

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

4 (213) 897-3937

FILED
APR 20 1998
DEPARTMENT OF REAL ESTATE

By Laura B. Cline

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of)
12 ROSE MAXINE MARROTTE,)
13)
14 Respondent.)
15 _____)

NO. H-27500 LA

STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between ROSE MAXINE
17 MARROTTE (sometimes referred to as Respondent), and the
18 Complainant, acting by and through Elliott Mac Lennan, Counsel for
19 the Department of Real Estate, as follows for the purpose of
20 settling and disposing of the Accusation filed on January 12,
21 1998, in this matter:

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

3 2. Respondent has received, read and understands 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. Respondent timely filed a Notice of Defense,
8 pursuant to Section 11506 of the Government Code for the purpose
9 of requesting a hearing on the allegations in the Accusation.
10 Respondent hereby freely and voluntarily withdraws said Notice of
11 Defense. Respondent acknowledges that she understands that by
12 withdrawing said Notice of Defense she thereby waives her right to
13 require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that she will waive other rights
16 afforded to her in connection with the hearing such as the right
17 to present evidence in her defense and the right to cross-examine
18 witnesses.

19 4. This Stipulation is based on the factual allegations
20 contained in the Accusation. In the interest of expedience and
21 economy, Respondent chooses not to contest these allegations, but
22 to remain silent and understands that, as a result thereof, these
23 factual allegations, without being admitted or denied, will serve
24 as a prima facie basis for the disciplinary action stipulated to
25 herein. The Real Estate Commissioner shall not be required to
26 provide further evidence to prove said factual allegations.

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1 5. This Stipulation is based on Respondent's decision
2 not to contest the allegations set forth in the Accusation as a
3 result of the agreement negotiated between the parties. This
4 Stipulation is expressly limited to this proceeding and any
5 further proceeding initiated by or brought before the Department
6 of Real Estate based upon the facts and circumstances alleged in
7 the Accusation, for the sole purpose of reaching an agreed
8 disposition of this proceeding. The decision of Respondent not to
9 contest the allegations is made solely for the purpose of
10 effectuating this Stipulation. It is the intent and understanding
11 of the parties that this Stipulation shall not be binding or
12 admissible against Respondent in any actions against Respondent by
13 third parties.

14 6. It is understood by the parties that the Real Estate
15 Commissioner may adopt the Stipulation as his decision in this
16 matter thereby imposing the penalty and sanctions on Respondent's
17 real estate license and license rights as set forth in the "Order"
18 herein below. In the event that the Commissioner in his
19 discretion does not adopt the Stipulation it shall be void and of
20 no effect and Respondent shall retain the right to a hearing and
21 proceeding on the Accusation under the provisions of the APA and
22 shall not be bound by any 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
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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 and solely for
5 the purpose of settlement of the Accusation without a hearing, it
6 is stipulated and agreed that the following determination of
7 issues shall be made:

8 I

9 The conduct of Respondent ROSE MAXINE MARROTTE, as
10 described in Paragraph 4, above, is in violation of Sections 10145
11 and 10148 of the California Business and Professions Code (Code)
12 and Section 2831, 2831.2, 2832 and 2832.1 of Title 10, Chapter 6
13 of the California Code of Regulations, and is a basis for the
14 suspension or revocation of said Respondent's licenses and license
15 rights pursuant to Section 10177(d) of the Code.

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ORDER

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

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I

10 The real estate broker license and license rights of
11 Respondent ROSE MAXINE MARROTTE under the Real Estate Law (Part 1
12 of Division 4 of the Business and Professions Code) are hereby
13 revoked.

14 However, Respondent shall be entitled to apply for and
15 be issued a restricted real estate broker license if Respondent
16 makes application therefor and pays to the Department of Real
17 Estate the appropriate fee for said license within ninety (90)
18 days of the effective date of the Order herein.

19 The restricted license issued to Respondent shall be
20 subject to all of the provisions of Section 10156.7 of the Code
21 and the following limitations, conditions and restrictions imposed
22 under authority of Section 10156.6 of the Code:

23 A. The restricted license may be suspended prior to
24 hearing by Order of the Real Estate Commissioner in the event of a
25 conviction (including conviction on a plea of nolo contendere) to
26 a crime which bears a significant relationship to a Respondent's
27 fitness or capacity as a real estate licensee.

B. The restricted license may be suspended prior to
hearing by Order of the Real Estate Commissioner on evidence
satisfactory to the Commissioner that Respondent has, after the
effective date of the Order herein, violated provisions of the
California Real Estate Law, the Subdivided Lands Law, Regulations

1 of the Real Estate Commissioner or conditions attaching to said
2 restricted license.

3 C. Respondent shall obey all laws of the United States,
4 the State of California and its political subdivisions, and shall
5 further obey and comply with all rules and regulations of the Real
6 Estate Commissioner.

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

18 E. Respondent shall within six months from the
19 effective date of the Order, take and pass the Professional
20 Responsibility Examination administered by the Department
21 including the payment of the appropriate examination fee. If
22 Respondent fails to satisfy this condition, the Commissioner may
23 order suspension of the restricted license until Respondent passes
24 the examination.

25 F. Respondent shall not be eligible for the issuance of
26 an unrestricted real estate license nor the removal of any of the
27 conditions, limitations or restrictions of the restricted license

1 until at least two years has elapsed from the issuance of any
2 restricted real estate license.

3 G. As a further condition of any restricted license
4 being issued to Respondent, Respondent shall first provide
5 evidence satisfactory to the Commissioner that the deficit in the
6 amount of \$26,327.16 in her trust account, as of June 12, 1997,
7 has been cured including the identity of the source of funds used
8 to cure the deficit.

9 II

10 Any restricted real estate broker license issued to
11 Respondent ROSE MAXINE MARROTTE, under the Real Estate Law is
12 suspended for a period of thirty (30) days from the effective date
13 any such license is issued; provided, however, that if Respondent
14 petitions, said suspension shall be permanently stayed upon the
15 terms and conditions of this paragraph:

16 (a) Respondent pays a monetary penalty pursuant to
17 Section 10175.2 of the Code at the rate of \$100.00 for each day of
18 said suspension stayed, for a total monetary penalty of \$3,000;

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

24 (c) If Respondent fails to pay the monetary penalty in
25 accordance with the terms of this paragraph of this Order, the
26 Commissioner, may, without a hearing, order the immediate
27 execution of all or any part of the 30 day stayed suspension, in



1 which event the Respondent shall not be entitled to any repayment
2 nor credit, prorated or otherwise, for money paid to the
3 Department under the terms of this Order.

4 III

5 A. Respondent ROSE MAXINE MARROTTE shall pay, pursuant
6 to Section 10148 of the Business and Professions Code, the
7 Commissioner's reasonable cost for an audit to determine if
8 respondent is presently in compliance with the Real Estate Law.
9 In calculating the amount of the Commissioner's reasonable costs,
10 the Commissioner may use the estimated average hourly salary for
11 all Department Audit Section personnel performing audits of real
12 estate brokers, and shall include an allocation for travel costs,
13 including mileage, time to and from the auditor's place of work,
14 and per diem in the total amount not to exceed \$3,500. Respondent
15 shall pay such cost within 45 days of receipt of an invoice from
16 the Commissioner detailing the activities performed during the
17 audit and the amount of time spent performing those activities.

18 (1) Notwithstanding the provisions of paragraph "A"
19 herein, if respondent fails to pay, within forty-five (45) days
20 from receipt of the invoice specified above, the Commissioner's
21 reasonable costs for an audit to determine if respondent is in
22 compliance with the Real Estate Law, the Commissioner may order
23 the indefinite suspension of respondent's real estate licenses and
24 license rights. The suspension shall remain in effect until
25 payment is made in full, or until respondent enters into an
26 agreement satisfactory to the Commissioner to provide for such
27 payment. The Commissioner may impose further reasonable



1 disciplinary terms and conditions upon respondent's real estate
2 license and license rights as part of any such agreement.

3 DATED: 3-4-98

Elliott Mac Lennan
4 ELLIOTT MAC LENNAN
5 Counsel for Complainant

6 * * * *

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

17 DATED: May 20, 98

Rose Maxine Marrotte
18 ROSE MAXINE MARROTTE,
19 Respondent

20 * * * *

21 The foregoing Stipulation and Agreement is hereby
22 adopted as my decision and Order and shall become effective at 12
23 o' clock noon on May 12, 1998.

24 IT IS SO ORDERED 4/14, 1998.

25 JIM ANTT JR.
26 Real Estate Commissioner
27 J. Antt Jr.



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ELLIOTT MAC LENNAN, Counsel
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Telephone (213) 897-3937

FILED
JAN 12 1998
DEPARTMENT OF REAL ESTATE

By *Laura B. Aron*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	
)	
ROSE MAXINE MARROTTE,)	
)	
)	No. H-27500 LA
)	A C C U S A T I O N
)	
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity, for cause of accusation against ROSE MAXINE MARROTTE operating under the fictitious business name of Rose Real Estate is informed and alleges as follows:

I

ROSE MAXINE MARROTTE (MARROTTE), sometimes referred to as Respondent, is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

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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 Title 10, Chapter 6, California Code of Regulations.

III

At all times mentioned, MARROTTE was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. MARROTTE was licensed by the Department on May 1, 1985, as a real estate broker.

IV

At all times mentioned, in the City of Indio, Riverside County, California, Respondent MARROTTE acted as a real estate broker within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, for or in expectation of compensation, Respondent leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

V

On July 14, 1997, the Department completed a field audit examination of the books and records of MARROTTE, pertaining to the activities described in Paragraph IV. The audit examination covered the period of time beginning on January 1, 1996 and ending on May 19, 1997. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs.

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VI

At all times mentioned, in connection with the aforesaid real estate activities described in Paragraph IV, MARROTTE accepted or received funds in trust (trust funds) from or on behalf of actual or prospective lessors and lessees, and thereafter made disposition of such funds. MARROTTE maintained the following trust account as the depository of said funds:

"Rose Marrotte Trust Account
Account Number 05854-21011"
Bank of America
Palm Desert, California

VII

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

(a) Permitted, allowed or caused the disbursement of trust funds from the trust account where the disbursement of said funds reduced the total of aggregate funds in the trust account, to an amount which, on June 12, 1997, was \$26,327.16 less than the existing aggregate trust fund liability of Respondent 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 Section 10145 of the Code and Section 2832.1 of the Regulations;

(b) Failed to maintain an adequate control record in the form of a columnar record in chronological order of all trust funds received, as required by Section 2831 of the Regulations;

(c) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records

1 maintained pursuant to Section 2831.1 of the Regulations with the
2 record of all trust funds received and disbursed, as required by
3 Section 2831.2 of the Regulations; and

4 (d) Failed to place funds, including funds received in
5 certain property management transactions, accepted on behalf of
6 another into the hands of the owner of the funds, into a neutral
7 escrow depository or into a trust fund account in the name of the
8 broker as trustee at a bank or other financial institution not
9 later than three business days following receipt of the funds by
10 the broker or by the broker's salesperson, as required by Section
11 2832 of the Regulations.

12 VIII

13 The conduct of Respondent MARROTTE, described in
14 Paragraph VII above, violated the Code and the Regulations as set
15 forth below:

16	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
17	VII(a)	Section 10145 of the Code and
18		Section 2832.1 of the Regulations
19		
20	VII(b)	Section 10145 of the Code and
21		Section 2831 of the Regulations
22		
23	VII(c)	Section 10145 of the Code and
24		Section 2831.2 of the Regulations
25		
26	VII(d)	Section 10145 of the Code and
27		Section 2832 of the Regulations

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1 Each of the foregoing violations separately constitutes cause for
2 the suspension or revocation of the real estate license and
3 license rights of Respondent MARROTTE under the provisions of
4 Section 10177(d) of the Code.

5 IX

6 The Department attempted to complete a field audit
7 examination of the books and records of MARROTTE dba Rose Real
8 Estate pertaining to the activities described in Paragraph IV.
9 The field audit examination revealed that Respondent failed to
10 retain the records of her activity requiring a real estate license
11 for the period of time beginning on March 24, 1997 to April 21,
12 1997. This conduct is in violation of Section 10148 of the Code
13 and constitutes cause for the suspension or revocation of the real
14 estate license and license rights of Respondent MARROTTE under the
15 provisions of Section 10177(d) of the Code.

16 X

17 The overall conduct of Respondent MARROTTE, in violating
18 Sections 10145 and 10148 of the Code and Sections 2831, 2831.2,
19 2832 and 2832.1 of the Regulations, as described in Paragraphs IV
20 through IX above, constitutes negligence or incompetence. This
21 conduct and violation are cause for the suspension or revocation
22 of the real estate license and license rights of Respondent
23 MARROTTE under the provisions of Section 10177(g) of the Code.

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Prior Discipline


XI

In Case No. H-1628 SA, an Accusation was filed against Respondent MARROTTE on August 16, 1993, that resulted in discipline effective November 23, 1994, for said Respondent for a violation of Sections 10145 and 10177(d) of the Code. As a result of this Accusation, MARROTTE's real estate broker license was suspended for thirty (30) days, all stayed.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondent ROSE MAXINE MARROTTE 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 12th day of January, 1998.


Deputy Real Estate Commissioner

cc: Rose Maxine Marrotte
Sacto
AK

