

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

JUN 17 2011

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 D & N SHEWMAKER PROPERTIES, INC.,)
14 a Corporation,)
15 DONALD STUART SHEWMAKER, and,)
16 NANCY MARGARET SHEWMAKER,)
Respondents.)

NO. H-5380 SAC

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

17 It is hereby stipulated by and between Respondents D & N SHEWMAKER
18 PROPERTIES, INC. (herein "SHEWMAKER, INC."), DONALD STUART SHEWMAKER
19 (herein "D. SHEWMAKER"), and NANCY MARGARET SHEWMAKER (herein
20 "N. SHEWMAKER") (herein jointly "Respondents"), individually and jointly, by and through
21 Joshua A. Rosenthal, attorney of record herein for Respondents, and the Complainant, acting by
22 and through Mary F. Clarke, Counsel for the Department of Real Estate (herein "the
23 Department"), as follows for the purpose of settling and disposing of the Accusation filed on
24 April 23, 2010 in this matter:

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

1 shall instead and in place thereof be submitted solely on the basis of the provisions of this
2 Stipulation and Agreement in Settlement and Order.

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

6 3. Notices of Defense were filed on May 5, 2010, by Respondents, pursuant to
7 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
8 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices of Defense.
9 Respondents acknowledge that they understand that by withdrawing said Notices of Defense
10 they will thereby waive their right to require the Real Estate Commissioner (herein the
11 "Commissioner") to prove the allegations in the Accusation at a contested hearing held in
12 accordance with the provisions of the APA and that they will waive other rights afforded to them
13 in connection with the hearing such as the right to present evidence in defense of the allegations
14 in the Accusation and the right to cross-examine witnesses.

15 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
16 factual allegations pertaining to them in the Accusation filed in this proceeding are true and
17 correct and the Commissioner shall not be required to provide further evidence of such
18 allegations.

19 5. It is understood by the parties that the Commissioner may adopt the Stipulation
20 and Agreement in Settlement and Order as his/her decision in this matter thereby imposing the
21 penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the
22 below "Order". In the event that the Commissioner in his/her discretion does not adopt the
23 Stipulation and Agreement in Settlement and Order, it shall be void and of no effect, and
24 Respondents shall retain the right to a hearing and proceeding on the Accusation under all the
25 provisions of the APA and shall not be bound by any admission or waiver made herein.

26 6. The Order or any subsequent Order of the Commissioner made pursuant to this
27 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or

1 bar to any further administrative or civil proceedings by the Department with respect to any
2 matters which were not specifically alleged to be causes for accusation in this proceeding.

3 7. Respondents understand that by agreeing to this Stipulation and Agreement in
4 Settlement and Order, Respondents jointly and severally agree to pay, pursuant to Section 10148
5 of the California Business and Professions Code (herein the "Code"), the cost of the audits,
6 which resulted in the determination that Respondents committed the trust fund violation(s) found
7 in Paragraph I, below, of the Determination of Issues. The amounts of said costs of the audits are
8 \$4,498.61 and \$6,217.61, as set forth in the Order, below:

9 8. Respondents further understand that by agreeing to this Stipulation and
10 Agreement in Settlement and Order, the findings set forth below in the Determination of Issues
11 become final, and that the Commissioner may charge said Respondents, jointly and severally, for
12 the costs of any audits conducted pursuant to Section 10148 of the Code to determine if the trust
13 fund violation(s) found in Paragraph I, below, of the Determination of Issues have been
14 corrected. The maximum costs of said audits shall not exceed \$4,498.61 and \$6,217.61, as set
15 forth in the Order, below.

16 DETERMINATION OF ISSUES

17 I

18 The acts and omissions of Respondents as described in the Accusation are
19 grounds for the suspension or revocation of the licenses and license rights of Respondents under
20 the following provisions of the Code and/or Chapter 6, Title 10, of the California Code of
21 Regulations (herein "the Regulations"):

22 (a) as to Respondent SHEWMAKER, INC., under Sections 10145, 10148,
23 10159.5, 10161.8, and 10162 of the Code and Sections 2731, 2832, 2831, 2831.1, 2831.2, and
24 2832.1 of the Regulations, in conjunction with Section 10177(d) of the Code;

25 (b) as to Respondent N. SHEWMAKER, under Sections 10145, 10148,
26 10159.5, and 10162 of the Code and Sections 2715, 2831, 2831.2, and 2832 of the Regulations,
27 in conjunction with Section 10177(d) of the Code; and

1 (c) as to Respondent D. SHEWMAKER, under Sections 10160, 10161.8,
2 10177(g) and (h), and 10159.2 of the Code and Sections 2725, and 2753 of the Regulations, in
3 conjunction with Section 10177(d) of the Code.

4 ORDER

5 I

6 A. All licenses and licensing rights of Respondent SHEWMAKER, INC., under the Real
7 Estate Law are suspended for a period of ninety (90) days from the effective date of this
8 Order; provided, however, that:

9 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the following
10 terms and conditions:

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

14 (b) That no final subsequent determination be made, after hearing or upon
15 stipulation, that cause for disciplinary action occurred within two (2) years
16 from the effective date of this Order. Should such a determination be made,
17 the Commissioner may, in his/her discretion, vacate and set aside the stay
18 order and reimpose all or a portion of the stayed suspension. Should no such
19 determination be made, the stay imposed herein shall become permanent.

20 2. The remaining thirty (30) days of said 90-day suspension shall be stayed upon the
21 condition that Respondent SHEWMAKER, INC., petition pursuant to Section
22 10175.2 of the Code and pay a monetary penalty pursuant to Section 10175.2 of the
23 Code at a rate of \$100.00 for each day of the suspension for a total monetary penalty
24 of \$3,000.00:

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

1 (b) No further cause for disciplinary action against the real estate licenses of said
2 Respondent occurs within two (2) years from the effective date of the Order in
3 this matter.

4 (c) If Respondent SHEWMAKER, INC., fails to pay the monetary penalty as
5 provided above prior to the effective date of this Order, the stay of the
6 suspension shall be vacated as to Respondent SHEWMAKER, INC., and the
7 order of suspension shall be immediately executed, under this Paragraph I of
8 this Order, in which event Respondent SHEWMAKER, INC., shall not be
9 entitled to any repayment nor credit, prorated or otherwise, for the money paid
10 to the Department under the terms of this Order.

11 (d) If Respondent SHEWMAKER, INC., pays the monetary penalty and any other
12 moneys due under this Stipulation and Agreement in Settlement and Order and
13 if no further cause for disciplinary action against the real estate licenses of
14 Respondent SHEWMAKER, INC., occurs within two (2) years from the
15 effective date of this Order, the entire stay hereby granted under Paragraphs I
16 and III of this Order, as to Respondent SHEWMAKER, INC., only, shall
17 become permanent.

18 3. Respondents understand that by agreeing to this Stipulation and Agreement in
19 Settlement and Order, Respondents SHEWMAKER, INC., and D. SHEWMAKER
20 jointly and severally agree to pay, pursuant to Section 10148 of the Code, the cost of
21 the audit which resulted in the determination that Respondents SHEWMAKER, INC.,
22 and D. SHEWMAKER committed the trust fund violations found in Paragraph I,
23 above, of the Determination of Issues. The amount of said cost is \$4,498.61.

24 4. Respondents SHEWMAKER, INC., and D. SHEWMAKER, jointly and severally,
25 shall pay the Commissioner's costs, not to exceed \$4,498.61, of any audit conducted
26 pursuant to Section 10148 of the Code to determine if Respondents have corrected the
27 violations described in Paragraph I of the Determination of Issues, above. In

1 calculating the amount of the Commissioner's reasonable cost, the Commissioner
2 may use the estimated average hourly salary for all persons performing audits of real
3 estate brokers, and shall include an allocation for travel time to and from the auditor's
4 place of work. Respondents shall pay such cost within 60 days of receiving an
5 invoice therefore from the Commissioner detailing the activities performed during the
6 audit and the amount of time spent performing those activities. If Respondents fail to
7 pay such cost within the 60 days, the Commissioner may in his/her discretion
8 indefinitely suspend all licenses and licensing rights of Respondent SHEWMAKER,
9 INC., and D. SHEWMAKER, under the Real Estate Law until payment is made in
10 full or until Respondents SHEWMAKER, INC., and D. SHEWMAKER enter into an
11 agreement satisfactory to the Commissioner to provide for payment. Upon payment
12 in full, the indefinite suspension provided in this paragraph shall be stayed.

13 II

14 A. All licenses and licensing rights of Respondent N. SHEWMAKER under the Real Estate
15 Law are suspended until such time as Respondent N. SHEWMAKER provides proof
16 satisfactory to the Commissioner that Respondent N. SHEWMAKER has, within one
17 hundred twenty (120) days prior to the effective date of the Order herein completed the
18 continuing education course on trust fund accounting and handling specified in subdivision
19 (a) of Section 10170.5 of the Code.

20 B. All licenses and licensing rights of Respondent N. SHEWMAKER under the Real Estate
21 Law are suspended for a period of ninety (90) days from the effective date of this Order;
22 provided, however, that:

23 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the following
24 terms and conditions:

25 a. Respondent N. SHEWMAKER shall obey all laws, rules and regulations
26 governing the rights, duties and responsibilities of a real estate licensee in
27 the State of California; and,

1 b. That no final subsequent determination be made, after hearing or upon
2 stipulation, that cause for disciplinary action occurred within two (2) years
3 from the effective date of this Order. Should such a determination be made,
4 the Commissioner may, in his/her discretion, vacate and set aside the stay
5 order and reimpose all or a portion of the stayed suspension. Should no such
6 determination be made, the stay imposed herein shall become permanent.

7 2. The remaining thirty (30) days of said 90-day suspension shall be stayed upon the
8 condition that Respondent N. SHEWMAKER petition pursuant to Section 10175.2
9 of the Code and pay a monetary penalty pursuant to Section 10175.2 of the Code at
10 a rate of \$100.00 for each day of the suspension for a total monetary penalty of
11 \$3,000.00:

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

16 b. No further cause for disciplinary action against the real estate licenses of
17 said Respondent N. SHEWMAKER occurs within two (2) years from the
18 effective date of the Order in this matter.

19 c. If Respondent N. SHEWMAKER fails to pay the monetary penalty as
20 provided above prior to the effective date of this Order, the stay of the
21 suspension shall be vacated as to Respondent N. SHEWMAKER and the
22 order of suspension shall be immediately executed, under this Paragraph II
23 of this Order, in which event Respondent N. SHEWMAKER shall not be
24 entitled to any repayment nor credit, prorated or otherwise, for the money
25 paid to the Department under the terms of this Order.

26 d. If Respondent N. SHEWMAKER pays the monetary penalty and any other
27 moneys due under this Stipulation and Agreement in Settlement and Order

1 and if no further cause for disciplinary action against the real estate licenses
2 of Respondent N. SHEWMAKER occurs within two (2) years from the
3 effective date of this Order, the entire stay hereby granted under Paragraph II
4 of this Order, as to Respondent N. SHEWMAKER only, shall become
5 permanent.

6 3. Respondent N. SHEWMAKER understands that by agreeing to this Stipulation and
7 Agreement in Settlement and Order, Respondent agrees to pay, pursuant to Section
8 10148 of the Code, the cost of the audit which resulted in the determination that
9 Respondent N. SHEWMAKER committed the trust fund violations found in
10 Paragraph I, above, of the Determination of Issues. The amount of said cost is
11 \$6,217.61.

12 4. Respondent N. SHEWMAKER, shall pay the Commissioner's costs, not to exceed
13 \$6,217.61, of any audit conducted pursuant to Section 10148 of the Code to determine
14 if Respondent N. SHEWMAKER has corrected the violations described in Paragraph
15 I of the Determination of Issues, above. In calculating the amount of the
16 Commissioner's reasonable cost, the Commissioner may use the estimated average
17 hourly salary for all persons performing audits of real estate brokers, and shall include
18 an allocation for travel time to and from the auditor's place of work. Respondent
19 N. SHEWMAKER shall pay such costs within 60 days of receiving an invoice
20 therefore from the Commissioner detailing the activities performed during the audit
21 and the amount of time spent performing those activities. If Respondent fails to pay
22 such costs within the 60 days, the Commissioner may in his/her discretion indefinitely
23 suspend all licenses and licensing rights of Respondent N. SHEWMAKER under the
24 Real Estate Law until payment is made in full or until Respondent N. SHEWMAKER
25 enters into an agreement satisfactory to the Commissioner to provide for payment.
26 Upon payment in full, the indefinite suspension provided in this paragraph shall be
27 stayed.

III

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2 A. All licenses and licensing rights of Respondent D. SHEWMAKER under the Real Estate
3 Law are suspended until such time as Respondent D. SHEWMAKER provides proof
4 satisfactory to the Commissioner that Respondent D. SHEWMAKER has, within one
5 hundred twenty (120) days prior to the effective date of the Order herein completed the
6 continuing education course on trust fund accounting and handling specified in subdivision
7 (a) of Section 10170.5 of the Code.

8 B. All licenses and licensing rights of Respondent D. SHEWMAKER under the Real Estate
9 Law are suspended for a period of ninety (90) days from the effective date of this Order;
10 provided, however, that:

11 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the following
12 terms and conditions:

13 a. Respondent D. SHEWMAKER shall obey all laws, rules, and regulations
14 governing the rights, duties and responsibilities of a real estate licensee in
15 the State of California; and,

16 b. That no final subsequent determination be made, after hearing or upon
17 stipulation, that cause for disciplinary action occurred within two (2) years
18 from the effective date of this Order. Should such a determination be
19 made, the Commissioner may, in his/her discretion, vacate and set aside
20 the stay order and reimpose all or a portion of the stayed suspension.
21 Should no such determination be made, the stay imposed herein shall
22 become permanent.

23 2. The remaining thirty (30) days of said 90-day suspension shall be stayed upon the
24 condition that Respondent D. SHEWMAKER petition pursuant to Section 10175.2 of
25 the Code and pay a monetary penalty pursuant to Section 10175.2 of the Code at a
26 rate of \$100.00 for each day of the suspension for a total monetary penalty of
27 \$3,000.00:

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a. 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 Order in this matter.

b. No further cause for disciplinary action against the Real Estate licenses of said Respondent D. SHEWMAKER occurs within two (2) years from the effective date of the Order in this matter.

c. If Respondent D. SHEWMAKER fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated as to Respondent D. SHEWMAKER and the order of suspension shall be immediately executed, under this Paragraph III of this Order, in which event Respondent D. SHEWMAKER shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms of this Order.

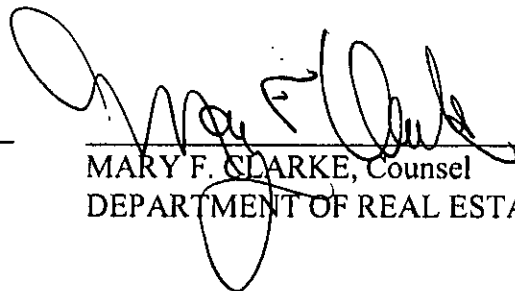
d. If Respondent D. SHEWMAKER pays the monetary penalty and any other moneys due under this Stipulation and Agreement in Settlement and Order, and if no further cause for disciplinary action against the real estate licenses of Respondent D. SHEWMAKER occurs within two (2) years from the effective date of this Order, the entire stay hereby granted under Paragraphs I and III of this Order, as to Respondent D. SHEWMAKER only, shall become permanent.

3. Respondents D. SHEWMAKER and SHEWMAKER, INC., understand that by agreeing to this Stipulation and Agreement in Settlement and Order, Respondents D. SHEWMAKER and SHEWMAKER, INC., jointly and severally agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the determination that Respondents D. SHEWMAKER and SHEWMAKER, INC., committed the trust fund violations found in Paragraph I, above, of the Determination of Issues. The amount of said cost is \$4,498.61.

1 4. Respondents D. SHEWMAKER and SHEWMAKER, INC., jointly and severally,
2 shall pay the Commissioner's costs, not to exceed \$4,498.61, of any audit
3 conducted pursuant to Section 10148 of the Code to determine if Respondents
4 D. SHEWMAKER and SHEWMAKER, INC., have corrected the violations
5 described in Paragraph I of the Determination of Issues, above. In calculating the
6 amount of the Commissioner's reasonable cost, the Commissioner may use the
7 estimated average hourly salary for all persons performing audits of real estate
8 brokers, and shall include an allocation for travel time to and from the auditor's place
9 of work. Respondents D. SHEWMAKER and SHEWMAKER, INC., shall pay such
10 costs within 60 days of receiving an invoice therefore from the Commissioner
11 detailing the activities performed during the audit and the amount of time spent
12 performing those activities. If Respondents D. SHEWMAKER and SHEWMAKER,
13 INC., fail to pay such costs within the 60 days, the Commissioner may in his/her
14 discretion indefinitely suspend all licenses and licensing rights of Respondent D.
15 SHEWMAKER under the Real Estate Law until payment is made in full or until
16 Respondent D. SHEWMAKER enters into an agreement satisfactory to the
17 Commissioner to provide for payment. Upon payment in full, the indefinite
18 suspension provided in this paragraph shall be stayed.

19
20 5-19-11

21 _____
DATED

22 
23 _____
MARY F. CLARKE, Counsel
24 DEPARTMENT OF REAL ESTATE

25 * * *

26 I have read the Stipulation and Agreement in Settlement and Order and its terms
27 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

1 Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly,
2 intelligently, and voluntarily waive those rights, including the right of requiring the
3 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
4 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
5 the charges.

6 D & N SHEWMAKER, INC.,
7 Respondent

8 5-12-11

9 DATED

10 By:

Donald Stuart Shewmaker
DONALD STUART SHEWMAKER
Designated Officer - Broker

11
12
13 12 May 2011

14 DATED

Nancy Margaret Shewmaker
NANCY MARGARET SHEWMAKER,
Respondent

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17
18 5-12-11

19 DATED

Donald Stuart Shewmaker
DONALD STUART SHEWMAKER,
Respondent

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21 * * *

22 I have reviewed the Stipulation and Agreement in Settlement and Order as to form
23 and content and have advised my clients accordingly.

24
25 5-18-11

26 DATED

Joshua A. Rosenthal
JOSHUA A. ROSENTHAL
Attorney for Respondents

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The foregoing Stipulation and Agreement in Settlement and Order is hereby
adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
July 7, 2011.

IT IS SO ORDERED 6/14, 2011

BARBARA J. BIGBY
Acting Real Estate Commissioner



1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0780 (Direct)

FILED

APR 23 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 D & N SHEWMAKER PROPERTIES, INC.,)
14 a Corporation,)
15 DONALD STUART SHEWMAKER, and)
16 NANCY MARGARET SHEWMAKER,)
17)
18 Respondents.)

NO. H-5380 SAC
ACCUSATION

17 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of
18 the State of California, for cause of Accusation against D & N SHEWMAKER PROPERTIES, INC.
19 (herein "SHEWMAKER INC."), DONALD STUART SHEWMAKER (herein "D. SHEWMAKER"),
20 and NANCY MARGARET SHEWMAKER (herein "N. SHEWMAKER") (herein collectively
21 "Respondents), is informed and alleges as follows:

22 1.

23 The Complainant makes this Accusation in her official capacity.

24 2.

25 At all times herein mentioned, Respondents were and now are, licensed and/or
26 have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and
27 Professions Code) (herein "the Code").

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3.

At all times herein mentioned, SHEWMAKER INC., was and now is licensed by the State of California Department of Real Estate (herein the "Department") as a corporate real estate broker by and through D. SHEWMAKER as designated officer-broker of SHEWMAKER INC., to qualify said corporation and to act for said corporation as a real estate broker.

4.

At all times herein mentioned, D. SHEWMAKER was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of SHEWMAKER INC. As said designated officer-broker, D. SHEWMAKER was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of SHEWMAKER INC., for which a license is required.

5.

At all times herein mentioned, N. SHEWMAKER was and now is licensed by the Department as a real estate broker.

6.

At all times herein mentioned Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others, for compensation or in expectation of compensation within the State of California within the meaning of Sections:

- (a) 10131(a) of the Code, including the operation and conduct of a real estate brokerage wherein Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity; and,
- (b) 10131(b) of the Code, including the operation and conduct of a property management business with the public, wherein Respondents leased or rented

1 or offered to lease or rent, or placed for rent, or solicited listings of places
2 for rent, or solicited for prospective tenants, or negotiated the sale, purchase
3 or exchanges of leases on real property, or on a business opportunity or
4 collected rents from real property, or improvements thereon, or from
5 business opportunities.

6 FIRST CAUSE OF ACCUSATION – N. SHEWMAKER

7 7.

8 The allegations of Paragraphs 1 through 6 are incorporated herein by reference.

9 8.

10 In so acting as a real estate broker, as described in Paragraph 6 above, Respondent
11 N. SHEWMAKER accepted or received funds in trust (herein “trust funds”) from or on behalf of
12 owners, tenants, and others in connection with the leasing, renting, and collection of rents on real
13 property or improvements thereon.

14 9.

15 The aforesaid trust funds accepted or received by Respondent N. SHEWMAKER
16 were deposited or caused to be deposited by Respondent N. SHEWMAKER into one or more
17 bank accounts (herein “trust fund accounts”) maintained by Respondent N. SHEWMAKER for
18 the handling of trust funds at the Tracy, California branch of USbank, including but not
19 necessarily limited to “Platinum Property Management Tyson Donald Shewmaker”, account
20 number 1 534 5779 6552 (herein “Bank #1”).

21 10.

22 Between about June 1, 2006 and May 31, 2007, in connection with the property
23 management activities described in Paragraph 6, above, Respondent N. SHEWMAKER:

24 (a) failed to keep a columnar record in chronological sequence of all trust
25 funds received and disbursed from Bank #1 containing all the information required by
26 Section 2831 of Title 10, Chapter 6 of the California Code of Regulations (herein “the
27 Regulations”);

1 (b) failed to reconcile at least once a month, the balance of all separate
2 beneficiary or transaction records with Bank #1, as required by Section 2831.2 of the Regulations;

3 (c) failed to place trust funds entrusted to Respondent N. SHEWMAKER into
4 the hands of a principal on whose behalf the funds were received, into a neutral escrow
5 depository, or into a trust fund account in the name of Respondent N. SHEWMAKER as trustee
6 at a bank or other financial institution, in conformance with the requirements of Section 10145 of
7 the Code and Section 2832 of the Regulations;

8 (d) failed to retain for three years and after notice make available for
9 examination, inspection, and copying by the Commissioner or designated representative during
10 regular business hours, copies of all listings, deposit receipts, canceled checks, trust records, and
11 other documents executed in connection with any and all transactions, in violation of Section
12 10148 of the Code;

13 (e) failed to obtain a real estate license bearing the fictitious business names
14 "Platinum Property Management" and "Platinum Property Management, Inc.," while conducting
15 activities for which a license was required under said fictitious business names, in violation of
16 Section 10159.5 of the Code and Section 2731 of the Regulations; and,

17 (f) failed to notify the Commissioner of a change in the location or address of
18 the principal place of business, in violation of Section 10162 of the Code and Section 2715 of the
19 Regulations.

20 SECOND CAUSE OF ACCUSATION – SHEWMAKER, INC.

21 11.

22 The allegations of Paragraphs 1 through 10 are incorporated herein by reference.

23 12.

24 In so acting as a real estate broker, as described in Paragraph 6 above, Respondent
25 SHEWMAKER, INC., accepted or received trust funds from or on behalf of owners, tenants,
26 and others in connection with the leasing, renting, and collection of rents on real property or
27 improvements thereon.

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13.

The aforesaid trust funds accepted or received by Respondent SHEWMAKER INC., were deposited or caused to be deposited by Respondent SHEWMAKER INC., into one or more trust fund accounts maintained by Respondent SHEWMAKER INC., for the handling of trust funds at the Tracy, California branch of the Bank of Stockton, including but not necessarily limited to "D & N Shewmaker Properties Inc. dba New Valley Rentals", account number 1245001894 (herein "Bank #1A").

14.

Between about September 1, 2007 and August 30, 2008, in connection with the property management activities described in Paragraph 6, above, Respondent SHEWMAKER, INC.:

(a) failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Bank #1A containing all the information required by Section 2831 of the Regulations;

(b) failed to keep a separate record for each beneficiary or transaction for Bank #1A containing all the information required by Section 10145 of the Code and Section 2831.1 of the Regulations;

(c) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Bank #1A, as required by Section 2831.2 of the Regulations;

(d) failed to place trust funds entrusted to Respondent SHEWMAKER INC., into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of Respondent SHEWMAKER INC., as trustee at a bank or other financial institution, in conformance with the requirements of Section 10145 of the Code and Section 2832 of the Regulations;

(e) caused, suffered or permitted the balance of funds in Bank #1A to be reduced to amounts less than the liability of SHEWMAKER, INC., resulting in a trust fund

1 shortage in violation of Section 10145 of the Code and Section 2832.1 the Regulations, as
2 follows:

	<u>Date</u>	<u>Shortage Amount</u>
4	7/31/08	\$ 5,371.76
5	8/31/08	\$ 5,634.20

6 (f) failed to retain for three years and after notice make available for
7 examination, inspection, and copying by the Commissioner or designated representative during
8 regular business hours, copies of all listings, deposit receipts, canceled checks, trust records, and
9 other documents executed in connection with any and all transactions, in violation of Section
10 10148 of the Code;

11 (g) failed to obtain a real estate license bearing the fictitious business name
12 "New Valley Rentals" while conducting activities for which a license was required under said
13 fictitious business name, in violation of Section 10159.5 of the Code and Section 2731 of the
14 Regulations;

15 (h) failed to immediately notify the Commissioner in writing when real estate
16 salesperson Jennifer Burch entered its employ, as required by Section 10161.8 of the Code; and,

17 (i) failed to notify the Commissioner of a change in the location or address of
18 the principal place of business, in violation of Section 10162 of the Code and Section 2715 of the
19 Regulations.

20 THIRD CAUSE OF ACCUSATION – D. SHEWMAKER

21 15.

22 The allegations of Paragraphs 1 through 14 are incorporated herein by reference.

23 16.

24 In so acting as a real estate broker, as described in Paragraph 6 above, Respondent
25 D. SHEWMAKER accepted or received trust funds from or on behalf of buyers, sellers, and
26 others in connection with the sale and purchase of real property and improvements thereon.
27 Respondent D. SHEWMAKER did not maintain a trust account.

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17.

Between about May 1, 2007 and July 31, 2008, in connection with the real estate activities described in Paragraph 6, above, Respondent D. SHEWMAKER:

(a) failed to mark out past employing broker's name and address on the face of the salesperson licenses of Yvette Marie Larson (#01771056), Tammie ReShunda Griffin (#01467834), and Ross Michael Graham (#01325888), and type or write his own name and address in ink on the reverse side is of said licenses, dating and initialing same, as required by Section 10161.8 of the Code; and,

(b) failed to maintain original licenses for salespersons Sylvia Marie Navarro-Orme (#01402211), Joseph Colenares (#01842110), and Michael Anthony Rodriguez (#01441384), as required by Section 10160 of the Code and Section 2753 of the Regulations.

18.

On about February 13, 2008, in connection with the sale of real property located at 28253 S. Vicenza Ave, Tracy, CA 95604, Respondent D. SHEWMAKER represented on the Residential Purchase Agreement and Joint Escrow Instructions that purchasers Archie and Diana Durham (herein "the Durham's") had "given a deposit in the amount of \$5,000 to the agent submitting the offer," when in fact, Respondent D. SHEWMAKER was not given the deposit until April 15, 2008, in violation of Sections 10176(a) and (i) and/or 10177(g) and/or 10177(j) of the Code.

19.

At all times mentioned herein, D. SHEWMAKER failed to exercise reasonable supervision over the acts of SHEWMAKER INC., and its agents and employees in such a manner as to allow the acts and omissions on the part of SHEWMAKER INC., described above, to occur in violation of Sections 10177(h) and/or (g) and 10159.2 of the Code and Section 2725 of the Regulations.

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The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 10(a) and Respondent N. SHEWMAKER under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 10(b) and Respondent N. SHEWMAKER under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 10(c) and Respondent N. SHEWMAKER under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 10(d) and Respondent N. SHEWMAKER under Section 10148 of the Code in conjunction with Section 10177(d) of the Code;
- (e) as to Paragraph 10(e) and Respondent N. SHEWMAKER under Section 10159.5 of the Code in conjunction with Section 10177(d) of the Code;
- (f) as to Paragraph 10(f) and Respondent N. SHEWMAKER under Section 10162 of the Code and Section 2715 of the Regulations in conjunction with Section 10177(d) of the Code;
- (g) as to Paragraph 14(a) and Respondent SHEWMAKER INC., under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (h) as to Paragraph 14(b) and Respondent SHEWMAKER INC., under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;

- 1 (i) as to Paragraph 14(c) and Respondent SHEWMAKER INC., under
2 Section 2831.2 of the Regulations in conjunction with Section
3 10177(d) of the Code;
- 4 (j) as to Paragraph 14(d) and Respondent SHEWMAKER INC., under
5 Section 10145 of the Code and Section 2832 of the Regulations in
6 conjunction with Section 10177(d) of the Code;
- 7 (k) as to Paragraph 14(e) and Respondent SHEWMAKER INC., under
8 Section 10145 of the Code and Section 2832.1 of the Regulations in
9 conjunction with Section 10177(d) of the Code;
- 10 (l) as to Paragraph 14(f) and Respondent SHEWMAKER INC., under
11 Section 10148 of the Code in conjunction with Section 10177(d) of the
12 Code;
- 13 (m) as to Paragraph 14(g) and Respondent SHEWMAKER INC., under
14 Section 10159.5 of the Code and Section 2731 of the Regulations in
15 conjunction with Section 10177(d) of the Code;
- 16 (n) as to Paragraph 14(h) and Respondent SHEWMAKER INC., under
17 Section 10161.8 of the Code in conjunction with Section 10177(d) of
18 the Code;
- 19 (o) as to Paragraph 14(i) and Respondent SHEWMAKER INC., under
20 Section 10162 of the Code and Section 2715 of the Regulations in
21 conjunction with Section 10177(d) of the Code;
- 22 (p) as to Paragraph 17(a) and Respondent D. SHEWMAKER under
23 Section 10161.8 of the Code in conjunction with Section 10177(d) of
24 the Code;
- 25 (q) as to Paragraph 17(b) and Respondent D. SHEWMAKER under
26 Section 10160 and Section 2753 of the Regulations in conjunction
27 with Section 10177(d) of the Code;

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(r) as to Paragraph 18 and Respondent D. SHEWMAKER under Sections 10176(a) and (k) and/or 10177(g) and/or 10177(j) of the Code; and,

(s) as to Paragraph 19 and Respondent D. SHEWMAKER under Sections 10177(h) and/or (g) and 101592 of the Code and Section 2725 of the Regulations in conjunction with Section 10177(d) of the Code.

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


TRICIA SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 24th day of March, 2010.