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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-31130 LA
)	L-2004080622
YORAM STERN,)	
)	
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On April 12, 2005, a Decision was rendered in the above-entitled matter to become effective May 18, 2005.

IT IS HEREBY ORDERED that the effective date of the Decision of April 12, 2005, is stayed for a period of 30 days.

The Decision of April 12, 2005, shall become effective at 12 o'clock noon on June 17, 2005.

DATED: May 9, 2005.

JEFF DAVI
Real Estate Commissioner

By: *Dolores Weeks*
DOLORES WEEKS
Regional Manager

FILED
APR 28 2005
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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* * * * *

In the Matter of the Accusation of)	No. H-31130 LA
)	
)	L-2004080622
YORAM STERN and)	
SILVERSTAR REALTY, INC.,)	
)	
)	
Respondents.)	

DECISION

The Proposed Decision dated March 15, 2005, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on May 18, 2005.

IT IS SO ORDERED 4-22-05.

JEFF DAVI
Real Estate Commissioner

[Handwritten Signature]

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

In the Matter of the Accusation of:

YORAM STERN and
SILVERSTAR REALTY, INC.

Respondents.

Case No. H-31130 LA

OAH No. L2004080622

PROPOSED DECISION

This matter came on regularly for hearing before Mark E. Harman, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California, on February 14, 2005.

James R. Peel, Counsel for the California Department of Real Estate (Department), represented the complainant, Janice A. Waddell, Deputy Real Estate Commissioner.

Frank M. Buda represented Yoram Stern. William H. Brownstein represented Silverstar Realty, Inc. (herein referred to, collectively, as Respondents).

Oral and documentary evidence was received. The matter was submitted on February 14, 2005.

FACTUAL FINDINGS

1. Janice A. Waddell, Deputy Real Estate Commissioner, filed the Accusation in her official capacity on July 29, 2004. Mr. Stern filed a Notice of Defense on or about August 10, 2004. Mr. Stern's attorney filed a second Notice of Defense on November 15, 2004. No evidence was presented showing that a notice of defense was filed on behalf of Respondent, Silverstar Realty, Inc. The hearing proceeded against Silverstar Realty, Inc., pursuant to Government Code section 11506, subdivision (c).

2. Mr. Stern is presently licensed and/or has license rights as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code). According to the Department's records, Silverstar Realty, Inc.'s real estate broker's license was cancelled as of December 31, 2004. Stern owned Silverstar Realty, Inc., and it was the corporation through which Stern conducted his real estate brokerage business. At all relevant times herein mentioned, Respondents were licensed by the Department as real estate brokers.

3. On or about June 28, 2002, in the Superior Court of California, County of Los Angeles, in Case No. LC048593, entitled *Deok Rye Yoon, Plaintiff, v. Yoram Stern, etc., et al., Defendants*, Respondents were held liable in a civil action, by final judgment, based upon proof that Respondents, while negotiating a short payoff on a commercial mortgage for the plaintiff, Deok Yoon, conspired to conceal material facts, defraud the plaintiff, convert the plaintiff's funds and commit usury. The court further found Respondents liable because they had breached an oral contract to represent the plaintiff for a fee of 5 percent in negotiating a short payoff of a loan, thus also breaching a fiduciary duty owed to Yoon. The judgment was appealed and is now final. (Opinion of the Court of Appeal, Second Appellate District, Division Two, Case No. B161022, filed on November 25, 2003, admitted as Exhibit 6.)

4. The circumstances underlying the judgment, which are set forth in the detailed factual summary of the opinion of the Court of Appeal,¹ are as follows: In late 1997, due to real estate market conditions, the apartment house owned by Yoon did not generate enough income to make the monthly payments on the first trust deed loan, and the approximately \$1 million loan on the property exceeded the property's market value. Yoon went into default on the first trust deed. Yoon was advised by an acquaintance to contact Mr. Aaron Zilberstein, who is in the business of negotiating for borrowers in these circumstances, for his assistance. Yoon, a Korean immigrant who does not speak fluent English, had her daughter, Seon Lecher, contact Zilberstein.

5. Aaron Zilberstein buys and sells real property and notes. He specializes in renegotiating loans. He is not licensed by the Department. He has known Stern since 1977 and has had several business dealings with Stern. Zilberstein and his company, N & E Funding, are located in an office in the same building as the office of Stern's company, Respondent Silverstar Realty, Inc.

6. When Lecher telephoned Zilberstein, Respondent Stern answered and told Lecher to come to his office and he could assist her. Lecher met with Stern at his office. Zilberstein was not present. Stern represented that he negotiated "short sales, short payoffs." Stern also stated that he would charge "five, six percent, like any other broker would charge." Stern started working on a "short sale," which is the sale of property for less than the amount of the first trust deed loan. This type of sale is made when the holder of the first trust deed loan agrees to a payoff of less than the full amount owed.

7. Lecher later indicated in a telephone conversation with Stern that Yoon wanted to keep the property, and thus sought a short payoff rather than a short sale. In a short payoff, the property is not sold but the lender consents to a payoff of the loan for less than the full amount due on the loan. Stern testified that, since he is in the business to sell properties, not to arrange short payoffs or loans, he stopped any further work on the short

¹ Although this opinion was not ordered published, it is relevant and may be relied on in this administrative disciplinary proceeding because it states reasons for a decision affecting the Respondents in this proceeding. (Cal. Rules of Court, rule 977(b)(2).)

sale and referred Lecher to Zilberstein of N & E Funding, because Zilberstein did short payoffs rather than short sales. Stern's testimony contradicts the judgment of the civil courts, which determined that Stern and Zilberstein conspired to defraud Yoon.

8. Zilberstein proceeded to negotiate with the holder of the first trust deed (Banc One) and arranged for a short payoff of \$500,000. However, Zilberstein told Lecher that the payoff amount was \$660,000, rather than the true amount of \$500,000, and Stern told Lecher that the \$660,000, which included his broker's fee, had to be paid within three days. When Lecher indicated that Yoon did not have that amount of cash, Stern told her that he had "friends and investors" who could fund the money at a large interest rate and referred her to Zilberstein. Lecher called Zilberstein, who agreed to help her get the money in a couple of days.

9. Stern suggested that Lecher and Yoon meet him at an escrow office, where he would have the necessary documents and the promissory note to sign. Zilberstein, however, was at that meeting instead of Stern. Zilberstein introduced himself as Stern's friend and business associate and stated he was there to bring the necessary documents for Yoon's signature. Neither Zilberstein nor anyone else ever explained to Lecher that there was a \$160,000 fee for the transaction. Stern had told Lecher that his 5 percent commission was included in the \$660,000, and that the bank would pay it to him. Zilberstein's company, N & E Funding, then proceeded to lend Yoon the money she was told was necessary to pay off the bank and to close the short payoff of the loan.

10. Respondents, along with co-conspirators Zilberstein and N & E Funding, concealed from Yoon the fact that the bank had accepted a payoff (\$500,000) that was substantially less than the amount Zilberstein had represented to her (\$660,000), so that Zilberstein could keep the difference between Yoon's payment and the payment to the bank (\$160,000). In effect, N & E Funding charged Yoon \$160,000 for making this loan; plus, it also charged 13 percent interest on the full sum of \$660,000, bringing the total interest charged to Yoon for the \$500,000 to approximately 45 percent. Yoon made three interest payments to N & E Funding until she refinanced the debt and paid the balance off in full. Later, Yoon learned that the sum accepted by the bank was \$500,000, not \$660,000, as represented by Stern and Zilberstein. Yoon sued Stern and Zilberstein and their companies (defendants).

11. On a motion for summary judgment, Yoon established that the charge of \$135,000 was usurious. The court granted Yoon's motion, reserving the issues of treble damages and Zilberstein's personal liability for trial. The amount of \$135,000 represents the difference between what was taken from Yoon (\$160,000) and the 5 percent she agreed to pay Stern. At trial, Yoon established that each of the defendants, including Stern, had entered into a civil conspiracy to commit the acts alleged and were therefore liable for each other's actions. The defendants conspired to convert Yoon's \$135,000, Stern breached an oral contract with Yoon to charge her only 5 percent, and each defendant, including Stern individually, conspired to defraud Yoon by both concealment and intentional misrepresentations. The court also found that Stern, who had been hired in his capacity as

real estate broker, had a special relationship with Yoon and had breached his fiduciary duty to her. The court awarded damages against each of the defendants, jointly and severally, in the total sum of \$135,000, plus interest.

12. On appeal, the defendants contended there was: (a) no evidence Yoon suffered any harm or damages as a result of the defendants' acts; (b) no substantial evidence the fee paid by Yoon was for the loan of money and thus usurious; (c) no justification for the award of 25 percent interest; (d) no substantial evidence that Stern individually participated in the conspiracy with the other defendants; and (e) no substantial evidence that Stern breached any agreements with Yoon regarding the short payoff of the loan. The Court of Appeal found each contention unavailing and affirmed the judgment.

13. Zilberstein testified that he, alone, is responsible for the fraudulent transactions underlying the civil lawsuit. Nevertheless, both the trial court and the Court of Appeal concluded that Zilberstein and Stern entered into a civil conspiracy to defraud Yoon. Significantly, the courts found that Stern himself made intentional misrepresentations to Yoon. Accordingly, Zilberstein's testimony, which directly contradicts the prior court findings, is deemed not credible.

14. Stern has been a real estate broker since March 1990. For four years before that, he was a real estate salesperson. He has no prior discipline under his licenses. At the hearing, a banker, a rabbi, an attorney, a client and a friend all testified in support of Stern. Those persons generally characterized Stern as an honest, forthright person, who helps other people through his community involvement and charitable work. Stern is married and has two children. He coaches youth soccer.

15. Stern believes, as he testified at the civil trial, that Zilberstein is responsible for the transactions leading to the civil lawsuit. Stern believes that his relationship to Yoon was based only on a contract to sell Yoon's property. He believes that, once Yoon had decided not to sell the property and Stern had referred Yoon to Zilberstein, then Stern was no longer involved with Yoon. Stern is aware that his testimony contradicts the decision of the court, but he maintains that it is true. When asked what lessons he had learned, Stern said that he would not have anything to do with a client after he has referred them to another person. Stern said that he would make sure the person being referred understands that Stern is not responsible for the conduct of the other person.

16. Stern blames the judgment, in part, on his failure to actively defend the civil litigation. He trusted Zilberstein to take care of the lawsuit and he did not hire his own attorney. Stern received a notice of suspension of his license on October 28, 2003, which was effected concurrently with the payment of \$20,000 from the Department's Recovery Account in the Real Estate Fund. Stern paid \$20,000 to reimburse the Recovery Account and the suspension of his license was terminated on January 26, 2004. Stern made no other payments to satisfy the civil judgment. Stern tried to settle the case with Yoon, because he cannot afford to pay the judgment. Those efforts were unsuccessful.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend the real estate brokers' licenses of Respondents, Yoram Stern and Silverstar Realty, Inc., under Business and Professions Code section 10177.5, because a final judgment has been obtained in a civil action against Respondents upon grounds of fraud, misrepresentation and deceit, with reference to transactions for which a license is required, as set forth in Findings 3 through 15.

Discussion

Section 10177.5 authorizes the Commissioner of Real Estate to rely upon the findings of a civil fraud judgment to take disciplinary action against a licensee. Respondents urge in this proceeding that the transactions underlying the civil judgment do not involve activities for which a real estate broker's license is required. In Respondents' view, the trial court's essential finding is that defendants lent plaintiff Yoon money at a usurious rate of interest. They argue that a person who lends money, or who negotiates a short payoff of a loan, does not necessarily need to obtain a real estate broker's license to engage in those activities. Since a licensed real estate broker is exempt from the usury provisions of the California Constitution, the trial court's finding that Respondents committed usury could not be with reference to transactions for which a license is required.

Respondents' arguments ignore the other determinations by the trial court that Respondents engaged in a civil conspiracy pursuant to which they concealed material facts, defrauded Yoon, and converted Yoon's funds for themselves. The loan of money to Yoon at a usurious rate of interest was only one part of the larger scheme to steal money from Yoon. The trial court determined that Stern, doing business as Silverstar Realty, Inc., represented Yoon as a real estate broker, personally promised Yoon that he would only charge a 5 percent commission, and breached the agreement with Yoon regarding the short payoff of the loan. Further, the trial court determined that Stern breached a fiduciary duty that he owed to Yoon. All of these specific findings reference transactions for which a real estate broker's license is required.

2. With regard to the degree of discipline to impose, Respondent Stern provided substantial evidence of significant involvement in community and church programs for social betterment. Through the testimony of clients, business associates and friends, he established that he has a business reputation for honesty and truthfulness. Many of these witnesses would continue to do business with Stern regardless of the civil fraud judgment. He has no prior history similar to the events leading to the judgment. His testimony, however, did not show rehabilitation, since he does not believe he is to blame for Yoon's damages. Stern has not corrected any of his business practices. He still does business with Zilberstein, whom he believes was responsible for defrauding Yoon. Stern has not satisfied the civil judgment, which was entered less than two years ago. Factual findings 14 through 16.

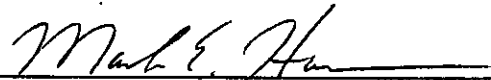
3. It is well established that, since a real estate licensee often acts in a confidential and fiduciary capacity for his clientele, a real estate licensee must possess the

qualifications of honest and integrity. "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 177-178.) The Department has met its burden to demonstrate that Respondents were held civilly liable for fraud in a final judgment referencing real estate transactions for which a real estate broker's license is required. This is sufficient to demonstrate Respondents' unfitness to hold real estate brokers' licenses. Respondents' evidence of rehabilitation has not been shown to outweigh the evidence that Respondents fail to meet the requisite qualifications of honesty, truthfulness and good reputation.

ORDER

All licenses and licensing rights of Respondents Yoram Stern and Silverstar Realty, Inc., under the Real Estate Law are revoked.

DATED: March 15, 2005



MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

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FILED
JAN 26 2005
DEPARTMENT OF REAL ESTATE
[Signature]

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

In the Matter of the Accusation of

**YORAM STERN and
SILVERSTAR REALTY, INC.**

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Case No. H-31130 LA

OAH No. L-2004080622

Respondent

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on February 14, 2005, at the hour of 1:30 p.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: January 26, 2005

By

James R. Peel
JAMES R. PEEL, Counsel

cc: Yoram Stern/Silverstar Rlty. Inc.
F. M. Buda, Esq./W. H. Brownstein, Esq.
Sacto./OAH

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

In the Matter of the Accusation of

**YORAM STERN and
SILVERSTAR REALTY, INC.**

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}

Case No. H-31130 LA

OAH No. L-2004080622

Respondent

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on January 10, 2005, at the hour of 1:00 p.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.

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DEPARTMENT OF REAL ESTATE

Dated: November 29, 2004.

By *James R. Peel*
JAMES R. PEEL, Counsel

cc: Yoram Stern
Silverstar Realty, Inc.
Frank M. Buda, Esq./Sacto./OAH

Sacto. filing

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DEPARTMENT OF REAL ESTATE
[Signature]

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

In the Matter of the Accusation of

**YORAM STERN and
SILVERSTAR REALTY, INC.**

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Case No. H-31130 LA

OAH No. L-2004080622

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on December 8, 2004**, at the hour of **1:30 p.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.

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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: October 6, 2004

By *James R. Peel*
JAMES R. PEEL, Counsel

cc: Yoram Stern
Silverstar Realty, Inc.
Sacto./OAH

*3/20/04
Hay*

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
JUL 29 2004
DEPARTMENT OF REAL ESTATE

By: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-31130 LA
)	
12 YORAM STERN and)	A C C U S A T I O N
13 SILVERSTAR REALTY, INC.,)	
)	
14 Respondents.)	

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16 The Complainant, Janice A. Waddell, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 accusation against YORAM STERN and SILVERSTAR REALTY, INC.,
19 alleges as follows:

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21 The Complainant, Janice A. Waddell, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation acting in her official capacity against YORAM STERN
24 and SILVERSTAR REALTY, INC.

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II

YORAM STERN and SILVERSTAR REALTY, INC. (hereinafter referred to as Respondents) are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter referred to as the "Code").

III

At all times herein mentioned, Respondents were licensed by the Department of Real Estate of the State of California as a real estate broker.

IV

On or about June 28, 2002, in the Superior Court, for the County of Los Angeles, State of California, Case No. LC 048593, Deok Rye Yoon, Plaintiff, v. Yoram Stern, Etc., Et al., Defendants, a final judgment was obtained in a civil action against Respondents upon grounds of fraud, misrepresentation or deceit with reference to a transaction for which a real estate license is required. Said matter is now final on appeal.

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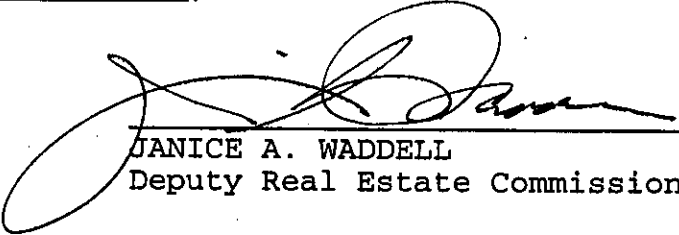
The conduct of Respondents, as alleged above, subjects their real estate licenses and license rights to suspension or revocation pursuant to Sections 10177.5 of the Business and Professions Code.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 YORAM STERN and SILVERSTAR REALTY, INC., under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code)
7 and for such other and further relief as may be proper under
8 other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 12 day of July, 2004.

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13 JANICE A. WADDELL
14 Deputy Real Estate Commissioner
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24 cc: Yoram Stern
25 Silverstar Realty Inc.
26 Janice Waddell
27 Sacto.
JN