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FEB 18 2011

DEPARTMENT OF REAL ESTATE

BY: Lawrence B. Cho

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-35676 LA
)	
)	
KYUNG HEE HWANG,)	
)	
Respondent)	
)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: Kyung Hee Hwang
635 S. Hobart Boulevard #308
Los Angeles, CA 90005

On March 15, 2010, a restricted real estate salesperson license was issued by the Department of Real Estate to respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Order of November 17, 2009, in Case No. H-35676 LA. This Order, which became effective on December 21, 2009, granted Respondent the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the

1 Business and Professions Code and to enumerated additional
2 terms, conditions and restrictions imposed under authority of
3 Section 10156.6 of said Code. Among those terms, conditions
4 and restrictions, was the requirement that:

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

22 The Commissioner has determined that as of
23 September 21, 2010, Respondent has failed to satisfy this
24 condition, and as such, is in violation of Section 10177(k) of
25 the Business and Professions Code. (Respondent has no right
26 to renew the restricted license if this condition isn't
27 satisfied by the date of its expiration. (Section 10156.7 of
the Business and Professions Code.)

28 NOW, THEREFORE, IT IS ORDERED under authority of
29 Section 10156.7 of the Business and Professions Code of the
30 State of California that the restricted real estate
31 salesperson license heretofore issued to respondent and the
32 exercise of any privileges thereunder is hereby suspended
33 until such time as Respondent provides proof satisfactory to

1 the Department of compliance with the condition(s) referred to
2 above, or pending final determination made after hearing (see
3 "Hearing Rights" set forth below).

4 IT IS FURTHER ORDERED that all license certificates
5 and identification cards issued by Department which are in the
6 possession of respondent be immediately surrendered by
7 personal delivery or by mailing in the enclosed,
8 self-addressed envelope to:

9 Department of Real Estate
10 Attn: Flag Section
11 P. O. Box 187000
12 Sacramento, CA 95818-7000

12 HEARING RIGHTS: Pursuant to the provisions of
13 Section 10156.7 of the Business and Professions Code, you have
14 the right to a hearing to contest the Commissioner's
15 determination that you are in violation of Section 10177(k).
16 If you desire a hearing, you must submit a written request.
17 The request may be in any form, as long as it is in writing
18 and indicates that you want a hearing. Unless a written
19 request for a hearing, signed by or on behalf of you, is
20 delivered or mailed to the Department at 320 West 4th Street,
21 Room 350, Los Angeles, California, 90013, within 20 days after
22 the date that this Order was mailed to or served on you, the
23 Department will not be obligated or required to provide you
24 with a hearing.

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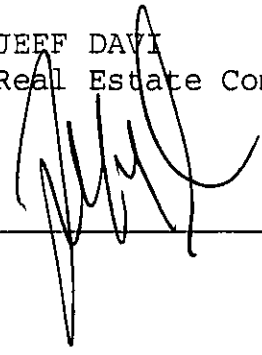
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This Order shall be effective immediately.

DATED: 12/30/2010

JEFF DAVIS
Real Estate Commissioner



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DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35676 LA
)	
<u>100 LOS ANGELES REAL ESTATE INC.</u>)	
doing business as ReMax 100;)	
KYUNG HEE HWANG, individually)	
and as designated officer of 100)	
Los Angeles Real Estate Inc.;)	
JOEL BARRY LEWIS; and, FRED)	
ALEXANDER SAENZ, individually)	
And as former designated officer)	
Of 100 Los Angeles Real Estate Inc.;)	
)	
Respondents.)	
)	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on August 2, 2010, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent 100 LOS ANGELES REAL ESTATE INC.'s, Kyung Hee Hwang's, Joel Barry Lewis', and Alexander Saenz' express admissions; (2) affidavits; (3) Department Audit Report LA 070381; and (4) other evidence.

FACTUAL FINDINGS

1.

On February 3, 2009, Robin Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, Notice of Defense, Provisions of APA Relating to Discovery, Notice Concerning Costs of Audit and Copy of Section 10148 were mailed by certified mail to Respondent 100 LOS ANGELES REAL ESTATE INC.'s last known mailing addresses on file with the Department on February 10, 2009, by regular mail on March 19, 2009.

2.

On August 2, 2010, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent 100 LOS ANGELES REAL ESTATE INC.'s default was entered herein.

3.

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

LICENSE HISTORY

4.

A. At all times mentioned, 100 LOS ANGELES REAL ESTATE INC. ("100 LAREI") was licensed or had license rights issued by the California Department of Real Estate ("Department") as a real estate broker. On January 8, 2001, 100 LAREI was originally licensed as a corporate real estate broker.

B. At all times mentioned, Kyung Hee Hwang ("Hwang") was licensed or had license rights issued by the Department as a real estate broker. On August 6, 2007, Hwang was originally licensed as a real estate broker. From January 22, 2008 to June 30, 2008, Hwang was licensed as the designated officer of 100 LAREI.

C. At all times mentioned, Joel Barry Lewis ("Lewis") was licensed or had license rights issued by the Department as a real estate broker. On November 14,

1986, Lewis was originally licensed as a real estate broker. From May 4, 2006 to January 21, 2008, Lewis was licensed as the designated officer of 100 LAREI.

D. At all times mentioned, Fred Alexander Saenz ("Saenz") was licensed or had license rights issued by the Department as a real estate broker. On February 3, 1992, Saenz was originally licensed as a real estate broker. From July 1, 2005 to March 5, 2006, Saenz was licensed as the designated officer of 100 LAREI; and

E. At all times material herein, 100 LAREI was licensed by the Department as a corporate real estate broker by and through Hwang, Lewis and Saenz, as the designated officers and brokers responsible, pursuant to Code Section 10159.2 of the Business and Professions Code for supervising the activities requiring a real estate license conducted on behalf of 100 LAREI by 100 LAREI's officers, agents and employees; including Hwang, Lewis and Saenz.

LICENSED ACTIVITIES AND BROKERAGE
100 LOS ANGELES REAL ESTATE INC.

5.

At all times mentioned, in the City and County of Los Angeles, 100 LAREI acted as real estate broker conducting licensed activities within the meaning of:

A. Code Section 10131(a). 100 LAREI operated a residential resale dba ReMax 100; and

B. In addition, 100 LAREI conducted broker-controlled escrows through its escrow division, Choice escrow, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

AUDIT EXAMINATION
100 LOS ANGELES REAL ESTATE INC.

6.

On November 26, 2008, the Department completed an audit examination of the books and records of 100 LAREI pertaining to the broker-escrow activities described in

Finding 5, that require a real estate license. The audit examination covered a period of time beginning on July 1, 2005 to June 30, 2008. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 070381 and the exhibits and work papers attached to said audit report.

TRUST ACCOUNTS

7.

At all times mentioned, in connection with the activities described in Finding 5, above, 100 LAREI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including lenders, borrowers, homeowners and escrow beneficiaries, to real estate transactions handled by 100 LAREI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by 100 LAREI in the bank account as follows:

"Choice Escrow Trust Account
Account No. 13267782"
City National Bank
City of Commerce, California (T/A #1)

"Choice Escrow Recovery Account
Account No. 013539235"
City National Bank
City of Commerce, California (Recovery Account)

"Choice Escrow Trust Account
Account No. 13539227"
City National Bank
City of Commerce, California (T/A #2)

VIOLATIONS OF THE REAL ESTATE LAW 100 LOS ANGELES REAL ESTATE INC.

8.

In the course of activities described in Findings 5 and 7, above, and during the examination period described in Finding 6, Respondent 100 LAREI acted in violation of the Code and the Regulations in that Respondent:

(a)(1) Permitted, allowed or caused the disbursement of trust funds from T/A #1 where the disbursement of funds reduced the total aggregate funds in T/A #1 set forth below, to an amount which was less than the existing aggregate trust fund liability of 100 LAREI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

- \$188,950.24 as of June 30, 2008
- \$884,858.35 as of March 30, 2007

On October 28, 2008, after the close of the audit examination on June 30, 2008, \$197,094.70 was deposited into T/A #1, thus restoring the deficit of \$186,200.72.

(a)(2) Permitted, allowed or caused the disbursement of trust funds from T/A #1 and the Recovery Account where the disbursement of funds reduced the total aggregate funds in T/A #1 and the Recovery Account, to an amount which, on January 31, 2008, was \$208,445.57, less than the existing aggregate trust fund liability of 100 LAREI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

(a)(3) Permitted, allowed or caused the disbursement of trust funds from T/A #1 and the Recovery Account where the disbursement of funds reduced the total aggregate funds in T/A #1 and the Recovery Account, to an amount which, on March 30, 2007, was \$884,858.35, less than the existing aggregate trust fund liability of 100 LAREI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(g) and 2951; and

(a)(4) Permitted, allowed or caused the disbursement of trust funds from T/A #1 and the Recovery Account where the disbursement of funds reduced the total aggregate funds in T/A #1 and the Recovery Account, to an amount which, on March 6, 2006, was \$207,222.23, less than the existing aggregate trust fund liability of 100 LAREI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

(b) Withdrew or paid out trust funds embezzled from T/A #1 by former escrow officer, Elizabeth Quinones ("Quinones"), that had been restored to T/A #1 on behalf of Quinones by her mother Ernestine Stupin and by her boyfriend Michael Bates, real estate salesperson employed by 100 LAREI, without the prior written consent of every owner or beneficiary of T/A #1, in violation of Code Sections 10145 and 10176(i) and/or 10177(g) and Regulations 2950(g) and 2951.

(c) At the close of escrow, failed to render to each principal of an escrow transaction a written statement setting forth all receipts and disbursements together with the name of the person to whom any such disbursement was made, as required by Code Section 10145 and Regulation 2950(i).

(d) Mixed and comingled trust funds and personal funds by depositing trust funds recovered from Ernestine Stupin (\$225,000) and Michael Bates (\$7,160) that had been embezzled by Quinones into 100 LAREI's general operating account and issuing checks from said account in payment of 100 LAREI's operating expenses unrelated to any escrow, homeowner or trust fund beneficiary, in violation of Code Sections 10145 and 10176(e).

(e) Converted trust funds from T/A #1 by issuing checks from 100 LAREI's general operating account in payment of 100 LAREI's operating expenses unrelated to any escrow, wherein trust funds recovered from Ernestine Stupin and Michael Bates, in restitution for Quinones embezzlement, had been deposited into 100 LAREI's general operating account, wherein the balance in said account was reduced to less than the amount of trust fund so deposited, in violation of Code Sections 10145 and 10176(i) and/or 10177(j) and/or 10177(g).

(f)(1) T/A #1, the Recovery Account and T/A #2, were not in the name of the broker as trustee at a bank or other financial institution, nor designated as a trust account, in violation of Code Section 10145 and Regulations 2832(a), 2950(d) and 2951. Instead, the said accounts were set up under the fictitious business name of Choice Escrow.

(f)(1) While acting in the capacity of an escrow holder for T/A #1, failed to place trust funds, including earnest money deposits, accepted on behalf of another

into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the broker at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson, as required by Code Section 10145 and Regulations 2832(e), 2950(f) and 2951. Instead, the said accounts were set up under the fictitious business name of Choice Escrow.

(g) Failed to maintain an accurate and complete control record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed into T/A #1 and T/A #2, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(h) Failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed into T/A #1, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

(i) (Hwang, Lewis, Saenz) Failed to perform an accurate and complete monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by T/A #1 and T/A #2, in violation of Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

(j) Permitted Elizabeth Quinones and Simon Cheon, unlicensed and unbounded persons, to be authorized signatories on T/A #1, the Recovery Account, and T/A #2, in violation of Code Section 10145 and Regulations 2834, 2950(d) and 2951.

(k) Used the fictitious name of "Choice Escrow", to conduct licensed activities including broker-controlled escrows without holding a license bearing said fictitious name, in violation of Code Section 10159.5 and Regulation 2731.

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NEGLIGENCE

9.

The overall conduct of Respondent 100 LAREI constitutes negligence or incompetence. This conduct, acts and/or omissions are cause for the suspension or revocation of the real estate license and license rights of said Respondent pursuant to Code Section 10177(g).

DETERMINATION OF ISSUES

1.

The conduct of Respondent 100 LAREI, as described in Finding 8, herein above, is in violation of Code Sections 10145, 10159.5 and 10176(e), and Regulations 2731, 2831, 2831.1, 2831.2, 2832(a), 2832(e), 2832.1, 2834, 2950(d), 2950(f), 2950(g), 2950(i) and 2951.

2.

The conduct of Respondent 100 LAREI, as described in Findings 8 and 9, herein above, is cause for disciplinary action pursuant to Code Sections 10176(e), 10176(i), 10177(d), 10177(g) and 10177(j).

3.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

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ORDER

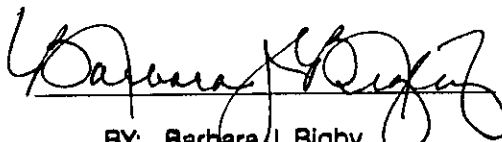
The real estate broker license and license rights of Respondent 100 LOS ANGELES REAL ESTATE INC., under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

Pursuant to Section 10148 of the Business and Professions Code, Respondents 100 LOS ANGELES REAL ESTATES INC. and JOEL BARRY LEWIS are jointly and severally liable to pay the Commissioner's reasonable cost for the audit which led to this disciplinary action. The cost of the audit which led to this disciplinary action is \$31,997.90. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

This Decision shall become effective at 12 o'clock noon on November 30, 2010

DATED: 11-1, 2010

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

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IT IS SO ORDERED August 2, 2010
JEFF DAVIS
Real Estate Commissioner

Dolores Weeks
By: DOLORES WEEKS
Regional Manager

Handwritten initials

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AUG 19 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of

100 LOS ANGELES REAL ESTATE INC., doing
business as ReMax 100; KYUNG HEE HWANG,
individually and as designated officer of 100
Los Angeles Real Estate Inc.; JOEL BARRY LEWIS;
and, FRED ALEXANDER SAENZ, individually and
as former designated officer of 100 Los Angeles Real
Estate Inc.,

No. H-35676 LA
L-2009040178

Respondents.

ORDER STAYING EFFECTIVE DATE

On July 22, 2010, a Decision After Further Reconsideration was rendered in the
above-entitled matter to become effective August 20, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision of July 22,
2010, is stayed for a period of ten (10) days to consider Respondent's petition for reconsideration.

The Decision of July 22, 2010, shall become effective at 12 o'clock noon on
August 30, 2010.

DATED: 8-18-2010

JEFF DAVI
Real Estate Commissioner

[Signature]

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FILED

JUL 22 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

100 LOS ANGELES REAL ESTATE INC., doing
business as ReMax 100; KYUNG HEE HWANG,
individually and as designated officer of 100
Los Angeles Real Estate Inc.; JOEL BARRY LEWIS;
and, FRED ALEXANDER SAENZ, individually and
as former designated officer of 100 Los Angeles Real
Estate Inc.,

No. H-35676 LA
L-2009040178

Respondents.

DECISION AFTER FURTHER RECONSIDERATION

An Accusation in this matter was filed on February 10, 2009. This matter was heard by Joseph D. Montoya, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings, on October 26, 2009, in Los Angeles, California.

The Complainant was represented by Elliott MacLennan, Staff Counsel for the Department of Real Estate. Respondent JOEL BARRY LEWIS ("Respondent") was present and represented himself.

Oral and documentary evidence was received, the case was argued, and the matter was submitted for decision on the hearing date.

1 On December 15, 2009, the ALJ submitted a Proposed Decision for
2 consideration of the Real Estate Commissioner.

3 On January 15, 2010, the Commissioner adopted the Proposed Decision,
4 which was to become effective at 12 o'clock noon on February 8, 2010.

5 Thereafter, Respondent requested reconsideration of the Decision.

6 On February 4, 2010, an Order Staying Effective Date was filed. The
7 Decision was stayed to twelve o'clock noon on March 10, 2010.

8 On February 23, 2010, Respondent filed argument in support of
9 Respondent's petition for reconsideration of said Decision.

10 Counsel for Complainant filed argument on March 8, 2010.

11 An Order Granting Reconsideration was filed on March 10, 2010.

12 Thereafter, Respondent and Counsel for Complainant filed additional argument.

13 On May 20, 2010, a Decision After Reconsideration was filed adopting
14 the Proposed Decision dated December 15, 2009. Thereafter an Amended Decision
15 After Reconsideration was filed on June 7, 2010.

16 Thereafter Respondent requested further reconsideration of the Decision.

17 On June 21, 2010 an Order Staying Effective Date was filed staying the
18 Amended Decision After Reconsideration to 12 o'clock noon on July 1, 2010.

19 Thereafter Respondent filed additional argument.

20 An Order Granting Reconsideration was filed on July 1, 2010.

21 I have considered the petitions and arguments submitted and I have
22 concluded that the following is appropriate and is consistent with protection of the public
23 interest.

24 The Findings and Conclusions of the Proposed Decision dated
25 December 15, 2009, of the Administrative Law Judge of the Office of Administrative
26 Hearings, are hereby adopted.

27 ///

1 WHEREFORE, THE FOLLOWING ORDER is hereby made:

2 ORDER

3 The real estate broker license and license rights of respondent JOEL
4 BARRY LEWIS, under the Real Estate Law are hereby revoked, provided, however, a
5 restricted real estate broker license shall be issued to Respondent pursuant to Section
6 10156.5 of the Business and Professions Code if Respondent:

7 A. makes application therefor and pays to the Department of Real Estate
8 the appropriate fee for the restricted license within ninety (90) days of the effective
9 date of this Decision; and

10 B. Respondent shall, prior to and as condition of the issuance of the
11 restricted license, submit proof satisfactory to the Real Estate Commissioner of having
12 taken and successfully completed the continuing education course on trust fund accounting
13 and handling specified in subdivision (a) of Section 10170.5 of the Business and
14 Professions Code. Proof of satisfaction of this requirement includes evidence that
15 Respondent has successfully completed the trust fund account and handling continuing
16 education course within 120 days prior to the effective date of the Decision in this matter.

17 C. Respondent shall, prior to and as condition of the issuance of the
18 restricted license, submit proof satisfactory to the Real Estate Commissioner of having
19 taken and successfully passed the Professional Responsibility Examination administered
20 by the Department including the payment of the appropriate examination fee. Proof of
21 satisfaction of this requirement includes evidence that Respondent has taken and
22 successfully passed the Professional Responsibility Examination administered by the
23 Department including the payment of the appropriate examination fee, within 120 days
24 prior to the effective date of the Decision in this matter.

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1 The restricted real estate broker license issued to respondent shall be
2 subject to all of the provisions of Section 10156.7 of the Business and Professions Code
3 and the following limitations, conditions and restrictions imposed under authority of
4 Section 10156.6 of that Code:

5 1. The restricted license issued to Respondent may be suspended prior
6 to hearing by Order of the Real Estate Commissioner in the event of Respondent's
7 conviction or plea of nolo contendere to a crime which is substantially related to
8 Respondent's fitness or capacity as a real estate licensee.

9 2. The restricted license issued to Respondent may be suspended prior
10 to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
11 Commissioner that Respondent has violated provisions of the California Real Estate Law,
12 the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions
13 attaching to the restricted license.

14 3. Respondent shall not be eligible for the issuance of an unrestricted
15 real estate license nor the removal of any of the conditions, limitations or restrictions of
16 the restricted license until at least two (2) years have elapsed from the effective date of this
17 Decision.

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

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5. Pursuant to Section 10148 of the Business and Professions Code,

Respondent and 100 LOS ANGELES REAL ESTATE INC., are jointly and severally liable to pay the Commissioner's reasonable cost for the audit which led to this disciplinary action. The cost of the audit which led to this disciplinary action is \$31,997.90. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work.

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

The Commissioner may suspend the licenses of Respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

This Decision After Further Reconsideration shall become effective at 12 o'clock noon on August 20, 2010.

IT IS SO ORDERED

7/24/2010
JEFF DAVI
Real Estate Commissioner

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FILED

JUL 01 2010

DEPARTMENT OF REAL ESTATE

By *Juan [Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

100 LOS ANGELES REAL ESTATE INC., doing
business as ReMax 100; KYUNG HEE HWANG,
individually and as designated officer of 100
Los Angeles Real Estate Inc.; JOEL BARRY LEWIS;
and, FRED ALEXANDER SAENZ, individually and
as former designated officer of 100 Los Angeles Real
Estate Inc.,

No. H-35676 LA
L-2009040178

Respondent.

ORDER GRANTING RECONSIDERATION

On January 19, 2010, a Decision was filed in the above-entitled matter to
become effective February 8, 2010. On February 4, 2010, the effective date of the Decision of
January 19, 2010 was stayed, and the new effective date was March 10, 2010.

On February 23, 2010, Respondent petitioned for reconsideration of the Decision
of January 19, 2010. An Order Granting Reconsideration was filed on March 10, 2010.
Thereafter, Respondent and Counsel for Complainant filed argument.

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On May 20, 2010 a Decision After Reconsideration was filed adopting the Proposed Decision of the Administrative Law Judge dated December 15, 2009. Thereafter an Amended Decision After Reconsideration was filed on June 7, 2010.

Respondent requested further reconsideration of the Decision.

On June 21, 2010 an Order Staying Effective Date was filed staying the Amended Decision After Reconsideration to 12 o'clock noon on July 1, 2010.

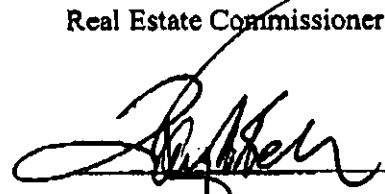
Thereafter Respondent filed additional argument.

I find good cause to reconsider the Decision of January 19, 2010. Reconsideration is hereby granted.

Respondent shall have until July 16, 2010 in which to file written argument in further support of his petition for reconsideration. Counsel for the Department of Real Estate shall submit any written reply to said argument within fifteen (15) days thereafter.

IT IS SO ORDERED 7/1/2010 11:45 a.m.

JEFF DAVI
Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

Sect

FILED

JUN 21 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-35676 LA
)	
100 LOS ANGELES REAL ESTATE INC.,)	L-2009040178
doing business as ReMax 100;)	
KYUNG HEE HWANG, individually)	
and as designated officer or)	
100 Los Angeles Real Estate Inc.;)	
<u>JOEL BARRY LEWIS</u> ; and, FRED)	
ALEXANDER SAENZ, individually and)	
as former designated officer of)	
100 Los Angeles Real Estate Inc.,)	
)	
Respondent(s).)	
)	

ORDER STAYING EFFECTIVE DATE

On June 3, 2010, an Amended Decision After
Reconsideration was rendered in the above-entitled matter to
become effective June 21, 2010.

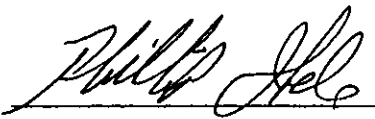
IT IS HEREBY ORDERED that the effective date of

1 the Amended Decision After Reconsideration of June 3, 2010 is
2 stayed for a period of ten (10) days to consider Respondent's
3 petition for reconsideration.
4

5 The Amended Decision After Reconsideration of
6 June 3, 2010, shall become effective at 12 o'clock noon on
7 July 1, 2010.
8

9 DATED: June 21, 2010.
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11 JEFF DAVI
12 Real Estate Commissioner
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14 By: 
15 PHILLIP IHDE
16 Regional Manager
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FILED

JUN -7 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of)	No. H-35676 LA
)	L-2009040178
JOEL BARRY LEWIS,)	
)	
Respondent)	
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)	

AMENDED DECISION AFTER RECONSIDERATION

An Accusation in this matter was filed on February 10, 2009. This matter was heard by Joseph D. Montoya, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings, on October 26, 2009, in Los Angeles, California.

The Complainant was represented by Elliott MacLennan, Staff Counsel for the Department of Real Estate. Respondent JOEL BARRY LEWIS ("Respondent") was present and represented himself.

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1 Oral and documentary evidence was received, the case
2 was argued, and the matter was submitted for decision on the
3 hearing date. On December 15, 2009, the ALJ submitted a
4 Proposed Decision which recommended the revocation of
5 Respondent's real estate broker license, with the right to apply
6 for and be issued a restricted real estate salesperson license.

7 On January 15, 2010, the Commissioner adopted the
8 Proposed Decision, which was to become effective at 12 o'clock
9 noon on February 8, 2010.

10 Thereafter, Respondent requested reconsideration of
11 the Decision.

12 On February 4, 2010, an Order Staying Effective Date
13 was filed. The Decision was stayed to twelve o'clock noon on
14 March 10, 2010.

15 On February 23, 2010, Respondent filed argument in
16 support on Respondent's petition for reconsideration of said
17 Decision.

18 Counsel for Complainant filed argument on March 8,
19 2010.

20 An Order Granting Reconsideration was filed on March
21 10, 2010. Thereafter, Respondent and Counsel for Complainant
22 filed additional argument.

23 I have considered the petition of Respondent and the
24 arguments submitted by Respondent and Counsel for Complainant.
25 I have concluded that the following Order is appropriate and is
26 consistent with protection of the public interest.

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

The Proposed Decision dated December 15, 2009, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in this matter.

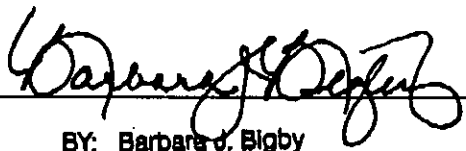
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted real estate salesperson license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

The Decision After Reconsideration shall become effective at 12 o'clock noon on June 21, 2010.

IT IS SO ORDERED 6/3/10

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

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FILED

MAY 20 2010

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-35676 LA
)	L-2009040178
JOEL BARRY LEWIS,)	
)	
Respondents.)	
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)	

DECISION AFTER RECONSIDERATION

An Accusation in this matter was filed on February 10, 2009. This matter was heard by Joseph D. Montoya, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings, on October 26, 2009, in Los Angeles, California.

The Complainant was represented by Elliott MacLennan, Staff Counsel for the Department of Real Estate. Respondent JOEL BARRY LEWIS ("Respondent") was present and represented himself.

///

///

1 Oral and documentary evidence was received, the case
2 was argued, and the matter was submitted for decision on the
3 hearing date. On December 15, 2009, the ALJ submitted a
4 Proposed Decision which recommended the revocation of
5 Respondent's real estate broker license, with the right to apply
6 for and be issued a restricted real estate salesperson license.

7 On January 15, 2010, the Commissioner adopted the
8 Proposed Decision, which was to become effective at 12 o'clock
9 noon on February 8, 2010.

10 Thereafter, Respondent requested reconsideration of
11 the Decision.

12 On February 4, 2010, an Order Staying Effective Date
13 was filed. The Decision was stayed to twelve o'clock noon on
14 March 10, 2010.

15 On February 23, 2010, Respondent filed argument in
16 support on Respondent's petition for reconsideration of said
17 Decision.

18 Counsel for Complainant filed argument on March 8,
19 2010.

20 An Order Granting Reconsideration was filed on March
21 10, 2010. Thereafter, Respondent and Counsel for Complainant
22 filed additional argument.

23 I have considered the petition of Respondent and the
24 arguments submitted by Respondent and Counsel for Complainant.
25 I have concluded that the following Order is appropriate and is
26 consistent with protection of the public interest.

27 ///

1 WHEREFORE, THE FOLLOWING ORDER is hereby made:

2 ORDER

3 The Proposed Decision dated December 15, 2009, of the
4 Administrative Law Judge of the Office of Administrative
5 Hearings, is hereby adopted as the Decision of the Real Estate
6 Commissioner in this matter.

7 The Decision suspends or revokes one or more real
8 estate licenses, but the right to a restricted real estate
9 salesperson license is granted to Respondent.

10 The right to reinstatement of a revoked real estate
11 license or to the reduction of a suspension is controlled by
12 Section 11522 of the Government Code. A copy of Section 11522
13 and a copy of the Commissioner's Criteria of Rehabilitation are
14 attached hereto for the information of Respondent.

15 IT IS SO ORDERED

16 JEFF DAVIS
17 Real Estate Commissioner
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FILED

MAR 10 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-35676 LA
JOEL BARRY LEWIS,)	L-2009040178
)	
)	
Respondent.)	
)	

ORDER GRANTING RECONSIDERATION

On January 19, 2010, a Decision was rendered in the above-entitled matter to become effective February 8, 2010. On February 4, 2010, the effective date of the Decision of January 19, 2010 was stayed, and the new effective date is March 10, 2010.

On February 23, 2010, Respondent petitioned for reconsideration of the Order of January 19, 2010.

I find that there is good cause to reconsider the Order of January 19, 2010. Reconsideration is hereby granted.

1 Respondent shall have until March 26, 2010, in which to
2 file written argument in further support of his petition for
3 reconsideration. Counsel for the Department of Real Estate shall
4 submit any written reply to said argument within fifteen (15)
5 days thereafter.

6 IT IS SO ORDERED

3/10/2010

7 JEFF DAVI
8 Real Estate Commissioner

9 
10 By WAYNE S. BELL
11 Chief Counsel

Sub

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
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5 Telephone: (213) 576-6982
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FILED

FEB 4 2010

DEPARTMENT OF REAL ESTATE
BY: *Dorsey*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)
12 100 LOS ANGELES REAL ESTATE INC.)
13 doing business as ReMax 100;)
14 KYUNG HEE HWANG, individually)
15 and as designated officer of 100)
16 Los Angeles Real Estate Inc.;)
17 JOEL BARRY LEWIS; and, FRED)
18 ALEXANDER SAENZ, individually)
19 and as former designated officer)
20 of 100 Los Angeles Real Estate Inc.,)
21 Respondents.)

No. H-35676 LA
L-2009040178

22 ORDER STAYING EFFECTIVE DATE

23 On January 19, 2010, a Decision was rendered in the
24 above-entitled matter to become effective February 8, 2010.

25 IT IS HEREBY ORDERED that the effective date of the
26 Decision of January 19, 2010, is stayed for a period of 30 days
27 for JOEL BARRY LEWIS.

The Decision of January 19, 2010, shall become
effective at 12 o'clock noon on March 10, 2010.

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DATED FEBRUARY 4, 2010

JEFF DAVI
REAL ESTATE COMMISSIONER

Phillip Ihde
BY: Phillip Ihde
Regional Manager

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

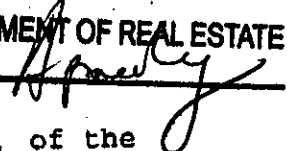
* * * * *

In the Matter of the Accusation of)
)
JOEL BARRY LEWIS,)
)
Respondent.)

No. H-35676 LA
L-200904678

FILED

JAN 19 2010

DEPARTMENT OF REAL ESTATE
BY: 

DECISION

The Proposed Decision dated December 15, 2009, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.


The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson's license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock
noon on February 8, 2010.

IT IS SO ORDERED 1/15/2010

JEFF DAVI
Real Estate Commissioner


BY: Barbara J. Bigby
Chief Deputy Commissioner

3. At all times relevant to this matter, 100 Los Angeles Real Estate, Inc., (100 RE) was licensed or had license rights as a real estate broker. It was first so licensed in January 2001.

4. Lewis was the licensed designated officer of 100 RE from May 4, 2006 until January 21, 2008, although the record indicates he acted in the capacity of designated officer for a short period before May 4, 2006. Prior to Lewis becoming the designated officer of 100 RE, Fred Alexander Saenz (Saenz) acted as the designated officer, from July 1, 2005 to March 5, 2006. After Lewis left the position of designated officer, Kyung Hee Hwang (Hwang) acted as the designated officer for the corporation.

5. During the time relevant to this matter, 100 RE operated a residential sales business. It also operated an escrow division, known as Choice Escrow, under the exemption set out in Financial Code section 17006, subdivision (a)(4).

The Embezzlement of Trust Funds from the Escrow Division of 100 RE:

6. During the relevant time period, 100 RE accepted or received funds in trust, on behalf of actual or prospective parties to transactions, such as buyers, borrowers, lenders, and escrow beneficiaries. Such transactions were being conducted by 100 RE and its agents, and 100 RE made deposits and disbursements of such funds.

7. In order to further such business, 100 RE held two accounts designated as trust accounts at City National Bank in Commerce, California.

8. Prior to and during Lewis's tenure as designated officer of 100 RE, Elizabeth Quinones (Quinones) acted as the escrow officer for Choice Escrow, in charge of the day-to-day management of 100 RE's escrow business. Unknown to Lewis and his predecessors, Ms. Quinones had been embezzling monies from the escrow operation at a steady pace, for a period of years.²

9. Respondent Lewis discovered the thefts in late March 2007, when he had to assist an agent in closing an escrow while Quinones was away from the office. He found various uncashed and/or unnegotiated checks, and bank records that indicated numerous checks had not been properly accounted for. Up until that time, Quinones, through an outside service, had been generating reconciliation reports that did not indicate any problems. Lewis called in the owners of 100 RE on a weekend, and shared his findings with them. On the following Monday, April 9, 2007, they met with Quinones, who soon admitted that she had been embezzling funds. She was terminated by 100 RE that morning.

² According to an audit performed by R. Mares and Associates, Inc., at the request of 100 RE, the embezzlement began in July 2001.

10. Shortly after she was terminated, Quinones had an attorney contact 100 RE. Essentially, he communicated that Quinones, with her family's help, wished to pay back the embezzled funds, then estimated by Lewis to be in excess of \$150,000, in the hope that she would not be prosecuted. Subsequent meetings were held, and Quinones's mother, Ms. Stupin, agreed to give 100 RE \$300,000 to make up the embezzled funds and to cover the firm's cost of investigating the matter. By May 4, 2007, Quinones had delivered two checks from her mother to 100 RE, one for \$150,000, and the second for \$75,000. Respondent Lewis made subsequent calls to Quinones's lawyer for the balance of \$75,000, but it was never paid to 100 RE.

11. In the course of investigating the embezzlement, Respondent and the owners of 100 RE determined that Quinones had used some of the embezzled funds to purchase real estate along with an agent then employed by the firm, with whom Quinones had a personal relationship. That agent, Mr. Bates, asserted that he had no knowledge that Quinones had been stealing money. However, he paid \$104,248.96 to 100 RE between September and December 2007. Thus, 100 RE received back just over \$329,000 to make good the embezzled trust funds.

12. Ms. Quinones scheme of embezzlement was sophisticated.³ She manipulated the various trust files and accounts to hide her thievery. As noted by Ms. Maras in her audit report, "Quinones concealed the embezzlement and misappropriation by posting funds received for other escrow files, transferring funds from other escrow files, or creating and posting receipts without receipt of funds into files from which unauthorized disbursements and/or overdraft balances were made." (Ex. 4, p. 13.) One of Quinones's ways of misappropriating funds was to obtain a refund due a customer, such as a refund of appraisal fees, or from title company fees, and to take that money instead of refunding it to the client. The client was typically unaware that they had a sum—anywhere from a few hundred to several thousand dollars—due to them. If she did not take the money outright, it was used to cover up other misappropriations. She also cut authorized checks, then cancelled them on the books, but put the money in an unrelated file. In some cases, she overstated expenses of the escrow process, pocketing the difference between the actual expenses and her overstated amounts. Her scheme was successful to the point that an outside firm that performed account reconciliations was provided with false data so that it rendered reports showing that the accounts were reconciled.

13. The Department's auditor determined that Quinones had embezzled at least \$227,707.70 from 100 RE. This figure is less than that found by 100 RE's outside auditor, Ms. Maras, who determined that the misappropriated funds totaled \$308,245.94. (Ex. 4, p. 10.) In either event, enough money had been recovered to replenish the trust accounts and to cover some of 100 RE's expenses.

³ Her ability may have been developed in prior employment. Lewis later learned that both Quinones and her mother had been barred by the Department of Corporations from working in escrow firms licensed by that agency.

14. Upon receiving the \$225,000 from Quinones's mother, 100 RE deposited the money into its general account, with Lewis's approval, and against the admonition of the firm's outside auditor, Maras, who told Lewis the funds were trust funds. Later, Respondent Lewis caused an account titled "recovery account" to be opened. The bulk of the funds obtained from the sales agent, Mr. Bates, were deposited into the recovery account, in an amount just over \$97,000, but approximately \$7,160 of the monies obtained from Bates were placed in 100 RE's operating account. 100 RE spent the monies obtained from Quinones on operating expenses of the firm, such as for rent, commissions, and salaries; they were not used to make various clients of the firm whole. Ultimately, the owners of the firm did replenish the trust accounts, but not with the monies received on from Quinones. That occurred in October 2008.

The Department's Audit Findings:

15. Between July 15 and November 26, 2008, Dorcas Chang, an auditor for the Department, conducted an audit of the activities of 100 RE, focused on its handling of trust funds. As part of the process, she met with Respondent Lewis and other persons associated with 100 LA, such as the firm's owners and the person then acting as the designated officer of the firm.

16. The audit determined that as of the date Respondent Lewis left 100 RE (January 21, 2008), there were discrepancies in the firm's trust accounts. During the audit, Ms. Chang denominated the recovery account as a trust account, even though it was not clearly titled as a trust account. She found a combined shortage of \$208,649.09 in trust account number 1 and the recovery account.

17. Ms. Chang also determined that there was a trust fund discrepancy of \$884,858.35 in trust account number 1 as of March 30, 2007, early in Lewis's tenure as the designated officer of 100 RE. That discrepancy consisted of embezzled funds in the amount of \$227,707.70, along with an overdrawn balance of \$657,350.09, and a bank charge of \$15. The overdrawn balance was attributed, in the main, to Quinones issuing a receipt for just over \$570,000 when the money had not yet been received.⁴

18. Aside from the trust account discrepancies, other deficiencies in the management of the trust accounts were established by Ms. Chang's audit:

//

⁴ Quinones was disbursing monies from a particular escrow over several days in February 2007, causing the account to be overdrawn by \$561,953.17 by March 30 of that year. A title company wired \$563,862.89 to 100 RE on April 5, 2007, covering those disbursements.

(A) Lewis allowed the commingling of trust funds and funds belonging to 100 RE when it deposited the monies received from Quinones, and \$7,160 received from Bates, in 100 RE's operating account.

(B) The use of trust funds deposited into the 100 RE operating account constituted a conversion of those funds, which was sanctioned by Lewis.

(C) The recovery account and a second trust account were not in the name of the broker as trustee at a bank nor designated as a trust account with such institution. Instead, the account was in the name of Choice Escrow, which was an unlicensed fictitious name being used by 100 RE.

(D) Quinones and Simon Cheon, both unlicensed and unbonded persons, were authorized signatories on both of the trust accounts, and Mr. Cheon was an authorized signatory on the recovery account.

(E) 100 RE used the name "Choice Escrow" to conduct licensed activities while Lewis was the designated broker, but 100 RE was never licensed to use that fictitious name.

Other Findings:

19. It was not established that Lewis "permitted, allowed or caused" certain acts pertaining to the trust accounts, as alleged in paragraphs 7(a)(2) and 7(a)(3), by allowing disbursements from trust account number 1 that brought the balance below acceptable levels. Instead, such were the acts of Quinones, and there is no evidence that such wrongdoing was permitted, caused, or allowed by Respondent Lewis. That it occurred during his tenure is not enough, under the circumstances, to establish some wrongdoing on his part, at least based on this record, given the high standard of proof required in this case.

20. It was not established that Lewis failed to render written statements at the close of escrow, nor was it established he failed to maintain accurate and complete control records for beneficiaries. Likewise, it was not established that he had failed to perform proper reconciliations of trust account balances. Such was in the hands of Quinones, and the evidence indicates that she hid her misconduct. There is insufficient evidence to establish that he failed to act reasonably in the circumstances.

21. During the course of the hearing, Lewis contended, quite adamantly, that the monies received from Quinones were not trust funds, because they were not received from a client for a transaction. He claimed to have been advised on this point by 100 RE's attorney, but no corroboration for that contention was provided. Meanwhile, Ms. Maras, a former auditor for the Department of Corporations had told him otherwise. While the nature of the transaction with Quinones and her mother may not have fit neatly into the provisions of Business and Professions Code section 10145, common sense should have indicated that if

the monies were being paid, in whole or in part, to make up for the theft of trust funds, then the beneficiaries of the trust should have an interest in those funds. While Lewis proceeded aggressively to deal with the embezzlement, once he discovered it, in the matter of the recovered funds, he should have acted cautiously.

22. All other matters, upon which findings have not been made, are deemed unproven or surplusage.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed pursuant to Business and Profession Code sections 10070 and 10100⁵ was established, based on Factual Findings 1 through 3.

2. (A) The monies received by 100 RE from Quinones and Bates constituted trust funds, and Lewis, as designated officer of 100 RE, should have required such funds to be put in a trust account, and not used for general operating expenses. Because the monies from Bates constituted trust funds, the Recovery Account, into which such funds were deposited, constituted a trust account. This conclusion, explained further below, follows from the source of the monies, and the reason they were paid to 100 RE, as well as the firm's ongoing status as a trustee of the embezzled monies.

(B) A trustee is under a duty to take reasonable steps to realize on claims that he or she holds in trust. (Prob. Code, § 16010.) At the same time, a trustee holds the "power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties." (Prob. Code, § 16249.)

(C) 100 RE, as trustee of the funds held for its various clients and others, held a claim against the embezzler Quinones, which was a claim that would have to be on behalf of the beneficiaries. Under the Probate Code, 100 RE was duty-bound to pursue Quinones for the monies she stole, so that it could make the various beneficiaries whole; it had such a duty whether or not it was at fault for the thefts. It had the power to discharge that duty under section 16249. Thus, 100 RE could have brought a civil lawsuit against Quinones, in its own name, for the money she stole. (See *Igauye v. Howard* (1952) 114 Cal.App.2d 122, 125 [trustee authorized to prosecute claim against a former landlord for wrongful eviction and conversion of property held in trust].) This would not have changed the trust character of such sued-for funds.

(D) Further, it could have pursued others who obtained ill-gotten funds from Quinones, such as her grandmother or Mr. Bates, or perhaps even the owner of the mortgage on her house, which had been paid at times with stolen trust funds. 100 RE could have

⁵ All further statutory references are to the Business and Professions Code unless otherwise noted.

sought to enforce a constructive trust on such persons, who would be involuntary trustees even if they obtained the money by mistake, absent a showing that they were innocent purchasers for value. (Civ. Code, § 2224.)⁶ Put another way, because the funds were trust funds, their character did not change because they were paid out to some third party. Third parties, unless innocent purchasers for value, could not take legal title to stolen monies, and the beneficial interest remained with the customers of the firm.

(E) If 100 RE had been forced to file one or more lawsuits to retrieve the funds, and if it had obtained a judgment, it would have held such a judgment as a trustee, and not as the outright owner of the embezzled monies. If it executed on such a judgment, it would have held the proceeds as a trustee. It follows that if it settled any such claims without filing a lawsuit, as it was empowered to do, it would hold the monies as trustee for the various clients. Here, 100 RE asserted its claim against Quinones, and collected an amount equal to the vast majority of what had been stolen. Although it had incurred some costs, in the investigation of the matter, and some attorneys' fees, it is obvious that such was a fraction of the amount collected within weeks of discovery of the embezzlement. Given the circumstances, it would be equitable for 100 RE to first make its beneficiaries whole, and then seek to obtain reimbursement for the expenses it incurred to account for and retrieve the embezzled funds.

(F) Respondent Lewis argued that under the Real Estate Law, the funds obtained from Quinones were not trust funds, which are generally defined as funds owned by third parties, received by a broker in connection with a transaction governed by the Real Estate Law. That position is not sustainable, for the reasons set out above. Further, the monies were owned by another, and given to 100 RE in connection with a transaction or transactions governed by the Real Estate Law. It appears from the record that it was the intent of Quinones and her mother to pay back that which was taken from the trust fund beneficiaries, who could have sued her in their own right and sought to impose a constructive trust. (See Factual Finding 10.) Thus, 100 RE received from Quinones—a third person—funds intended for the benefit of another, namely the beneficiaries of the trust fund, and this pertained to a series of transactions controlled under the Real Estate Law. This impressed a trust status on the funds under that Law, even if the funds paid over by Quinones had not directly come from the trust account.

3. Respondent violated provisions of the California Code of Regulations (CCR), title 10,⁷ as follows:

⁶ Section 2224 provides that "One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

⁷ All further references to the CCR shall be to title 10 thereof.

(A) Section 2950, subdivision (g), by paying out monies recovered from Quinones without the authority of the beneficiaries of the trust accounts. This Conclusion is based on Factual Findings 6 through 14 and Legal Conclusion 2.

(B) Section 2835, by commingling the monies received in trust from Quinones with 100 RE's funds in its operating account, based on Factual Findings 6 through 14, and 18(A), and Legal Conclusion 2.

(C) By allowing 100 RE to have trust accounts in an unlicensed fictitious name, Lewis allowed the firm to violate section 2832, subdivision (a), based on Factual Finding 18(E).

(D) Section 2834, by allowing Elizabeth Quinones and Simon Cheon, unlicensed and unbonded persons to be signatories on trust accounts, based on Factual Finding 18(D) and Legal Conclusion 2.

(E) Section 2731, subdivision (a), by allowing 100 RE to use an unlicensed fictitious name, Choice Escrow, based on Factual Finding 18(E).

4. Respondent Lewis's violations of the CCR, established in Legal Conclusion 3 and its factual predicates, establish that he violated section 10145.

5. Respondent Lewis's conduct of allowing the funds received from Quinones and Bates to be paid out for operating expenses of 100 RE constituted incompetence within the meaning of section 10177, subdivision (g), and further constituted a violation of section 10145. This Conclusion is based on Factual Findings 6 through 14 and Legal Conclusion 2.

6. Respondent's Lewis, by allowing 100 RE to mix its operating funds with the funds received from Quinones and Bates, commingled trust funds with personal funds, in violation of section 10176, subdivision (e), and section 10145. This Conclusion is based on Factual Findings 6 through 14, and Legal Conclusion 2.

7. Cause has been established to discipline Respondent's license pursuant to 10177, subdivision (d), and 10177, subdivision (g), for his violations of section 10145 and of the Commissioner's regulations, based on Legal Conclusions 2 through 6, and their factual predicates.

8. (A) Section 10159.2, subdivision (a), provides that a corporation's designated officer "shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required."

(B) The Commissioner's regulations, at CCR section 2725, provide in pertinent part that:

"A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

[¶] . . . [¶]

(d) The handling of trust funds."

(C) In this case, the record does not establish, by clear and convincing evidence,⁸ that Respondent failed to engage in reasonable supervision over the handling of the trust funds, where the employee placed in charge of them had skillfully manipulated the records for a period of years, and where other designated officers and the owners of the firm had been scammed as well. Thus, some of the claims against Respondent can not be sustained, such as the charge that he "allowed" certain violations, or that he failed to do certain things entrusted to Quinones, such as the maintenance of completely accurate records. There remains in this record a paucity of evidence about what processes were in place during Lewis's tenure; instead, the proof established that the accounts were manipulated and funds stolen. Under the statute and the regulation, Lewis was not a guarantor of the performance of every act of the corporate broker and its employees, and the fact that there were inaccuracies and theft is not enough to establish a violation on Lewis's part in connection with some of the trust management rules.

9. It has long been recognized that the purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.2d 161, 164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.) In this case, Lewis failed to recognize the trust character of the funds recovered from Quinones. If there was any question as to their status, they should have been segregated in a trust account, until the matter could be analyzed carefully. His action threatened to undo a fortunate turn of events, where Quinones's mother was willing to make good on the loss suffered by the firm's clients. Instead, he allowed a substantial amount of money to be commingled, and converted from trust status. This conduct must draw a disciplinary response from the Commissioner, and the following order is made for the protection of the public.

ORDER

The real estate broker's license issued to Respondent Joel Barry Lewis is hereby revoked, provided, however, that Respondent may apply for a restricted salesperson's

⁸ An accusation against a real estate licensee must be proved by clear and convincing evidence. (*Realty Projects v. Smith* (1973) 32 Cal.App.3d 204.)

license, and a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code upon his application for such. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(A) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee;

(B) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the issuance of the restricted license to the Respondent.

3. During the period that the restricted license is in effect Respondent shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California, and shall remain in compliance with the terms and conditions of his criminal probation.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

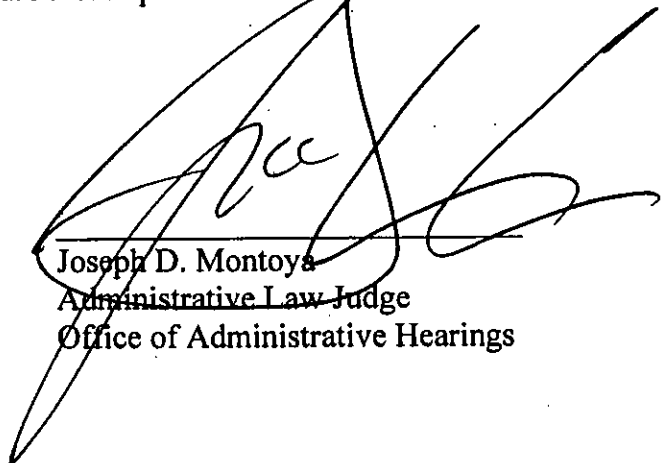
(A) That the employing broker has read the Decision which is the basis for issuing the restricted license; and,

(B) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,

the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

December 15, 2009

A large, stylized handwritten signature in black ink, appearing to read 'Joe', is written over a horizontal line. The signature is highly cursive and loops around the line.

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982 (Office)

FILED

NOV 30 2009

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 100 LOS ANGELES REAL ESTATE INC.)
14 doing business as ReMax 100;)
15 KYUNG HEE HWANG, individually)
16 and as designated officer of 100)
17 Los Angeles Real Estate Inc.;)
18 JOEL BARRY LEWIS; and, FRED)
19 ALEXANDER SAENZ, individually)
20 and as former designated officer)
21 of 100 Los Angeles Real Estate)
22 Inc.;)
23 Respondents.)

No. H-35676 LA

STIPULATION
AND
AGREEMENT

19 It is hereby stipulated by and between Respondent
20 KYUNG HEE HWANG, individually and as designated officer of 100
21 Los Angeles Real Estate Inc., (sometimes referred to as
22 "Respondents), represented by Michael Y. Yi, Esq. and the
23 Complainant, acting by and through Elliott Mac Lennan, Counsel
24 for the Department of Real Estate, as follows for the purpose of
25 settling and disposing of the Accusation filed on February 10,
26 2009 ("Accusation") in this matter:
27

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondent
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

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

12 3. Respondent timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondent hereby freely and voluntarily withdraws said Notice of
16 Defense. Respondent acknowledges that she understand that by
17 withdrawing said Notice of Defense she thereby waives her right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that she will waive other rights
21 afforded to her in connection with the hearing such as the right
22 to present evidence in her defense including the right to cross-
23 examine witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondent chooses not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation and Respondent's decision not to
11 contest the Accusation is made for the purpose of reaching an
12 agreed disposition of this proceeding and is expressly limited to
13 this proceeding and any other proceeding or case in which the
14 Department of Real Estate ("Department"), the state or federal
15 government, or any agency of this state, another state or federal
16 government is involved.

17 6. It is understood by the parties that the Real
18 Estate Commissioner may adopt this Stipulation as his Decision in
19 this matter thereby imposing the penalty and sanctions on
20 Respondent's real estate licenses and license rights as set forth
21 in the below "Order". In the event that the Commissioner in his
22 discretion does not adopt the Stipulation, the Stipulation shall
23 be void and of no effect and Respondent shall retain the right to
24 a hearing and proceeding on the Accusation under the provisions
25 of the APA and shall not be bound by any stipulation or waiver
26
27

1 3. Respondent shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations or restrictions of
4 a restricted license until one (1) year has elapsed from the
5 effective date of the issuance of the restricted license.

6 4. Respondent shall submit with any application for
7 license under an employing broker, or any application for
8 transfer to a new employing broker, a statement signed by the
9 prospective employing real estate broker on a form approved by
10 the Department of Real Estate which shall certify:

11 (a) That the employing broker has read the
12 Decision of the Commissioner which granted
13 the right to a restricted license; and

14 (b) That the employing broker will exercise
15 close supervision over the performance by the
16 restricted licensee relating to activities
17 for which a real estate license is required.

18 5. Respondent shall, within nine (9) months from the
19 effective date of this Decision, present evidence satisfactory to
20 the Real Estate Commissioner that Respondent has, since the most
21 recent issuance of an original or renewal real estate license,
22 taken and successfully completed the continuing education
23 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
24 for renewal of a real estate license. If Respondent fails to
25 satisfy this condition, the Commissioner may order the suspension
26
27

1 of the restricted license until Respondent presents such
2 evidence. The Commissioner shall afford Respondent the
3 opportunity for a hearing pursuant to the Administrative
4 Procedure Act to present such evidence.

5
6
7 DATED: 10-22-09

8 EL
9 ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

10 * * *

11 EXECUTION OF THE STIPULATION

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

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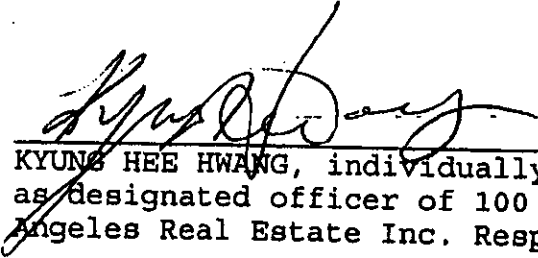
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MAILING AND FACSIMILE

1
2 Respondent (1) shall mail the original signed signature
3 page of the Stipulation herein to Elliott Mac Lennan: Attention:
4 Legal Section, Department of Real Estate, 320 W. Fourth St.,
5 Suite 350, Los Angeles, California 90013-1105. Additionally,
6 Respondent shall also (2) facsimile a copy of signed signature
7 page, to the Department at the following telephone/fax number:
8 (213) 576-6917, Attention: Elliott Mac Lennan.

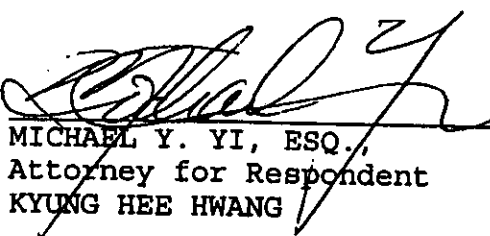
9 A facsimile constitutes acceptance and approval of the
10 terms and conditions of this stipulation. Respondent agrees,
11 acknowledges and understands that by electronically sending to
12 the Department a facsimile copy of Respondent's actual signature
13 as it appears on the stipulation that receipt of the facsimile
14 copy by the Department shall be as binding on Respondent as if
15 the Department had received the original signed stipulation.
16

17
18
19 DATED: 10/21/2009



KYUNG HEE HWANG, individually and
as designated officer of 100 Los
Angeles Real Estate Inc. Respondent

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21
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23
24 DATED: 10/21/2009



MICHAEL Y. YI, ESQ.,
Attorney for Respondent
KYUNG HEE HWANG

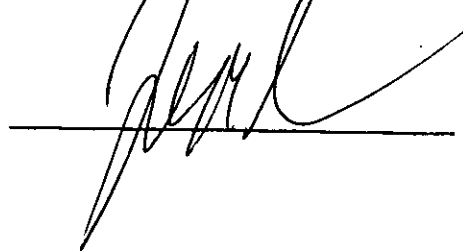
* * *

1
2 The foregoing Stipulation and Agreement is hereby
3 adopted as my Decision as to Respondent KYUNG HEE HWANG,
4 individually and as designated officer of 100 Los Angeles Real
5 Estate Inc. and shall become effective at 12 o'clock noon on
6 December 21 , 2009.

7 IT IS SO ORDERED 11-17 , 2009.

8
9 JEFF DAVI
10 Real Estate Commissioner

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A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line. The signature is stylized and cursive.

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

FILED

FEB 10 2009

DEPARTMENT OF REAL ESTATE
BY: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H- 35676 LA
100 LOS ANGELES REAL ESTATE INC.)	<u>A C C U S A T I O N</u>
doing business as ReMax 100;)	
KYUNG HEE HWANG, individually)	
and as designated officer of 100)	
Los Angeles Real Estate Inc.;)	
JOEL BARRY LEWIS; and; FRED)	
ALEXANDER SAENZ, individually)	
and as former designated officer)	
of 100 Los Angeles Real Estate Inc.;)	
Respondents.)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against 100 LOS ANGELES REAL ESTATE INC. dba ReMax 100; KYUNG HEE HWANG, individually and as designated officer of 100 Los Angeles Real Estate Inc.; and JOEL BARRY LEWIS and FRED ALEXANDER SAENZ, individually and as former designated officer of 100 Los Angeles Real Estate Inc., alleges as follows:

1.

1 The Complainant, Robin Trujillo, acting in her official
2 capacity as a Deputy Real Estate Commissioner of the State of
3 California, makes this Accusation against 100 LOS ANGELES REAL
4 ESTATE INC. and KYUNG HEE HWANG, JOEL BARRY LEWIS and FRED
5 ALEXANDER SAENZ.
6

2.

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

11 LICENSE HISTORY

3.

12 A. At all times mentioned, 100 LOS ANGELES REAL ESTATE
13 INC. ("100 LAREI") was licensed or had license rights issued by
14 the Department of Real Estate ("Department") as a real estate
15 broker. On January 8, 2001, 100 LAREI was originally licensed as
16 a corporate real estate broker.
17

18 B. At all times mentioned, KYUNG HEE HWANG ("HWANG")
19 was licensed or had license rights issued by the Department as a
20 real estate broker. On August 6, 2007, HWANG was originally
21 licensed as a real estate broker. From January 22, 2008 to June
22 30, 2008, HWANG was licensed as the designated officer of 100
23 LAREI.

24 C. At all times mentioned, JOEL BARRY LEWIS ("LEWIS")
25 was licensed or had license rights issued by the Department as a
26 real estate broker. On November 14, 1986, LEWIS was originally
27 licensed as a real estate broker. From May 4, 2006 to January

1 21, 2008, LEWIS was licensed as the designated officer of 100
2 LAREI.

3 D. At all times mentioned, FRED ALEXANDER SAENZ
4 ("SAENZ") was licensed or had license rights issued by the
5 Department as a real estate broker. On February 3, 1992, SAENZ
6 was originally licensed as a real estate broker. From July 1,
7 2005 to March 5, 2006, SAENZ was licensed as the designated
8 officer of 100 LAREI; and

9 E. At all times material herein, 100 LAREI was
10 licensed by the Department as a corporate restricted real estate
11 broker by and through HWANG, LEWIS and SAENZ, as the designated
12 officer and formerly designated officers and brokers responsible,
13 pursuant to Code Section 10159.2 of the Business and Professions
14 Code for supervising the activities requiring a real estate
15 license conducted on behalf 100 LAREI by 100 LAREI's officers,
16 agents and employees, including HWANG, LEWIS and SAENZ.
17

18 BROKERAGE

19 100 LOS ANGELES REAL ESTATE INC.

20 4.

21 At all times mentioned, in the City and County of Los
22 Angeles, 100 LAREI acted as a real estate broker and conducted
23 licensed activities within the meaning of:

24 A. Code Section 10131(a). 100 LAREI operated a
25 residential resale dba ReMax 100; and

26 B. In addition, 100 LAREI conducted broker-controlled
27

TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, 100 LAREI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including lenders, borrowers, homeowners and escrow beneficiaries, to real estate transactions handled by 100 LAREI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by 100 LAREI in the bank account as follows:

"Choice Escrow Trust Account
Account No. 13267782"
City National Bank
City of Commerce, California (T/A #1)

"Choice Escrow Recovery Account
Account No. 013539235"
City National Bank
City of Commerce, California (Recovery Account)

"Choice Escrow Trust Account
Account No. 13539227"
City National Bank
City of Commerce, California (T/A #2)

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100 LOS ANGELES REAL ESTATE INC.
VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents 100 LAREI, HWANG, LEWIS and SAENZ, acted in violation of the Code and the Regulations in that they:

(a)(1) (HWANG) Permitted, allowed or caused the disbursement of trust funds from T/A #1 where the disbursement of funds reduced the total of aggregate funds in T/A #1 set forth below, to an amount which was less than the existing aggregate trust fund liability of 100 LAREI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

- \$188,950.24 as of June 30, 2008
- \$884,858.35 as of March 30, 2007

On October 28, 2008, after the close of the audit examination on June 30, 2008, \$197,094.70 was deposited into T/A #1, thus restoring the deficit of \$186,200.72.

(a)(2) (LEWIS) Permitted, allowed or caused the disbursement of trust funds from T/A #1 and the Recovery Account where the disbursement of funds reduced the total of aggregate funds in T/A #1 and the Recovery Account, to an amount which, on

1 January 31, 2008, was \$208,445.57, less than the existing
2 aggregate trust fund liability of 100 LAREI to every principal
3 who was an owner of said funds, without first obtaining the prior
4 written consent of the owners of said funds, as required by Code
5 Section 10145 and Regulations 2832.1, 2950(g) and 2951.

6 (a) (3) (LEWIS) Permitted, allowed or caused the
7 disbursement of trust funds from T/A #1 and the Recovery Account
8 where the disbursement of funds reduced the total of aggregate
9 funds in T/A #1 and the Recovery Account, to an amount which, on
10 March 30, 2007, was \$884,858.35, less than the existing aggregate
11 trust fund liability of 100 LAREI to every principal who was an
12 owner of said funds, without first obtaining the prior written
13 consent of the owners of said funds, as required by Code Section
14 10145 and Regulations 2832.1, 2950(g) and 2951; and

15 (a) (4) (SAENZ) Permitted, allowed or caused the
16 disbursement of trust funds from T/A #1 and the Recovery Account
17 where the disbursement of funds reduced the total of aggregate
18 funds in T/A #1 and the Recovery Account, to an amount which, on
19 March 6, 2006, was \$207,222.23, less than the existing aggregate
20 trust fund liability of 100 LAREI to every principal who was an
21 owner of said funds, without first obtaining the prior written
22 consent of the owners of said funds, as required by Code Section
23 10145 and Regulations 2832.1, 2950(g) and 2951.
24

25 (b) (SAENZ and LEWIS) Withdrew or paid out trust funds
26 embezzled from T/A #1 by former escrow officer, Elizabeth
27

1 Quinones ("Quinones"), that had been restored to T/A #1 on behalf
2 of Quinones by her mother Ernestine Stupin and by her boyfriend
3 Michael Bates, real estate salesperson employed by 100 LAREI,
4 without the prior written consent of every owner or beneficiary
5 of T/A #1, in violation of Code Sections 10145 and 10176(i)
6 and/or 10177(g) and Regulations 2950(g) and 2951.

7 (c) (SAENZ and LEWIS) At the close of escrow, failed to
8 render to each principal of an escrow transaction a written
9 statement setting forth all receipts and disbursements together
10 with the name of the person to whom any such disbursement was
11 made, as required by Code Section 10145 and Regulation 2950(i).

12 (d) Mixed and commingled trust funds and personal funds
13 by depositing trust funds recovered from Ernestine Stupin
14 (\$225,000) and Michael Bates (\$7,160) that had been embezzled by
15 Quinones into 100 LAREI's general operating account and issuing
16 checks from said account in payment of 100 LAREI's operating
17 expenses unrelated to any escrow, homeowner or trust fund
18 beneficiary, in violation of Code Sections 10145 and 10176(e).

19 (e) (HWANG and LEWIS) Converted trust funds from T/A #1
20 by issuing checks from 100 LAREI's general operating account in
21 payment of 100 LAREI's operating expenses unrelated to any
22 escrow, wherein trust funds recovered from Ernestine Stupin and
23 Michael Bates, in restitution for Quinones embezzlement, had
24 been deposited into 100 LAREI's general operating account,
25 wherein the balance in said account was reduced to less than the
26
27

1 amount of trust fund so deposited, in violation of Code Sections
2 10145 and 10176(i) and/or 10177(j) and/or 10177(g).

3 (f)(1) (HWANG, LEWIS, SAENZ) T/A #1, the Recovery
4 Account and T/A #2, were was not in the name of the broker as
5 trustee at a bank or other financial institution, nor designated
6 as a trust account, in violation of Code Section 10145 of the
7 Code and Regulations 2832(a), 2950(d) and 2951. Instead, the
8 said accounts were set up under the fictitious business name of
9 Choice Escrow.

10 (f)(2) (HWANG, LEWIS, SAENZ) While acting in the
11 capacity of an escrow holder for T/A #1, failed to place trust
12 funds, including earnest money deposits, accepted on behalf of
13 another into the hands of the owner of the funds, a neutral
14 escrow depository or into a trust fund account in the name of the
15 broker at a bank or other financial institution not later than
16 the next business day following receipt of the funds by the
17 broker or by the broker's salesperson, as required by Code
18 Section 10145 and Regulations 2832(e), 2950(f) and 2951.
19 Instead, the said accounts were set up under the fictitious
20 business name of Choice Escrow.
21

22 (g) (HWANG, LEWIS, SAENZ) Failed to maintain an
23 accurate and complete control record for each beneficiary or
24 transaction, thereby failing to account for all trust funds
25 received, deposited and disbursed into T/A #1 and T/A #2, in
26
27

1 violation of Code Section 10145 and Regulations 2831, 2950(d) and
2 2951.

3 (h) (HWANG, LEWIS, SAENZ) Failed to maintain an
4 accurate and complete separate record for each beneficiary or
5 transaction, thereby failing to account for all trust funds
6 received, deposited and disbursed for into T/A #1, in violation
7 of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

8 (i) (HWANG, LEWIS, SAENZ) Failed to perform an accurate
9 and complete monthly reconciliation of the balance of all
10 separate beneficiary or transaction records maintained pursuant
11 to Regulation 2831.1 with the record of all trust funds received
12 and disbursed by T/A #1 and T/A #2, in violation of Code Section
13 10145 and Regulation 2831.2, 2950(d) and 2951.

14 (j) Permitted Elizabeth Quiniones and Simon Cheon,
15 unlicensed and unbonded persons, to be authorized signatories on
16 T/A #1, the Recovery Account, and T/A #2, in violation of Code
17 Section 10145 and Regulations 2834, 2950(d) and 2951.

18 (k) Used the fictitious name of "Choice Escrow", to
19 conduct licensed activities including broker-controlled escrows
20 without holding a license bearing said fictitious business name,
21 in violation of Code Section 10159.5 and Regulation 2731.

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100 LOS ANGELES REAL ESTATE INC.
DISCIPLINARY STATUES AND REGULATIONS

8.

The conduct of Respondents 100 LAREI and HWANG described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
7(b)	Code Sections 10145, 10176(i) and/or 10177(g) and Regulations 2950(g) and 2951
7(c)	Code Section 10145 and Regulation 2950(i)
7(d)	Code Sections 10145 and 10176(e)
7(e)	Code Section 10145, 10176(i) and/or 10177(j) and/or 10177(g)

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7(f) Code Section 10145 and Regulations
2832(a) and 2832(e), 2950(d),
2950(f) and 2951

7(g) Code Section 10145 and Regulations
2831, 2950(d) and 2951

7(h) Code Section 10145 and Regulations
2831.1, 2950(d) and 2951

7(i) Code Section 10145 and Regulations
2831.2, 2950(d) and 2951

7(j) Code Section 10145 and Regulation
2834, 2950(d) and 2951

7(k) Code Section 10159.5 and Regulation
2731

The foregoing violations constitute cause for the suspension or
revocation of the real estate license and license rights of 100
LAREI and HWANG, LEWIS and SAENZ, under the provisions of Code
Sections:

- 1 A. 10176(e) for commingling
2 B. 10176(i) for fraud and dishonest dealing
3 C. 10177(d) for willful disregard or violation of the
4 Real Estate Law, and/or
5 D. 10177(g) negligence or incompetence, and
6 E. 10177(j) for fraud and dishonest dealing not in a
7 licensed capacity

8 NEGLIGENCE

9 9.

10 The overall conduct of Respondents 100 LAREI, HWANG,
11 LEWIS and SAENZ constitutes negligence or incompetence. This
12 conduct and violation are cause for the suspension or revocation
13 of the real estate license and license rights of Respondents 100
14 LAREI, HWANG, LEWIS and SAENZ, pursuant to Code Section 10177(g).

15 SUPERVISION AND COMPLIANCE

16 10.


17 The overall conduct of Respondents HWANG, LEWIS and
18 SAENZ constitutes a failure on their part, as officers designated
19 by a corporate broker licensee, to exercise the reasonable
20 supervision and control over the licensed activities of 100 LAREI
21 as required by Code Section 10159.2 and Regulation 2725, and to
22 keep 100 LAREI in compliance with the Real Estate Law. Said
23 conduct, acts and omissions are cause for the suspension or
24 revocation of the real estate license and license rights of
25 HWANG, LEWIS and SAENZ pursuant to the provisions of Code
26

27

1 Sections 10177(d) and 10177(h). HWANG, LEWIS and SAENZ failed to
2 exercise reasonable care and supervision over 100 LAREI,
3 particularly with respect to the trust fund handling monitoring
4 and procedures of Choice Escrow. Nor did HWANG, LEWIS and SAENZ
5 have policies and procedures in place to maintain and monitor 100
6 LAREI's compliance with the Real Estate Law.

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against the license and license rights of Respondents 100
11 LOS ANGELES REAL ESTATE INC., KYUNG HEE HWANG, JOEL BARRY LEWIS
12 and FRED ALEXANDER SAENZ, under the Real Estate Law (Part 1 of
13 Division 4 of the Business and Professions Code) and for such
14 other and further relief as may be proper under other applicable
15 provisions of law.

16 Dated at Los Angeles, California

17 this 3 day of February 2009 
18
19 Deputy Real Estate Commissioner

20
21
22 cc: 100 Los Angeles Real Estate Inc.
23 c/o Kyung Hee Hwang D.O.
24 c/o Joel Barry Lewis, former D.O.
25 c/o Fred Alexander Saenz, former D.O.
26 Robin Trujillo
Sacto
Marcus Beltramo - Sacto
Audits - Dorcas Cheng

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