

1 Department of Real Estate
2 107 South Broadway, Room 8107
3 Los Angeles, California 90012
4 (213) 897-3937

FILED

JUL 30 1992

DEPARTMENT OF REAL ESTATE

BY C. Barry

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-1856 SD
12)
13 MARC ANTHONY PRESTARA,) STIPULATION AND
14) AGREEMENT IN
15) SETTLEMENT AND ORDER
16)
17)
18 Respondent.)
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22)

23 It is hereby stipulated by and between MARC ANTHONY
24 PRESTARA (sometimes referred to as respondent) and his attorney,
25 Jeffrey A. Schneider, and the Complainant, acting by and through
26 Elliott Mac Lennan, Counsel for the Department of Real Estate, as
27 follows for the purpose of settling and disposing of the
Accusation filed on February 14, 1991 in this matter:

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

1 submitted solely on the basis of the provisions of this
2 Stipulation.

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

7 3. On April 16, 1991, Respondent filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that he
12 understands that by withdrawing said Notice of Defense he thereby
13 waives his right to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that he will waive
16 other rights afforded to him in connection with the hearing such
17 as the right to present evidence in defense of the allegations in
18 the Accusation and the right to cross-examine witnesses.

19 4. Respondent, pursuant to the limitations set forth
20 below, hereby admits that the factual allegations in Paragraphs 1
21 through 11 of the Accusation filed in this proceeding are true and
22 correct and the Real Estate Commissioner shall not be required to
23 provide further evidence of such allegations.

24 5. This Stipulation is based on respondent's decision
25 not to contest the allegations set forth in the Accusation as a
26 result of the agreement negotiated between the parties. This
27 Stipulation and the finding, express or implied, based on

1 respondent's decision not to contest the Accusation, is made
2 expressly limited to this proceeding and any further proceeding
3 initiated by or brought before the Department of Real Estate based
4 upon the facts and circumstances alleged in the Accusation, and
5 made for the sole purpose of reaching an agreed disposition of
6 this proceeding. The decision of respondent not to contest the
7 factual statements alleged, and as contained in the stipulated
8 Order, is made solely for the purpose of effectuating this
9 Stipulation. It is the intent and understanding of the parties
10 that this Stipulation and Order shall not be binding or admissible
11 against respondent in any actions against respondent by third
12 parties.

13 6. It is understood by the parties that the Real Estate
14 Commissioner may adopt the Stipulation and Order as his decision
15 in this matter thereby imposing the penalty and sanctions on
16 respondent's real estate licenses and license rights as set forth
17 in the Order hereinbelow. In the event that the Commissioner, in
18 his discretion, does not adopt the Stipulation and Order, the
19 Stipulation shall be void and of no effect, and respondent shall
20 retain the right to a hearing and proceeding on the Accusation
21 under the provisions of the APA and shall not be bound by any
22 admission or waiver made herein.

23 7. The Order or any subsequent Order of the Real Estate
24 Commissioner made pursuant to this Stipulation shall not
25 constitute an estoppel, merger or bar to any further
26 administrative or civil proceedings by the Department of Real
27

1 Estate with respect to any matters which were not specifically
2 alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

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

8 I

9 The conduct of respondent, as described in Paragraph 4
10 is cause to suspend or revoke the real estate license and license
11 rights of respondent MARC ANTHONY PRESTARA under the provisions of
12 Sections 10177(g) of the Code.

13 ORDER

14 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE
15 WRITTEN STIPULATION OF THE PARTIES:

16 I

17 The real estate salesperson license and license rights
18 of respondent under the Real Estate Law (Part 1 of Division 4 of
19 the Business and Professions Code) are hereby revoked.

20 However, respondent shall be entitled to apply for and
21 be issued a restricted real estate salesperson license if he makes
22 application therefor and pays to the Department of Real Estate the
23 appropriate fee for said license within ninety (90) days of the
24 effective date of the Decision herein.

25 The restricted real estate salesperson license issued to
26 respondent shall be subject to all of the provisions of Section
27 10156.7 of the Business and Professions Code and the following

1 limitations, conditions and restrictions imposed under authority
2 of Section 10156.6 of the Code:

3 A. The restricted license may be suspended prior to
4 hearing by Order of the Real Estate Commissioner in the event of
5 respondent's conviction (including conviction of a plea of nolo
6 contendere) to a crime which bears a significant relationship to
7 respondent's fitness or capacity as a real estate licensee.

8 B. The restricted license may be suspended prior to
9 hearing by Order of the Real Estate Commissioner on evidence
10 satisfactory to the Commissioner that respondent has, after the
11 effective date of the Order herein, violated provisions of the
12 California Real Estate Law, the Subdivided Lands Law, Regulations
13 of the Real Estate Commissioner or conditions attaching to said
14 restricted license.

15 C. Respondent shall obey all laws of the United States,
16 the State of California and its political subdivisions, and shall
17 further obey and comply with all rules and regulations of the Real
18 Estate Commissioner.

19 D. Respondent shall not be eligible for the issuance of
20 an unrestricted real estate license nor the removal of any of the
21 conditions, limitations or restrictions of the restricted license
22 until at least one year has elapsed from the effective date of the
23 Decision.

24 E. Respondent shall within six months from the
25 effective date of the restricted license, take and pass the
26 Professional Responsibility Examination administered by the
27 Department including the payment of the appropriate examination

1 fee. If respondent fails to satisfy this condition, the
2 Commissioner may order suspension of the restricted license until
3 respondent passes the examination.

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

16 G. Respondent shall submit with his application for
17 transfer to a new employing broker, a statement signed by the
18 prospective broker which shall certify:

19 (1) That he has read the Decision of the
20 Commissioner which granted the right to a
21 restricted license; and

22 (2) That he will exercise close supervision over
23 the performance by the restricted licensee of the
24 activities for which a real estate license is
25 required.

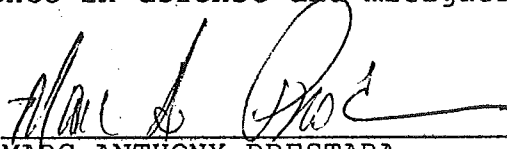
26 DATED: 4-6-92

27 Elliott Mac Lennan
ELLIOTT MAC LENNAN
Counsel for Complainant

* * * *

I have read the Stipulation and Agreement in Settlement and Order 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.

DATED: 6/25/92


MARC ANTHONY PRESTARA
Respondent

DATED: 5-29-92

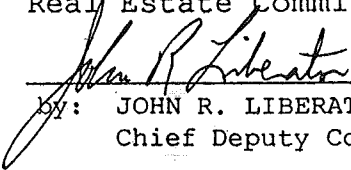
As to form.


JEFFREY A. SCHNEIDER
Attorney for Respondent

* * * *

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by the Commissioner as Decision and Order and shall become effective at 12 o' clock noon on August 19, 1992.

IT IS SO ORDERED July 24, 1992.

CLARK WALLACE
Real Estate Commissioner

By: JOHN R. LIBERATOR
Chief Deputy Commissioner

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1 ELLIOTT MAC LENNAN, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012
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8 (213) 620-4790

FILED

FEB 14 1991

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * * * *

12 In the Matter of the Accusation of) No. H-1856 SD
13 MARC ANTHONY PRESTERA,) ACCUSATION
14 Respondent.)

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against MARC ANTHONY PRESTERA (respondent) is informed and alleges
18 in his official capacity as follows:

19 1.

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 Business and Professions Code (Code).

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2.

At all times herein mentioned, respondent engaged in the business of a real estate salesperson as defined in Sections 10131(b) and 10132 of the Code. He is employed by Execu- Systems Realtors Corporation of San Diego City (Realty Executives) as an agent renting residential real property on behalf of owners to prospective tenants for or in expectation of compensation.

3.

In or about June of 1988, David Taylor and Neil Schram (Owners) listed their rental condominium located at 535 Anchor Way, Carlsbad, California (the Property), with respondent's employer, Realty Executives. A tenant had been previously procured by this firm who rented the Property. When this lease expired without incident on July 31, 1989, Owners requested that Realty Executives locate another tenant.

4.

On or about September 3, 1989, respondent received an inquiry for the rental from two prospective tenants that had recently moved into the area from Oregon, Michael Dickerson and Jeffery Anderson (Tenants). They were living in a local hotel while awaiting a rental. They claimed that they had obtained local employment and were waiting for its commencement to begin.

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5.

The rental agency agreement executed by and between Owner and Realty Executives for the Property required Realty Executives to assume responsibility for ascertaining the credit worthiness and for verifying the employment status of prospective Tenants.

6.

On or about September 4, 1989, respondent initiated a credit check on both Tenants, which he reported to the Owners as "positive", and verified their previous employment also so reporting to the Owners. Respondent, however, was unable to reach the purported new employer for employment verification and did not follow up on this activity. He also failed to inform the Owners that he had not contacted the proposed Tenants' new employer.

7.

On September 5, 1989, after Owners had directly interviewed the Tenants and while believing that their past and current employment had been checked out by respondent, they directed respondent to prepare a rental agreement.

8.

On September 5, 1989, Owners and Tenants executed a rental agreement for the Property. Approximately four months later, Owners decided to make inquiries about the Tenants; they had received numerous complaints from their neighbors; plus during their short tenancy, they had one rent check returned for non-sufficient funds.

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9.

Owners called Tenants' purported employer, discovered that they had never been employed by that firm, then telephoned respondent to report this information. Respondent informed Owners that they had forgotten to tell him that they had not verified the Tenants' current employment.

10.

Owners claim that they would not have rented the Property to Tenants, given their recent arrival to the area, absent their belief that respondent had verified Tenants' current employment.

11.

Owners subsequently reached an agreement with Tenants terminating their tenancy four months after it had began. Tenants paid the final rent with a bogus check never made good.

12.

The acts described in Paragraphs 3 to 11 constitute substantial misrepresentations or omissions of material facts under Code Section 10176(a), negligence or incompetence under Code Section 10177(g) and fraud and/or dishonest dealing under Code Section 10176(i) and are bases to suspend or revoke respondent's real estate license and license rights.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary action
4 against the license and license rights of respondent MARC ANTHONY
5 PRESTERA under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code), and for such other and further
7 relief as may be proper under other provisions of law.
8 Dated at San Diego, California
9 this 14th day of February, 1991.

10 J. CHRIS GRAVES
11 Deputy Real Estate Commissioner

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cc: Marc Anthony Prestera
 Execu-Systems, Realtors Corp. of San Diego
 Sacto.
 FJF