

Bureau of Real Estate
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Los Angeles, CA 90013

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FILED

JAN 19 2018

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

CARLOS MARTINEZ,
individually, and doing business as
Platinum Consulting Rental Service,

No. H-40888 LA

ORDER TO DESIST
AND REFRAIN

(B&P Code Sec. 10086)

The Real Estate Commissioner of the State of California ("Commissioner") has caused an investigation to be made of the activities of CARLOS MARTINEZ ("MARTINEZ"), individually, and doing business as Platinum Consulting Rental Service. Based on that investigation, the Commissioner is of the opinion that MARTINEZ has engaged in acts or practices constituting violations of the California Business and Professions Code ("Code") with respect to activity undertaken in the operation of a business engaged in Prepaid Rental Listing Services ("PRLS") (Code Section 10167 et seq.).

Based on that investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

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FINDINGS OF FACT

1. MARTINEZ is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a restricted real estate broker, and is authorized to use the fictitious business name "Platinum Consulting Rental Service."

2. On or about November 18, 2015, in case number H-39561 LA, the Commissioner revoked the broker license of MARTINEZ and gave him the right to the issuance of a restricted broker license upon his application therefor. By the same order, the Commissioner also suspended any restricted license issued to MARTINEZ for a period of thirty (30) days. A restricted broker license was issued to MARTINEZ on November 18, 2015.

3. At all times mentioned herein MARTINEZ engaged in the business of supplying prospective tenants with listings of residential real properties for tenancy, by publication or otherwise, pursuant to an arrangement under which the prospective tenants are required to pay an advance or contemporaneous fee, which constitutes a PRLS.

4. At all times mentioned herein Respondent engaged in the business of advance fee brokerage within the definition of Code Section 10131.2 by claiming, demanding, charging, receiving or collecting an advance fee prior to fully completing the service the licensee contracted to perform or represented would be performed within the meaning of Code Section 10026.

5. During the course of MARTINEZ's PRLS activities MARTINEZ utilized a written agreement ("PRLS Agreement") which bore the name "Platinum Consulting Rental Service," and described the business as a prepaid rental listing service. The PRLS Agreement described the sum of \$60 rather than \$50 as the statutory service charge the business could deduct from any refund given to a prospective tenant utilizing MARTINEZ's PRLS business.

6. MARTINEZ engaged in PRLS activities on behalf of numerous prospective tenants, including but not limited to those set forth below:

a. On or about July 10, 2017, Genelle G. entered into a PRLS Agreement with

1 MARTINEZ. The PRLS Agreement recited that the sum of \$200 for prepaid rental listing
2 services had been received from Genelle G. Prior to entering into the PRLS Agreement with
3 MARTINEZ, Genelle G. advised an employee of the business that she was only in town for a
4 day and needed immediate access to rental addresses so she could view the properties that day.
5 In response, the employee agreed to telephone Genelle G. to provide her with rental listings
6 which could be viewed by Genelle G. before the end of the day. When Genelle G. received no
7 telephone call from anyone at MARTINEZ's business, Genelle G. called the business back and
8 requested a refund of her \$200 inasmuch as she had received no services whatsoever for her
9 \$200 payment. At that time an employee named Cathy Thomas advised Genelle G. that she
10 would be unable to receive a refund for ten days. With no other recourse available, Genelle G.
11 filled out a form entitled "Refund Form" requesting a refund of the monies paid to the business.
12 Approximately two months later Genelle G. received a check in the amount of \$140 from
13 MARTINEZ's PRLS business. The amount refunded to Genelle G. reflected a \$60 service
14 charge deduction taken from the payment made by Genelle G.

15 b. On or about March 14, 2017, Marcella H. entered into a PRLS Agreement with
16 MARTINEZ. The agreement recited that the sum of \$200 for prepaid rental listing services had
17 been received from Marcella H. The PRLS Agreement listed June 14, 2017, as the termination
18 date of the contract. Two lists of rentals were given to Marcella H., both in mid-March, 2017. At
19 the direction of MARTINEZ' employees Marcella H. filled out appointment forms requesting
20 that MARTINEZ set up appointments for her with the landlords of six different properties.
21 Marcella H. delivered filled-out appointment forms to the business on or about March 14 and
22 March 15, 2017. Despite receiving Marcella H.'s appointment form, no appointments were made
23 by MARTINEZ for Marcella H. to see the properties listed on her appointment forms. Marcella
24 H. obtained her own rental property without the assistance of MARTINEZ's services. Marcella
25 H. then sought a refund from MARTINEZ. In support of her refund request Marcella H.
26 provided MARTINEZ with a copy of the rental agreement she entered into for the rental of the
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1 property she had located without MARTINEZ's assistance. Utilities were included in the rental
2 agreement Marcella H. entered into. At that time MARTINEZ's employee advised Marcella H.
3 that she could not receive a refund unless she provided copies of leads the business had given her
4 for each week of the ninety-day contract. Marcella H. was unable to comply with this direction
5 inasmuch as she had received only two rental lists from MARTINEZ before she obtained her
6 own rental property. MARTINEZ failed to provide a refund of any portion of the payment made
7 by Marcella H.

8 c. On or about March 9, 2016, Nelson R.S. entered into a PRLS Agreement with
9 MARTINEZ. The PRLS Agreement recited that the sum of \$195 for prepaid rental listing
10 services had been received from Nelson R.S., and listed July 6, 2016, as the termination date of
11 the contract. A list of potential rentals was given to Nelson R.S. after he entered into the PRLS
12 Agreement with MARTINEZ. Six days after entering into the PRLS Agreement Nelson R.S.
13 obtained his own rental property without the assistance of MARTINEZ's services. Nelson R.S.
14 sought a refund from MARTINEZ. In support of his refund request Nelson R.S. provided
15 MARTINEZ with a copy of the rental agreement he entered into for the rental of the property he
16 had located without MARTINEZ's assistance. Utilities were included in the rental agreement. At
17 that time MARTINEZ's employee advised Nelson R.S. that he could not receive a refund unless
18 he provided MARTINEZ with copies of twenty-four updated potential rental lists, which
19 constituted two lists of leads for each week of the ninety-day contract. Nelson R.S. was unable to
20 comply with this direction inasmuch as he had received no additional rental lists from
21 MARTINEZ after Nelson R.S. found a rental property on his own during the first week of the
22 contract. MARTINEZ failed to provide a refund of any portion of the payment made by Nelson
23 R.S.

24 CONCLUSION OF LAW

25 1. Based on the information contained in Paragraphs 1 through 6, above,
26 MARTINEZ engaged in conduct which is in violation of the PRLS provisions contained in the
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1 Code. Specifically, MARTINEZ violated Code Section 10167.10, which sets forth a prospective
2 tenant's right to obtain a refund of an advance fee paid for PRLS services, by failing and refusing
3 to refund fees under circumstances entitling prospective tenants, including but not limited to
4 those listed in Paragraph 6, above, to receive a full or partial refund of the advance fee paid to
5 MARTINEZ. The following conduct of MARTINEZ demonstrates a violation of Section
6 10167.10:

7 a. In violation of Subdivision (a)(1) of Code Section 10167.10, MARTINEZ
8 failed to refund in full the \$200 advance fee paid by the prospective tenant in Paragraph 6.a. of
9 the Findings of Fact though she received no rental listings from MARTINEZ.

10 b. In violation of Subdivision (b)(1) of Code Section 10167.10, MARTINEZ
11 asserted a right in the PRLS Agreement to deduct from refunds paid to prospective tenants the
12 amount of \$60 as a service charge rather than the statutorily permitted \$50.

13 c. In violation of Subdivision (b)(2) of Code Section 10167.10, with respect to the
14 prospective tenants in Paragraph 6.b. and 6.c. of the Findings of Fact, MARTINEZ asserted an
15 unauthorized condition with respect to the prospective tenants' right to obtain a refund of their
16 advance fee. Specifically, MARTINEZ demanded that the prospective tenants provide copies of
17 rental listings provided to them by MARTINEZ over a period of ninety (90) days.

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CARLOS MARTINEZ IS HEREBY ORDERED TO immediately desist and refrain from engaging in any PRLS activities within the State of California which violate Code Section 10167.10 by failing and refusing to refund advance fees paid by prospective tenants under circumstances entitling the prospective tenants to obtain a full or partial refund.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

cc: CARLOS MARTINEZ