

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789

FILED
APR 27 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-7626 SF
12 MICHAEL WILLIAM GOWER,)
13 Respondent.) OAH NO. N-1998120240
14) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between MICHAEL WILLIAM
16 GOWER ("Respondent"), acting by and through his attorney, Frank H.
17 Russow; and the Complainant, acting by and through Thomas C.
18 Lasken, Counsel for the Department of Real Estate; as follows, for
19 the purpose of settling and disposing of the Accusation filed on
20 September 30, 1998, in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act ("APA") (Government Code Section 11500 et seq.),
26 shall instead and in place thereof be submitted solely on the
27 basis of the provisions of this Stipulation and Agreement.

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA, and
3 the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. On October 16, 1998, Respondent filed his Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 his Notice of Defense. Respondent acknowledges that by
10 withdrawing said Notice of Defense he will thereby waive his right
11 to require the Commissioner to prove the allegations in the
12 Accusation at a contested hearing held in accordance with the
13 provisions of the APA and that he will waive other rights afforded
14 to him in connection with the hearing such as the right to present
15 evidence in defense of the allegations in the Accusation and the
16 right to cross-examine witnesses.

17 4. This Stipulation is based on the factual allegations
18 contained in the Accusation. In the interests of expedience and
19 economy, Respondent chooses not to contest these allegations, but
20 to remain silent and understands that, as a result thereof, these
21 factual allegations, without being admitted or denied, will serve
22 as a prima facie basis for the disciplinary action stipulated to
23 herein. The Real Estate Commissioner shall not be required to
24 provide further evidence to prove said factual allegations.

25 5. It is understood by the parties that the Real Estate
26 Commissioner may adopt the Stipulation and Agreement as his
27 Decision in this matter, thereby imposing the penalty and

1 sanctions on Respondent's real estate license and license rights
2 as set forth in the below "Order". In the event that the
3 Commissioner in his discretion does not adopt the Stipulation and
4 Agreement, it shall be void and of no effect, and Respondent shall
5 retain the right to a hearing and proceeding on the Accusation
6 under all the provisions of the APA and shall not be bound by any
7 admission or waiver made herein.

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

14 7. Respondent has received, read, and understands
15 the "Notice Concerning Costs of Subsequent Audits". Respondent
16 understands that by agreeing to this Stipulation and Agreement
17 in Settlement, the findings set forth below in the DETERMINATION
18 OF ISSUES become final, and that the Commissioner may charge
19 Respondent for the cost of any audit conducted pursuant to
20 Section 10148 of the Business and Professions Code to determine
21 if the violations have been corrected. The maximum costs of said
22 audit will not exceed \$7,500.00.

23 8. Respondent expressly stipulates and agrees that a
24 failure to meet the requirements of Paragraphs 2. a., and b., of
25 the below Order is a per se violation of the conditions of any
26 restricted license issued to him warranting revocation of all
27 licenses and license rights then held by him.

1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions and
3 waivers, and solely for the purpose of settlement of the pending
4 Accusation without a hearing, it is stipulated and agreed that the
5 following determination of issues shall be made:

6 I

7 The conduct of the Respondent, as described in the
8 Accusation, constitutes cause for the suspension or revocation of
9 the real estate license and license rights of Respondent under the
10 provisions of Sections 10145, 10176(e), and 10177(d) of the
11 California Business and Professions Code ("Code").

12 ORDER

- 13 1. All licenses and licensing rights of Respondent MICHAEL WILLIAM
14 GOWER under the Real Estate Law are revoked; provided, however,
15 a restricted real estate broker license shall be issued to
16 Respondent pursuant to Section 10156.5 of the Code if
17 Respondent makes application therefor and pays to the
18 Department the appropriate fee for said license within
19 ninety (90) days from the effective date of this ORDER.
- 20 2. The restricted license issued to Respondent shall be subject
21 to all of the provisions of Section 10156.7 of the Business
22 and Professions Code and to the following limitations,
23 conditions and restrictions imposed under authority of
24 Section 10156.6 of that Code:
- 25 a. Within six months after the effective date of the Order
26 herein, Respondent shall provide proof satisfactory to
27 the Real Estate Commissioner that there is on deposit in

1 one or more trust bank accounts for the use and benefit
2 of all owners of funds entrusted to said Respondent an
3 amount or amounts equal to the individual and aggregate
4 trust fund liability of said Respondent to such owners.

5 b. The Commissioner may suspend the restricted license
6 issued to Respondent pending a hearing held in accordance
7 with Section 11500, et seq., of the Government Code, if
8 the proof satisfactory to the Commissioner provided for
9 in Paragraph a., above, is not timely provided. The
10 suspension shall remain in effect until a decision
11 providing otherwise is adopted following a hearing held
12 pursuant to this condition.

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

16 d. Pursuant to Section 10148 of the Code, Respondent shall
17 pay the Commissioner's reasonable cost, not to exceed
18 \$7,500.00, for an audit to determine if Respondent has
19 corrected the trust fund violations found in paragraph I
20 of the Determination of Issues. In calculating the
21 amount of the Commissioner's reasonable cost, the
22 Commissioner may use the estimated average hourly salary
23 for all persons performing audits of real estate brokers,
24 and shall include an allocation for travel time to and
25 from the auditor's place of work. Respondent shall pay
26 such cost within 60 days of receiving an invoice from the
27 Commissioner detailing the activities performed during

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

13 e. Respondent shall, within six (6) months from the issuance
14 of the restricted license, take and pass the Professional
15 Responsibility Examination administered by the Department
16 including the payment of the appropriate examination fee.
17 If Respondent fails to satisfy this condition, the
18 Commissioner may order the suspension of the restricted
19 license until Respondent passes the examination.

20 f. The restricted license issued to Respondent may be
21 suspended prior to hearing by Order of the Real Estate
22 Commissioner in the event of Respondent's conviction or
23 plea of nolo contendere to a crime which is substantially
24 related to Respondent's fitness or capacity as a real
25 estate licensee.

26 g. The restricted license issued to Respondent may be
27 suspended prior to hearing by Order of the Real Estate

1 Commissioner on evidence satisfactory to the Commissioner
2 that Respondent has violated provisions of the California
3 Real Estate Law, the Subdivided Lands Law, Regulations of
4 the Real Estate Commissioner or conditions attaching to
5 the restricted license.

6 h. Any restricted real estate broker license issued to
7 Respondent may be suspended or revoked for a violation by
8 Respondent of any of the conditions attaching to the
9 restricted license.

10 i. Respondent shall not be eligible to apply for the
11 issuance of an unrestricted real estate license nor for
12 the removal of any of the conditions, limitations or
13 restrictions of a restricted license until one (1) year
14 has elapsed from the effective date of this Order.

15
16 April 2, 1999
17 DATED

15
16 Thomas C. Lasken
17 THOMAS C. LASKEN, Counsel
18 DEPARTMENT OF REAL ESTATE

18 * * *

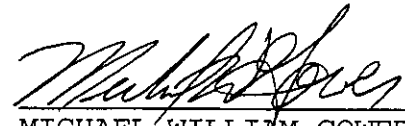
19 I have read the Stipulation and Agreement, have
20 discussed it with my counsel, and its terms are understood by me
21 and are agreeable and acceptable to me. I understand that I am
22 waiving rights given to me by the California Administrative
23 Procedure Act (including but not limited to Sections 11506,
24 11508, 11509, and 11513 of the Government Code), and I willingly,
25 intelligently, and voluntarily waive those rights, including the
26 right of requiring the Commissioner to prove the allegations in
27 the Accusation at a hearing at which I would have the right to

1 cross-examine witnesses against me and to present evidence in
2 defense and mitigation of the charges.

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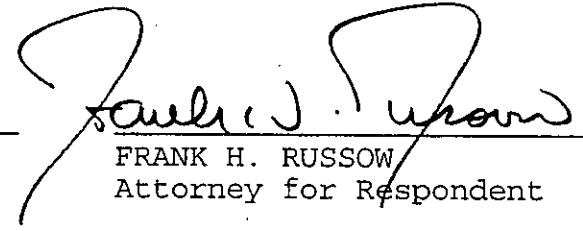


MICHAEL WILLIAM GOWER
Respondent

I have reviewed the Stipulation and Agreement in
Settlement as to form and content and have advised my client
accordingly.

3-26-99

DATED



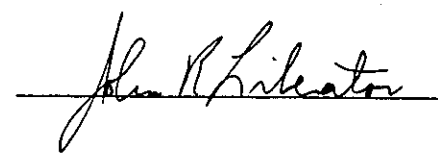
FRANK H. RUSSOW
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby
adopted by the Real Estate Commissioner as his Decision and Order
and shall become effective at 12 o'clock noon on
May 17, 1999.

IT IS SO ORDERED April 16, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner



FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FEB 26 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

MICHAEL WILLIAM GOWER,

Case No. H-7626 SF

OAH No. N-1998120240

Respondent

FIRST CONTINUED
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, the Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, CA 94612

on March 31, 1999 and April 1, 1999, 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: February 24, 1999

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

FILED
DEC 28 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

MICHAEL WILLIAM GOWER,

Case No. H-7626 SF

OAH No. N-1998120240

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, the Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, CA 94612

on February 16, 1999, and February 17, 1999, 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: December 28, 1998

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

1 THOMAS C. LASKEN, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
SEP 30 1998
DEPARTMENT OF REAL ESTATE

Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 MICHAEL WILLIAM GOWER,) NO. H-7626 SF
14 Respondent.) ACCUSATION

15
16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against MICHAEL WILLIAM GOWER, is informed and alleges
19 as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity.

24 II

25 At all times herein mentioned, Respondent MICHAEL
26 WILLIAM GOWER (hereinafter "Respondent"), individually and doing
27 business as "Gower Properties", was licensed and/or had license



1 rights under the Real Estate Law, Part 1 of Division 4 of the
2 Business and Professions Code (hereinafter "Code") as a real
3 estate broker.

4 III

5 At all times mentioned herein, Respondent engaged in
6 the business of, acted in the capacity of, advertised or assumed
7 to act as a real estate broker within the State of California,
8 within the meaning of Section 10131(b) of the Code, including
9 the operation and conduct of a real estate property management
10 business with the public, wherein Respondent, for or in
11 expectation of a compensation, leased or rented or offered to
12 lease or rent, or solicited listings of, places for rent;
13 solicited prospective tenants for, negotiated rental agreements
14 for, and collected rents from, real properties owned by
15 another or others; and otherwise managed real properties in
16 California.

17 IV

18 During the course of the property management activities
19 described in Paragraph III above, Respondent received and
20 disbursed funds held in trust on behalf of another or others.

21 V

22 Within the three-year period immediately preceding the
23 filing of this Accusation, Respondent maintained the following
24 trust account:

25	<u>Account Name and Number</u>	<u>Bank</u>
26	Gower Properties	Union Bank of California
27	Property Management Trust Acct #1	990 North First Street
	#05-935504	San Jose, CA 95112.



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VI

Commencing on August 6, 1998, and continuing through September 4, 1998, an investigative audit ("Audit") was made by the Department of Real Estate ("Department") of Respondent's records for the period February 29, 1996 through September 4, 1998 ("the audit period"), as those records relate to Respondent's licensed activities in his real estate business.

VII

In connection with the collection and disbursement of trust funds, Respondent failed to deposit and maintain trust funds in the trust account in such manner that as of June 30, 1998, there was a shortage of \$366,652.55 of trust funds.

VIII

In connection with the collection and disbursement of trust funds, Respondent disbursed, or caused or permitted the disbursement of, trust funds from the trust account, without the prior written consent of every principal who was an owner of the funds in the account, where the disbursement reduced the balance of funds in the accounts to an amount which was \$366,652.55 less than the existing aggregate trust fund liability of Respondent to all owners of said funds, in violation of Section 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations").

IX

During the audit period, in connection with the collection and disbursement of trust funds as described in Paragraph IV above, Respondent commingled with his own money or

1 property, the money or property of others which was received and
2 held by him.

3 X

4 During the audit period, in connection with the receipt
5 and disbursement of trust funds, Respondent failed to maintain
6 columnar records of all the trust funds received and disbursed, in
7 conformance with Section 2831 of the Regulations.

8 XI

9 During the audit period, in connection with the receipt
10 and disbursement of trust funds, Respondent failed to maintain
11 separate records for each beneficiary or transaction, accounting
12 for all trust funds received, deposited, and disbursed, in
13 conformance with Section 2831.1 of the Regulations.

14 XII

15 During the audit period, in connection with the receipt
16 and disbursement of trust funds, Respondent failed to reconcile
17 the balances of all separate beneficiary or transaction records
18 maintained with the record of all trust funds received and
19 disbursed at least once a month, in violation of Section 2831.2 of
20 the Regulations.

21 XIII

22 During the audit period, in connection with the receipt
23 and disbursement of trust funds, Respondent allowed withdrawal
24 from his trust account by unlicensed persons who did not have
25 fidelity bond coverage, in violation of Section 2834 of the
26 Regulations.

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XIV

Respondent's acts and omissions alleged above in Paragraphs VII and VIII constitute cause for discipline under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations.

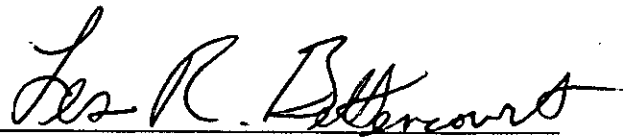
XV

Respondent's acts and omissions alleged above in Paragraph IX constitute cause for discipline under the provisions of Section 10176(e) of the Code.

XVI

Respondent's acts and omissions alleged above in Paragraphs X through XIII constitute cause for discipline under the provisions of Section 10177(d) of the Code.

WHEREFORE, the 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 Respondent 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 provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 28th day of September, 1998.