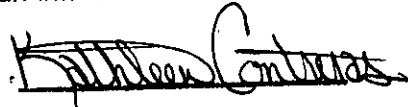


1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
JAN 22 2004

DEPARTMENT OF REAL ESTATE



9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of)
14 LAWRENCE WILLIAM MARTELLA,)
15)
16 Respondent.)

NO. H-1576 FR
STIPULATION AND AGREEMENT

17
18 It is hereby stipulated by and between LAWRENCE
19 WILLIAM MARTELLA (hereafter Respondent), represented by Larry
20 H. Shapazian, Attorney at Law, Tomassian, Pimentel & Shapazian,
21 and the Complainant, acting by and through Deidre L. Johnson,
22 Counsel for the Department of Real Estate, as follows for the
23 purpose of settling and disposing the Accusation filed on
24 January 27, 2003, in this matter:

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondent
27 at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement.

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

8 3. On February 13, 2003, Respondent filed his Notice
9 of Defense pursuant to Section 11505 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense he will
14 thereby waive his rights to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA, and that he will waive
17 other rights afforded to him in connection with the hearing such
18 as the right to present evidence in defense of the allegations in
19 the Accusation and the right to cross-examine witnesses.

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

25 5. Without admitting the truth of the allegations
26 contained in the rest of the Accusation, Respondent stipulates
27 that he will not interpose a defense thereto. This Stipulation

1 is based on the factual allegations contained in the Accusation
2 as found below. In the interests of expedience and economy,
3 Respondent chooses not to contest the remaining allegations, but
4 to remain silent, and understands that, as a result thereof,
5 these factual allegations, without being admitted or denied, will
6 serve as a basis for the disciplinary action stipulated to
7 herein. The Real Estate Commissioner shall not be required to
8 provide further evidence to prove said factual allegations.

9 6. Respondent has received, read and understands the
10 "Notice Concerning Costs of Audits." Respondent understands, by
11 agreeing to this Stipulation and Agreement, and after the
12 findings set forth below in the "Determination of Issues" become
13 final, that the Commissioner may charge Respondent for the costs
14 of the following audits that have been and may be conducted
15 pursuant to Section 10148 of the Business and Professions Code:

16 (a) Audit #FR-010025 dated January 9, 2002:
17 Not more than \$2,622.00;

18 (b) Future follow-up audit: Not more than
19 \$3,500.00.

20 7. It is understood by the parties that the Real
21 Estate Commissioner may adopt the Stipulation and Agreement as
22 her decision in this matter thereby imposing the penalty and
23 sanctions on the real estate licenses and license rights of
24 Respondent as set forth in the below "Order". In the event that
25 the Commissioner in her discretion does not adopt the Stipulation
26 and Agreement, it shall be void and of no effect, and Respondent
27 shall retain the right to a hearing and proceeding on the

///

1 Accusation under all the provisions of the APA and shall not be
2 bound by any admission or waiver made herein.

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

* * *

10 DETERMINATION OF ISSUES

11
12 By reason of the foregoing stipulations and waivers and
13 solely for the purpose of settlement of the pending Accusation
14 without a hearing, it is stipulated and agreed that the following
15 determination of issues shall be made:

16 The acts and/or omissions of Respondent LAWRENCE
17 WILLIAM MARTELLA as stipulated above violate Section 10145 of the
18 California Business and Professions Code (hereafter the Code),
19 and Sections 2831.2, 2832.1, and 2834 of Title 10, California
20 Code of Regulations, and constitute grounds for disciplinary
21 action under the provisions of Section 10177(d) of the Code.
22 Said acts and/or omissions also constitute grounds for
23 disciplinary action under the provisions of Section 10176(e) of
24 the Code.

25 ///

26 ///

27 ///

1 * * *

2 ORDER

3 A. All real estate license(s) and license rights of Respondent
4 LAWRENCE WILLIAM MARTELLA are hereby revoked.

5 B. A restricted real estate broker license shall be issued to
6 Respondent pursuant to Section 10156.6 of the Code if he
7 makes application therefor and pays to the Department the
8 appropriate fee for the license within ninety (90) days of
9 the effective date of the Order.

10 C. The restricted license issued to Respondent shall be subject
11 to all of the provisions of Section 10156.7 of the Business
12 and Professions Code and to the following conditions and
13 limitations imposed under authority of Section 10156.6 of
14 said Code:

15 1) Respondent shall, prior to and as a condition of the
16 issuance of said restricted license, submit proof
17 satisfactory to the Commissioner of having taken and
18 completed the continuing education course on trust fund
19 accounting and handling specified in paragraph (3) of
20 subdivision (a) of Section 10170.5 of the Business and
21 Professions Code from an approved continuing education
22 course provider. Said course may have been completed
23 within one hundred and twenty (120) days prior to the
24 effective date of the order herein.

25 2) The restricted license issued to Respondent may be
26 suspended prior to hearing by order of the Real Estate
27 Commissioner in the event of Respondent's conviction or

1 plea of nolo contendere to a crime which bears a
2 substantial relationship to Respondent's fitness or
3 capacity as a real estate licensee.

4 3) The restricted license may be suspended prior to hearing
5 by Order of the Real estate Commissioner on evidence
6 satisfactory to the Commissioner that Respondent has
7 violated provisions of the California Real Estate Law,
8 the Subdivided Lands Law, Regulations of the Real Estate
9 Commissioner or conditions attaching to the restricted
10 license.

11 4) Respondent shall not be eligible to apply for the
12 issuance of an unrestricted real estate license, nor the
13 removal of any of the conditions of the restricted
14 license, until two (2) years have elapsed from the
15 effective date of this Order.

16 5) Pursuant to Section 10148 of the Business and Professions
17 Code, Respondent shall pay the Commissioner's reasonable
18 cost for the following audits as a result of the above
19 found violations:

20 (a) Audit #FR-010025 dated January 9, 2002:
21 Not more than \$2,622.00;

22 (b) Future follow-up audit: Not more than
23 \$3,500.00.

24 In calculating the amount of the Commissioner's
25 reasonable costs for each audit, the Commissioner may use
26 the estimated average hourly salary for all Department
27 Audit Section personnel performing audits of real estate


1 brokers, and shall include an allocation for travel time
2 to and from the auditor's place of work. Respondent
3 shall pay such costs within sixty (60) days of receiving
4 an invoice from the Commissioner detailing the activities
5 performed during each audit and the amount of time spent
6 performing those activities. The Commissioner may
7 suspend the restricted license issued to Respondent
8 pending a hearing held in accordance with Section 11500,
9 et seq., of the Government Code, if payment is not timely
10 made as provided for herein, or as provided for in a
11 subsequent agreement between Respondent and the
12 Commissioner. The suspension shall remain in effect
13 until payment is made in full for each audit or until
14 Respondent enters into an agreement satisfactory to the
15 Commissioner to provide for payment, or until a decision
16 providing otherwise is adopted following a hearing held
17 pursuant to this condition.

18 6) Respondent shall, within nine (9) months from the
19 effective date of this Order, present evidence
20 satisfactory to the Real Estate Commissioner that
21 Respondent has, since the most recent issuance of an
22 original or renewal real estate license, taken and
23 successfully completed the continuing education
24 requirements of Article 2.5 of Chapter 3 of the Real
25 Estate Law for renewal of a real estate license. If
26 Respondent fails to satisfy this condition, the
27 Commissioner may order the suspension of the restricted

1 license until the Respondent presents such evidence. The
2 Commissioner shall afford Respondent the opportunity for
3 hearing pursuant to the Administrative Procedure Act to
4 present such evidence.

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

13
14
15 November 12, 2003
16 DATED

15 
16 DEIDRE L. JOHNSON
17 Counsel for Complainant


18 * * *

19 I have read the Stipulation and Agreement, have
20 discussed it with my counsel, and its terms are understood by me
21 and are agreeable and acceptable to me. I understand that I am
22 waiving rights given to me by the California Administrative
23 Procedure Act, and I willingly, intelligently and voluntarily
24 waive those rights, including the right of requiring the
25 Commissioner to prove the allegations in the Accusation at a
26 hearing at which I would have the right to cross-examine

27 ///

1 witnesses against me and to present evidence in defense and
2 mitigation of the charges.

3
4 10-23-03
5 DATED


6 LAWRENCE WILLIAM MARTELLA
7 Respondent

8 APPROVED AS TO FORM:

9 DATED

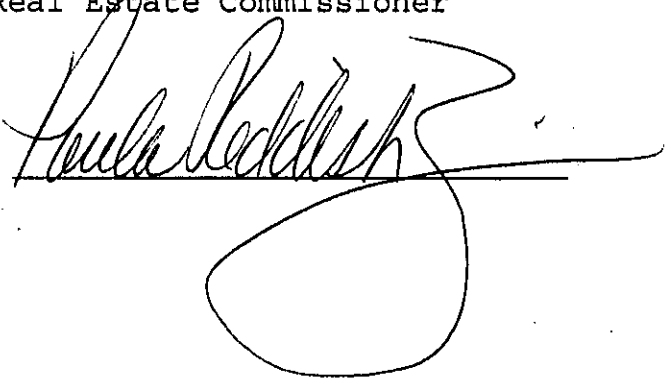
LARRY H. SHAPAZIAN
Attorney for Respondent

12 * * *

13
14 The foregoing Stipulation and Agreement is hereby
15 adopted as my Decision and shall become effective at 12 o'clock
16 noon on February 11, 2004.

17
18
19 IT IS SO ORDERED November 24, 2003.

20 PAULA REDDISH ZINNE MANN
21 Real Estate Commissioner

22 

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE AUG - 5 2003
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

LAWRENCE WILLIAM MARTELLA,

} Case No. H-1576 FR

} OAH No. N-2003050815

Respondent

FIRST CONTINUED
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 STATE BUILDING
2550 MARIPOSA MALL, ROOM 1027
FRESNO, CALIFORNIA 93721

on **OCTOBER 28, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JULY 25, 2003

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

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

FILED
JUL - 3 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

LAWRENCE WILLIAM MARTELLA,

By Yolanda Contreras

Case No. H-1576 FR

OAH No. N-2003050815

Respondent

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 STATE BUILDING
2550 MARIPOSA MALL, ROOM 1027
FRESNO, CALIFORNIA 93721**

on **SEPTEMBER 11, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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.

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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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JULY 2, 2003

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

RE 501 (Rev. 8/97)

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789
5
6
7

FILED
JAN 27 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 LAWRENCE WILLIAM MARTELLA,) NO. H-1576 FR
13 Respondent.) ACCUSATION
14)

15 The Complainant, JOHN SWEENEY, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against LAWRENCE WILLIAM MARTELLA, is informed and alleges as
18 follows:

19 I

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

24 II

25 The Complainant, JOHN SWEENEY, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 against Respondent in his official capacity and not otherwise.

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III

At all times herein mentioned, LAWRENCE WILLIAM MARTELLA (hereafter Respondent) was and is licensed by the Department as a real estate broker, individually, and doing business under the fictitious business name of HOMETOWN REALTY & PROPERTY MANAGEMENT.

IV

At least within the last three years, Respondent engaged in activities on behalf of others for which a real estate license is required under Section 10131(b) of the Code, for or in expectation of compensation, and leased or rented, offered to lease or rent, solicited prospective tenants, collected rents on, and/or managed certain real properties in California.

V

Beginning in October of 2001, the Department conducted an audit of the above business activities of Respondent for the time period of December 1, 1999, to October 1, 2001 (hereafter the audit period), as more particularly set forth in Audit Report No. FR-01-0025 dated January 10, 2002, and accompanying exhibits and working papers. During the course of the activities described in Paragraph IV above, Respondent received and disbursed funds in trust on behalf of others.

VI

Within the last three years, Respondent deposited the trust funds referred to above into a bank account at Union Bank of California in Los Angeles, California, bearing account number

1 4470310419, in the name of "Hometown Realty and Property
2 Management Trust Account," (hereafter the trust account).

3 VII

4 In connection with the collection and disbursement of
5 trust funds, Respondent failed to deposit and maintain the trust
6 funds in a trust account or neutral escrow depository, or to
7 deliver them into the hands of the owners of the funds as
8 required by Section 10145 of the Code, in such a manner that as
9 of about September 28, 2001, there was a trust fund shortage in
10 the approximate sum of \$11,068.67. Approximately \$4,091.40 of the
11 above trust fund shortage was due to unauthorized disbursements
12 that caused negative balances.

13 VIII

14 During the audit period, Respondent failed to maintain
15 the trust funds as required by Section 10145 of the Code, in
16 that Respondent commingled his own monies in the trust account,
17 and as of about September 28, 2001, Respondent had commingled
18 approximately \$3,750.04 of his funds in the trust account,
19 including but not limited to approximately \$2,365.00 pertaining
20 to the management of real property owned by him, and \$1,385.04
21 pertaining to late fees earned by him.

22 IX

23 Within the last three years, Respondent authorized or
24 permitted withdrawals to be made from the trust account upon the
25 sole signatures of Jess Duran and Angie Duran when they were not
26 licensed by the Department as real estate brokers or real estate
27 salespersons, and when they were not duly bonded as employees of

1 Respondent with the requisite fidelity bond insurance coverage to
2 conduct such trust account activities, pursuant to Section 2834
3 of the Regulations.

4 X

5 In connection with the receipt and disbursement of
6 trust funds as above alleged, Respondent:

- 7 (a) Failed to reconcile the balance of separate
8 beneficiary or transaction records with the
9 control records of trust funds received and
10 disbursed at least once a month, and/or failed
11 to maintain a record of such reconciliations as
12 to the trust account in conformance with
13 Section 2831.2 of Title 10, California Code of
14 Regulations (hereafter the Regulations); and
15 (b) Failed to obtain the prior written consent of the
16 principals for the reduction of the aggregate
17 balance of trust funds in the trust account to
18 an amount less than the existing aggregate trust
19 fund liability to the owners of said funds, in
20 conformance with Section 2832.1 of the Regulations.

21 XI


22 The acts and/or omissions of Respondent as alleged
23 above constitute grounds for disciplinary action under the
24 following provisions:

- 25 (a) As to Paragraph VII, under Section 10145 of the
26 Code, in conjunction with Section 10177(d) of the
27 Code;

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- (b) As to Paragraph VIII, under Section 10176(e) of the Code;
- (c) As to Paragraph IX, under Section 2834 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) As to Paragraph X(a), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code; and
- (e) As to Paragraph X(b), under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code.

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 all license(s) and license rights of Respondent 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 provisions of law.


JOHN SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 7th day of January, 2003