

FILED
SEP 22 2008
DEPARTMENT OF REAL ESTATE

By K. Niederhiser

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-32073 LA
	)	
CHARLES J. BRAKER INC. and	)	L-2005090557
CHARLES JOHN BRAKER,	)	
	)	
Respondents.	)	

DECISION AFTER REJECTION

Sandra L. Hitt, Administrative Law Judge ("ALJ"),
Office of Administrative Hearings, heard this matter on February
22, 2006, at Los Angeles, California.

Elliott Mac Lennan, counsel for the Department of Real
Estate ("Department"), represented Complainant.

Respondent Charles John Braker appeared in propria
persona on behalf of himself and as the designated officer of
Charles J. Braker, Inc.

Oral and documentary evidence were received, argument
made, the record was closed. The matter submitted for decision
on February 22, 2006.

1 On March 16, 2006, the Administrative Law Judge
2 submitted a Proposed Decision which I declined to adopt as my
3 Decision herein. Pursuant to Section 11517(c) of the Government
4 Code of the State of California, Respondent was served with
5 notice of my determination not to adopt the Proposed Decision of
6 the Administrative Law Judge along with a copy of said Proposed
7 Decision. On April 20, 2006, Respondent was notified that the
8 case would be decided by me upon the record, the transcript of
9 proceedings held on February 22, 2006, and upon written argument
10 offered by Respondent.

11 I have given careful consideration to the record in
12 this case, including the transcript of the proceedings of
13 February 22, 2006.

14 Written argument was submitted by Respondent on July
15 11, 2006. Written argument was submitted by Complainant on
16 August 28, 2006.

17 After further consideration of the matter, the
18 following shall constitute the Decision of the Real Estate
19 Commissioner in the above-entitled matter:
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21 FACTUAL FINDINGS

22 1. Complainant, Maria Suarez, Deputy Real Estate
23 Commissioner of the State of California, filed the Accusation
24 Issues in her official capacity.

25 2. At all relevant times, Charles J. Braker, Inc.
26 ("CJBI") and Charles John Braker ("Braker") (collectively,
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1 "Respondents") were licensed or had license rights issued by the
2 Department.

3 3. At all relevant times, CBJI was licensed by the
4 Department as a corporate real estate broker with Braker as the
5 designated officer and broker responsible, pursuant to California
6 Business and Professions Code Section 10159.2, for supervising
7 the activities requiring a real estate license conducted on
8 behalf of CBJI by CBJI's officers, agents and employees.

9 All references to the Code herein are to the California
10 Business and Professions Code and all references to Regulations
11 are to the California Code of Regulations Chapter 6, Title 10,
12 unless otherwise indicated.

13 4. At all relevant times, in the City of Fountain
14 Valley, California, CBJI acted as a real estate broker and
15 conducted licensed activities within the meaning of Section
16 10131(d) of the Code. In addition, CBJI conducted escrows
17 through its escrow division under the exemption set forth in
18 Section 17006(a)(4) of the California Financial Code for real
19 estate brokers conducting escrows incidental to a real estate
20 transaction to which the broker is a party and where the broker
21 is performing acts for which a real estate license is required.

22 5. On or about May 25, 2004, in response to a consumer
23 complaint, the Department conducted an audit of the books and
24 records of CBJI pertaining to its mortgage and loan activities,
25 including CBJI's escrow division. The audit covered the period
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1 from January 10, 2003 to December 31, 2003.

2 6. The audit examination revealed that:

3 (a) Braker permitted his sister, Patricia Vitzi, an
4 unlicensed person who was not bonded, to be an authorized
5 signatory on CJBI's trust account in violation of Code Section
6 10145 and Regulation 2834.

7 (b) Braker failed to maintain an accurate control
8 record in the form of a columnar record in chronological order of
9 all trust funds received, deposited and dispersed by the escrow
10 trust account, in violation of Code Section 10145 and Regulation
11 2831.

12 (c) Braker failed to retain a true and correct copy of
13 a Department approved Mortgage Loan Disclosure Statement signed
14 by the broker for four borrowers, as required by Code Section
15 10240.

16 (d) CJBI listed an address for CJBI's escrow division
17 that was not listed with the Department as either a branch office
18 or a mailing address, in violation of Code Section 10162 and
19 Regulation 2715. CJBI was using as a mailing address a mail box
20 at a UPS store in Irvine, California. This was done for Ms.
21 Vitzi's convenience, as the UPS store was close to her home.

22 (e) CJBI did not timely disclose rebates from lenders
23 for yield spread premiums in the Mortgage Loan Disclosure
24 Statements/Good Faith Estimates provided to borrowers as required
25 by Code Sections 10240 and 10241(b).
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1 (f) In mitigation, Braker has been licensed as a real
2 estate broker since 1996. No evidence of any other complaints
3 against Braker or CJBFI was presented. Braker cooperated fully
4 with Department. Braker testified that when he was made aware of
5 the deficiencies he took immediate corrective action. Braker
6 testified that closed down his escrow business. Braker testified
7 that now sends out two Mortgage Disclosure Statements: one at
8 the initiation of the loan process and one when the loan is said
9 to be "locked." Braker testified that he ensures that the
10 correct address is listed on all forms, and with the Department.

11 (g) Braker testified that he is well regarded by his
12 clients. He submitted letters of recommendation from his clients
13 that attested to his honesty and fairness, and the fact that all
14 loan costs and yield spread premium rebates had been disclosed to
15 them.

16 (h) The Administrative Law Judge found that Braker
17 testified credibly at the hearing and that he supported his
18 testimony with documentary evidence. Braker did not deny the
19 violations, or question the auditor's competence.

20 (i) Braker however argued that the violations found in
21 the audit were largely of a minor, technical nature, that the
22 costs of the audit were unreasonably high, and that he should not
23 have to pay such a high cost. Braker did not present any expert
24 testimony on this issue.

25 (j) The Department presented the testimony of its
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auditor, Darryl Thomas, who testified that the cost of the audit was higher than average due to the need to audit the third party escrows improperly conducted by Respondents.

LEGAL CONCLUSIONS

Cause exists for discipline of Respondents CHARLES J. BRAKER INC. and CHARLES JOHN BRAKER licenses and license rights, for violation of the Code and Regulations, as follows:

1. Code Section 10145 and Regulation 2834, by reason of Finding 6(a).

2. Code Section 10145 and Regulation 2831, by reason of Finding 6(b).

3. Code Section 10240, by reason of Finding 6(c).

4. Code Section 10162 and Regulation 2715, by reason of Finding 6(d).

5. Code Section 10240 and 10241(b), by reason of Finding 6(e).

6. All evidence presented as mitigation, extenuation and aggravation has been considered.

7. Contrary to the opinion of the Administrative Law Judge, I do not feel that the public interest would be adequately protected by publicly reproofing Respondents.

The trust fund record keeping and other violations revealed by the audit examination were uncontroverted at the hearing including Code Sections 10145, 10162, 10240 and 10241(b)

1 and Regulations 2715, 2831 and 2834. Respondents failed to
2 comply with the Real Estate Law.

3 Respondents abrogated their license privileges by
4 allowing Braker's sister, Patricia Vitzl, who was unbonded to be
5 a signatory on CJBI's escrow trust account, and insufficiently
6 knowledgeable to operate CJBI's escrow division. Respondent's
7 BRAKER's inadequate knowledge of the real estate law and his
8 business procedures were a contributory cause of the violations.

9 Proper handling of a trust account and complying with
10 trust fund recording keeping is fundamental to conducting
11 licensed mortgage loan broker and broker-escrow activities.

12 8. Respondents conduct constitutes negligence or
13 incompetence.

14 9. It has not been shown that said violations will not
15 reoccur. Protection of the public interest requires imposition
16 of discipline against Respondents' licenses.

17 10. Respondents caused the audit costs to be higher
18 than average by errantly conducting third party escrows.

19 11. The objective of an administrative proceeding
20 relating to discipline, if any, is to protect the public, and to
21 determine whether a license holder has exercised his privilege in
22 derogation of the public interest. Such proceedings are not for
23 the primary purpose of punishment. *Famy v. MBC* (1995) 38 Cal.
24 App.4th 810, 817).

25 12. The Real Estate Commissioner is empowered to
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1 enforce the provisions of the Real Estate Law "in a manner which
2 achieves the maximum protection for the purchasers of real
3 property and those persons dealing with real estate licensees".
4 (Business and Professional Code Section 10050; *Handeland v.*
5 *Department of Real Estate* (1976) 58 Cal App. 3rd 513).

6 13. While reasonable minds may differ, the degree of a
7 disciplinary penalty is a matter squarely within the discretion
8 of the Real Estate Commissioner. *Golde v. Fox* (1979) 98 Cal.
9 App.3rd 167, 189.

10 Pursuant to my statutory authority to protect persons
11 dealing with licensees and in the exercise of my discretion based
12 on the above Factual Findings and Legal Conclusions, I have
13 determined that the Order of the Proposed Decision of the
14 Administrative Law Judge is not appropriate and that it would not
15 be in the public interest to adopt the Order recommended by the
16 Administrative Law Judge in her Proposed Decision and therefore
17 said Order is not adopted.

18
19 ORDER

20 WHEREFORE, THE FOLLOWING ORDER is hereby made.

21 I. The real estate broker licenses and licensing
22 rights of Respondent CHARLES J. BRAKER INC. and CHARLES JOHN
23 BRAKER, under the Real Estate Law are revoked; provided, however,
24 restricted real estate broker licenses shall be issued to
25 Respondents, pursuant to Section 10156.5 of the Business and
26 Professions Code, if Respondents:
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1 (A) make application thereof and pay to the Department
2 of Real Estate the appropriate fee for the restricted licenses
3 within ninety (90) days from the effective date of this Decision.

4 1. The restricted license issued to Respondents may be
5 suspended prior to hearing by Order of the Real Estate
6 Commissioner in the event of a 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 licenses issued to Respondents may
10 be suspended prior to hearing by Order of the Real Estate
11 Commissioner on evidence satisfactory to the Commissioner that
12 Respondents have violated provisions of the California Real
13 Estate Law, the Subdivided Lands Law, Regulations of the Real
14 Estate Commissioner or conditions attaching to the restricted
15 licenses.

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

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

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

15 II. The restricted license and licensing rights of
16 Respondents CHARLES J. BRAKER INC. and CHARLES JOHN BRAKER, under
17 the Real Estate Law are suspended for a period of ninety days
18 from the effective date of this Decision; provided, however, that
19 if Respondents request, the initial thirty days of said
20 suspension (or a portion thereof) shall be stayed upon condition
21 that:

22 A 1. Respondents each pay a monetary penalty pursuant
23 to Section 10175.2 of the Business and Professions Code at the
24 rate of \$100 per day for each day of the suspension for a
25 monetary penalty of \$3,000 each or a total monetary penalty of
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1 \$6,000.

2 2. Said payment shall be in the form of a cashier's
3 check or certified check made payable to the Recovery Account of
4 the Real Estate Fund. Said check must be received by the
5 Department prior to the effective date of the Decision in this
6 matter.

7 3. No further cause for disciplinary action against
8 the real estate licenses of Respondents occurs within two years
9 from the effective date of the Decision in this matter.

10 4. If Respondents fail to pay the monetary penalty in
11 accordance with the terms of the Decision, the Commissioner may,
12 without a hearing, order the immediate execution of all or any
13 part of the stayed suspension, in which event the Respondents
14 shall not be entitled to any repayment nor credit, prorated or
15 otherwise, for money paid to the Department under the terms of
16 this Decision.

17 5. If Respondents pay the monetary penalty and if no
18 further cause for disciplinary action against the real estate
19 license of Respondent occurs within two years from the effective
20 date of the Decision, the stay hereby granted shall become
21 permanent.

22 B. The remaining sixty days of the ninety day
23 suspension shall be stayed for two years upon the following terms
24 and conditions:

25 (a) Respondents shall obey all laws, rules and
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1 regulations governing the rights, duties and responsibilities of
2 a real estate licensee in the State of California; and

3 (b) That no final subsequent determination be made
4 after hearing or upon stipulation, that cause for disciplinary
5 action occurred within two years from the effective date of this
6 Decision. Should such a determination be made, the Commissioner
7 may, in his discretion, vacate and set aside the stay order and
8 reimpose all or a portion of the stayed suspension. Should no
9 such determination be made, the stay imposed herein shall become
10 permanent.

11 III. Pursuant to Section 10148 of the Business and
12 Professions Code, Respondent shall pay the Commissioner's
13 reasonable cost for: (a) the audit which led to this
14 disciplinary action and (b) a subsequent audit to determine if
15 Respondent is now in compliance with the Real Estate Law. The
16 cost of the audit which led to this disciplinary action is
17 \$6,920.30. In calculating the amount of the Commissioner's
18 reasonable cost, the Commissioner may use the estimated average
19 hourly salary for all persons performing audits of real estate
20 brokers, and shall include an allocation for travel time to and
21 from the auditor's place of work. Said amount for the prior and
22 subsequent audits shall not exceed \$13,840.60.

24 Respondent shall pay such cost within 60 days of
25 receiving an invoice from the Commissioner detailing the
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1 activities performed during the audit and the amount of time
2 spent performing those activities.

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

12 IV. All licenses and licensing rights of Respondent.

13 CHARLES JOHN BRAKER are indefinitely suspended unless or until
14 Respondent provides proof satisfactory to the Commissioner, of
15 having taken and successfully completed the continuing education
16 course on trust fund accounting and handling specified in
17 paragraph (3) of subdivision (a) of Section 10170.5 of the
18 Business and Professions Code. Proof of satisfaction of this
19 requirement includes evidence that respondent has successfully
20 completed the trust fund account and handling continuing
21 education course within 120 days prior to the effective date of
22 the Decision in this matter.

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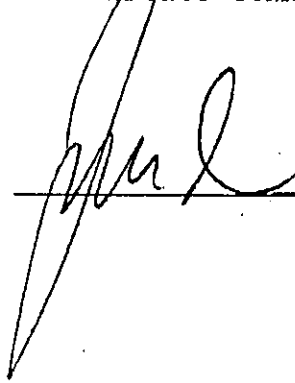
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This Decision shall become effective at 12 o'clock noon

on OCT 23 2006.

IT IS SO ORDERED , 2006.

JEFF DAVI.
Real Estate Commissioner



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Jag*

FILED
APR 20 2006
DEPARTMENT OF REAL ESTATE

By *R. Hildebrand*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-32073 LA
CHARLES J. BRAKER, INC.,	)	
and CHARLES JOHN BRAKER,	)	L-2005090557
Respondents.	)	

NOTICE

TO: CHARLES J. BRAKER, INC., and CHARLES JOHN BRAKER,
Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated March 16, 2006, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated March 16, 2006, 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 February 22,

///

1 2006, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

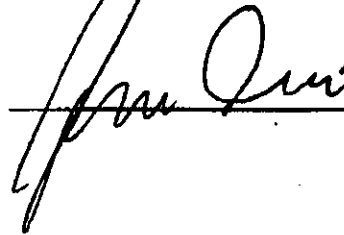
3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of February 22, 2006, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: _____

4-18-06

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15 JEFF DAVI
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CHARLES J. BRAKER, INC.,
CHARLES JOHN BRAKER,
Individually and as designated officer
of Charles J. Braker, Inc.,

Respondents.

Case No. H-32073 LA

OAH No: L2005090557

PROPOSED DECISION

Sandra L. Hitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on February 22, 2006, at Los Angeles, California.

Elliott Mac Lennan, staff counsel for the Department of Real Estate (DRE), represented Complainant.

Respondent Charles John Braker appeared in propria persona on behalf of himself and as the designated officer of Charles John Braker, Inc.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Proposed Decision:

FINDINGS OF FACT

1. Complainant, Maria Suarez, Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues in her official capacity.
2. At all relevant times, Charles J. Braker, Inc. (CJBI) and Charles John Braker (Braker) (collectively, Respondents) were licensed or had license rights issued by DRE.
3. At all relevant times, CJBI was licensed by DRE as a corporate real estate broker with Braker as the designated officer and broker responsible, pursuant to California Business and Professions Code¹ section 10159.2, for supervising the activities requiring a real estate license conducted on behalf of CJBI by CJBI's officers, agents and employees.

¹ All references to the Code herein are to the California Business and Professions Code unless otherwise indicated.

4. At all relevant times, in the city of Fountain Valley, California, CJBI acted as a real estate broker and conducted licensed activities within the meaning of Section 10131, subdivision (d) of the Code. In addition, CBJI conducted escrows through its escrow division under the exemption set forth in Section 17006, subdivision (a) (4) of the California Financial Code for real estate brokers conducting escrows incidental to a real estate transaction to which the broker is a party and where the broker is performing acts for which a real estate license is required.

5. On or about May 25, 2004, in response to a consumer complaint, DRE conducted an audit of the books and records of CJBI pertaining to the mortgage and loan activities of CJBI, including the escrow division, Charles J. Braker, Inc., Escrow. The audit covered the period from January 10, 2003 to December 31, 2003. The audit covered 22 loans and 21 borrowers. The audit required that the auditor spend approximately 18 hours on-site examining respondents' books and records. As a result of the audit, DRE brought the underlying accusation; this hearing ensued.

6. The audit revealed that:

- (a) Braker permitted his sister, Patricia Vitzi, an unlicensed person who was not bonded, to be an authorized signatory on CJBI's client trust account in violation of California Code of Regulations Chapter 6, title 10, Section 2834 (Real Estate Regulation 2834).
- (b) Braker failed to maintain complete control records in the form of a columnar record in chronological order of all trust funds received, deposited and dispersed by the trust account, in violation of California Code of Regulations Chapter 6, title 10, Section 2831 (Real Estate Regulation 2831). To wit: Braker failed to maintain records showing separate daily totals for all borrowers.
- (c) Braker failed to retain a true and correct copy of a DRE approved Mortgage Loan Disclosure Statement signed by the broker for borrowers Irely, Leonard, and Torgerson, as required by Section 10240 of the Code.
- (d) CJBI listed an address for CJBI's escrow division that was not listed with DRE as either a branch office or a mailing address of CJBI, in violation of Section 10162 of the Code and California Code of Regulations Chapter 6, title 10, Section 2715 (Real estate Regulation 2715). CJBI was using as a mailing address a mail box at a UPS store in Irvine, California. This was done for Ms. Vitzi's convenience, as the UPS store was close to her home.

- (e) CJBI did not timely disclose rebates from lenders for yield spread premiums² in the Mortgage Loan disclosure Statements/good faith estimates provided to borrowers as required by Sections 10240 and 10241(b). DRE also alleged that CBJI failed to advise all parties of its ownership of the escrow company as required by Section 10145 and California Code of Regulations Chapter 6, title 10, Section 2950, Subdivision (h) (Real Estate Regulation 2950 (h)). This allegation was apparently based on the fact that Braker did not have his business address on some of the mortgage loan forms. However, the name of the business was Charles John Braker, Inc. and Charles John Braker had his name on the front of the escrow instructions.³

7. Braker had not been aware that CJBI was not able to perform third party escrows; Vitzi had been an escrow officer for 25 years, and he trusted her to know what she was doing. Braker opened the escrow division as a favor to his sister (Vitzi), who wanted to work part-time. Vitzi kept all of the profits from the escrow business. Vitzi may have been used to the rules promulgated by the Department of Corporations, but unfamiliar with the regulations of DRE; she brought in some third party escrows (e.g. refinances from other brokers), including that of Timothy Yu. Respondents were not licensed to perform escrows when neither Braker nor CJBI had been involved with the underlying transaction. Such escrows are called third party escrows. Once Braker became aware that CJBI was not allowed to perform third party escrows, he returned the earnest money of Timothy Yu. Mr. Yu is the party who complained to DRE.

8. The cost of the audit was calculated at \$6,920.30, including the auditor's travel costs. This covered the audit of the escrow business and the mortgage loan brokerage. The cost of the audit was higher than an average audit because it involved third party escrows. The cost of the audit was also increased because the financial records of CJBI for the audit period utilized "batch posting" instead of daily balances for each borrower. The auditor was not comfortable with the way the records had been kept, so he reconstructed them to show daily balances for each borrower. The auditor found no irregularities in the financial records. The cost of the audit was calculated using a rate of \$53 per hour.

9. In mitigation, Braker has been licensed as a real estate broker since 1996. No evidence of any other complaints against Braker or CJBI was presented. Braker cooperated fully with DRE. When he was made aware of the deficiencies he took immediate corrective action. He closed down his escrow business. He now sends out two Mortgage Disclosure

² Yield spread premiums are rebates that are paid to a broker by a lender if rates go down during the application process or, conversely, an extra amount that the borrower may have to pay should rates go up before the loan is locked.

³ While Braker may have committed a minor, technical violation of Real Estate Regulation 2950, it cannot be said, under the circumstances, that he failed to disclose his ownership of the escrow company.

Statements: one at the beginning and one when the loan is locked. He ensures that the correct address is listed on all forms, and with the DRE.

10. Braker took exception to the cost of the audit and opined that it was unreasonably high. He did not present any expert testimony on this issue. DRE, for its part, presented the testimony of its auditor, Darryl Thomas, who stated that he spent 126.5 hours on the audit. Mr. Thomas is an auditor level II with DRE.

11. The violations cited in the audit report were few in number and mostly of a minor, technical nature.

12. Braker is well regarded by his clients. He submitted letters of recommendation from clients, attesting to his honesty and fairness, and the fact that all loan costs and rebates had been disclosed to them.

13. Braker testified credibly at hearing; he supported his testimony with documentary evidence. He did not deny the violations, or question the auditor's competence. However, he argued that the violations found in the audit were largely of a minor, technical nature, that the costs of the audit were unreasonably high, and that he should not have to pay such a high cost.

CONCLUSIONS OF LAW

1. DRE has the burden of proof, by clear and convincing evidence to a reasonable certainty (*Realty Projects v. Smith* (1973) 32 Cal.App.3d 204), to demonstrate that Respondents' licenses should be disciplined. DRE met that burden at hearing by demonstrating that Respondents violated the real estate law (Finding 6).

2. The violations revealed in the audit were few in number, and mostly of a minor, technical nature (Findings 6 and 11). Accordingly, the disciplinary order set forth below will adequately protect the public interest.

3. Section 10148, subdivision (b) of the Business and Professions Code provides that DRE can recoup the costs of an audit from a licensee if it is determined, in a final decision following a disciplinary hearing, that the licensee has violated section 10145 of the Code, or a regulation interpreting section 10145. Respondents are found to have violated Real Estate regulations 2834, 2831 and 2715 (Finding 6 and Conclusion 2). Real Estate Regulation 2715 relates to Section 10162, it does not interpret Section 10145; however, Real Estate Regulations 2834 and 2831 relate to trust fund violations and as such, can reasonably be said to interpret Section 10145. Therefore, DRE can recoup its audit costs from Respondents.

4. The charge of \$53 per hour for the auditor's time was reasonable. However, The ALJ finds that the amount sought for recovery of costs (\$6920.30) is not reasonable.

This is not to say that the auditor was anything other than diligent and trying to do a thorough job. However, given the number and nature of the violations found, requiring Respondents to pay almost \$7000 for an audit would seem unduly punitive. Under these circumstances, the ALJ finds it is reasonable to charge Respondents \$5000 for the audit.

5. The purpose of disciplining a professional or occupational license is to protect the public, not to punish the licensee. Punishment is a task for the criminal courts. See, e.g. *Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67. See, also, *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, and authorities cited therein. Braker immediately corrected the deficiencies, once they were made known to him (Finding 9). Braker has closed his escrow business and must pay \$5000 in audit costs; it is unlikely that he will repeat his mistakes. Under these circumstances, the public interest will not be threatened by leaving Respondents' licenses intact, and issuing Respondents a public reproof pursuant to Business and Professions Code Section 495. Under the circumstances as outlined above, any further discipline of Respondents' licenses would be unduly punitive.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondents are to be issued a public reproof for violating Real Estate Regulations 2834, 2831, 2715, and Business and Professions Code Sections 10145, 10240, 10162 and 10241, subdivision (b). Publication shall consist of placing a copy of this Decision in DRE's public records. Respondents are also ordered to pay to DRE, within 90 days of the effective date of this decision, \$5000 in audit costs, unless other arrangements are agreed between Respondents and DRE.

Date: March 16, 2006


SANDRA L. HITT
Administrative Law Judge
Office of Administrative Hearings

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED
JUL 14 2005
DEPARTMENT OF REAL ESTATE

By The Defendant

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-32073 LA

CHARLES J. BRAKER INC.
and CHARLES JOHN BRAKER,
individually and as
designated officer of
Charles J. Braker Inc.,

A C C U S A T I O N

Respondents.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CHARLES J. BRAKER INC. and CHARLES JOHN BRAKER alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against CHARLES J. BRAKER INC. ("CJBI") and CHARLES JOHN BRAKER ("BRAKER").

///

2.

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

LICENSE HISTORY

3.

A. At all times mentioned, CHARLES J. BRAKER INC. was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On July 14, 1992, CJBI was originally licensed as a real estate broker.

B. At all times mentioned, CHARLES JOHN BRAKER was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On January 31, 1996, BRAKER was originally licensed as a real estate broker.

C. At all times material herein, CJBI was licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a corporate real estate broker by and through BRAKER, as the designated officer and broker responsible, pursuant to Code Section 10159.2 of the Business and Professions Code for supervising the activities requiring a real estate license conducted on behalf CJBI of by CJBI's officers, agents and employees.

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1 4.

2 At all times mentioned, in the City of Fountain Valley,
3 County of Los Angeles, CJBI acted as a real estate broker and
4 conducted licensed activities within the meaning of:

5 A. Section 10131(d) of the Code. CJBI operated a
6 mortgage and loan brokerage; and

7 B. In addition, CJBI conducted broker-controlled
8 escrows through its escrow division, under the exemption set
9 forth in Section 17006(a)(4) of the California Financial Code for
10 real estate brokers performing escrows incidental to a real
11 estate transaction where the broker is a party and where the
12 broker is performing acts for which a real estate license is
13 required.
14

15 5.

16 On May 25, 2004, the Department completed an audit
17 examination of the books and records of CJBI pertaining to the
18 mortgage and loan activities described in Paragraph 4, that
19 require a real estate license. The audit examination covered a
20 period of time beginning on January 10, 2003 to December 31,
21 2003. The audit examination revealed violations of the Code and
22 the Regulations as set forth in the following paragraphs, and
23 more fully discussed in Audit Reports LA 030347 and LA 030367 and
24 the exhibits and workpapers attached to said audit reports.
25

26 6.
27

At all times mentioned, in connection with the activities described in Paragraphs 4 and 5, above, CJBI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by CJBI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by CJBI in the bank accounts as follows:

"Charles Braker, Inc. ("trust account")
0455833178
Wells Fargo Bank
P.O. Box 6995
Portland, OR 97228-6995

7.

In the course of activities described in Paragraphs 4, 5 and 6, above, and during the examination period described in Paragraph 5, Respondent the CJBI, acted in violation of the Code and the Regulations in that:

(a) Permitted Patricia Vitzi, escrow officer, an unlicensed person who was not bonded, to be authorized signatories on the trust account in violation of Code Section 10145 and Regulation 2834.

(b) Failed to maintain an accurate and complete control record in the form of a columnar record in chronological order of

1 all trust funds received, deposited and disbursed by the trust
2 account, in violation of Code Section 10145 and Regulations 2831.

3 (c) failed to advise all parties to its escrow
4 operation of its ownership of said escrow company, as required by
5 Code Section 10145 and Regulation 2950(h).

6 (d(1) failed to retain a true and correct copy of a
7 Department of Real Estate approved Mortgage Loan Disclosure
8 Statement signed by the broker for borrowers Parker L. Irey,
9 Oliver Gregg Leonard, and Harry L Torgerson Jr., as required by
10 Code Section 10240;

11 (d(2) Additionally, rebates from lenders for Yield
12 Spread Premiums were not timely disclosed in the Mortgage Loan
13 Disclosure Statements/Good Faith Estimates provided to the
14 aforesaid borrowers, as required by Code Sections 10240 and
15 10241(b).

16 (e) Listed an address for CJBI's escrow division that
17 was not listed with the Department as either a branch office or a
18 mailing address of CJBI, in violation of Code Section 10162 and
19 Regulation 2715. CJBI listed a UPS Store at 4790 Irvine Blvd.,
20 Suite 105-297, Irvine, CA 92620-1998, as its escrow place of
21 settlement.
22

23 8.

24 The conduct of Respondent CJBI, described in Paragraph
25 7, above, violated the Code and the Regulations as set forth
26 below:
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PARAGRAPH

PROVISIONS VIOLATED

7(a)

Code Section 10145 and Regulation
2834

7(b)

Code Section 10145 and Regulation
2831

7(c)

Code Section 10145 and Regulation
2950(h)

7(d)(1) & (2)

Code Sections 10240, 10241(b)
and Regulation 2840

7(e)

Code Section 10162 and Regulation
2715

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

9.

The overall conduct of Respondents CJBI and BRAKER
constitutes negligence or incompetence. This conduct and
violation are cause for the suspension or revocation of the real
estate license and license rights of Respondents CJBI and BRAKER
pursuant to Code Section 10177(g).

10.

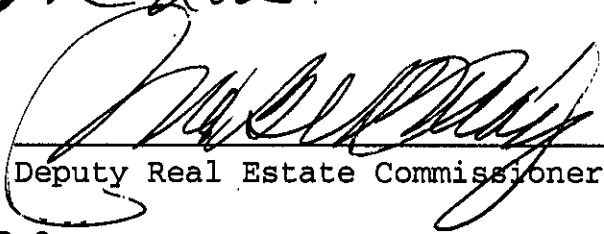
1 The conduct, acts and/or omissions of BRAKER, in
2 causing, allowing, or permitting CJBI to violate the Real Estate
3 Law, as described, herein above, constitutes failure on the part
4 of Respondent BRAKER, as the officer designated by a corporate
5 broker licensee, to exercise the reasonable supervision and
6 control over the licensed activities of CJBI, as required by Code
7 Section 10159.2. Said conduct is cause to suspend or revoke the
8 real estate licenses and license rights of BRAKER pursuant to
9 the provisions of Code Sections 10177(d) or 10177(g) and/or
10 10177(h).

11 WHEREFORE, Complainant prays that a hearing be
12 conducted on the allegations of this Accusation and that upon
13 proof thereof, a decision be rendered imposing disciplinary
14 action against the license and license rights of Respondent
15 CHARLES J. BRAKER INC. and CHARLES J. BRAKER, under the Real
16 Estate Law (Part 1 of Division 4 of the Business and Professions
17 Code) and for such other and further relief as may be proper
18 under other applicable provisions of law.
19

20 Dated at Los Angeles, California

21 this

29th day of June 2005.


Deputy Real Estate Commissioner

22
23
24 cc: Charles J. Braker Inc.
25 c/o Charles John Braker D.O.
26 Maria Suarez
27 Sacto
MS
Audits - Darryl M. Thomas