

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

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

FILED
SEP 7 2004
DEPARTMENT OF REAL ESTATE

By K. Kederholt

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 TERRY C. FENSKE, doing)
13 business as Re/Max of Victor)
14 Valley, Victor Valley Property)
15 Management, and victor Valley)
16 Real Estate,)
17 Respondent.)

No. H-29955 LA

STIPULATION

AND AGREEMENT

16 It is hereby stipulated by and between Respondent
17 TERRY C. FENSKE (sometimes referred to herein as "Respondent")
18 and the Complainant, acting by and through Elliott Mac Lennan,
19 Counsel for the Department of Real Estate, as follows for the
20 purpose of settling and disposing of the Accusation filed on
21 February 14, 2003, in this matter.

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

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

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

21 4. This Stipulation and Agreement is based on the
22 factual allegations contained in the Accusation filed in this
23 proceeding. In the interest of expedience and economy,
24 Respondent chooses not to contest these factual allegations, but
25 to remain silent and understands that, as a result thereof, these
26 factual statements, without being admitted or denied, will serve
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1 as a prima facie basis for the disciplinary action stipulated to
2 herein. This Stipulation and Respondent's decision not to
3 contest the Accusation are hereby expressly limited to this
4 proceeding and made for the sole purpose of reaching an agreed
5 disposition of this proceeding. Respondent's decision not to
6 contest the factual allegations is made solely for the purpose of
7 effectuating this Stipulation and is intended by Respondent to be
8 non-binding upon Respondent in any actions against Respondent by
9 third parties. The Real Estate Commissioner shall not be
10 required to provide further evidence to prove such allegations.

11 5. This Stipulation and Respondents decision not to
12 contest the Accusation is made for the purpose of reaching an
13 agreed disposition of this proceeding and is expressly limited to
14 this proceeding and any other proceeding or case in which the
15 Department of Real Estate ("Department"), the state or federal
16 government, or any agency of this state, another state or federal
17 government is involved.
18

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

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

9 8. Respondent TERRY C. FENSKE understands that by
10 agreeing to this Stipulation, Respondent agrees to pay, pursuant
11 to Business and Professions Code Section 10148, the cost of the
12 original audit which led to this disciplinary action. The amount
13 of said cost for the original audit is \$5,610 (LA 010393).

14 9. Respondent TERRY C. FENSKE has received, read, and
15 understands the "Notice Concerning Costs of Subsequent Audit".
16 Respondent further understands that by agreeing to this
17 Stipulation, the findings set forth below in the Determination of
18 Issues become final, and the Commissioner may charge Respondent
19 for the cost of any subsequent audit conducted pursuant to
20 Business and Professions Code Section 10148 to determine if the
21 violations have been corrected. The maximum cost of the
22 subsequent audit will not exceed \$5,610.
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DETERMINATION OF ISSUES

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

I.

The conduct, acts and/or omissions of Respondent TERRY C. FENSKE as set forth in the Paragraph 4 above, constitute cause to suspend or revoke the real estate broker license and license rights of Respondent under the provisions of Code Section 10177(d) of the Business and Professions Code ("Code") for violations of Sections 10145 and 10163 of the Code and Sections 2715, 2831, 2831.1, 2831.2, 2832.1, and 2834 of Title 10, Chapter 6, California Code of Regulations.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The real estate broker license and licensing rights of Respondent TERRY C. FENSKE under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code, if Respondent:

(A) makes application thereof and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this

1 Decision. The restricted license issued to Respondent shall be
2 subject to all the provisions of Section 10156.7 of the Business
3 and Professions Code and to the following limitations,
4 conditions, and restrictions as imposed under authority of
5 Section 10156 of the Code; and

6 (B) Respondent shall, prior to and as a condition of
7 the issuance of the restricted license, submit proof satisfactory
8 to the Commissioner of having taken and successfully completed
9 the continuing education course on trust fund accounting and
10 handling specified in paragraph (3) of subdivision (a) of Section
11 10170.5 of the Business and Professions Code. Proof of
12 satisfaction of this requirement includes evidence that
13 Respondent has successfully completed the trust fund accounting
14 and handling continuing education course within 120 days prior to
15 the effective date of the Decision in this matter.

16
17 (C) Prior to the issuance of any restricted license,
18 Respondent shall first provide evidence satisfactory to the
19 Commissioner that the trust fund deficits set forth in Audit
20 Report LA 010393, in the amount of \$11,347.78, in property
21 management trust account #050-3509101, as of May 31, 2002, and,
22 in the amount of \$815.00, in property management trust account
23 #000-7506961, as of May 31, 2002, have been cured, including the
24 identification of the source of funds used to cure the deficit.

25 The restricted license issued to Respondent shall be
26 subject to all of the provisions of Section 10156.7 of the Code
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1 and the following limitations, conditions and restrictions
2 imposed under authority of Section 10156.6 of that Code:

3 1. The restricted license issued to Respondent may be
4 suspended prior to hearing by Order of the Real Estate
5 Commissioner in the event of Respondent's conviction or plea of
6 nolo contendere to a crime which is substantially related to
7 Respondent's fitness or capacity as a real estate licensee.

8 2. The restricted license issued to Respondent may
9 be suspended prior to hearing by Order of the Real Estate
10 Commissioner on evidence satisfactory to the Commissioner that
11 Respondent has violated provisions of the California Real Estate
12 Law, the Subdivided Lands Law, Regulations of the Real Estate
13 Commissioner or conditions attaching to the restricted license.

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

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

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

13 6. 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
16 disciplinary action (LA 010393) and (b) a subsequent audit to
17 determine if Respondent is now in compliance with the Real Estate
18 Law. The cost of these audits which led to this disciplinary
19 action is \$5,610. In calculating the amount of the
20 Commissioner's reasonable cost, the Commissioner may use the
21 estimated average hourly salary for all persons performing audits
22 of real estate brokers, and shall include an allocation for
23 travel time to and from the auditor's place of work. Said amount
24 for the prior and subsequent audits shall not exceed \$11,220.00
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Respondent TERRY C. FENSKE shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

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

DATED: 8-25-04

ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

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EXECUTION OF THE STIPULATION

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

FACSIMILE TRANSMISSION

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

DATED: _____

TERRY C. FENSKE, Respondent

AUG-16-04 MON 10:10 AM

FAX NO. 213.576.6917

P. 10

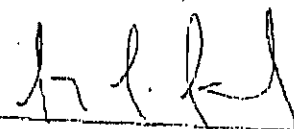
* * *

EXECUTION OF THE STIPULATION

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

FACSIMILE TRANSMISSION

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DATED: August 16 2004
TERRY C. PENSKE, Respondent

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2 * * *

3 The foregoing Stipulation and Agreement is hereby
4 adopted as my Decision as to Respondent TERRY C. FENSKE, and
5 shall become effective at 12 o'clock noon on

6 SEP 27, 2004

7 IT IS SO ORDERED August 31, 2004
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9 JOHN R. LIBERATOR
10 Acting Real Estate Commissioner

11 John R. Liberator
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back stay

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

FILED
MAR 29 2004
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

TERRY CRAIG FENSKE,

By *R. Mederholt*

Case No. H-29955 LA

OAH No. L-2003030549

Respondent

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at 320 W. Fourth Street, Ste. 630, Los Angeles, CA on August 27, 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: MAR 29 2004

By *Elliott MacLennan*
ELLIOTT MAC LENNAN, Counsel

cc: Terry Craig Fenske
Sacto/OAH/MA

Sacto

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

FILED
NOV 10 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

TERRY CRAIG FENSKE,

By *K. Mederhals*

Case No. H-29955 LA

OAH No. L-2003030549

Respondent

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at 320 W. Fourth Street, Ste. 630, Los Angeles, CA on March 22, 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.

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DEPARTMENT OF REAL ESTATE

Dated: NOV 10 2003

By *E. MacLennan*
ELLIOTT MAC LENNAN, Counsel

cc: Terry Craig Fenske
Sacto/OAH/MA

Handwritten: New Log

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

FILED
MAY 14 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

TERRY CRAIG FENSKE,

By R. Niederholt

Case No. H-29955 LA

OAH No. L-2003030549

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 **September 22, 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: **MAY 14 2003**

By E. J. MacLennan
ELLIOTT MAC LENNAN, Counsel

cc: Terry Craig Fenske
Sacto/OAH/MA

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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
FEB 14 2003
DEPARTMENT OF REAL ESTATE

K. Mcderhby

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H- 29955 LA

TERRY CRAIG FENSKE dba
ReMax of Victor Valley; Victor
Valley Property Management; and,
Victor Valley Real Estate,

A C C U S A T I O N

Respondent.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for cause of Accusation against TERRY CRAIG FENSKE dba ReMax of Victor Valley; Victor Valley Property Management; and, Victor Valley Real Estate, is informed and alleges as follows:

1.

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

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2.

At all times mentioned, TERRY CRAIG FENSKE ("FENSKE"), was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On November 15, 1994, FENSKE was originally licensed as a real estate broker.

3.

At all times mentioned, in the City of Victorville, County of Riverside, FENSKE acted as real estate broker and conducted licensed activities within the meaning of Code Section 10131(b) of the Code in that FENSKE operated a property management brokerage dba ReMax of Victor Valley, Victor Valley Property Management, and Victor Valley Real Estate.

4.

On July 24, 2002, the Department completed an audit examination of the books and records of FENSKE, pertaining to the property management activities described in Paragraph 3 that require a real estate license. The audit examination covered a period of time beginning on September 1, 2000 through May 31, 2002. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 010393 and the exhibits and workpapers attached to said audit report.

5.

At all times mentioned, in connection with the activities described in Paragraph 4, FENSKE accepted or received funds in trust (trust funds) from or on behalf of landlords and

tenants. Thereafter FENSKE made disposition of such funds.

FENSKE maintained the following trust accounts into which he deposited certain of these funds:

"Victor Valley Property Management, Terry C. Fenske, Trustee
Trust Operating Account
Account No. 050-3509101"
Wells Fargo Bank
P. O. Box 6995
Portland, Oregon

(Property Management Trust Account)

"Victor Valley Property Management Terry C. Fenske, Trustee
Escrow Trust Account
Account No. 000-7506961"
Wells Fargo Bank
P. O. Box 6995
Portland, Oregon

(Escrow Trust Account)

6.

With respect to the licensed property management activities referred to in Paragraph 5, and the audit examination including the exhibits and workpapers referred to in Paragraph 3, it is alleged that FENSKE:

(a) (1) Permitted, allowed or caused the disbursement of trust funds from the property management trust account where the disbursement of said funds reduced the total of aggregate funds, to an amount which, on May 31, 2002, was \$11,347.78, less than the existing aggregate trust fund liability of FENSKE to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulation 2832.1.

1 (a) (2) Permitted, allowed or caused the disbursement of
2 trust funds from the escrow trust account where the disbursement
3 of said funds reduced the total of aggregate funds, to an amount
4 which, on May 31, 2002, was \$815.00, less than the existing
5 aggregate trust fund liability of FENSKE to every principal who
6 was an owner of said funds, without first obtaining the prior
7 written consent of the owners of said funds, as required by Code
8 Section 10145 and Regulation 2832.1.

9 (b) Failed to maintain an accurate and complete control
10 record in the form of a columnar record in chronological order of
11 all trust funds received for the property management trust
12 account, as required by Code Section 10145 and Regulations 2831.

13 (c) Failed to maintain an accurate and complete
14 separate record for each beneficiary or transaction, thereby
15 failing to account for all trust funds received, deposited into,
16 and disbursed from the property management trust account, as
17 required by Code Section 10145 and Regulation 2831.1.

18 (d) Failed to perform a monthly reconciliation of the
19 balance of all separate beneficiary or transaction records
20 maintained pursuant to Regulation 2831.1 with the record of all
21 trust funds received and disbursed by the property management
22 trust account, as required by Regulation 2831.2.

23 (e) Permitted Albert Bouvier, an unlicensed and
24 unbonded person, to be an authorized signatory on both trust
25 accounts without specific written authorization from FENSKE, in
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violation of Code Section 10145 and Regulation 2834.

(f) Failed to notify the Department that property management activities were conducted at a branch office located at 12555 Mariposa Road, Ste. B. Victorville, California, as required by Code Section 10163 and 2715.

7.

The conduct of Respondent FENSKE, described in Paragraph 6, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

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 2834
6(f)	Code Section 10163 and Regulation 2715

Each of the foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of FENSKE under the provisions of Code Sections 10165, 10177(d) and/or 10177(g).

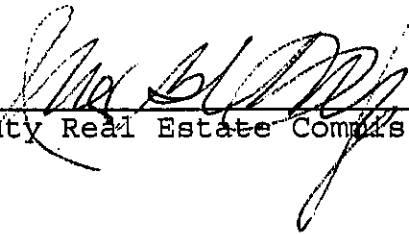
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondent TERRY
5 CRAIG FENSKE, under the Real Estate Law (Part 1 of Division 4 of
6 the Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.
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9 Dated at Los Angeles, California

10 this 4th day of February 2003.
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14 Deputy Real Estate Commissioner
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23 cc: Terry Craig Fenske
24 Maria Suarez
25 Sacto
26 MA
27 Audits