

1 Department of Real Estate  
P. O. Box 187000  
2 Sacramento, CA 95818-7000  
3 Telephone: (916) 227-0789

FILED  
JUN 20 2000

DEPARTMENT OF REAL ESTATE  
By *Laurie L. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-2550 SD  
12 PENNY REALTY, INC., ) OAH NO. L-2000030076  
13 GREGORY SHAWN FLAHERTY, )  
14 Respondents. ) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between PENNY REALTY,  
16 INC. dba ReMax Coastal Properties (hereinafter "Respondent  
17 PENNY") and GREGORY SHAWN FLAHERTY (hereinafter "Respondent  
18 FLAHERTY") and their attorneys of record Steven F. Spierer and  
19 Charles I. Karlin, and Complainant, acting by and through David  
20 A. Peters, Counsel for the Department of Real Estate, as follows  
21 for purpose of settling and disposing of the Accusation filed  
22 February 17, 2000 in this matter:

23 1. All issues which were to be contested and all  
24 evidence which was to be presented by Complainant and  
25 Respondents at a formal hearing on the Accusation, which hearing  
26 was to be held in accordance with the provisions of the  
27 Administrative Procedure Act (APA) (Government Code Section

1 11500 et seq.), shall instead and in place thereof be submitted  
2 solely on the basis of the provisions of this Stipulation and  
3 Agreement.

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

8           3. On February 28, 2000, Respondents filed their  
9 Notices of Defense pursuant to Section 11505 of the Government  
10 Code for the purpose of requesting a hearing on the allegations  
11 in the Accusation. Respondents hereby freely and voluntarily  
12 withdraw their Notices of Defense. Respondents acknowledge that  
13 by withdrawing said Notices of Defense they will thereby waive  
14 their right to require the Commissioner to prove the allegations  
15 in the Accusation at a contested hearing held in accordance with  
16 the provisions of the APA and that they will waive other rights  
17 afforded to them in connection with the hearing such as the  
18 right to present evidence in defense of the allegations in the  
19 Accusation and the right to cross-examine witnesses.

20           4. This Stipulation is based on the factual  
21 allegations contained in the Accusation. In the interests of  
22 expedience and economy, Respondents choose not to contest these  
23 allegations, but to remain silent and understand that, as a  
24 result thereof, these factual allegations, without being  
25 admitted or denied, will serve as a prima facia basis for the  
26 disciplinary action stipulated to herein. The Real Estate

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1 Commissioner shall not be required to provide further evidence  
2 to prove said factual allegations.

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

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

20           7. Respondents understand that by agreeing to this  
21 Stipulation and Agreement in Settlement, Respondents agree to  
22 pay, pursuant to Section 10148 of the Business and Professions  
23 Code, the cost of the audit which led to this disciplinary  
24 action. The amount of said costs is \$3,822.02.

25           8. Respondents have received, read, and understand  
26 the "Notice Concerning Costs of Subsequent Audit.". Respondents  
27 further understand that by agreeing to this Stipulation and

1 Agreement in Settlement, the findings set forth below in the  
2 DETERMINATION OF ISSUES become final, and that the Commissioner  
3 may charge Respondents for the costs of any subsequent audit  
4 conducted pursuant to Section 10148 of the Business and  
5 Professions Code to determine if the violations have been  
6 corrected. The maximum costs of said audit will not exceed  
7 \$3,822.02.

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions  
10 and waivers, and solely for the purpose of settlement of the  
11 pending Accusation without a hearing, it is stipulated and  
12 agreed that the following determination of issues shall be made:

13 I

14 The conduct of Respondent PENNY, as described in the  
15 Accusation, constitutes cause for the suspension or revocation  
16 of the real estate license and license rights of Respondent  
17 PENNY under the provisions of Sections 10176(a) and 10176(i) of  
18 the Business and Professions Code and Section 10177(d) of the  
19 Business and Professions Code in conjunction with Section 10145  
20 of the Business and Professions Code and Sections 2832.1, 2834,  
21 2831, 2831.1, 2752, and 2826 of Title 10, California Code of  
22 Regulations.

23 II

24 The conduct of Respondent FLAHERTY, as described in  
25 the Accusation, constitutes cause for suspension or revocation  
26 of the real estate license and license rights of Respondent  
27 FLAHERTY under the Provisions of Sections 10176(e), 10176(a),

1 and 10176(i) of the Business and Professions Code and Section  
2 10177(d) of the Business and Professions Code in conjunction  
3 with Section 10145 of the Business and Professions Code and  
4 Sections 2832.1, 2834, 2835, 2831, 2831.1, 2752, and 2826 of  
5 Title 10, California code of Regulations.

6 ORDER

7 I

8 A. All licenses and licensing rights of Respondent  
9 PENNY REALTY, INC. under the Real Estate Law are suspended for a  
10 period of sixty (60) days from the effective date of this  
11 Decision; provided, however, that thirty (30) days of said  
12 suspension shall be stayed for one (1) year upon the following  
13 terms and conditions:

14 1. Respondents PENNY and/or FLAHERTY petitions and  
15 pays a monetary penalty pursuant to Section 10175.2 of the  
16 Business and Professions Code at the rate of \$200.00 for each  
17 day of the suspension for a total monetary penalty of \$6,000.00.

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

23 3. No further cause for disciplinary action against  
24 the real estate license of Respondent PENNY occurs within one  
25 (1) year from the effective date of the Decision in this matter.

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1                   4. If Respondents PENNY and/or FLAHERTY fail to pay  
2 the monetary penalty in accordance with the terms and conditions  
3 of the Decision, the Commissioner may, without a hearing, order  
4 the immediate execution of all or any part of the stayed  
5 suspension in which event Respondent PENNY shall not be entitled  
6 to any repayment nor credit, prorated or otherwise, for money  
7 paid to the Department under the terms of this Decision. Should  
8 no order vacating the stay be issued in accordance with this  
9 condition or any other condition of this Decision, the stay  
10 imposed herein shall become permanent.

11                   B. The remaining thirty (30) days of said suspension  
12 shall be stayed for one (1) year upon the following terms and  
13 conditions:

14                   1. Pursuant to Section 10148 of the Business and  
15 Professions Code, Respondents PENNY and/or FLAHERTY shall pay  
16 the Commissioner's reasonable cost for: a) the audit which led  
17 to this disciplinary action and, b) a subsequent audit to  
18 determine if Respondents have corrected the trust fund  
19 violations found in paragraph I of the Determination of Issues.  
20 In calculating the amount of the Commissioner's reasonable cost,  
21 the Commissioner may use the estimated average hourly salary for  
22 all persons performing audits of real estate brokers, and shall  
23 include an allocation for travel costs, including mileage, time  
24 to and from the auditor's place of work and per diem.

25                   2. Respondents PENNY and/or FLAHERTY shall, prior to  
26 the effective date of this Decision, and as a condition  
27 precedent to the stay of thirty (30) days of said suspension,

1 pay \$3,822.02 to the Department's general fund, for the audit  
2 which led to this disciplinary action and \$3,822.02 to the  
3 Department's general fund for the follow-up chargeable audit.

4 a) Respondent shall be entitled to a refund in full  
5 of said \$3,822.02 if the follow-up chargeable  
6 audit is not performed within two years from the  
7 effective date of the Decision herein. If the  
8 actual charge for the follow-up chargeable audit  
9 is less than \$3,822.02, Respondent PENNY and/or  
10 FLAHERTY shall be entitled to a refund of the  
11 difference between the actual charge and  
12 \$3,822.02.

13 3. If Respondents PENNY and/or FLAHERTY pay the  
14 Commissioner's reasonable costs for both audits and if no  
15 further cause for disciplinary action against the real estate  
16 license of Respondent PENNY, as finally determined after hearing  
17 or stipulation, occurs within one (1) year from the effective  
18 date of this Decision, and should no order vacating the stay be  
19 issued in accordance with any other condition of this Decision,  
20 the stay imposed herein shall become permanent.

21 4. Respondent PENNY and/or FLAHERTY, prior to the  
22 effective date of this Decision, shall provide evidence  
23 satisfactory to the Commissioner that Respondent PENNY and/or  
24 FLAHERTY have notified the owners of properties managed by  
25 Respondents that Respondents own A+ Cleaning and the amounts of  
26 any "mark-ups" charged to said owners by A+ Cleaning as a  
27 condition precedent to the stay. If Respondent PENNY and/or

1 FLAHERTY prior to the effective date of the Decision, provides  
2 said evidence satisfactory to the Commissioner and should no  
3 order vacating the stay be issued in accordance with any other  
4 condition of this Decision the stay shall become permanent.

5 5. Respondent PENNY and/or FLAHERTY, prior to the  
6 effective date of this Decision, shall provide evidence  
7 satisfactory to the Commissioner that the trust fund shortage  
8 alleged in the Accusation has been cured, as a condition  
9 precedent to the stay. If Respondent PENNY and/or FLAHERTY  
10 prior to the effective date of the Decision, provides said  
11 evidence satisfactory to the Commissioner and should no order  
12 vacating the stay be issued in accordance with any other  
13 condition of this Decision the stay shall become permanent.

14 6. Respondent PENNY shall obey all laws, rules and  
15 regulations governing the rights, duties and responsibilities of  
16 a real estate licensee in the state of California; and that no  
17 final subsequent determination be made, after hearing or upon  
18 stipulation, that cause for disciplinary action occurred within  
19 one (1) year of the effective date of this Decision. Should  
20 such a determination be made, the Commissioner may, in her  
21 discretion, vacate and set aside the stay order and reimpose all  
22 or a portion of the stayed suspension. Should no such order  
23 vacating the stay be issued in accordance with this condition or  
24 any other condition of this Decision, the stay imposed herein  
25 shall become permanent.

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2 II

3 B. All licenses and licensing rights of Respondent  
4 GREGORY SHAWN FLAHERTY under the Real Estate Law are suspended  
5 for a period of sixty (60) days from the effective date of this  
6 Decision; provided, however, that thirty (30) days of said  
7 suspension shall be stayed for one (1) year upon the following  
8 terms and conditions:

9 1. Respondents FLAHERTY and/or PENNY petitions and  
10 pays a monetary penalty pursuant to Section 10175.2 of the  
11 Business and Professions Code at the rate of \$200.00 for each  
12 day of the suspension for a total monetary penalty of \$6,000.00.

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

18 3. No further cause for disciplinary action against  
19 the real estate license of Respondent FLAHERTY occurs within one  
20 (1) year from the effective date of the Decision in this matter.

21 4. If Respondents FLAHERTY and/or PENNY fail to pay  
22 the monetary penalty in accordance with the terms and conditions  
23 of the Decision, the Commissioner may, without a hearing, order  
24 the immediate execution of all or any part of the stayed  
25 suspension in which event Respondent FLAHERTY shall not be  
26 entitled to any repayment nor credit, prorated or otherwise, for  
27 money paid to the Department under the terms of this Decision.  
Should no order vacating the stay be issued in accordance with

1 this condition or any other condition of this Decision, the stay  
2 imposed herein shall become permanent.

3 B. The remaining thirty (30) days of said suspension  
4 shall be stayed for one (1) year upon the following terms and  
5 conditions:

6 1. Pursuant to Section 10148 of the Business and  
7 Professions Code, Respondents FLAHERTY and/or PENNY shall pay  
8 the Commissioner's reasonable cost for: a) the audit which led  
9 to this disciplinary action and, b) a subsequent audit to  
10 determine if Respondents have corrected the trust fund  
11 violations found in paragraph I and II of the Determination of  
12 Issues. In calculating the amount of the Commissioner's  
13 reasonable cost, the Commissioner may use the estimated average  
14 hourly salary for all persons performing audits of real estate  
15 brokers, and shall include an allocation for travel costs,  
16 including mileage, time to and from the auditor's place of work  
17 and per diem.

18 2. Respondents FLAHERTY and/or PENNY shall, prior to  
19 the effective date of this Decision, and as a condition  
20 precedent to the stay of thirty (30) days of said suspension,  
21 pay \$3,822.02 to the Department's general fund, for the audit  
22 which led to this disciplinary action, and \$3,822.02 to the  
23 Department's general fund for the follow-up chargeable audit.

24 a) Respondent shall be entitled to a refund in full  
25 of said \$3,822.02 if the follow-up chargeable  
26 audit is not performed within two years from the  
27 effective date of the Decision herein. If the

1 actual charge for the follow-up chargeable audit  
2 is less than \$3,822.02, Respondent FLAHERTY  
3 and/or PENNY shall be entitled to a refund of the  
4 difference between the actual charge and  
5 \$3,822.02.

6 3. If Respondents FLAHERTY and/or PENNY pay the  
7 Commissioner's reasonable costs for both audits and if no  
8 further cause for disciplinary action against the real estate  
9 license of Respondent FLAHERTY, as finally determined after  
10 hearing or stipulation, occurs within one (1) year from the  
11 effective date of this Decision, and should no order vacating  
12 the stay be issued in accordance with any other condition of  
13 this Decision, the stay imposed herein shall become permanent.

14 4. Respondent FLAHERTY and/or PENNY, prior to the  
15 effective date of this Decision, shall provide evidence  
16 satisfactory to the Commissioner that Respondent FLAHERTY and/or  
17 PENNY have notified the owners of properties managed by  
18 Respondents that Respondents own A+ Cleaning and the amounts of  
19 any "mark-ups" charged to said owners by A+ Cleaning as a  
20 condition precedent to the stay. If Respondent FLAHERTY and/or  
21 PENNY prior to the effective date of this Decision, provides  
22 said evidence satisfactory to the Commissioner and should no  
23 order vacating the stay be issued in accordance with any other  
24 condition of this Decision the stay shall become permanent.

25 5. Respondent FLAHERTY and/or PENNY, prior to the  
26 effective date of this Decision, shall provide evidence  
27 satisfactory to the Commissioner that the trust fund shortage

1 alleged in the Accusation has been cured, as a condition  
2 precedent to the stay. If Respondent FLAHERTY and/or PENNY  
3 prior to the effective date of this Decision, provides said  
4 evidence satisfactory to the Commissioner and should no order  
5 vacating the stay be issued in accordance with any other  
6 condition of this Decision the stay shall become permanent.

7 6. Respondent FLAHERTY shall obey all laws, rules  
8 and regulations governing the rights, duties and  
9 responsibilities of a real estate licensee in the State of  
10 California; and no final subsequent determination be made, after  
11 hearing or upon stipulation, that cause for disciplinary action  
12 occurred within one (1) year of the effective date of this  
13 Decision. Should such a determination be made, the Commissioner  
14 may, in her discretion, vacate and set aside the stay order and  
15 reimpose all or a portion of the stayed suspension. Should no  
16 such order vacating the stay be issued in accordance with this  
17 condition or any other condition of this Decision, the stay  
18 imposed herein shall become permanent.

19 5/15/2000  
20 \_\_\_\_\_  
DATED

21 David A. Peters  
DAVID A. PETERS, Counsel  
DEPARTMENT OF REAL ESTATE

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\* \* \*

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11505, 11598, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Second Amended Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

5/18/00  
DATED

Gregory Shawn Flaherty  
PENNY REALTY, INC.  
Respondent  
By: Gregory Shawn Flaherty


5/18/00  
DATED

Gregory Shawn Flaherty  
GREGORY SHAWN FLAHERTY  
Respondent

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1 I have reviewed the Stipulation and Agreement in  
2 Settlement as to form and content and have advised my clients  
3 accordingly.

4  
5 5/16/00  
6 DATED

  
7 STEVEN F. SPIERER  
8 Attorney for Respondents

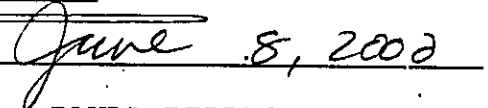
9  
10 5/16/00  
11 DATED

  
12 CHARLES I. KARLIN  
13 Attorney for Respondents

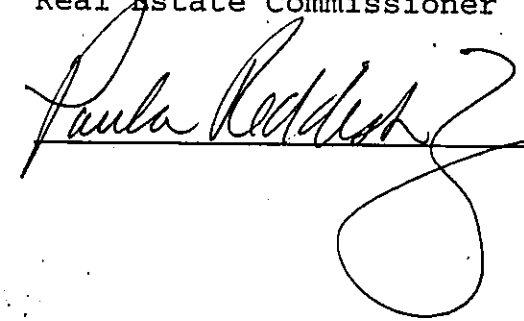
14 \* \* \*

15 The foregoing Stipulation and Agreement for  
16 Settlement is hereby adopted by the Real Estate Commissioner as  
17 her Decision and Order and shall become effective at 12 o'clock  
18 noon on July 11, 2000

19 IT IS SO ORDERED

  
20

21 PAULA REDDISH ZINNEMANN  
22 Real Estate Commissioner

  
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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

MAR 31 2000

DEPARTMENT OF REAL ESTATE

*Laurie G. Z...*  
By \_\_\_\_\_

In the Matter of the Accusation of

PENNY REALTY, INC. and  
GREGORY SHAWN FLAHERTY,

}

Case No. H-2550 SD

OAH No. L-2000030076

Respondent

FIRST AMENDED  
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the  
Office of Administrative Hearings, 1350 Front Street, Room 6022,  
San Diego, CA 92101

on Tuesday, May 23, 2000, at the hour of 9:00 AM,  
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: March 31, 2000

By *David A. Peters*  
DAVID A. PETERS Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

MAR - 8 2000

DEPARTMENT OF REAL ESTATE

*Laurie G. Fair*

In the Matter of the Accusation of

PENNY REALTY, INC. and  
GREGORY SHAWN FLAHERTY,

}

Case No. H-2550 SD

OAH No. L-2000030076

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the  
Office of Administrative Hearings, 1350 Front Street, Room 6022,  
San Diego, CA 92101

on Monday, May 8, 2000, at the hour of 9:00 AM,  
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: March 8, 2000

By David A. Peters  
DAVID A. PETERS Counsel



1 DAVID A. PETERS, Counsel (SBN 99528)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0781 (Direct)

FILED  
FEB 17 2000

DEPARTMENT OF REAL ESTATE

*Laurie A. Zia*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-2550 SD  
12 PENNY REALTY, INC., ) ACCUSATION  
13 GREGORY SHAWN FLAHERTY, )  
14 Respondent. )

15 The Complainant, J. Chris Graves, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against PENNY REALTY, INC. dba ReMax Coastal Properties  
18 (hereinafter "Respondent PENNY") and GREGORY SHAWN FLAHERTY  
19 (hereinafter "Respondent FLAHERTY"), is informed and alleges as  
20 follows:

21 I

22 The Complainant, J. Chris Graves, a Deputy Real Estate  
23 Commissioner of the State of California, makes this Accusation  
24 against Respondent PENNY and Respondent FLAHERTY in his official  
25 capacity.

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1 II

2 Respondent PENNY is presently licensed and/or has  
3 license rights under the Real Estate Law, Part 1 of Division 4 of  
4 the California Business and Professions Code (hereinafter  
5 "Code"). At all times herein mentioned, Respondent PENNY was  
6 licensed as a real estate broker corporation by and through its  
7 designated broker-officer Respondent FLAHERTY.

8 III

9 Respondent FLAHERTY is presently licensed and/or has  
10 license rights under the Code. At all times herein mentioned,  
11 Respondent FLAHERTY was licensed as a real estate broker and  
12 served as the designated broker-officer of Respondent PENNY.

13 IV

14 Whenever reference is made in an allegation in this  
15 Accusation to an act or omission of "Respondents", such  
16 allegation shall be deemed to mean the act or omission of each of  
17 the Respondents named in the caption hereof, acting individually,  
18 jointly, and severally.

19 V

20 At all times herein mentioned, Respondents engaged in  
21 the business of, acted in the capacity of, advertised or assumed  
22 to act as a real estate brokers in the State of California within  
23 the meaning of Section 10131(b) of the Code, including the  
24 operation and conduct of a real estate property management  
25 business with the public wherein, on behalf of others and for  
26 compensation or in expectation of compensation, Respondents  
27 solicited prospective tenants for, negotiated rental agreements

1 for, collected rents from and otherwise managed certain real  
2 properties located in or near San Diego, California.

3 VI

4 During the course of the property management activities  
5 described in Paragraph V above, Respondents received and  
6 disbursed funds held in trust on behalf of another or others.

7 VII

8 Beginning on or before January 1, 1998 and continuing  
9 through on or after April 30, 1999, in connection with the  
10 property management activities described in Paragraph V above,  
11 Respondents maintained the following trust fund account:

12	<u>TITLE &amp; ACCOUNT NO.</u>	<u>BANK</u>
13	Penny Realty Inc Property Trust II	Peninsula Bank
14	Account No. 560005701	San Diego, California
15	(hereinafter "Trust Account")	

16 VIII

17 In connection with the collection and disbursement of  
18 said trust funds, Respondents failed to deposit and maintain said  
19 trust funds in the Trust Account in such manner that as of  
20 April 30, 1999, there was a shortage of \$1,871.26 of trust funds,  
21 in violation of Section 10145 of the Code.

22 IX

23 Respondents failed to obtain the prior written consent  
24 of their principals for the reduction of the aggregate balance of  
25 trust funds in the Trust Account to an amount less than the  
26 existing aggregate trust fund liability to the owners of said  
27 funds in violation of Section 2832.1 of Title 10, California Code  
of Regulations (hereinafter "Regulations").

1 for, collected rents from and otherwise managed certain real  
2 properties located in or near San Diego, California.

3 VI

4 During the course of the property management activities  
5 described in Paragraph V above, Respondents received and  
6 disbursed funds held in trust on behalf of another or others.

7 VII

8 Beginning on or before January 1, 1998 and continuing  
9 through on or after April 30, 1999, in connection with the  
10 property management activities described in Paragraph V above,  
11 Respondents maintained the following trust fund account:

12 <u>TITLE &amp; ACCOUNT NO.</u>	<u>BANK</u>
13 Penny Realty Inc Property Trust II 14 Account No. 560005701 (hereinafter "Trust Account")	Peninsula Bank San Diego, California

15 VIII

16 In connection with the collection and disbursement of  
17 said trust funds, Respondents failed to deposit and maintain said  
18 trust funds in the Trust Account in such manner that as of  
19 April 0, 1999, there was a shortage of \$1,871.26 of trust funds,  
20 in violation of Section 10145 of the Code.

21 IX

22 Respondents failed to obtain the prior written consent  
23 of their principals for the reduction of the aggregate balance of  
24 trust funds in the Trust Account to an amount less than the  
25 existing aggregate trust fund liability to the owners of said  
26 funds in violation of Section 2832.1 of Title 10, California Code  
27 of Regulations (hereinafter "Regulations").

1 X

2 In connection with the Trust Account, Respondents  
3 permitted withdrawals to be made from the Trust Account by  
4 someone other than a salesperson licensed by Respondents and  
5 authorized in writing by Respondents to withdraw said funds, or  
6 an unlicensed employee covered by a fidelity bond indemnifying  
7 Respondents against loss in an amount sufficient to cover the  
8 maximum amount of funds to which the employee had access at any  
9 time in violation of Section 2834 of the Regulations.

10 XI

11 In connection with the receipt and disbursement of  
12 trust funds as described in Paragraph VI above, Respondent  
13 FLAHERTY commingled with his own money or property the money or  
14 property of others which was received and held by Respondents in  
15 violation of Section 10176(e) of the Code and Section 2835 of the  
16 Regulations.

17 XII

18 In connection with the receipt and disbursement of  
19 trust funds as described in Paragraph VI above, Respondents  
20 failed to maintain adequate columnar records of all trust funds  
21 received and disbursed in the manner required by Section 2831 of  
22 the Regulations.

23 XIII

24 In connection with the receipt and disbursement of  
25 trust funds described in Paragraph VI above, Respondents failed  
26 to adequately maintain separate records for each beneficiary or  
27 transaction, accounting therein for all said trust funds

1 received, deposited, and disbursed in the manner required by  
2 Section 2831.1 of the Regulations.

3 XIV

4 Within the three-year period immediately preceding the  
5 filing of this Accusation, Respondents failed to notify the Real  
6 Estate Commissioner in writing that real estate salesperson  
7 Daniel Alvarez, Fabian Jose Gonzalez and Nancy Currie LaBuda were  
8 employed by Respondent PENNY as required by Section 10161.8 of  
9 the Code and Section 2752 of the Regulations.

10 XV

11 Within the three-year period immediately preceding the  
12 filing of this Accusation, Respondents failed to notify the Real  
13 Estate Commissioner in writing that real estate salespersons  
14 Susan Marie O'Connell and Susan J. Wilson were terminated from  
15 the employ of Respondent PENNY as required by Section 10161.8 of  
16 the Code and Section 2752 of the Regulations.

17 XVI

18 Within the three-year period immediately preceding the  
19 filing of this Accusation, Respondents failed to have written  
20 broker-salesperson agreements with Respondent PENNY's employees  
21 Jean Dickenson, Nancy Currie LaBuda and Edwin Michael Nakamura as  
22 required by Section 2826 of the Regulations.

23 XVII

24 Within the three-year period immediately preceding the  
25 filing of this Accusation, Respondent PENNY was the owner of a  
26 company called A+ Cleaning, a cleaning company. Respondents  
27 during said period, pursuant to management contracts with various

1 principals, ordered work done on properties owned by these  
2 principals and paid on behalf of these principals bills for  
3 cleaning done by A+ Cleaning or by subcontractors of A+ Cleaning.  
4 Respondents failed to inform the various principals that  
5 Respondent PENNY was also the owner of A+ Cleaning, a material  
6 fact which Respondents knew or should have known, but was unknown  
7 to said principals.

8 XVIII

9 Within the three-year period immediately preceding the  
10 filing of this Accusation, Respondents permitted and/or caused  
11 the disbursement of trust funds to A+ Cleaning (a company owned  
12 by Respondent PENNY) on the representation that these amounts  
13 were needed to pay for cleaning, which payments exceeded the  
14 actual costs of these services by Respondents. Respondents did  
15 not cause the disclosure of these "mark-ups" to the beneficiaries  
16 of said trust funds, did not obtain their consent to these "mark-  
17 ups" and pocketed the difference between the amounts paid and the  
18 actual costs of the services.

19 XIX

20 The acts and/or omissions of Respondents described  
21 above, are grounds for the suspension or revocation of  
22 Respondents' licenses under the following sections of the Code  
23 and Regulations:

24 (1) As to Paragraph VIII, under Section 10177(d) of  
25 the Code in conjunction with Section 10145 of the Code;

26 (2) As to Paragraph IX, under Section 10177(d) of the  
27 Code in conjunction with 2832.1 of the Regulations;

1 (3) As to Paragraph X, under Section 10177(d) of the  
2 Code in conjunction with Section 2834 of the Regulations;

3 (4) As to Paragraph XI, under Section 10176(e) of the  
4 Code and Section 10177(d) of the Code in conjunction with Section  
5 2835 of the Regulations, as to Respondent FLAHERTY;

6 (5) As to Paragraph XII, under Section 10177(d) of the  
7 Code in conjunction with Section 2831 of the Regulations;

8 (6) As to Paragraph XIII, under Section 10177(d) of  
9 the Code in conjunction with Section 2831.1 of the Regulations;

10 (7) As to Paragraphs XIV and XV, under Section  
11 10177(d) of the Code in conjunction with Section 10161.8 of the  
12 Code and Section 2752 of the Regulations;

13 (8) As to Paragraph XVI, under Section 10177(d) of the  
14 Code in conjunction with Section 2826 of the Regulations; and

15 (9) As to Paragraphs XVII and XVIII, under Section  
16 10176(a) of the Code and Section 10176(i) of the Code and/or  
17 Section 10177(j) of the Code.

18 In the alternative the acts and/or omissions of  
19 Respondent FLAHERTY, as described in Paragraphs VIII, IX, X, XII,  
20 and XIII above, constitute failure on the part of Respondent  
21 FLAHERTY, as designated broker-officer of Respondent PENNY, to  
22 exercise reasonable supervision and control over the licensed  
23 activities of Respondent PENNY required by Section 10159.2 of the  
24 Code, and is cause for the suspension or revocation of Respondent  
25 FLAHERTY's licenses and/or license rights under Section 10177(h)  
26 of the Code.

27 ///



