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**FILED**  
OCT - 1 2007  
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-30508 LA  
MONTGOMERY ROBERTS, )  
Respondent. )

ORDER DENYING REINSTATEMENT OF LICENSE

On November 17, 2004, a Decision was rendered herein revoking Respondent's real estate salesperson license.

On July 13, 2006, 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 submitted and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the issuance to Respondent of an unrestricted real estate salesperson license, in that:

I

In the Decision which revoked the real estate license of Respondent there was a Determination of Issues made that there was cause to revoke Respondent's real estate license pursuant to Business and Professions Code ("Code") Sections 490 and 10177(b).

On or about July 2, 2003, Respondent was convicted of violating Penal Code Sections 484(g) (fraudulent use of access card) and 459-460 (burglary second degree - commercial structure). Said crimes involve moral turpitude and are substantially related to the qualifications, functions and duties of a real estate licensee.

II

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

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

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1           2911(i) - Respondent has not provided proof of  
2 completion of, or sustained enrollment in, formal educational  
3 or vocational training courses for economic self-improvement.

4           2911(l) - Respondent has not provided proof of  
5 significant or conscientious involvement in community, church  
6 or social programs.

7           2911(n)(2) - Respondent has not provided proof from  
8 others of a change in attitude from that which existed at the  
9 time of the conduct in question.

10           Given the fact that Respondent has not established  
11 that he has complied with Regulations 2911(i), 2911(l) and  
12 2911(n)(2), I am not satisfied that Respondent is sufficiently  
13 rehabilitated to receive a real estate salesperson license.

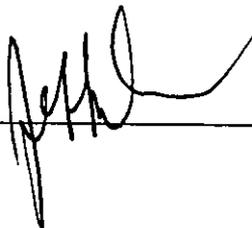
14           NOW, THEREFORE, IT IS ORDERED that Respondent's  
15 petition for reinstatement of Respondent's real estate  
16 salesperson license is denied.

17           This Order shall become effective at 12 o'clock noon  
18 OCT 22 2007  
19 on

20           DATED: \_\_\_\_\_

9-19-07

21           JEFF DAVI  
22           Real Estate Commissioner

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**FILED**  
NOV 23 2004  
DEPARTMENT OF REAL ESTATE  
*[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) No. H-30508 LA  
MONTGOMERY ROBERTS, ) L-2003120507  
Respondent. )

DECISION AFTER REJECTION

The above-entitled matter came on for hearing before Samuel D. Reyes, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on May 17, 2004.

Complainant was represented by James R. Peel, Counsel. Respondent MONTGOMERY ROBERTS ("Respondent") was present at the hearing and was represented by Moses S. Hall, Esq.

Evidence was received and the matter stood submitted on May 17, 2004.

On June 14, 2004, the Administrative Law Judge ("Judge") submitted a Proposed Decision which was not adopted as the Decision of the Real Estate Commissioner.

1 On July 20, 2004, pursuant to Section 11517(c) of the  
2 Government Code of the State of California, Respondent was served  
3 with a copy of the Proposed Decision dated June 14, 2004, and  
4 with notice that the case would be decided by me upon the record  
5 including the transcript of proceedings held on May 17, 2004, and  
6 upon any written argument offered by the parties.

7 Argument has been submitted on behalf of the Respondent  
8 and Complainant.

9 I have given careful consideration to the record in  
10 this case, including the transcript of proceedings of May 17,  
11 2004, and Respondent and Complainant's arguments.

12 The following shall constitute the Decision of the Real  
13 Estate Commissioner in this matter.

14 FINDINGS OF FACT

15 1. On November 25, 2003, Janice A. Waddell, Deputy  
16 Real Estate Commissioner of the State of California, filed the  
17 Accusation in her official capacity.

18 2. The California Department of Real Estate  
19 ("Department") issued real estate license number 01253351 to  
20 Respondent on February 9, 1999. The license expires on  
21 February 8, 2007.

22 3. On July 2, 2003, in the Superior Court, County of  
23 Orange, State of California, in case number 02HF1670MA,  
24 Respondent was convicted, following his plea of guilty, of  
25 violating Penal Code Sections 484(g) (fraudulent use of access  
26 card) and 459-460 (burglary second degree - commercial  
27 structure), misdemeanors.

1           4.    The Court suspended imposition of sentence and  
2 placed Respondent on formal probation for three years on terms  
3 and conditions that included payment of a \$100 fine, completion  
4 of 30 days of community service (California Department of  
5 Transportation or other physical labor), and payment of \$6,000 in  
6 restitution.

7           5.    Respondent's criminal conviction arose from his  
8 purchase of merchandise at a store with a fraudulent credit card.

9           6.    Respondent testified that he is complying with the  
10 terms and conditions of probation. He paid the fine and the  
11 restitution amount, and performed the community service. He  
12 further testified that he has not suffered any other convictions.  
13 Respondent testified that while shopping with a friend, the  
14 friend gave him a credit card and asked him to pay for some  
15 items. The credit card was fraudulent. Respondent testified  
16 that he had consumed a number of alcoholic beverages before the  
17 incident.

18           7.    Respondent maintains his innocence, insisting he  
19 did not know the card was fraudulent. Respondent testified he  
20 agreed to plead guilty on advice of counsel because the charges  
21 would be reduced to misdemeanors and because he did not have the  
22 time or money to litigate the matter. He nevertheless accepts  
23 responsibility for his actions in light of the plea and  
24 conviction.

25           8.    Respondent testified that he has worked for three  
26 years for a mortgage loan broker, Dove Capital Corporation, and  
27 wishes to continue his employment with the firm. He further

1 testified that he has competently discharged the duties of his  
2 position and his employer wishes to retain him.

3 9. Respondent's crime is a crime of moral turpitude.  
4 Crimes which reveal an applicant's dishonesty involve moral  
5 turpitude. Clerici v. Department of Motor Vehicles (1990) 224  
6 Cal.App.3d 1016, 1027. The Legislature intended to ensure that  
7 real estate brokers and salespersons will be honest, truthful and  
8 worthy of the fiduciary responsibilities which they will bear.  
9 Ring v. Smith (1970) 5 Cal.App.3d 197, 205; Golde v. Fox (1976)  
10 98 Cal.App.3d 167, 177; Harrington v. Department of Real Estate  
11 (1989) 214 Cal.App.3d 394, 402.

12 10. Respondent's crime bears a substantial  
13 relationship to the qualifications, functions and duties of a  
14 real estate licensee. A real estate salesperson is entrusted with  
15 and responsible for the real property and funds of clients. Theft  
16 is an act directly contrary to the duties of the real estate  
17 licensee.

#### 18 CONCLUSIONS OF LAW

19 1. The Department has established cause, by clear and  
20 convincing evidence, for discipline of Respondent's real estate  
21 salesperson license and all licensing rights pursuant to Business  
22 and Professions Code Sections 490 and 10177(b) by reason of his  
23 criminal conviction, as set forth in Finding 3.

24 2. Respondent's criminal conviction is a crime of  
25 "moral turpitude" within the meaning of Business and Professions  
26 Code Section 10177(b), as set forth in Finding 9.

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1                   3. Respondent's criminal offense is substantially  
2 related to the qualifications, functions and duties of a real  
3 estate licensee. His crime meets the criteria of substantial  
4 relationship contained in Title 10, California Code of  
5 Regulations, Section 2910 (a)(1), the fraudulent taking,  
6 obtaining, appropriating or retaining of funds or property  
7 belonging to another person; and Section 2910 (a)(8), doing of  
8 any unlawful act with the intent of conferring a financial or  
9 economic benefit upon the perpetrator or with the intent or  
10 threat of doing substantial injury to the person or property of  
11 another. Respondent's offense involved the elements of these  
12 provisions.

13                   4. Title 10, California Code of Regulations, Section  
14 2912 sets forth the criteria developed by the Department of Real  
15 Estate pursuant to Business and Professions Code Section 482(b)  
16 for evaluating rehabilitation of a licensee following a criminal  
17 conviction or act of dishonesty:

18                   (a) The passage of not less than two years from  
19 the most recent criminal conviction that is "substantially  
20 related" to the qualifications, functions or duties of a licensee  
21 of the Department. Respondent's criminal conviction occurred in  
22 July of 2003. Two years have not passed since his conviction.

23                   (b) Restitution to any person who has suffered  
24 monetary losses through "substantially related" acts or omissions  
25 of the licensee. Respondent made the required restitution.

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1 (c) Expungement of the conviction or convictions  
2 which culminated in the administrative proceeding to take  
3 disciplinary action. The conviction has not been expunged.

4 (d) Expungement or discontinuance of a  
5 requirement of registration pursuant to the provisions of Section  
6 290 of the Penal Code. This item is not applicable to  
7 Respondent.

8 (e) Successful completion or early discharge from  
9 probation or parole. Respondent's three-year term of probation  
10 will end in July 2006.

11 (f) Abstinence from the use of controlled  
12 substances or alcohol for not less than two years if the criminal  
13 conviction was attributable in part to the use of a controlled  
14 substance or alcohol. Respondent testified that he attends AA  
15 meetings at least three times a week.

16 (g) Payment of any fine imposed in connection  
17 with the criminal conviction that is the basis for revocation or  
18 suspension of the license. Respondent has paid the fine imposed  
19 for his criminal conviction.

20 (h) Correction of business practices responsible  
21 in some degree for the crime or crimes of which the licensee was  
22 convicted. This item is not applicable to Respondent.

23 (i) New and different social and business  
24 relationships from those which existed at the time of the  
25 commission of the acts that led to the criminal conviction or  
26 convictions in question. Respondent testified that he no longer  
27 associates with the friend who gave him the credit card.

1 (j) Stability of family life and fulfillment of  
2 parental and familial responsibilities subsequent to the criminal  
3 conviction. Respondent is not married.

4 (k) Completion of, or sustained enrollment in,  
5 formal educational or vocational training courses for economic  
6 self-improvement. Respondent did not provide any evidence that he  
7 is involved in formal education or vocational training.

8 (l) Significant or conscientious involvement in  
9 community, church or privately-sponsored programs designed to  
10 provide social benefits or to ameliorate social problems.  
11 Respondent testified that he regularly attends church and is  
12 involved in charitable community activities and volunteers at a  
13 homeless center.

14 (m) Change in attitude from that which existed at  
15 the time of the commission of the criminal acts in question as  
16 evidenced by any or all of the following:

- 17 (1) Testimony of applicant.
- 18 (2) Evidence from family members, friends  
19 or other persons familiar with the  
20 licensee's previous conduct and with  
21 subsequent attitudes and behavioral  
22 patterns.
- 23 (3) Evidence from probation or parole  
24 officers or law enforcement officials  
25 competent to testify as to [licensee's]  
26 social adjustments.

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(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Respondent has not shown a change in attitude. He has not accepted full responsibility for his actions. In addition, he has not provided proof from others of a change in attitude.

5. The purpose of regulatory statutes is not to punish but to protect members of the public when they deal with licensees. Cf. Clerici v. Department of Motor Vehicles (1990) 224 Cal.App.3d 1016, 1027 (citing Brewer v. Department of Motor Vehicles (1979) 93 Cal.App.3d 358, 367). Real estate licensees must be honest and responsible for their actions. Real estate licensees have access to the homes of sellers. They have access to personal and financial records of clients. They must abide by numerous statutes and regulations designed to protect clients and to provide full disclosure to buyers, sellers and borrowers.

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1           6. Whether Respondent is a low risk to engage in  
2 recidivism or will continue to avoid committing theft crimes is  
3 unknown. After Respondent has spent a period of time without the  
4 supervision of the criminal justice system, his actions can be  
5 more fully evaluated and his level of rehabilitation can be more  
6 accurately determined. Respondent is on probation until July  
7 2006. California courts have held that little weight is placed on  
8 the fact that a license applicant did not commit additional  
9 crimes while in prison, or while on parole or probation. (See  
10 In re Menna (1995) 11 Cal.4<sup>th</sup> 975; Seide v. Committee of Bar  
11 Examiners (1989) 49 Cal.3d 933.) For example, In re Gossage  
12 (2000) 23 Cal.4<sup>th</sup> 1080, the court noted that persons under the  
13 direct supervision of correctional authorities are required to  
14 behave in an exemplary fashion and gave little weight to the fact  
15 that a licensee did not commit additional crimes during the  
16 period of probation or while engaged in the disciplinary process.  
17 Such is the case with Respondent.

18           7. It has not been shown that allowing Respondent to  
19 retain a real estate license even on a restricted basis would be  
20 in the public interest. A restricted license allows a licensee  
21 to do the same thing any other licensee can do -- no one can  
22 constantly monitor all activity. Our most effective means of  
23 protecting the public is to refuse to allow a licensee to retain  
24 a license when there is any doubt about the licensee's  
25 rehabilitation.

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ORDER

All licenses and licensing rights of Respondent  
MONTGOMERY ROBERTS under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon  
on December 13, 2004.

IT IS SO ORDERED November 17 2004

JEFF DAVI  
Real Estate Commissioner

  
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SACD.  
May

FILED  
JUL 20 2004

DEPARTMENT OF REAL ESTATE

*[Handwritten Signature]*

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

In the Matter of the Accusation of )  
MONTGOMERY ROBERTS, ) No. H-30508 LA  
Respondent. ) L-2003120507

NOTICE

TO: MONTGOMERY ROBERTS, Respondent, and MOSES S. HALL, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 14, 2004, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 14, 2004, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on May 17,





5. The circumstances surrounding the conviction are as follows. Respondent and two friends were drinking and shopping at a local mall one evening in December 2001. They stopped at several shops and at a restaurant, where respondent consumed three to four alcoholic beverages. He had also drunk an unspecified number of alcoholic beverages at home before meeting his friends. While standing in line to purchase some items at one of the shops, Bernini's, respondent's friend, Inez Wilson Aguilar ("Aguilar"), asked him to pay for her items while she went to the restroom. She left him with the goods she wished to purchase and with a credit card. Respondent attempted to pay for Aguilar's items with the card she provided. The credit card was fraudulent, a fact respondent testified he did not know at the time. Although he intended to sign the sales slip, respondent did not actually affix his signature on the document, apparently because of his inebriated condition.

6. a. Respondent's conviction unfavorably reflects on his honesty and truthfulness, traits that the legislature and the courts have deemed desirable in real estate licensees. *See: Golde v. Fox*, (1979) 98 Cal.App.3d 167. Accordingly, the conviction is for a crime which is substantially related to the qualifications, functions, and duties of a real estate salesperson.

b. Additionally, respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of Title 10, California Code of Regulations, section 2910(b), in that it involves an unlawful act for financial benefit.

7. The conviction is also one involving moral turpitude because it involves an unlawful act for financial gain. *Harrington v. Department of Real Estate* (1989), 214 CA3d 394.

8. Respondent is complying with the terms and conditions of probation. He paid the fine and the restitution amount, and performed the community service. He has not suffered any other convictions. He no longer associates himself with Aguilar.

9. Respondent maintains his innocence, insisting he did not know the card was fraudulent. Respondent testified he agreed to plead guilty on advice of counsel, because the charges would be reduced to misdemeanors and because he did not have the time or money to litigate the matter. He nevertheless accepts responsibility for his actions in light of the plea and conviction. He realizes alcohol consumption placed him in a precarious situation and has stopped his drinking; respondent attends Alcoholics Anonymous meetings at least three times per week.

10. Respondent has worked for three years for a mortgage loan broker, Dove Capital Corporation, and wishes to continue his employment with the firm. He has competently discharged the duties of his position and his employer wishes to retain him

11. Respondent regularly attends church and is involved in charitable community activities. He volunteers time at a homeless center in Laguna Beach.

### LEGAL CONCLUSIONS

1. Grounds exist pursuant to Business and Professions Code section 490 to suspend or revoke respondent's license because he was convicted of a crime substantially related to the qualifications, functions, and duties of a real estate salesperson, by reason of finding of fact numbers 3 through 6.

2. Grounds exist pursuant to Business and Professions Code section 10177(b) to suspend or revoke respondent's license because he was convicted of a crime involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate salesperson, by reason of finding of fact numbers 3 through 7.

3. All evidence offered in mitigation and rehabilitation has been considered. The conviction represents an isolated incident. The incident occurred while he was under the influence of alcoholic beverages and he no longer consumes said beverages. He was apparently manipulated by a friend with whom he no longer associates. He is discharging the duties of his employment without incident. Accordingly, the order that follows, which is necessary in light of the conviction, will adequately protect the public interest.

### ORDER

NOT ADMITTED

All licenses and licensing rights of Respondent Montgomery Roberts under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

NOT ADOPTED

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

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

- (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
- (b) That the employing broker will exercise supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

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

DATED: 6/14/04

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

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FILED  
JAN 21 2004  
DEPARTMENT OF REAL ESTATE  
By 

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

*In the Matter of the Accusation of*

**MONTGOMERY ROBERTS**

*Respondent*

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Case No. H-30508 LA

OAH No. L-2003120507

**NOTICE OF HEARING ON ACCUSATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at **Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on May 17, 2004**, at the hour of **11:00 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.

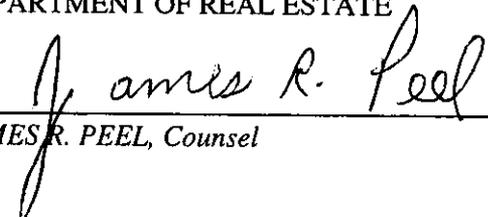
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented 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: January 21, 2004

DEPARTMENT OF REAL ESTATE

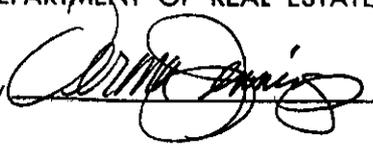
By   
JAMES R. PEEL, Counsel

cc: Montgomery Roberts  
Moses S. Hall, Esq.  
Sacto./OAH

SACD.  
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JAMES R. PEEL, Counsel (SBN 47055)  
Department of Real Estate  
320 West Fourth Street, Ste. 350  
Los Angeles, California 90013-1105  
  
Telephone: (213) 576-6982  
-or- (213) 576-6913 (Direct)

**FILED**  
NOV 25 2003  
DEPARTMENT OF REAL ESTATE  
By 

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) No. H-30508 LA  
MONTGOMERY ROBERTS, ) ACCUSATION  
Respondent. )

The Complainant, Janice A. Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MONTGOMERY ROBERTS alleges as follows:

I

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

II

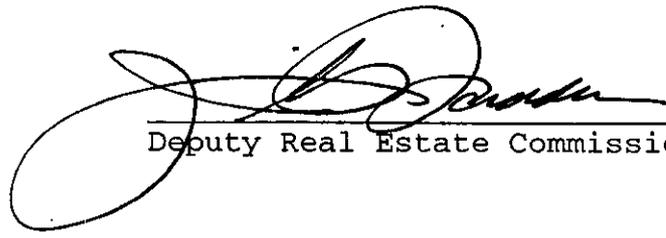
MONTGOMERY ROBERTS (hereinafter referred to as "Respondent") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter referred to as the "Code").



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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent MONTGOMERY ROBERTS under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California,  
this 12<sup>th</sup> day of November, 2003.

  
Deputy Real Estate Commissioner

cc: Montgomery Roberts  
Lawrence V. Jackson  
Sacto.  
CW