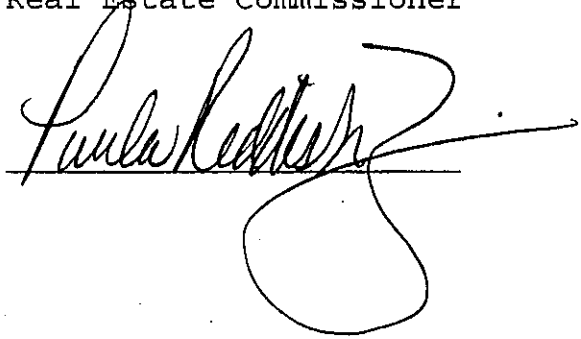
ROSE POTHIER, ESQ.
Pothier & Associates

* * * *

16 The foregoing Stipulation and Agreement is hereby
17 adopted as my Decision in this matter and shall become effective
18 at 12 o'clock noon on July 31, 2003.

19 IT IS SO ORDERED June 19, 2003.

20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner



27

FILED
JUN 10 2003
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

[Handwritten Signature]

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)
) No. H-29925 LA
SILVERCREST REALTY, INC., dba)
Prudential California Realty;)
RICHARD DAVID COSNER,)
individually and as designated)
officer of Silvercrest Realty,)
Inc.; and OSCAR O. LAM,)
)
Respondents.)
)

DECISION

This Decision regarding Respondent OSCAR O. LAM only is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on April 11, 2003, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

I

On January 29, 2003, Janice A. Waddell made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondent's last known mailing address on file with the Department on January 30, 2003, and by regular mail on March 6, 2003.

On April 11, 2003, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

II

OSCAR O. LAM (hereinafter referred to as "Respondent") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code").

III

Respondent was licensed as a real estate salesperson from October 8, 1991, through October 7, 1999, when his license expired. His salesperson license was renewed effective October 7, 2001.

IV

From January 7, 2000 through September 7, 2000, Respondent was employed by Silvercrest Realty, Inc. ("Silvercrest") and Richard David Cosner ("Cosner"), licensed real estate brokers. Silvercrest and Cosner employed Respondent to solicit and negotiate the sale of real property.

V

During 2000, Respondent, an expired real estate salesperson, negotiated the sale of 5102 Sierra Cross Way, Riverside, to Jose R. and Reyna M. Lopez from Javier Chavez, Jr., and Kathleen Ann Chavez. This is an activity requiring a real estate license under Section 10131(a) of the Code.

DETERMINATION OF ISSUES

I

The conduct, acts and omissions of Respondent OSCAR O. LAM, is in violation of Section 10130 of the Code.

II

Cause exists to suspend or revoke the real estate license and license rights of Respondent OSCAR O. LAM, pursuant to Section 10177(d) of the Code.

III

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

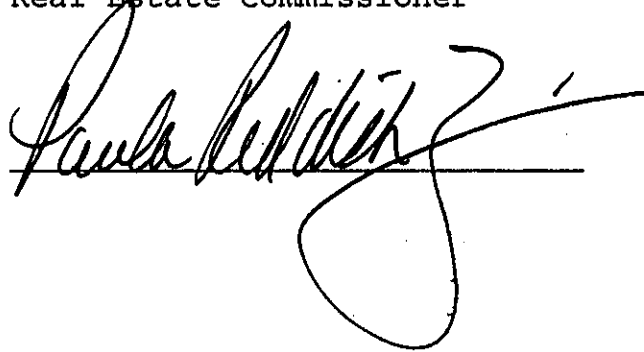
ORDER

The licenses and license rights of Respondent OSCAR O. LAM under the provisions of Part 1 of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on June 30, 2003.

DATED: May 30, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

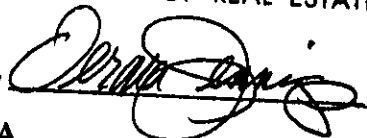
A large, stylized handwritten signature in black ink, appearing to read "Paula Reddish Zinnemann", is written over a horizontal line.

ADD
May

BEFC THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 11 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
SILVERCREST REALTY, INC., et al.,)
)
Respondents.)

By 

Case No. H-29925 LA
OAH No. L-2003030584

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondents:

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, Suite 630, Los Angeles, California, on Tuesday, May 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.

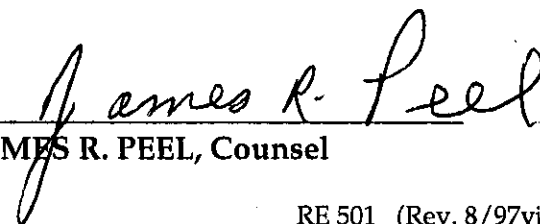
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real 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.

Dated: April 11, 2003.

cc: Silvercrest Realty, Inc.
Richard D. Cosner
Oscar O. Lam
Rose Pothier, Esq.
Sacto.
OAH

DEPARTMENT OF REAL ESTATE

By: 
JAMES R. PEEL, Counsel

Handwritten:
SBN
Flag

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105
5
6
7
8 Telephone: (213) 576-6982
9 -or- (213) 576-6913 (Direct)

FILED
JAN 30 2003
DEPARTMENT OF REAL ESTATE
By *[Signature]*

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 SILVERCREST REALTY, INC., dba) No. H-29925 LA
13 Prudential California Realty;) ACCUSATION
14 RICHARD DAVID COSNER,)
15 individually and as designated)
16 officer of Silvercrest Realty,)
17 Inc.; and OSCAR O. LAM,)
18 Respondents.)

17 The Complainant, Janice A. Waddell, a Deputy Real
18 Estate Commissioner of the State of California, for cause of
19 accusation against SILVERCREST REALTY, INC., dba Prudential
20 California Realty; RICHARD DAVID COSNER, individually and as
21 designated officer of Silvercrest Realty, Inc.; and OSCAR O. LAM
22 alleges as follows:

23 I

24 The Complainant, Janice A. Waddell, acting in her
25 official capacity as a Deputy Real Estate Commissioner of the
26 State of California, makes this Accusation against SILVERCREST
27 REALTY, INC., dba Prudential California Realty; RICHARD DAVID

1 COSNER, individually and as designated officer of Silvercrest
2 Realty, Inc.; and OSCAR O. LAM.

3 II

4 SILVERCREST REALTY, INC., RICHARD DAVID COSNER, and
5 OSCAR O. LAM (hereinafter referred to as "Respondents") are
6 presently licensed and/or have license rights under the Real
7 Estate Law (Part 1 of Division 4 of the Business and Professions
8 Code, hereinafter "Code").

9 III

10 At all times herein mentioned, respondent SILVERCREST
11 REALTY, INC., was licensed by the Department of Real Estate of
12 the State of California as a corporate real estate broker, and
13 respondent RICHARD DAVID COSNER was licensed as the designated
14 broker-officer of said corporation and was responsible for the
15 supervision and control of the activities conducted on behalf of
16 respondent SILVERCREST REALTY, INC., by its officers and
17 employees as necessary to secure full compliance with Real Estate
18 Law as set forth in Section 10159.2 of the Code.

19 IV

20 PRIOR DISCIPLINE

21 Effective November 28, 2000, in Case No. H-28594 LA,
22 respondents SILVERCREST REALTY, INC., and RICHARD DAVID COSNER
23 had their real estate broker licenses suspended for 60 days
24 subject to terms and conditions.

25 //

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1 V

2 Respondent OSCAR O. LAM was licensed as a real estate
3 salesperson from October 8, 1991, through October 7, 1999, when
4 his license expired. His salesperson license was renewed
5 effective October 7, 2001. From January 7, 2000, through
6 September 7, 2000, respondent LAM was employed by respondents
7 SILVERCREST REALTY, INC., and RICHARD DAVID COSNER.

8 VI

9 At all times herein mentioned, respondent SILVERCREST
10 REALTY, INC., on behalf of others in expectation of compensation,
11 engaged in the business, acted in the capacity of, advertised or
12 assumed to act as a real estate broker in the State of California
13 within the meaning of Section 10131(a) of the Code, including
14 soliciting buyers and sellers and negotiating the sale of real
15 property.

16 VII

17 In connection with respondents' activities as real
18 estate brokers, as described above, respondents SILVERCREST
19 REALTY, INC., and RICHARD DAVID COSNER acted in violation of the
20 Real Estate Law, the Code and California Code of Regulations
21 (hereinafter Regulations), Title 10, Chapter 6, as follows:

22 Violated Section 10137 of the Code by employing
23 respondent OSCAR O. LAM, an expired real estate salesperson, to
24 solicit and negotiate the sale of real property, as set forth
25 below:

26 //

27 //

1 During 2000, the sale of 5102 Sierra Cross
2 Way, Riverside, CA., to Jose R. and Reyna M.
3 Lopez from Javier Chavez, Jr., and Kathleen
4 Ann Chavez.

5 VIII

6 The conduct of respondents SILVERCREST REALTY, INC.,
7 RICHARD DAVID COSNER and OSCAR O. LAM, as alleged above, subjects
8 their real estate licenses and license rights to suspension or
9 revocation as follows:

10 1. Respondents SILVERCREST REALTY, INC., and RICHARD
11 DAVID COSNER pursuant to Sections 10137 and 10177(d) of the Code
12 for the conduct alleged in Paragraph VII.

13 2. Respondent OSCAR O. LAM pursuant to Sections 10130
14 and 10177(d) of the Code for the conduct alleged in Paragraph
15 VII.

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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 all licenses and license rights of respondents
5 SILVERCREST REALTY, INC., dba Prudential California Realty;
6 RICHARD DAVID COSNER, individually and as designated officer of
7 Silvercrest Realty, Inc.; and OSCAR O. LAM under the Real Estate
8 Law (Part 1 of Division 4 of the Business and Professions Code)
9 and for such other and further relief as may be proper under
10 other applicable provisions of law.

11 Dated at Los Angeles, California,
12 this 29th day of January, 2003.

13
14
15 
16 JANICE A. WADDELL
17 Deputy Real Estate Commissioner
18
19
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22
23

24 cc: Silvercrest Realty, Inc.
25 Richard David Cosner
26 Oscar O. Lam
27 Janice A. Waddell
Sacto.
AS