

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. H-25149 LA
PINNACLE ESTATE PROPERTIES, INC.,)	
a corporation; JEFFREY OWEN BLACK,)	OAH No. L-58123
individually and as designated)	
officer of Pinnacle Estate)	
Properties, Inc., HECTOR GRAJEDA;)	
and GUSTAVO VARGAS;)	
)	
Respondents.)	

PROPOSED DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on March 24 and 25, 1993. Complainant, Department of Real Estate ("Department"), was represented by V. Ahda Sands, Staff Counsel. Respondent Pinnacle Estate Properties, Inc. was present by its designated officer, Jeffrey Owen Black; individual respondents Jeffrey Owen Black, Hector Grajeda and Gustavo Vargas were also present; all respondents were represented by Walleck, Shane, Stanard & Blender, by David L. Shane, Attorney at Law.

Oral and documentary evidence was received, the record was closed and the matter was submitted for decision.

FINDINGS OF FACT

The Administrative Law Judge finds the following facts:

1. The Accusation was brought by Stephen J. Ellis in his official capacity as a Deputy Real Estate Commissioner.
2. Pinnacle Estate Properties, Inc. ("Pinnacle") is licensed by the Department as a corporate real estate broker, with respondent Jeffrey Owen Black as its designated officer.
3. Jeffrey Owen Black is licensed by the Department as a real estate broker. His broker license expires 7/10/94, and his officer designation expires 12/12/93.
4. Hector Grajeda is licensed by the Department as a real estate salesperson. His salesperson license expires 7/30/96.

5. Gustavo Vargas is licensed by the Department as a real estate salesperson. His salesperson license expires 2/17/96.

6. At all relevant times, Pinnacle was engaged in business as a residential realtor and Grajeda and Vargas were employed by Pinnacle as licensed salespersons.

7. In connection with its residential realty sales, Pinnacle operated an escrow business and received funds in trust from or on behalf of sellers and buyers and deposited such funds into its trust account.

8. A Department auditor examined the books and records of Pinnacle covering the period from September 1, 1990 through November 30, 1991 ("the audit period"). As of November 30, 1991, the adjusted balance of the trust account was \$1,229,396.26. On that same date, the aggregate trust fund liability of the broker to all owners of said funds was \$1,234,046.30, leaving a shortage of \$4,650.05. The Department's auditor determined that the majority of this shortage was the result of certain unposted bank fees and some returned checks from clients.

Respondents established that the bank fees were improperly charged against the account by the bank and were later removed, and that the other items were also removed later from the bank's month end account statement.

Respondents also established that, on many month end bank statements, certain items may appear that will technically, temporarily create a shortage in the trust account until the items are properly accounted for or otherwise removed from the statement. The Department auditor stated his opinion that, whenever a month end statement reveals a shortage, it is the responsibility of the licensee to place funds in the account to cover that amount until the items are reversed or properly accounted for. Whether or not this interpretation is correct, the licensee must act reasonably and comply with the applicable regulations.

9. California Code of Regulations, Title 10 ("Regulation"), section 2832.1 prohibits a broker from disbursing trust funds if the disbursement will reduce the balance to an amount less than the aggregate trust fund liability to all owners of said funds, "without the prior written consent of every principal who is an owner of the funds in the account."

Technically speaking, respondent's trust account did not comply with the spirit of the regulation due to the shortage, although the degree of noncompliance was de minimis. However, the Department did not establish whether or not there was written permission for the shortage from the owners of the funds in

trust. As the Department has failed to present any evidence on an element of the alleged offense, no violation has been established.

10. Respondents maintained trust fund records, as required by Regulation 2831 and separate records for each beneficiary or transaction, as required by Regulation 2831.1. The Department contends that respondents did not perform a reconciliation of those accounts on at least a monthly basis, as required by Regulation 2831.2, because respondents did not deposit immediately into the trust account the amount found by the auditor to be a shortage at the close of the audit period.

Again, technically speaking, the trust account did not comply with the letter of Regulation 2831.2. However, respondents were aware of the discrepancies between the month end bank statement and the account records, immediately identified the reasons for the discrepancies, and worked to resolve them. The discrepancies noted at the end of the audit period were resolved shortly thereafter. Further, at the suggestion of the Department auditor, respondents placed sufficient funds in the trust account to cover the auditor's preliminary finding of shortage, approximately \$14,000, which still remains in the trust account.

It was not established that any harm resulted as a consequence of respondents' failure to reconcile the account before the auditor found the shortage.

The combination of addressing and resolving any noted discrepancies rapidly, successfully, and to no one's harm, as well as depositing and maintaining extra money in the trust account as a buffer against any future shortages, however momentary they may be, is an appropriate response to the auditor's findings.

11. During the audit period, Kathy Helgedalen was an employee of Pinnacle, was not licensed by the Department and was not bonded, yet nevertheless was a signatory upon, and could and did withdraw funds from, the trust account.

Respondents explained that Kathy Helgedalen's status as a signatory on the trust account was an "oversight" which was immediately corrected.

12. On a date in 1989 not otherwise established by the evidence, Juan and Luz Ortiz ("buyers"), husband and wife, employed respondents, and specifically Vargas, to act as their agent in locating and buying a house.

13. On July 5, 1989, Arturo and Irma Barragan ("sellers"), husband and wife, employed respondents, and

specifically Grajeda, to act as their agent in selling their house at 2007 Seventh Street, San Fernando, California ("the property").

14. Respondents showed buyers the property. On July 14, 1989, buyers submitted an offer to purchase. On July 16, 1989, sellers submitted a counteroffer to buyers. Buyers accepted the counteroffer. Escrow closed, consummating the sale of the property, on October 5, 1989.

15. When Grajeda accepted the listing of the property, he was shown a prior multiple listing service information sheet which indicated that the property had a new roof. Mr. Barragan testified that he told Grajeda that 3/4 of the roof was new, and showed him a receipt of his insurance company's payment for the work (as a result of wind damage). The portion of the roof over an addition to the house had not been repaired. Grajeda testified that no such statements were made or receipt shown. Based upon their comportment and demeanor at the time of hearing, Mr. Barragan's testimony is accepted and Grajeda's testimony is rejected on this subject.

On July 5, 1989, Grajeda prepared, and sellers signed, a Real Property Disclosure Statement pursuant to Civil Code section 1102 which indicated that the roof was approximately 1 year old.

16. Based upon buyers' concerns about a hole in the ceiling and some ceiling water damage stains, a second Real Property Disclosure Statement pursuant to Civil Code section 1102