

1 Department of Real Estate
2 107 South Broadway, Room 8107
3 Los Angeles, California 90012

4 (213) 897-3937

FILED
JUL 14 1997
DEPARTMENT OF REAL ESTATE

By K. Muelichols

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8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of) NO. H-26891 LA
12 PATRICIO C. SO and)
13 JOSE MALLARE BALANCIO,) STIPULATION AND AGREEMENT
14) IN SETTLEMENT AND ORDER
15 Respondents.)

16 It is hereby stipulated by and between PATRICIO C. SO
17 and the Complainant, acting by and through Elliott Mac Lennan,
18 Counsel for the Department of Real Estate, as follows for the
19 purpose of settling and disposing of the Accusation filed in this
20 matter on December 31, 1996:

21 1. Respondent has received, read and understands the
22 Statement to Respondent, the Discovery Provisions of the
23 Administrative Procedure Act (APA) and the Accusation filed by the
24 Department of Real Estate in this proceeding.

25 2. Respondent filed a Notice of Defense pursuant to
26 Section 11505 of the Government Code for the purpose of requesting
27 a hearing on the allegations in the Accusation. Respondent hereby

1 freely and voluntarily withdraws said Notice of Defense.
2 Respondent acknowledges that he understands that by withdrawing
3 said Notice of Defense he thereby waives his right to require the
4 Commissioner to prove the allegations in the Accusation at a
5 contested hearing held in accordance with the provisions of the
6 APA and that he will waive other rights afforded to him in
7 connection with the hearing such as the right to present evidence
8 in his defense and the right to cross-examine witnesses.

9 3. This Stipulation and Agreement in Settlement and
10 Order (Stipulation) is based on the factual allegations contained
11 in the Accusation. In the interest of expedience and economy,
12 respondent chooses not to contest these allegations, but to remain
13 silent and understands that, as a result thereof, these factual
14 allegations, without being admitted or denied, will-serve as a
15 prima facie basis for the disciplinary action stipulated to
16 herein. The Real Estate Commissioner shall not be required to
17 provide further evidence to prove said factual allegations.

18 4. This Stipulation is based on respondent's decision
19 not to contest the allegations set forth in the Accusation as a
20 result of the agreement negotiated between the parties. This
21 Stipulation, based on respondent's decision not to contest the
22 Accusation, is expressly limited to this proceeding and any
23 further proceeding initiated by or brought before the Department
24 of Real Estate based upon the facts and circumstances alleged in
25 the Accusation, and made for the sole purpose of reaching an
26 agreed disposition of this proceeding. The decision of respondent
27 not to contest the factual statements alleged, as contained in the



1 stipulated Order, is made solely for the purpose of effectuating
2 this Stipulation. It is the intent and understanding of the
3 parties that this Stipulation shall not be binding or admissible
4 against respondent in any actions against respondent by third
5 parties.

6 5. It is understood by the parties that the Real Estate
7 Commissioner may adopt the Stipulation as his Decision and Order
8 in this matter thereby imposing the penalty and sanctions on
9 respondent's real estate license and license rights as set forth
10 in the "Order" herein below. In the event that the Commissioner
11 in his discretion does not adopt the Stipulation, the Stipulation
12 shall be void and of no effect, and respondent shall retain the
13 right to a hearing and proceeding on the Accusation under the
14 provisions of the APA and shall not be bound by any admission or
15 waiver made herein.

16 6. The Order or any subsequent Order of the Real Estate
17 Commissioner made pursuant to this Stipulation shall not
18 constitute an estoppel, merger or bar to any further
19 administrative or civil proceedings by the Department of Real
20 Estate with respect to any matters which were not specifically
21 alleged to be causes for accusation in this proceeding.

22 DETERMINATION OF ISSUES

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

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I

The acts or omissions of respondent PATRICIO C. SO, as described in Paragraph 4, above, are in violation of Section 10145 of the California Business and Professions Code (Code) and Sections 2830, 2831 and 2832 of Title 10, Chapter 6 of the California Code of Regulations, and are a basis for the suspension or revocation of said respondent's license and license rights pursuant to Section 10177(d) of the Code.

ORDER

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

I

1. All license and license rights of respondent PATRICIO C. SO under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Order, sixty days stayed; provided, however, that the remaining thirty (30) days of said suspension shall be permanently stayed on the condition that:

(a) Respondent pays a monetary penalty pursuant to Section 10175.2 of the Code at the rate of \$16.67 for each day of said suspension stayed, for a total monetary penalty of \$500;

(b) Said payment shall be in the form of a cashier's check or certified check and payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Order in this matter; and

(c) If Respondent fails to pay the monetary penalty in accordance with the terms of this paragraph or this Order, the

1 Commissioner, may, without a hearing, order the immediate
2 execution of all or any part of the 30 day stayed suspension, in
3 which event the respondent shall not be entitled to any repayment
4 nor credit, prorated or otherwise, for money paid to the
5 Department under the terms of this Order.

6 2. The remaining sixty (60) days of the ninety (90) day
7 suspension provided in paragraph "1" shall be stayed for two (2)
8 years upon the following terms and conditions:

9 (a) Respondent shall obey all laws, rules and
10 regulations governing the rights, duties and responsibilities of a
11 real estate licensee in the State of California;

12 (b) That no final subsequent determination be made
13 after hearing or upon stipulation, that cause for disciplinary
14 action occurred within two years of the effective date of this
15 Order;

16 (c) That respondent pays within 45 days from receipt of
17 the invoice referred to in paragraph "3" below, the Commissioner's
18 reasonable costs for an audit;

19 (d) If Respondent (1) pays the monetary penalty as
20 provided for herein, and (2) pay, within 45 days from receipt of
21 the invoice referred to in paragraph "3" below, the Commissioner's
22 reasonable cost for an audit, and (3) if no further cause for
23 disciplinary action against the real estate license of respondent
24 occurs within two (2) years from the effective date of this Order,
25 the sixty (60) day stay granted pursuant to this paragraph shall
26 become permanent.

27



1 3. Respondent shall pay, pursuant to Section 10148 of the Code,
2 the Commissioner's reasonable cost for an audit to determine if
3 respondent has corrected the trust fund violations found in the
4 Determination of Issues. In calculating the amount of the
5 Commissioner's reasonable costs, the Commissioner may use the
6 estimated average hourly salary for all persons performing audits
7 of real estate brokers, and shall include an allocation for travel
8 costs, including mileage, time to and from the auditor's place of
9 work, and per diem in the total amount not to exceed \$1,900.

10 (a) Respondent shall pay such cost within 45 days of
11 receipt of an invoice from the Commissioner detailing the
12 activities performed during the audit and the amount of time spent
13 performing those activities;

14 (b) Notwithstanding the provisions of paragraph "1"
15 herein, if respondent fails to pay, within forty-five
16 (45) days from receipt of the invoice specified above,
17 the Commissioner's reasonable costs for an audit to
18 determine if respondent has corrected the violations
19 found in the Determination of Issues, the Commissioner
20 may order the indefinite suspension of respondent's
21 real estate licenses and license rights. The
22 suspension shall remain in effect until payment is made
23 in full, or until respondent enters into an
24 agreement satisfactory to the Commissioner to provide
25 for such payment. The Commissioner may impose further
26 reasonable disciplinary terms and conditions upon
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Respondent's real estate license and license rights as part of any such agreement.

DATED: 05-21-97

E. M. L.
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: 5/27/97

Patricio C. So
PATRICIO C. SO
Respondent

* * * * *

The foregoing Stipulation and Agreement in Settlement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on August 5, 1997.

IT IS SO ORDERED 7-9, 1997

JIM ANTT, JR.
Real Estate Commissioner

J. Antt Jr.

1 Department of Real Estate
2 107 South Broadway, Room 8107
3 Los Angeles, California 90012

4 (213) 897-3937

FILED
MAY 15 1997
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-26891 LA
13 PATRICIO C. SO and)
14 JOSE MALLARE BALANCIO,) STIPULATION AND AGREEMENT
15) IN SETTLEMENT AND ORDER
16 Respondents.)

17 It is hereby stipulated by and between JOSE MALLARE
18 BALANCIO and the Complainant, acting by and through Elliott Mac
19 Lennan, Counsel for the Department of Real Estate, as follows for
20 the purpose of settling and disposing of the Accusation filed in
21 this matter on December 31, 1996:

22 1. Respondent has received, read and understands the
23 Statement to Respondent, the Discovery Provisions of the
24 Administrative Procedure Act (APA) and the Accusation filed by the
25 Department of Real Estate in this proceeding.

26 2. Respondent filed a Notice of Defense pursuant to
27 Section 11505 of the Government Code for the purpose of requesting
a hearing on the allegations in the Accusation. Respondent hereby

1 freely and voluntarily withdraws said Notice of Defense.
2 Respondent acknowledges that he understands that by withdrawing
3 said Notice of Defense he thereby waives his right to require the
4 Commissioner to prove the allegations in the Accusation at a
5 contested hearing held in accordance with the provisions of the
6 APA and that he will waive other rights afforded to him in
7 connection with the hearing such as the right to present evidence
8 in his defense and the right to cross-examine witnesses.

9 3. This Stipulation and Agreement in Settlement and
10 Order (Stipulation) is based on the factual allegations contained
11 in the Accusation. In the interest of expedience and economy,
12 respondent chooses not to contest these allegations, but to remain
13 silent and understands that, as a result thereof, these factual
14 allegations, without being admitted or denied, will serve as a
15 prima facie basis for the disciplinary action stipulated to
16 herein. The Real Estate Commissioner shall not be required to
17 provide further evidence to prove said factual allegations.

18 4. This Stipulation is based on respondent's decision
19 not to contest the allegations set forth in the Accusation as a
20 result of the agreement negotiated between the parties. This
21 Stipulation, based on respondent's decision not to contest the
22 Accusation, is expressly limited to this proceeding and any
23 further proceeding initiated by or brought before the Department
24 of Real Estate based upon the facts and circumstances alleged in
25 the Accusation, and made for the sole purpose of reaching an
26 agreed disposition of this proceeding. The decision of respondent
27 not to contest the factual statements alleged, as contained in the



1 stipulated Order, is made solely for the purpose of effectuating
2 this Stipulation. It is the intent and understanding of the
3 parties that this Stipulation shall not be binding or admissible
4 against respondent in any actions against respondent by third
5 parties.

6 5. It is understood by the parties that the Real Estate
7 Commissioner may adopt the Stipulation as his decision in this
8 matter thereby imposing the penalty and sanctions on respondent's
9 real estate license and license rights as set forth in the "Order"
10 herein below. In the event that the Commissioner in his
11 discretion does not adopt the Stipulation, the Stipulation shall
12 be void and of no effect, and respondent shall retain the right to
13 a hearing and proceeding on the Accusation under the provisions of
14 the APA and shall not be bound by any admission or waiver made
15 herein.

16 6. The Order or any subsequent Order of the Real Estate
17 Commissioner made pursuant to this Stipulation shall not
18 constitute an estoppel, merger or bar to any further
19 administrative or civil proceedings by the Department of Real
20 Estate with respect to any matters which were not specifically
21 alleged to be causes for accusation in this proceeding.

22 DETERMINATION OF ISSUES

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

The conduct of respondent JOSE MALLARE BALANCIO as described in Paragraph 4, above, consists a failure to timely tender to his broker, Patricio C. So, buyers Jesse Hermosillo and Jose Mendiola deposit check in the amount of \$1,000 as required by California Business and Professions Code Section 10145(c) (Code). This conduct is a basis for the suspension or revocation of respondent's license and license rights pursuant to Sections 10177(d) and 10177(g) of the Code.

ORDER

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

I

The real estate salesperson license and license rights of respondent JOSE MALLARE BALANCIO under the Real Estate Law (Part 1 of Division 4 of the Code) are hereby revoked.

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

The restricted real estate salesperson license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Code and the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

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

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

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

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

22 E. Respondent shall, within twelve (12) months from the
23 effective date of the issuance of any license, present evidence
24 satisfactory to the Real Estate Commissioner that Respondent has,
25 since the most recent issuance of an original or renewal real
26 estate license, taken and successfully completed the continuing
27 education requirements of Section 10170.5 operative January 1,



1 1996, for renewal of a real estate license. If Respondent fails to
2 satisfy this condition, the Commissioner may order the suspension
3 of the restricted license until the respondent presents such
4 evidence. The Commissioner shall afford respondent the opportunity
5 for a hearing pursuant to the Administrative Procedure Act to
6 present such evidence.

7 F. With the application for license, or with the
8 application for transfer to a new employing broker, respondent
9 shall submit a statement signed by the prospective employing broker
10 on a form approved by the Department of Real Estate wherein the
11 employing broker shall certify as follows:

- 12 (1) That the broker has read the Decision
13 and Order of the Commissioner which
14 granted the right to a restricted
15 license; and
16 (2) That the broker will exercise close
17 supervision over the performance by
18 the restricted licensee of activities
19 for which a real estate license is
20 required.

21
22 DATED: 3-3-97 E. J. L.
23 ELLIOTT MAC LENNAN
24 Counsel for Complainant


25 * * * * *

26 I have read the Stipulation and Agreement in Settlement
27 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

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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: 3/14/97



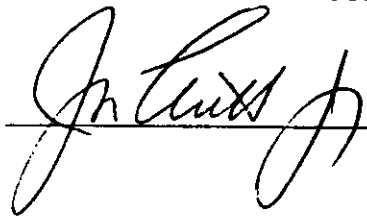
JOSE MALLARE BALANCIO
Respondent

* * * * *

The foregoing Stipulation and Agreement in Settlement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on June 4, 1997.

IT IS SO ORDERED 4/9, 1997.

JIM ANTT, JR.
Real Estate Commissioner



Sacto. Plans

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 11 1997
DEPARTMENT OF REAL ESTATE

* * * *

In the Matter of the Accusation of)
)
PATRICIO C. SO, et al.,)
)
Respondents.)
_____)

Case No. H-26891 EA
OAH No. L-9702180

[Handwritten Signature]

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 Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California, on **September 23, 1997**, at the hour of 9:00 a.m., 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.

Dated: April 11, 1997

cc: Patricio C. So
Jose Mallare Balancio
Sacto.
OAH

DEPARTMENT OF REAL ESTATE

[Handwritten Signature]
ELLIOTT MAC LENNAN, Counsel

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II

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

III

SO is presently licensed and/or has license rights under the Real Estate Law. SO was originally licensed as a real estate broker on August 24, 1990, by the Department of Real Estate (Department).

IV

BALANCIO is presently licensed and/or has license rights under the Real Estate Law. BALANCIO was originally licensed as a real estate salesperson on June 29, 1987, by the Department.

V

At all times herein mentioned, in the city of La Puente, Los Angeles County, respondent SO dba Century 21 Metro engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker, within the meaning of Section 10131(a) of the Code in that he operated a residential real estate resale business with the public wherein, on behalf of others and for compensation or in expectation of compensation, respondent SO, sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property including broker-controlled escrows. BALANCIO was employed as a salesman by SO. Respondent SO dba Metro Mortgage also engaged in the business of, acted in the capacity



1 of, advertised, or assumed to act as a real estate broker, within
2 the meaning of Section 10131(d) of the Code, including the
3 operation of a mortgage loan brokerage business with the public
4 wherein lenders and borrowers were solicited for loans secured
5 directly or collaterally by liens on real property, wherein such
6 loans were arranged, negotiated, processed, and consummated on
7 behalf of others for compensation or in expectation of
8 compensation and for fees often collected in advance.

9 VI

10 At all times mentioned herein, in connection with the
11 activities described in Paragraph V, above, respondent SO accepted
12 or received funds in trust (trust funds) from or on behalf of
13 actual or prospective buyers and sellers, and accepted or
14 received funds in trust from or on behalf of actual or prospective
15 borrowers and lenders, and thereafter made disposition of such
16 funds. Respondent maintained the following trust accounts into
17 which he deposited certain of these funds:

18 (T/A # 1)
19 "Metroworld Realty Corporation dba Century 21 Metro"
20 Account Number 9120026957
21 Union Bank
17899 Colima Road
City of Industry, CA 91748

22 (T/A # 2)
23 "Century 21 Metro Escrow Trust Account"
24 Account Number 2080-26888
25 Sanwa Bank
2041 Duarte Avenue
26 El Monte, CA 91733
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Audit Number LA 950618 .

VII

On July 3, 1996, the Department completed a field examination of the books and records of SO pertaining to the activities described in Paragraphs V and VI, above, beginning on May 1, 1995 and terminating on May 31, 1996, which revealed violations of the Code and the Regulations as set forth in the following paragraphs.

VIII

With respect to the trust funds referred to in Paragraph VI, it is alleged that SO:

(a) Failed to maintain T/A #1 and T/A #2 in the name of the broker, as required by Section 2830 of the Regulations and as previously cited in the Corrective Action Letter dated April 18, 1996;

(b) Failed to maintain a control record for the daily balance of the receipt and disposition of all trust funds in trust account received by SO, as required by Regulation 2831;

(c) Failed to deposit trust funds into the trust account before the end of the next business day as required by Regulation 2832.

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IX

The conduct of respondent SO, described in Paragraph VIII above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
VIII(a)	Section 10145 of the Code and Section 2830 of the Regulations
VIII(b)	Section 10145 of the Code and Section 2831 of the Regulations
VIII(c)	Section 10145 of the Code and Section 2832 of the Regulations

Each of the foregoing violations separately constitutes cause for the suspension or revocation of the real estate license and license rights of respondent SO under the provisions of Section 10177(d) of the Code.

X

On or about January 16, 1996, BALANCIO accepted a \$1,000 deposit check on behalf of buyers Jesse Hermosillo and Jose Mendiola to purchase the real property located at 16112 Blue Lagoon Street, Valinda, California from Kim Ramsden, the seller. BALANCIO deposited buyers check into California Western Escrow, Inc., on February 28, 1996

XI

The conduct of BALANCIO, as described in Paragraph X, above, in failing to deposit the \$1,000 deposit check of buyers

1 Jesse Hermosillo and Jose Mendiola until forty two days after he
2 received it from them constitutes a violation of Section 10145(c).
3 This conduct and violation are cause to suspend or revoke the real
4 estate license and license rights of BALANCIO pursuant to Sections
5 10177(d) and 10177(g) of the Code.

6 XII

7 The overall conduct of respondent SO dba Metro Mortgage
8 in violating Section 10145 of the Code and Regulations Sections
9 2830, 2831 and 2832 and, as described in Paragraphs VI and IX
10 above, constitutes negligence and/or incompetence. This conduct
11 and violation are cause for the suspension or revocation of the
12 real estate license and license rights of respondent SO under the
13 provisions of Section 10177(g) of the Code.

14 XIII

15 The acts and omissions of respondent SO, in failing to
16 exercise supervision and control over the licensed activities of
17 BALANCIO are cause for the suspension or revocation of all real
18 estate licenses and license rights of respondent SO pursuant to
19 the provisions of Section 10177(h) of the Code.

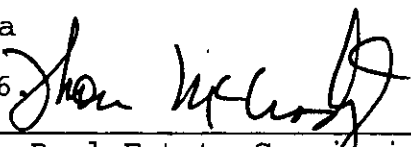
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations made by the Accusation and, that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of respondent PATRICIO C. SO and JOSE MALLARE BALANCIO under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 31st day of December, 1996.



Deputy Real Estate Commissioner

cc: Patricio C. So
Jose Mallare Balancio
Sacto.
DR