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FILED

MAY 13 2008

DEPARTMENT OF REAL ESTATE

By *Jan Brent*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-1214 FR
RUTH ELAINE McCARTHY,)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 27, 1994, in Case No. H-1214 FR, a Decision was rendered revoking the real estate broker license of Respondent effective June 3, 1994, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on June 3, 1994, and Respondent has operated as a restricted licensee since that time.

On May 15, 2006, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has

1 demonstrated to my satisfaction that Respondent meets the
2 requirements of law for the issuance to Respondent of an
3 unrestricted real estate broker license and that it would not be
4 against the public interest to issue said license to Respondent.

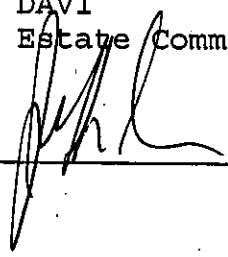
5 NOW, THEREFORE, IT IS ORDERED that Respondent's
6 petition for reinstatement is granted and that a real estate
7 broker license be issued to Respondent if Respondent satisfies
8 the following conditions within nine (9) months from the date of
9 this Order:

10 1. Submittal of a completed application and payment of
11 the fee for a real estate broker license.

12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 This Order shall be effective immediately.

18 DATED: 4-30-08

19 JEFF DAVI
20 Real Estate Commissioner
21 
22 _____
23
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27

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
MAY 13 1994
DEPARTMENT OF REAL ESTATE

By Laurie A. Zier

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-1214 FRESNO
12 RUTH ELAINE MCCARTHY,) STIPULATION AND
13 Respondent.) AGREEMENT IN
14) SETTLEMENT AND ORDER

15 It is hereby stipulated by and between RUTH ELAINE
16 MCCARTHY (hereinafter "Respondent"), her attorney of record,
17 J. Scott Dorius, and the Complainant, acting by and through
18 David A. Peters, Counsel for the Department of Real Estate, as
19 follows for the purpose of settling and disposing of the
20 Accusation filed on January 7, 1994, in this matter:

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

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

5 3. On January 24, 1994, Respondent filed a Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that she
10 understands that by withdrawing said Notice of Defense she will
11 thereby waive her right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA and that she will waive
14 other rights afforded to her in connection with the hearing such
15 as the right to present evidence in defense of the allegations in
16 the Accusation and the right to cross-examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below, hereby admits that the factual allegations in Paragraphs
19 II through IX and XII through XIV of the Accusation filed in this
20 proceeding are true and correct and the Real Estate Commissioner
21 shall not be required to provide further evidence to prove such
22 allegations.

23 5. It is understood by the parties that the Real
24 Estate Commissioner may adopt the Stipulation and Agreement as
25 his decision in this matter thereby imposing the penalty and
26 sanctions on Respondent's real estate license and license rights
27 as set forth in the below "Order". In the event that the

1 Commissioner in his discretion does not adopt the Stipulation and
2 Agreement in Settlement, it shall be void and of no effect, and
3 Respondent shall retain the right to a hearing and proceeding on
4 the Accusation under all the provisions of the APA and shall not
5 be bound by any admission or waiver made herein.

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

13 7. Respondent has received, read and understands the
14 "Notice Concerning Costs of Subsequent Audits". Respondent
15 understands that by agreeing to this Stipulation and Agreement in
16 Settlement, the findings set forth below in the DETERMINATION OF
17 ISSUES become final, and that the Commissioner may charge
18 Respondent for the costs of any audit conducted pursuant to
19 Section 10148 of the Business and Professions Code to determine
20 if the violations have been corrected. The maximum costs of said
21 audit will not exceed \$4,397.71.

22 DETERMINATION OF ISSUES

23 By reason of the foregoing stipulations, admissions,
24 and waivers and solely for the purpose of settlement of the
25 pending Accusation without hearing, it is stipulated and agreed
26 that the following Determination of Issues shall be made:

27 ///

1
 2 The acts and/or omissions of Respondent as described in
 3 Paragraphs VI, VII, VIII and IX of the Accusation, violate
 4 Section 10177(d) of the Business and Professions Code in
 5 conjunction with Section 10145 of the Business and Professions
 6 Code and Sections 2830, 2831.1, 2831.2 and 2832.1 of Title 10,
 7 California Code of Regulations and are grounds for the suspension
 8 or revocation of the real estate broker license and all license
 9 rights of Respondent under the provisions of the Real Estate Law.

10 The acts and/or omissions of Respondent as described in
 11 Paragraphs XII, XIII and XIV of the Accusation, violate Section
 12 10177(h) of the Business and Professions Code and Section
 13 10177(d) of the Business and Professions Code in conjunction with
 14 Sections 2731, 2726 and 2725 of Title 10, California Code of
 15 Regulations and are grounds for the suspension or revocation of
 16 the real estate broker license and all license rights of
 17 Respondent under the provisions of the Real Estate Law.

ORDER

18
 19
 20 A. The real estate broker license and all license
 21 rights of Respondent under the Real Estate Law are revoked.

22 B. A restricted real estate broker license shall be
 23 issued to Respondent pursuant to Business and Professions Code
 24 Section 10156.5, if Respondent makes application therefor and
 25 pays to the Department the appropriate fee for said license
 26 within ninety (90) days from the effective date of this ORDER.

27 ///

1 C. The restricted license issued to Respondent shall
2 be subject to all the provisions of Section 10156.7 of the
3 Business and Professions Code and to the following limitations,
4 conditions and restrictions imposed under authority of Section
5 10156.6 of said Code:

6 (1) The license shall not confer any property right in
7 the privileges to be exercised, and the Real Estate
8 Commissioner may, by appropriate order, suspend the
9 right to exercise any privileges granted under the
10 restricted license in the event of:

11 (a) The conviction of Respondent (including a
12 plea of nolo contendere) to a crime which
13 bears a significant relation to Respondent's
14 fitness or capacity as a real estate licensee;
15 or,

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

21 (2) Respondent shall not be eligible to apply for
22 issuance of an unrestricted real estate license
23 nor the removal of any of the conditions,
24 limitations or restrictions attaching to the
25 restricted license until one (1) year has elapsed
26 from the date of issuance of a restricted license
27 to Respondent.

1 D. Respondent shall, within six (6) months from the
2 effective date of the restricted license, take and pass the
3 Professional Responsibility Examination administered by the
4 Department including the payment of the appropriate examination
5 fee. If Respondent fails to satisfy this condition, the
6 Commissioner may order the suspension of the restricted license
7 until Respondent passes the examination.

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

20 F. Any restricted real estate license issued to
21 Respondent pursuant to this Decision shall be suspended for
22 forty-five (45) days from the date of issuance of said restricted
23 license; provided, however, that thirty (30) days of said
24 suspension shall be stayed upon the following terms and
25 conditions:

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

2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

3. The remaining fifteen (15) days of said suspension (or a portion thereof) shall be stayed upon condition that:
 - (A) Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$100.00 for each day of the suspension for a total monetary penalty of \$1,500.00.

 - (B) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to

///

1 the Department prior to the effective date of
2 the Decision in this matter.

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

7 5. If Respondent fails to pay the monetary penalty in
8 accordance with the terms and conditions of the
9 Decision, the Commissioner may, without a hearing,
10 order the immediate execution of all or any part
11 of the stayed suspension in which event the
12 Respondent shall not be entitled to any repayment
13 nor credit, prorated or otherwise, for money paid
14 to the Department under the terms of this
15 Decision.

16 6. If Respondent pays the monetary penalty and if no
17 further cause for disciplinary action against the
18 real estate license of Respondent occurs within
19 one (1) year from the effective date of the
20 Decision, the stay hereby granted shall become
21 permanent.

22 G. Pursuant to Section 10148 of the Business and
23 Professions Code, Respondent shall pay the Commissioner's
24 reasonable cost for an audit to determine if Respondent has
25 corrected the trust fund violation(s) found in Paragraph VI of
26 the Accusation. In calculating the amount of the Commissioner's
27 reasonable cost, the Commissioner may use the estimated average

1 hourly salary for all persons performing audits of real estate
2 brokers, and shall include an allocation for travel costs,
3 including mileage, time to and from the auditor's place of work
4 and per diem. Respondent shall pay such cost within forty-five
5 (45) days of receiving an invoice from the Commissioner detailing
6 the activities performed during the audit and the amount of time
7 spent performing those activities. If Respondent fails to pay
8 within said forty-five (45) days, the Commissioner may, in his
9 discretion, order the indefinite suspension of Respondent's real
10 estate license and license rights. The suspension shall remain
11 in effect until payment is made in full, or until Respondent
12 enters into an agreement satisfactory to the Commissioner to
13 provide for such payment. The Commissioner may impose further
14 reasonable disciplinary terms and conditions upon Respondent's
15 real estate license and license rights as part of any such
16 agreement.

17 H. Respondent shall, prior to the effective date of
18 the Decision in this matter shall provide evidence satisfactory
19 to the Commissioner that Respondent has cured the \$10,418.64
20 trust fund shortage alleged in the Accusation and has corrected
21 the other violations alleged in the Accusation in this matter.

22 I. Any restricted real estate broker license issued to
23 Respondent may be suspended or revoked for a violation by
24 Respondent of any of the conditions attaching to the restricted
25 license.

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3/17/94

DATED

David A. Peters

DAVID A. PETERS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

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

March 21, 1994

DATED

Ruth Elaine McCarthy

RUTH ELAINE MCCARTHY
Respondent

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

MARCH 21, 1994

DATED

J. Scott Dorius

J. SCOTT DORIUS
Attorney for Respondent

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The foregoing Stipulation and Agreement for Settlement
is hereby adopted by the Real Estate Commissioner as Decision and
Order and shall become effective at 12 o'clock noon on
June 3, 1994.

IT IS SO ORDERED 4/21, 1994.

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

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

FILED
FEB 16 1994
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

RUTH ELAINE MCCARTHY,

Respondent

By Laurie A. Zyan
Case No. H-1214 FRESNO

OAH No. N9401194

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 501 J Street, Suite 220 (Second
Floor Hearing Rooms), Sacramento, CA 95814

on Tuesday, August 23, 1994, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: February 16, 1994

By

David A. Peters
DAVID A. PETERS Counsel

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

5 Telephone: (916) 227-0789

FILED
JAN - 7 1994
DEPARTMENT OF REAL ESTATE

By *Laurie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 RUTH ELAINE MCCARTHY,)
13 Respondent.)
_____)

No. H-1214 FRESNO

ACCUSATION

14
15 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against RUTH ELAINE MCCARTHY dba Century 21 Norton Agency
18 (hereinafter "Respondent"), is informed and alleges as follows:

19 FIRST CAUSE OF ACCUSATION

20 I

21 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation in
23 his official capacity.

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II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code"), as a real estate broker.

III

Beginning on or before January 1, 1992 and continuing through on or about July 27, 1993, Respondent for, or in expectation of a compensation and acting on behalf of another or others, solicited prospective tenants for, collected rents from and otherwise managed certain real properties located in or near Turlock, California.

IV

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

V

On or after January 1, 1992 and continuing through on or about July 27, 1993, Respondent maintained the following trust fund accounts:

<u>TITLE & ACCOUNT NO.</u>	<u>BANK</u>
Ruth McCarthy, dba Century 21 McCarthy & Associates Account No. 05-052777 (hereinafter "Trust #1")	Farmers & Merchants Bank Turlock, California
Ruth McCarthy, dba Century 21 McCarthy & Associates Account No. 05-527546 (hereinafter "Trust #2")	Farmers & Merchants Bank Turlock, California

///

1 Ruth McCarthy, dba Century 21
2 McCarthy & Associates
3 Account No. 05-056381
4 (hereinafter "Trust #3")

Farmers & Merchants Bank
Turlock, California

3 Ruth McCarthy, dba Century 21
4 Real Estate
5 Account No. 05-52904-2
6 (hereinafter "Trust #4")

Farmers & Merchants Bank
Turlock, California

6 VI

7 In connection with the collection and disbursement of
8 said trust funds, Respondent failed to deposit and maintain said
9 trust funds in Trust #1 and Trust #3 in such manner that as of
10 April 30, 1993, there was a shortage of \$10,418.64 of trust funds.

11 VII

12 Respondent failed to obtain prior written consent of
13 their principals for the reduction of the aggregate balance of
14 trust funds in said accounts to an amount less than the existing
15 aggregate trust fund liability to the owners of said funds.

16 VIII

17 In connection with the receipt and disbursement of trust
18 funds described in Paragraph IV above, Respondent failed to
19 maintain separate beneficiary records in the manner required by
20 Section 2831.1 of the Regulations.

21 IX

22 In connection with the receipt and disbursement of trust
23 funds described in Paragraph IV above, Respondent failed to
24 reconcile or maintain a reconciliation of the separate beneficiary
25 records and the record of trust funds received and paid out in the
26 manner required by Section 2831.2 of the Regulations.

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X

The acts and/or omissions of Respondent alleged above are grounds for the suspension or revocation of Respondent's licenses and license rights pursuant to Sections 2830, 2831.1, 2831.2 and 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations") and Section 10145 of the Code all in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

XI

There is hereby incorporated in this second, separate and distinct cause of Accusation all of the allegations contained in Paragraphs I, II, III, IV and V of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XII

Within the three-year period immediately preceding the filing of this Accusation and continuing thereafter, Respondent operated her property management business in Turlock, California, under the fictitious business name Century 21 McCarthy & Associates without Respondent obtaining a license from the Department of Real Estate bearing said fictitious business name as required by Section 2731 of the Regulations.

XIII

Within the three-year period immediately preceding the filing of this Accusation, Respondent failed to have a written agreement with Eric Stelzer, a real estate salesperson employed by Respondent, as required by Section 2726 of the Regulations.

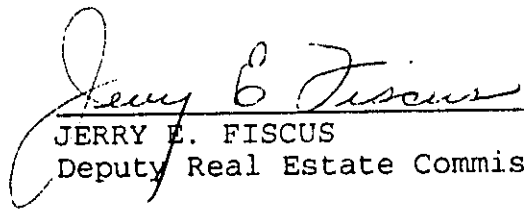
XIV

1
2 Beginning on or before January 1, 1992 and continuing
3 through on or about July 27, 1993, Respondent during the course of
4 the property management activities described in Paragraph III
5 above, failed to review, initial and date within five (5) working
6 days all instruments having a material effect upon a party's
7 rights or obligations prepared or signed by Respondent's
8 employees, associates, or real estate salespersons as required by
9 Section 2725 of the Regulations.

10 XV

11 The acts and/or omissions of Respondent as described in
12 Paragraphs XII, XIII, and IV above, are grounds for the suspension
13 or revocation of Respondent's license and license rights pursuant
14 to Section 10177(h) of the Code and Section 10177(d) of the Code
15 in conjunction with Sections 2731, 2726, and 2725 of the
16 Regulations.

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

24 
25 JERRY E. FISCUS
26 Deputy Real Estate Commissioner

26 Dated at Fresno, California,
27 this 5th day of January, 1994.