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Department of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013

(213) 576-6982
(213) 576-6907

FILED
JAN 24 2005
DEPARTMENT OF REAL ESTATE

By Laura B. Shaw

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
LILY KAUT, dba Professional Realty) DRE No. H-30118 LA
Services, and JAVIER O. OBANDO,) OAH No. L-2003060102
)
) STIPULATION AND AGREEMENT
)
)
Respondents.)

It is hereby stipulated by and between JAVIER OBANDO,
Respondent, acting on his own behalf, and the Complainant,
acting by and through Martha J. Rosett, Counsel for the
Department of Real Estate, as follows for the purpose of
settling and disposing of the Accusation filed on May 16, 2003
in this matter:

1. All issues which were to be contested and all
evidence which was to be presented by Complainant and
Respondent at a formal hearing on the Accusation, which hearing
was to be held in accordance with the provisions of the

1 Administrative Procedure Act (APA), shall instead and in place
2 thereof be submitted solely on the basis of the provisions of
3 this Stipulation and Agreement.

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

8 3. On May 30, 2003, Respondent filed a Notice of
9 Defense pursuant to Section 11506 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. In order to effectuate this settlement, Respondent
12 hereby freely and voluntarily withdraws said Notice of Defense.
13 Respondent acknowledges that he understands that by withdrawing
14 said Notice of Defense, he will thereby waive his right to
15 require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA and that he will waive other rights
18 afforded to him in connection with the hearing such as the
19 right to present evidence in defense of the allegations in the
20 Accusation and the right to cross-examine witnesses.

21 4. Respondent, pursuant to the limitations set forth
22 below, although not admitting or denying the truth of the
23 allegations, will not contest the factual allegations contained
24 in the Accusation filed in this proceeding and the Real Estate
25 Commissioner shall not be required to provide further evidence
26 of such allegations.

27

1 5. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement as
3 his Decision in this matter, thereby imposing the penalty and
4 sanctions on Respondent's real estate license and license
5 rights as set forth in the below "Order." In the event that
6 the Commissioner in his discretion does not adopt the
7 Stipulation and Agreement, it shall be void and of no effect,
8 and Respondent shall retain the right to a hearing and
9 proceeding on the Accusation under all the provisions of the
10 APA and shall not be bound by any stipulation or waiver made
11 herein.

12 6. The Order or any subsequent Order of the Real
13 Estate Commissioner made pursuant to this Stipulation and
14 Agreement shall not constitute an estoppel, merger or bar to
15 any further administrative proceedings by the Department of
16 Real Estate with respect to any matters which were not
17 specifically alleged to be causes for accusation in this
18 proceeding.

19 7. The Stipulation is entered into by each party
20 with the express understanding and agreement that it is to be
21 used for the purposes of settling these proceedings only and
22 that this stipulation shall not be deemed, used, or accepted as
23 an acknowledgment or stipulation in any other civil or
24 administrative proceeding to which this Department is not a
25 party. Said stipulation is expressly limited to these
26 proceedings and to any further proceeding initiated by or
27 brought before the Department of Real Estate, and shall have no

1 collateral estoppel or res judicata effect in any proceeding
2 other than a proceeding brought by the Department of Real
3 Estate.

4 DETERMINATION OF ISSUES

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

9 The conduct, acts or omissions of Respondent JAVIER
10 OBANDO as set forth in the Accusation, are in violation of
11 Business and Professions Code ("Code") Section 10145(c) and
12 constitute cause to suspend or revoke the real estate license
13 and license rights of Respondent under the provisions of Code
14 Sections 10176(e), 10176(i) and 10177(d).

15 ORDER

16 WHEREFORE, THE FOLLOWING ORDER is hereby made:

17 I. All licenses and licensing rights of Respondent
18 JAVIER OBANDO under the Real Estate Law are revoked; provided,
19 however, a restricted real estate salesperson license shall be
20 issued to Respondent pursuant to Section 10156.5 of the
21 Business and Professions Code if:

22 (a) Respondent makes application therefor and pays
23 to the Department of Real Estate the appropriate fee for the
24 restricted license within 90 days from the effective date of
25 this Decision.

26 (b) The restricted license issued to Respondent
27 shall be subject to all of the provisions of Section 10156.7 of

1 the Business and Professions Code and to the following
2 limitations, conditions and restrictions imposed under
3 authority of Section 10156.6 of that Code:

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

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

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

20 4. Respondent shall submit with any application for
21 license under an employing broker, or any application for
22 transfer to a new employing broker, a statement signed by the
23 prospective employing real estate broker on a form approved by
24 the Department of Real Estate which shall certify:

25 (a) That the employing broker has read the Decision
26 of the Commissioner which granted the right to a
27 restricted license; and

1 (b) That the employing broker will exercise close
2 supervision over the performance by the restricted
3 licensee relating to the activities for which a real
4 estate license is required.

5 5. Respondent shall, within nine months from the
6 effective date of this Decision, present evidence satisfactory
7 to the Real Estate Commissioner that Respondent has, since the
8 most recent issuance of an original or renewal real estate
9 license, taken and successfully completed the continuing
10 education requirements of Article 2.5 of Chapter 3 of the Real
11 Estate Law for renewal of a real estate license. If Respondent
12 fails to satisfy this condition, the Commissioner may order the
13 suspension of the restricted license until the Respondent
14 presents such evidence. The Commissioner shall afford
15 Respondent the opportunity for a hearing pursuant to the
16 Administrative Procedure Act to present such evidence.

17 6. Respondent shall, within six months from the
18 effective date of this Decision, take and pass the Professional
19 Responsibility Examination administered by the Department
20 including the payment of the appropriate examination fee. If
21 Respondent fails to satisfy this condition, the Commissioner
22 may order suspension of Respondent's license until Respondent
23 passes the examination.

24
25 DATED: _____

12/15/04



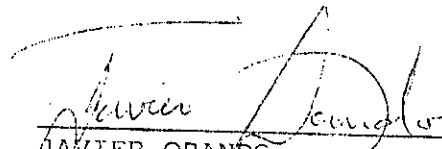
26 MARTHA J. ROSETT
27 Counsel for Complainant

* * *

1
2 I have read the Stipulation and Agreement, have
3 discussed it with my counsel, and its terms are understood by
4 me and are agreeable and acceptable to me. I understand that I
5 am waiving rights given to me by the California Administrative
6 Procedure Act (including but not limited to Sections 11506,
7 11508, 11509 and 11513 of the Government Code), and I
8 willingly, intelligently and voluntarily waive those rights,
9 including the right of requiring the Commissioner to prove the
10 allegations in the Accusation at a hearing at which I would
11 have the right to cross-examine witnesses against me and to
12 present evidence in defense and mitigation of the charges.

13 Respondent may signify acceptance and approval of the
14 terms and conditions of this Stipulation and Agreement by faxing
15 a copy of its signature page, as actually signed by Respondent,
16 to the Department at the following fax number (213) 576-6917.
17 Respondent agrees, acknowledges and understands that by
18 electronically sending to the Department a fax copy of his actual
19 signature as it appears on the Stipulation, that receipt of the
20 faxed copy by the Department shall be as binding on Respondent as
21 if the Department had received the original signed Stipulation
22 and Agreement.

23 DATED: 11-5-2004

24 
25 JAVIER OBANDO
26 Respondent

27 * * *

* * *

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

13 Respondent may signify acceptance and approval of the
14 terms and conditions of this Stipulation and Agreement by faxing
15 a copy of its signature page, as actually signed by Respondent,
16 to the Department at the following fax number (213) 576-6917.
17 Respondent agrees, acknowledges and understands that by
18 electronically sending to the Department a fax copy of his actual
19 signature as it appears on the Stipulation, that receipt of the
20 faxed copy by the Department shall be as binding on Respondent as
21 if the Department had received the original signed Stipulation
22 and Agreement.

23 DATED: _____

JAVIER OBANDO
Respondent

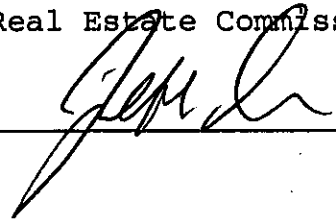
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision in this matter and shall become
effective at 12 o'clock noon on FEB 14 2005.

IT IS SO ORDERED 1-11-05.

JEFF DAVI
Real Estate Commissioner



1 NOW, THEREFORE, IT IS ORDERED under authority of the
2 Order issued in this matter that the real estate broker license
3 heretofore issued to Respondent and the exercise of any
4 privileges thereunder is hereby suspended until such time as you
5 provide proof satisfactory to the Department of compliance with
6 the "condition" referred to above, or pending final determination
7 made after hearing (see "Hearing Rights" set forth below).

8 IT IS FURTHER ORDERED that all license certificates and
9 identification cards issued by Department which are in the
10 possession of Respondent be immediately surrendered by personal
11 delivery or by mailing in the enclosed, self-addressed envelope
12 to:

13 DEPARTMENT OF REAL ESTATE
14 ATTN: FLAG SECTION
15 P. O. Box 187000
16 Sacramento, CA 95818-7000

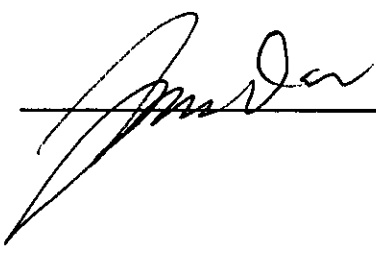
17 HEARING RIGHTS: Pursuant to the provisions of Section
18 10156.7 of the Business and Professions Code, you have the right
19 to a hearing to contest the Commissioner's determination that you
20 are in violation of the Order issued in this matter. If you
21 desire a hearing, you must submit a written request. The request
22 may be in any form, as long as it is in writing and indicates
23 that you want a hearing. Unless a written request for a hearing,
24 signed by or on behalf of you, is delivered or mailed to the
25 Department at 2201 Broadway, P. O. Box 187000, Sacramento,
26 California 95818-7000, within 20 days after the date that this
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1 Order was mailed to or served on you, the Department will not be
2 obligated or required to provide you with a hearing.

3
4 This Order shall be effective immediately.

5 DATED: December 15 2004, 2004.

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7 JEFF DAVI
8 Real Estate Commissioner

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1 was to be held in accordance with the provisions of the
2 Administrative Procedure Act (APA), shall instead and in place
3 thereof be submitted solely on the basis of the provisions of
4 this Stipulation and Agreement.

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

9 3. On May 30, 2003, Respondent filed a Notice of
10 Defense pursuant to Section 11506 of the Government Code for
11 the purpose of requesting a hearing on the allegations in the
12 Accusation. In order to effectuate this settlement, Respondent
13 hereby freely and voluntarily withdraws said Notice of Defense.
14 Respondent acknowledges that she understands that by
15 withdrawing said Notice of Defense, she will thereby waive her
16 rights to require the Commissioner to prove the allegations in
17 the Accusation at a contested hearing held in accordance with
18 the provisions of the APA and that she will waive other rights
19 afforded to her in connection with the hearing such as the
20 right to present evidence in defense of the allegations in the
21 Accusation and the right to cross-examine witnesses.

22 4. Respondent, pursuant to the limitations set forth
23 below, although not admitting or denying the truth of the
24 allegations, will not contest the factual allegations contained
25 in the Accusation filed in this proceeding and the Real Estate
26 Commissioner shall not be required to provide further evidence
27 of such allegations.

1 5. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement as
3 his Decision in this matter, thereby imposing the penalty and
4 sanctions on Respondent's real estate licenses and license
5 rights as set forth in the below "Order". In the event that
6 the Commissioner in his discretion does not adopt the
7 Stipulation and Agreement, it shall be void and of no effect,
8 and Respondent shall retain the right to a hearing and
9 proceeding on the Accusation under all the provisions of the
10 APA and shall not be bound by any stipulation or waiver made
11 herein.

12 6. The Order or any subsequent Order of the Real
13 Estate Commissioner made pursuant to this Stipulation and
14 Agreement shall not constitute an estoppel, merger or bar to
15 any further administrative proceedings by the Department of
16 Real Estate with respect to any matters which were not
17 specifically alleged to be causes for accusation in this
18 proceeding.

19 7. The Stipulation is entered into by each party
20 with the express understanding and agreement that it is to be
21 used for the purposes of settling these proceedings only and
22 that this stipulation shall not be deemed, used, or accepted as
23 an acknowledgment or stipulation in any other civil or
24 administrative proceeding to which this Department is not a
25 party. Said stipulation is expressly limited to these
26 proceedings and to any further proceeding initiated by or
27 brought before the Department of Real Estate, and shall have no

1 collateral estoppel or res judicata effect in any proceeding
2 other than a proceeding brought by the Department of Real
3 Estate.

4 8. Respondent understands that by agreeing to this
5 Stipulation and Agreement, Respondent agrees to pay, pursuant
6 to Section 10148 of the Business and Professions Code, the cost
7 of the audit which led to this disciplinary action. The amount
8 of said cost is \$2,586.78.

9 9. Respondent has received, read and understands the
10 "Notice Concerning Costs of Subsequent Audit". Respondent
11 further understands that by agreeing to this Stipulation and
12 Agreement, the findings set forth below in the Determination of
13 Issues become final, and that the Commissioner may charge
14 Respondent for the costs of any subsequent audit conducted
15 pursuant to Section 10148 of the Business and Professions Code
16 to determine if the violations have been corrected. The
17 maximum cost of said audit will not exceed \$2,586.78.

18 DETERMINATION OF ISSUES

19 By reason of the foregoing stipulations and waivers
20 and solely for the purpose of settlement of the pending
21 Accusation without a hearing, it is stipulated and agreed that
22 the following Determination of Issues shall be made:

23 The conduct, acts or omissions of Respondent LILY
24 KAUT, as set forth in the Accusation, constitute cause to
25 suspend or revoke the real estate license and license rights of
26 Respondent LILY KAUT under the provisions of Business and
27 Professions Code ("Code") Sections 10177(d), 10176(e) and

1 10177(h) for violation of Code Sections 10145(a)(1) and
2 10159.2.

3 ORDER .

4 WHEREFORE, THE FOLLOWING ORDER is hereby made:

5 I. All licenses and licensing rights of Respondent
6 LILY KAUT are suspended for a period of one-hundred and eighty
7 (180) days from the effective date of this Decision; provided,
8 however, that one-hundred and fifty (150) days of said
9 suspension shall be stayed for two (2) years upon the following
10 terms and conditions:

11 1. Prior to the effective date of this Decision,
12 Respondent provides evidence satisfactory to the Commissioner
13 that restitution in the amount of \$250.00 has been made to
14 Marcos Barrera; and

15 2. 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 3. That no final subsequent determination be made,
19 after hearing or upon stipulation, that cause for disciplinary
20 action occurred within two (2) years of the effective date of
21 this Decision. Should such a determination be made, the
22 Commissioner may, in his discretion, vacate and set aside the
23 stay order and reimpose all or a portion of the stayed
24 suspension. Should no such determination be made, the stay
25 imposed herein shall become permanent.

26 II. As to the remaining thirty (30) days of said
27 one-hundred and eighty (180) day suspension, all licenses and

1 licensing rights of Respondent LILY KAUT are suspended for a
2 period of thirty (30) days from the effective date of this
3 Decision; provided, however, that if Respondent petitions, the
4 remaining thirty (30) days of said one-hundred and eighty (180)
5 day suspension shall be stayed upon condition that:

6 1. Respondent pays a monetary penalty pursuant to
7 Section 10175.2 of the Business and Professions Code at the
8 rate of \$50 for each day of the suspension for a total monetary
9 penalty of \$1,500.

10 2. Said payment shall be in the form of a cashier's
11 check or certified check made payable to the Recovery Account
12 of the Real Estate Fund. Said check must be received by the
13 Department prior to the effective date of the Decision in this
14 matter.

15 3. No further cause for disciplinary action against
16 the real estate license of Respondent occurs within two years
17 of the Decision in this matter.

18 4. If Respondent fails to pay the monetary penalty
19 in accordance with the terms and conditions of the Decision,
20 the Commissioner may, without a hearing, order the immediate
21 execution of all or any part of the stayed suspension in which
22 event the Respondent shall not be entitled to any repayment nor
23 credit, prorated or otherwise, for the money paid to the
24 Department under the terms of this Decision.

25 5. If Respondent pays the monetary penalty and if no
26 further cause for disciplinary action against the real estate
27

1 license of Respondent occurs within two years from the
2 effective date of the Decision, the stay hereby granted shall
3 become permanent.

4 III. All licenses and licensing rights of Respondent
5 shall be indefinitely suspended unless or until she provides
6 proof satisfactory to the Commissioner, of having taken and
7 successfully completed the trust fund accounting and handling
8 course specified in paragraph (3) of subdivision (a) of
9 Business and Professions Code Section 10170.5. Proof of
10 satisfaction of this requirement includes evidence that
11 Respondent has successfully completed the trust fund accounting
12 and handling continuing education course within 120 days prior
13 to the effective date of the Decision in this matter.

14 IV. Respondent shall, within six months from the
15 effective date of this Decision, take and pass the Professional
16 Responsibility Examination administered by the Department
17 including the payment of the appropriate examination fee. If
18 Respondent fails to satisfy this condition, the Commissioner
19 may order suspension of Respondent's license until Respondent
20 passes the examination.

21 V. Pursuant to Section 10148 of the Business and
22 Professions Code, Respondent LILY KAUT shall pay the
23 Commissioner's reasonable cost for: a) the audit which led to
24 this disciplinary action and, b) a subsequent audit to
25 determine if Respondent has corrected the trust fund violations
26
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1 found in the Determination of Issues. In calculating the
2 amount of the Commissioner's reasonable cost, the Commissioner
3 may use the estimated average hourly salary for all persons
4 performing audits of real estate brokers, and shall include an
5 allocation for travel costs, including mileage to and from the
6 auditor's place of work and per diem. Respondent shall pay
7 such cost within 60 days of receiving an invoice from the
8 Commissioner detailing the activities performed during the
9 audit and the amount of time spent performing those activities.
10 The Commissioner may, in her discretion, vacate and set aside
11 the stay order if payment is not timely made as provided
12 herein, or as provided for in a subsequent agreement between
13 the Respondent and the Commissioner. The vacation and the set
14 aside of the stay shall remain in effect until payment is made
15 in full, or until Respondent enters into an agreement
16 satisfactory to the Commissioner to provide for payment. Should
17 no order vacating the stay be issued, either in accordance with
18 this condition or any other condition, the stay imposed herein
19 shall become permanent.
20

21 DATED: _____

2/19/04



MARTHA J. ROSETT
Counsel for Complainant

22 * * *

23
24 I have read the Stipulation and Agreement, have
25 discussed it with my attorney, and its terms are understood by
26 me and are agreeable and acceptable to me. I understand that I
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10 mantha

1 am waiving rights given to me by the California Administrative
 2 Procedure Act (including but not limited to Sections 11506,
 3 11508, 11509 and 11513 of the Government Code), and I
 4 willingly, intelligently and voluntarily waive those rights,
 5 including the right of requiring the Commissioner to prove the
 6 allegations in the Accusation at a hearing at which I would
 7 have the right to cross-examine witnesses against me and to
 8 present evidence in defense and mitigation of the charges.

9 Respondent can signify acceptance and approval of the
 10 terms and conditions of this Stipulation and Agreement by faxing
 11 a copy of its signature page, as actually signed by Respondent,
 12 to the Department at the following fax number (213) 576-6917.
 13 Respondent agrees, acknowledges and understands that by
 14 electronically sending to the Department a fax copy of his actual
 15 signature as it appears on the Stipulation, that receipt of the
 16 faxed copy by the Department shall be as binding on Respondent as
 17 if the Department had received the original signed Stipulation
 18 and Agreement.

19 DATED: 12/16/03

Lily Kaut
 LILY KAUT
 Respondent

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The foregoing Stipulation and Agreement is hereby
adopted as my Decision in this matter and shall become
effective at 12 o'clock noon on March 24, 2004.

IT IS SO ORDERED February 27, 2004.

JOHN R. LIBERATOR
Chief Deputy Commissioner

John R. Liberator

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 16 2003
DEPARTMENT OF REAL ESTATE

Sacto Obando

In the Matter of the Accusation)
LILY KAUT, dba Professional Realty)
Services, and JAVIER O. OBANDO,)
Respondent(s).)

Case No. H-30118 LA)
OAH No. L-2003060102)

Jana B. Dione

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on DECEMBER 17, 18 & 19, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of 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: June 16, 2003

DEPARTMENT OF REAL ESTATE

By: *Martha J. Rosett*
MARTHA J. ROSETT, Counsel

cc: Lily Kaut
Javier O. Obando
Sacto., OAH

Sacto file

MARTHA J. ROSETT, Counsel (SBN 142072)
Department of Real Estate
320 West Fourth Street, Suite #350
Los Angeles, California 90013-1105

(213) 576-6982
(213) 576-6914

FILED
MAY 16 2003
DEPARTMENT OF REAL ESTATE

Janis B. Stone

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-30118 LA
LILY KAUT, dba Professional Realty)	<u>A C C U S A T I O N</u>
Services, and JAVIER O. OBANDO,)	
)	
Respondents.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LILY KAUT, dba Professional Realty Services, and JAVIER O. OBANDO, Respondents, is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

At all times material herein, Respondent LILY KAUT, dba Professional Realty Services (hereinafter "KAUT") was and now is

1 presently licensed and/or has license rights under the Real
2 Estate Law, Part 1 of Division 4 of the California Business and
3 Professions Code (hereinafter "Code"), as a real estate broker.
4 Respondent KAUT does business as "Professional Realty Services".
5 Respondent is also the broker-officer designated pursuant to Code
6 Section 10159.2 for Professional Mortgage L Inc., a corporate
7 real estate broker. Respondent KAUT was first licensed by the
8 Department as a broker on February 22, 1999 and was licensed as a
9 salesperson before that.

10 3.

11 At all times material herein, Respondent JAVIER O.
12 OBANDO (hereinafter "OBANDO"), was and now is presently licensed
13 by the Department as a real estate salesperson. Respondent
14 OBANDO was first licensed October 19, 1993. At all times
15 relevant herein, Respondent OBANDO was employed by Respondent
16 KAUT.

17 4.

18 All further references to "Respondents" unless
19 otherwise specified, include the parties identified in Paragraphs
20 2 and 3, and also include the employees, agents and real estate
21 licensees employed by or associated with said parties, who at all
22 times material herein were engaged in the furtherance of the
23 business or operations of said parties and who were acting within
24 the course and scope of their authority, agency or employment.

25 5.

26 At all times material herein, Respondent KAUT engaged
27 in the business of, acted in the capacity of, advertised or

1 assumed to act as a real estate broker in the State of
2 California, within the meaning of Code Sections 10131(a) for
3 another or others, for or in expectation of compensation. Said
4 activity included representation of sellers and buyers of
5 residential property. Respondent OBANDO advertised or assumed to
6 act as a real estate salesperson pursuant to Code Section
7 10131(a) and 10132.

8 First Cause of Accusation

9 (16980 Lurelane Street Transaction)

10 6.

11 On or about December 14, 2000, Marcos Barrera signed a
12 Department of Veterans Affairs (hereinafter "DVA") form, "Offer
13 to Purchase and Contract for Sale", (hereinafter "Purchase
14 Contract") for the purchase of real property located at 16980
15 Lurelane Street, Fontana, California (hereinafter "Lurelane
16 Property"). The Purchase Contract was signed by Mr. Barrera, the
17 purchaser, and Respondent KAUT, as the broker, and called for an
18 earnest money deposit of \$3,000. The contract listed Respondent
19 OBANDO as the salesperson, though he did not sign it.

20 7.

21 On or about December 15, 2000, Mr. Barrera purchased a
22 cashier's check from Washington Mutual Bank, number 225122384 in
23 the amount of \$3,000 made payable to "Professionals Realty or
24 Javier Obando". On that same date, Mr. Barrera delivered this
25 cashier's check to Respondent OBANDO as his earnest money deposit
26 towards the purchase of the Lurelane property.

27 ///

1 8.

2 On December 22, 2000, the DVA accepted Mr. Barrera's
3 offer and notified him in writing through his agent, Professional
4 Realty and Respondent OBANDO, that loan approval and the opening
5 of escrow were contingent upon receipt of an earnest money
6 deposit of \$1,000 by close of business on December 29, 2000.

7 9.

8 Between December 22, 2000 and January 5, 2001, Mr.
9 Barrera left telephone messages for Respondent OBANDO regarding
10 the status of the pending escrow. On January 2, 2001, Mr.
11 Barrera left a message for Respondent OBANDO indicating that
12 since the deposit money had not yet been deposited into escrow,
13 he believed that he had lost the bid and that the transaction was
14 canceled, in light of the DVA's previous communication.

15 10.

16 On or about January 4, 2001, Respondent OBANDO cashed
17 Mr. Barrera's \$3,000 cashier's check at the Bank of America in
18 Rancho Cucamonga. On that same date, at the same Bank of America
19 in Rancho Cucamonga, OBANDO, in the name of Professional Realty,
20 purchased Bank of America cashier's check number 2007720710 in
21 the amount of \$1,000 made payable to Cimarron Escrow.

22 11.

23 On or about January 5, 2001, Respondents deposited Bank
24 of America cashier's check number 2007720710 in the amount of
25 \$1,000 into Cimarron Escrow No. 2-19885-RS on behalf of Mr.
26 Barrera. On that same date, Mr. Barrera notified Respondent
27 OBANDO in writing that he wished to cancel the transaction. He

1 sent a copy of this letter to Cimarron Escrow.

2 12.

3 On or about January 11, 2001, the D.V.A. notified
4 Cimarron Escrow that it agreed to cancel the transaction and
5 authorized the refund of \$1,000 to Mr. Barrera, less any fees and
6 charges. Upon learning that only \$1,000 of his \$3,000 deposit
7 had been placed into escrow, Mr. Barrera attempted to contact
8 Respondent OBANDO to obtain the balance of \$2,000. Respondent
9 OBANDO failed to return Mr. Berrera's phone calls and did not
10 keep any of the pre-arranged appointments to meet.

11 13.

12 On or about January 26, 2001, Mr. Barrera and a friend
13 named James Middlestetter visited the offices of Professional
14 Realty to meet with Respondent OBANDO. Respondent OBANDO refused
15 to return the \$2,000 and offered no explanation as to why it had
16 not been deposited into escrow. After arguing for some time,
17 Respondent OBANDO agreed to return \$1,410.00 of the \$2,000,
18 claiming the balance as a fee for showing Mr. Barrera houses.
19 Respondent KAUT then joined the discussions and offered to give
20 Mr. Barrera all but \$250 of his money back if he signed an
21 agreement not to pursue further legal action against Professional
22 Realty. Upon signing such an agreement, Respondent KAUT gave Mr.
23 Barrera a check for \$1,750.

24 14.

25 The conduct, acts and/or omissions of Respondent JAVIER
26 OBANDO, as set forth in Paragraphs 6 through 13 above constitute
27 grounds to suspend or revoke Respondent OBANDO's real estate

1 license and license rights pursuant to Business and Professions
2 Code Sections 10145(c), 10176(e), 10176(i), 10177(d), and
3 10177(j).

4 15.

5 The conduct, acts or omissions of Respondent KAUT as
6 set forth in Paragraphs 6 through 13 above, constitutes grounds
7 to suspend or revoke Respondent KAUT's license and license rights
8 pursuant to Code Sections 10176(e), 10176(i), 10177(d), 10177(h),
9 and/or 10177(g) for violation of Code Sections 10145(a)(1) and
10 10159.2.

11 Second Cause of Accusation

12 (Audit No. LA 010167)

13 16.

14 Complainant hereby restates and incorporates by
15 reference herein the allegations contained above in Paragraphs 1
16 through 8 of the Accusation.

17 17.

18 During the period between January 1, 2000 and December
19 31, 2001, in connection with the aforesaid real estate brokerage
20 activities, Respondents accepted or received funds, including
21 funds in trust (hereinafter "trust funds") from or on behalf of
22 actual and prospective owners and buyers and thereafter made
23 deposits and/or disbursements of such funds. From time to time
24 herein mentioned, said trust funds were deposited into Respondent
25 KAUT's business account located at Wells Fargo Bank. This
26 account, account number 046-5941441, was used as a depository for
27 earnest money deposits received by KAUT and/or Professional

1 Realty Services. Respondent did not maintain a trust account
2 during this period in time.

3 18.

4 On or about February 20, 2002, the Department completed
5 its examination of Respondent KAUT's books and records,
6 pertaining to the residential resale real estate activities
7 described in Paragraphs 5 and 6 above, covering a period from
8 approximately January 1, 2000 through December 31, 2001. The
9 primary purpose of the examination was to determine Respondent's
10 compliance with the Real Estate Laws. The examination, Audit
11 #LA 010167, revealed violations of the Code and of Title 10,
12 Chapter 6, California Code of Regulations ("Regulations"), as set
13 forth below, and as more specifically set forth in the audit
14 reports and attached exhibits.

15 19.

16 In the course of activities described in Paragraphs 5,
17 6 and 17 above, and during the examination period described in
18 Paragraph 18, Respondent KAUT acted in violation of the Code and
19 the Regulations in that:

20 a) Respondent KAUT deposited client trust funds into
21 her personal business account, in violation of Code Sections
22 10145 and 10176(e). (Details of this violation are set forth in
23 more detail in the First Cause of Accusation).

24 b) Respondent KAUT failed to maintain a record of
25 trust funds received and disbursed in at least two of the sampled
26 transactions, including the 16980 Lurelane Street transaction and
27 the 11549 Old Field Avenue transaction, each of which took place

1 in and around December of 2000. This failure to maintain a
2 record of trust funds received and disbursed was in violation of
3 Code Section 10145 and Regulation 2831.

4 c) Respondent KAUT failed to maintain separate
5 beneficiary trust fund records for trust funds received, for the
6 transactions indicated in subsection (b) above, in violation of
7 Code Section 10145 and Regulation 2831.1.

8 (d) Respondent KAUT held the earnest money deposit she
9 received in the Lurelane Street transaction beyond three business
10 days following the acceptance of the offer, in violation of Code
11 Section 10145 and Regulation 2832.

12 (e) Respondent KAUT failed to retain and/or provide to
13 the Department upon request all trust fund receipt and
14 disbursement records, in violation of Code Section 10148.

15 The foregoing violations constitute cause for the
16 suspension or revocation of Respondent KAUT's real estate license
17 and license rights under the provisions of Code Sections
18 10177(d), 10176(e), 10177(h) and/or 10177(g).

19 THIRD CAUSE OF ACCUSATION

20 (Code Section 10148)

21 20.

22 On September 20, 2002, a Deputy Real Estate
23 Commissioner personally served Respondent KAUT with a subpoena
24 duces tecum alleging sufficient cause to require Respondent to
25 produce (or make available for examination, inspection or
26 copying) the following material connected with a transaction or
27 transactions for which a real estate broker license is required:

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 LILY KAUT and JAVIER O. OBANDO, under the Real Estate Law (Part 1
6 of Division 4 of the Business and Professions Code), and for such
7 other and further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California

10 this 14th day of May, 2003.

11
12 
13 _____
14 Deputy Real Estate Commissioner
15
16
17
18
19
20
21
22

23 cc: Lily Kaut, dba "Professional Realty Services"
24 Javier O. Obando
25 Maria Suarez
26 Sacto.
27 MB
Audits