

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

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

FILED
JAN - 5 2007
DEPARTMENT OF REAL ESTATE

By *K. M. Lennan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 BONA REAL ESTATE #1 INC.;)
14 and JAIME G. SUAREZ, individually)
15 and as designated officer of)
16 Bona Real Estate #1 Inc.,)
17)
18)
19)
20 Respondents,)
21)

No. H-32834 LA

STIPULATION
AND
AGREEMENT

18 It is hereby stipulated by and between Respondents
19 BONA REAL ESTATE #1 INC., a corporate real estate broker, and
20 JAIME G. SUAREZ, individually and as designated officer of Bona
21 Real Estate #1 Inc. (sometimes collectively referred to as
22 "Respondents"), represented by Frank M. Buda, Esq. and the
23 Complainant, acting by and through Elliott Mac Lennan, Counsel
24 for the Department of Real Estate, as follows for the purpose of
25 settling and disposing of the Accusation ("Accusation") filed on
26 May 10, 2006, in this matter:
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department of Real Estate in this
11 proceeding.

12 3. Respondents timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense the right to cross-examine
23 witnesses.
24

25 4. This Stipulation is based on the factual
26 allegations contained in the Accusation. In the interest of
27

1 expedience and economy, Respondents choose not to contest these
2 allegations, but to remain silent and understand that, as a
3 result thereof, these factual allegations, without being admitted
4 or denied, will serve as a prima facie basis for the disciplinary
5 action stipulated to herein. The Real Estate Commissioner shall
6 not be required to provide further evidence to prove said factual
7 allegations.

8 5. This Stipulation and Respondents' decision not to
9 contest the Accusation is made for the purpose of reaching an
10 agreed disposition of this proceeding and is expressly limited to
11 this proceeding and any other proceeding or case in which the
12 Department of Real Estate ("Department"), the state or federal
13 government, or any agency of this state, another state or federal
14 government is involved, and otherwise shall not be admissible in
15 any other criminal or civil proceedings.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 herein.
26
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondents herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of audit which led to
12 this disciplinary action. The amount of said cost for the audit
13 is \$6,757.50.

14 9. Respondents have received, read, and understand the
15 "Notice Concerning Costs of Subsequent Audit". Respondents
16 further understand that by agreeing to this Stipulation, the
17 findings set forth below in the Determination of Issues become
18 final, and the Commissioner may charge Respondents for the cost
19 of any subsequent audit conducted pursuant to Business and
20 Professions Code Section 10148 to determine if the violations
21 have been corrected. The maximum cost of the subsequent audit
22 will not exceed \$6,757.50.

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DETERMINATION OF ISSUES

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2 By reason of the foregoing, it is stipulated and agreed
3 that the following determination of issues shall be made:

I.

4
5 The conduct of BONA REAL ESTATE #1 INC., and JAIME G.
6 SUAREZ, as described in Paragraph 4, above, is in violation of
7 Section 10145 of the Business and Professions Code ("Code") and
8 Sections 2742(c), 2832.1, 2950 and 2951 of Title 10, Chapter 6 of
9 the California Code of Regulations ("Regulations") and is a basis
10 for the suspension or revocation of Respondents' license and
11 license rights as a violation of the Real Estate Law pursuant to
12 Code Section 10177(d).

II.

14 The conduct of JAIME G. SUAREZ, as described in
15 Paragraph 4, constitutes a failure to keep Bona Real Estate #1
16 Inc. in compliance with the Real Estate Law during the time that
17 he was the officer designated by a corporate broker licensee in
18 violation of Code Section 10159.2. This conduct is a basis for
19 the suspension or revocation of Respondent's license pursuant to
20 Code Section 10177(h).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents

BONA REAL ESTATE #1 INC., and JAIME G. SUAREZ under the Real

Estate Law are suspended for a period of sixty days from the

effective date of this Decision; provided, however, that if

Respondents request, the initial thirty days of said suspension

(or a portion thereof) shall be stayed upon condition that:

A 1. Respondents each pay a monetary penalty pursuant
to Section 10175.2 of the Business and Professions Code at the
rate of \$66.66 per day for each day of the suspension for a
monetary penalty of \$2,000 each or a total monetary penalty of
\$4,000.

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

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

4. If Respondents fail to pay the monetary penalty in
accordance with the terms of the Decision, the Commissioner may,
without a hearing, order the immediate execution of all or any

1 part of the stayed suspension, in which event the Respondents
2 shall not be entitled to any repayment nor credit, prorated or
3 otherwise, for money paid to the Department under the terms of
4 this Decision.

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

10 B. The remaining thirty days of the sixty day
11 suspension shall be stayed for two years upon the following terms
12 and conditions:

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

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

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2 Pursuant to Section 10148 of the Business and
3 Professions Code, Respondents BONA REAL ESTATE #1 INC. and JAIME
4 G. SUAREZ shall pay the Commissioner's reasonable cost for (a)
5 the audit which led to this disciplinary action (b) a subsequent
6 audit to determine if Respondents are now in compliance with the
7 Real Estate Law. The cost of the audit which led to this
8 disciplinary action is \$6,757.50. In calculating the amount of the
9 Commissioner's reasonable cost, the Commissioner may use the
10 estimated average hourly salary for all persons performing audits
11 of real estate brokers, and shall include an allocation for
12 travel time to and from the auditor's place of work. Said amount
13 for the prior and subsequent audits shall not exceed \$13,515.00

14
15 Respondents shall pay such cost within 60 days of
16 receiving an invoice from the Commissioner detailing the
17 activities performed during the audit and the amount of time
18 spent performing those activities.

19 The Commissioner may suspend the license of Respondents
20 pending a hearing held in accordance with Section 11500, et seq.,
21 of the Government Code, if payment is not timely made as provided
22 for herein, or as provided for in a subsequent agreement between
23 the Respondent and the Commissioner. The suspension shall remain
24 in effect until payment is made in full or until Respondents
25 enter into an agreement satisfactory to the Commissioner to
26 provide for payment, or until a decision providing otherwise is
27

1 provide for payment, or until a decision providing otherwise is
2 adopted following a hearing held pursuant to this condition.

3 IV.

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

17 V.

18 All licenses and licensing rights of Respondent JAIME
19 G. SUAREZ are indefinitely suspended unless or until Respondent
20 provides proof satisfactory to the Commissioner, of having taken
21 and successfully completed the continuing education course on
22 trust fund accounting and handling specified in paragraph (3) of
23 subdivision (a) of Section 10170.5 of the Business and
24 Professions Code. Proof of satisfaction of this requirement
25 includes evidence that respondent has successfully completed the
26 trust fund account and handling continuing education course
27

1 within 120 days prior to the effective date of the Decision in
2 this matter.

3
4 DATED: 11-08-06 EJL
5 ELLIOTT MAC LENNAN, Counsel for
6 the Department of Real Estate

7 * * *

8 EXECUTION OF THE STIPULATION

9 We have read the Stipulation and discussed it with our
10 counsel. Its terms are understood by us and are agreeable and
11 acceptable to us. We understand that we are waiving rights given
12 to us by the California Administrative Procedure Act (including
13 but not limited to Sections 11506, 11508, 11509 and 11513 of the
14 Government Code), and we willingly, intelligently and voluntarily
15 waive those rights, including the right of requiring the
16 Commissioner to prove the allegations in the Accusation at a
17 hearing at which we would have the right to cross-examine
18 witnesses against us and to present evidence in defense and
19 mitigation of the charges.

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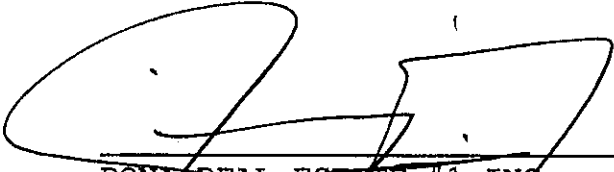
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1 Respondents can signify acceptance and approval of the
2 terms and conditions of this Stipulation by faxing a copy of its
3 signature page, as actually signed by Respondents, to the
4 Department at the following telephone/fax number: Elliott Mac
5 Lennan at (213) 576-6917. Respondents agree, acknowledge and
6 understand that by electronically sending to the Department a fax
7 copy of Respondents' actual signature as they appear on the
8 Stipulation, that receipt of the faxed copy by the Department
9 shall be as binding on Respondents as if the Department had
10 received the original signed Stipulation. Respondent's shall
11 forward the original signed signature page to Elliott Mac Lennan.
12

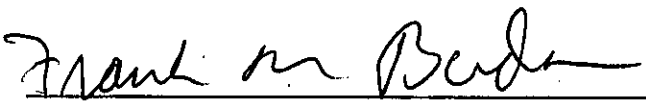
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14
15 DATED: 11/22/06


BONA REAL ESTATE #1 INC., a
corporate real estate broker,
BY: JAIME G. SUAREZ, D.O.,
Respondent

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17
18
19 DATED: 11/22/06


JAIME G. SUAREZ individually and as
designated officer of Bona Real
Estate #1 Inc., Respondent

20
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22
23 DATED: 11-29-06


FRANK M. BUDA, ESQ.
Attorney for Respondents
Approved as to form

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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents BONA REAL ESTATE #1 INC.
and JAIME G. SUAREZ, individually and as designated officer of
BONA REAL ESTATE #1 INC. and shall become effective at 12 o'clock
noon on FEB - 5 2007

IT IS SO ORDERED 12/28/06, 2006.

JEFF DAVE
Real Estate Commissioner



Handwritten initials/signature

FILED
MAY 10 2008
DEPARTMENT OF REAL ESTATE

1 ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
2 320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105
3
4 Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

By *K. Mederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Accusation of)	No. H-32834LA
12	BONA REAL ESTATE #1 INC.)	<u>A C C U S A T I O N</u>
13	and JAIME G. SUAREZ,)	
14	individually and as)	
15	designated officer of)	
16	Bona Real Estate #1 Inc.,)	
)	
	Respondents.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BONA REAL ESTATE #1 INC. and JAIME G. SUAREZ 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 BONA REAL ESTATE #1 INC. ("BREI") and JAIME G. SUAREZ ("SUAREZ").

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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, BONA REAL ESTATE #1 INC. was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On January 12, 1994, BREI was originally licensed as a real estate broker.

B. At all times mentioned, JAIME G. SUAREZ was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On September 18, 1974, SUAREZ was originally licensed as a real estate broker.

C. Effective February 4, 1986, in Case No. H-22225 LA, Respondents' broker licenses were disciplined as further set forth in Paragraph 11, below.

D. At all times material herein, BREI was licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a corporate real estate broker by and through SUAREZ, 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 BREI of by BREI's officers, agents and employees, including SUAREZ.

///

1 4.

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

5 A. Section 10131(a) of the Code. BREI operated a
6 residential resale brokerage; and

7 B. In addition, BREI 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 December 30, 2003, the Department completed an audit
17 examination of the books and records of BREI pertaining to the
18 resale and broker-escrow activities described in Paragraph 4,
19 that require a real estate license. The audit examination covered
20 a period of time beginning on August 31, 2002 to September 30,
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 030115 and LA 030167 and
24 the exhibits and workpapers attached to said audit reports.

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6.

1
2 At all times mentioned, in connection with the activities
3 described in Paragraph 4, above, BREI accepted or received funds
4 including funds in trust (hereinafter "trust funds") from or on
5 behalf of actual or prospective parties to transactions handled
6 by BREI and thereafter made deposits and or disbursements of such
7 funds. From time to time herein mentioned during the audit
8 period, said trust funds were deposited and/or maintained by BREI
9 in the bank accounts as follows:

10
11 "Bona Real Estate #1 Inc. ("escrow trust account")
12 013337969
13 City National Bank
14 20385 Yorba Linda Blvd.
15 Yorba Linda, Ca 92886

7.

16 In the course of activities described in Paragraphs 4
17 and 6, above, and during the examination period described in
18 Paragraph 5, Respondents BREI and SUAREZ, acted in violation of
19 the Code and the Regulations in that they:

20 (a) Permitted, allowed or caused the disbursement of
21 trust funds from the escrow trust account where the disbursement
22 of funds reduced the total of aggregate funds in the escrow trust
23 account, to an amount which, on September 30, 2003, was
24 \$56,035.64; less than the existing aggregate trust fund liability
25 of BREI to every principal who was an owner of said funds,
26 without first obtaining the prior written consent of the owners
27

1 of said funds, as required by Code Section 10145 and Regulations
2 2832.1, 2950(d), 2950(g) and 2951.

3 (b) Failed to perform a monthly reconciliation of the
4 balance of all separate beneficiary or transaction records
5 maintained pursuant to Regulation 2831.1, with the control record
6 of all trust funds received and disbursed by the escrow trust
7 account, as required by Regulation 2831, in violation of Code
8 Section 10145 and Regulations 2831.2, 2950(d) and 2951.

9 (c) Failed to maintain an accurate and complete control
10 record in the form of a columnar record in chronological order of
11 all trust funds received, deposited and disbursed by the escrow
12 trust account, in violation of Code Section 10145 and Regulations
13 2831, 2950(d) and 2951.

14 (d) Failed to place trust funds, including earnest
15 money deposits, accepted on behalf of another into the hands of
16 the owner of the funds, a neutral escrow depository or into a
17 trust fund account in the name of the trustee at a bank or other
18 financial institution not later than three business days
19 following receipt of the funds by the broker or by the broker's
20 salesperson, as required by Code Section 10145 and Regulations
21 2832, 2950(d) and 2951.

22 (e) Failed to maintain a separate record for each
23 beneficiary or transaction, thereby failing to account for all
24 trust funds received, deposited and disbursed, as required by
25 Code Section 10145 and Regulations 2831.1, 2950(d) and 2951; and
26
27

1 (f) On November 14, 2003, pursuant to the provisions of
2 California Revenue and Taxation Code Section 23302, the rights
3 and privileges of BREI were suspended by the California Secretary
4 of State. Said suspension is a violation of Code Section
5 ~~10177(f) in that it would have constituted grounds for the denial~~
6 of BREI's corporate real estate broker license under Regulation
7 2742(c), corporate Certificate of Good Standing, Domestic Stock
8 Corporation, State of California.

9 8.

10 The conduct of Respondents BREI and SUAREZ, described
11 in Paragraph 7, above, violated the Code and the Regulations as
12 set forth below:

13 PARAGRAPH

14 PROVISIONS VIOLATED

15 7(a)	Code Section 10145 and Regulations 16 2832.1, 2950(d), 2950(g), and 2951
17 7(b)	Code Section 10145 and Regulations 18 2831.2, 2950(d) and 2951
19 7(c)	Code Section 10145 and Regulations 20 2831, 2950(d) and 2951
21 7(d)	Code Section 10145 and Regulations 22 2832, 2950(d) and 2951
23 7(e)	Code Section 10145 and Regulations 24 2831.1, 2950(d) and 2951
25 7(f)	Code Section 10177(f) and 26 Regulation 2742(c)

1 The foregoing violations constitutes cause for the suspension or
2 revocation of the real estate license and license rights of BREI
3 and SUAREZ under the provisions of Code Sections 10177(d) and/or
4 10177(g).

5 9.

6 The overall conduct of Respondents BREI and SUAREZ
7 constitutes negligence or incompetence. This conduct and
8 violation are cause for the suspension or revocation of the real
9 estate license and license rights of Respondents BREI and SUAREZ
10 pursuant to Code Section 10177(g).

11 10.

12 The conduct, acts and/or omissions of SUAREZ, in
13 causing, allowing, or permitting BREI to violate the Real Estate
14 Law, as described, herein above, constitutes failure on the part
15 of Respondent SUAREZ, as the officer designated by a corporate
16 broker licensee, to exercise the reasonable supervision and
17 control over the licensed activities of BREI, as required by Code
18 Section 10159.2 and Regulation 2725. Said conduct is cause to
19 suspend or revoke the real estate licenses and license rights of
20 SUAREZ pursuant to the provisions of Code Sections 10177(d) or
21 and 10177(h).

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PRIOR DEPARTMENTAL ACTION

11.

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2
3 On April 26 1985, and as amended thereto on April 29,
4 1985, in Case No. H-22225 LA, Accusations were filed against
5 Respondent JAIMIE G. SUAREZ and Bona Real Estate, a corporation,
6 predecessor-in-interest to BONA REAL ESTATE #1 INC., that
7 resulted in discipline by public reproof after a hearing for
8 said parties for violations of Sections 10141, 10145 and 10176(a)
9 of the California Business and Professions Code and Sections 2831
10 and 2831.1 of Title 10, Chapter 6, California Code of
11 Regulations, effective February 4, 1986.

12 WHEREFORE, Complainant prays that a hearing be
13 conducted on the allegations of this Accusation and that upon
14 proof thereof, a decision be rendered imposing disciplinary
15 action against the license and license rights of Respondents BONA
16 REAL ESTATE-#1 INC. and JAIME G. SUAREZ, under the Real Estate
17 Law (Part 1 of Division 4 of the Business and Professions Code)
18 and for such other and further relief as may be proper under
19 other applicable provisions of law.
20

21 Dated at Los Angeles, California

22 this

10th day of January 1986


Deputy Real Estate Commissioner

24 cc: Bona Real Estate #1 Inc.
25 c/o Jaime G. Suarez D.O.
26 Maria Suarez
27 Sacto
Audits - Darryl M. Thomas