

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

(213) 897-3937

FILED
OCT 13 1995
DEPARTMENT OF REAL ESTATE

By *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-2128 SD
)	L-9502036
BRIAN DOUGLAS MC CRAY,)	
)	
Respondent.)	
_____)	

In the Matter of the Application of)	No. H-2189 SD
)	
BRIAN DOUGLAS MC CRAY,)	
)	
Respondent.)	
_____)	

STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

It is hereby stipulated by and between BRIAN DOUGLAS MC CRAY (hereinafter "Respondent"), representing himself, and the complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on November 29, 1994, and the Statement of Issues filed on August 9, 1995, in this matter:

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

2. Respondent has received, reviewed and understands the Accusation and Statement of Issues, the Statement to Respondent, and the Discovery Provisions of the APA filed by the Department of Real Estate in the above-captioned proceedings.

3. Respondent has filed Notices of Defense, pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation and Statement of Issues. Respondent hereby freely and voluntarily withdraws both said Notices of Defense. Respondent acknowledges that he understands that by withdrawing said Notices of Defense he will thereby waive his right to require the Commissioner to prove the allegations in the Accusation and Statement of Issues at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and Statement of Issues and the right to cross-examine witnesses.

4. Respondent, pursuant to the limitations set forth below, hereby admits that the factual allegations in Paragraphs I through VI of the Accusation and Paragraphs I and II of the

1 Statement of Issues filed in this proceeding are true and correct
2 and the Real Estate Commissioner shall not be required to provide
3 further evidence of such allegations. In addition, Respondent
4 agrees and stipulates that his conduct is cause for discipline
5 and/or denial pursuant to Sections 480, 490 and 10177(b) of the
6 Business and Professions Code.

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

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

23 DETERMINATION OF ISSUES

24 By reason of the foregoing stipulations, admissions and
25 waivers and solely for the purpose of settlement of the pending
26 Accusation and Statement of Issues without a hearing, it is
27

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1 stipulated and agreed that the following determination of issues
2 shall be made:

3 I

4 Respondent's conduct, as set forth in Paragraph 4, is
5 cause under Sections 490 and 10177(b) of the Business and
6 Professions Code for suspension or revocation of all licenses and
7 license rights of Respondent including Respondent's real estate
8 salesperson license under the Real Estate Law.

9 II

10 Respondent's conduct, as set forth in Paragraph 4, is
11 cause under Sections 480 and 10177(b) of the Business and
12 Professions Code for denial of his application for a real estate
13 broker license.

14 ORDER

15 I

16 A. Respondent BRIAN DOUGLAS MC CRAY's real estate
17 salesperson license is hereby revoked.

18 B. Respondent BRIAN DOUGLAS MC CRAY's application for
19 a real estate broker license is hereby denied.

20 C. However, a restricted real estate broker license
21 shall be issued to Respondent pursuant to Section 10156.5 of the
22 Business and Professions Code if Respondent makes application
23 therefor, and pays to the Department of Real Estate the
24 appropriate fee for said license within 120 days from the
25 effective date of the Order herein.

26 (1) The restricted license may be suspended prior
27 to hearing by Order of the Real Estate Commissioner in the event

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

4 (2) The restricted license may be suspended, prior
5 to and pending final determination after formal hearing by Order
6 of the Real Estate Commissioner based upon evidence satisfactory
7 to the Commissioner that Respondent has violated provisions of the
8 California Real Estate Law, the Subdivided Lands Law, Regulations
9 of the Real Estate Commissioner or conditions attaching to this
10 restricted license.

11 (3) Respondent shall not be eligible to apply for
12 the issuance of an unrestricted real estate license nor the
13 removal of any of the conditions, limitations or restrictions of
14 the restricted license until at least one year has elapsed from
15 the date of this Order.

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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 and
Statement of Issues at hearings 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: 8-9-95 em 74
ELLIOTT MAC LENNAN
Counsel for Complainant

DATED: 8/14/95
Brian Douglas McCray
BRIAN DOUGLAS MCCRAY
Respondent

* * * * *

The foregoing Stipulation and Agreement in Settlement
and Order is hereby adopted by the Real Estate Commissioner as his
Decision and Order and shall become effective at 12 o'clock noon
on November 2, 1995.

IT IS SO ORDERED 9-27, 1995.

JIM ANTT, JR.
Real Estate Commissioner

J. Antt Jr.

Sacto Doug

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 14 1995
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BRIAN DOUGLAS MC CRAY,

By *K. Knecht*

Case No. H-2128 SD

OAH No. L-9502036

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 _____
Office of Administrative Hearings, 1350 Front Street, Room 6018,
San Diego

on March 24, 1995, at the hour of 1:30 p.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.

DEPARTMENT OF REAL ESTATE

By *James R. Peel*
Counsel

Dated: February 14, 1995

cc: Brian Douglas McCray
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JAMES R. PEEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
NOV 29 1994
DEPARTMENT OF REAL ESTATE

By *K. Wiedner*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-2128 SD
BRIAN DOUGLAS MC CRAY,)	A C C U S A T I O N
Respondents.)	

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against BRIAN DOUGLAS MC CRAY, alleges as follows:

I

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

BRIAN DOUGLAS MC CRAY (hereinafter referred to as respondent) is presently licensed and/or has license rights as a real estate salesperson subject to Section 10153.4(c) of the Business and Professions Code (hereinafter Code).

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III

On or about September 20, 1993, respondent made application to the Department of Real Estate to be licensed as a real estate salesperson.

IV

As part of the application, respondent represented to the Department of Real Estate that he had never been convicted of any violation of law, other than a conviction for driving under the influence.

V

In truth, on or about October 22, 1992, in the Superior Court, County of San Diego, State of California, respondent was convicted on two counts of violating Health & Safety Code Section 11350 (possession of controlled substances), a felony.

VI

As a result of the above false representation made by the respondent, respondent was issued a license to act as a real estate salesperson by the Department of Real Estate on January 5, 1994.

VII

The conduct of respondent as alleged above subjects his real estate license and license rights to suspension or revocation pursuant to Sections 498 and 10177(a) of the Code.

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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 licenses and license rights of Respondent BRIAN DOUGLAS MC CRAY 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 San Diego, California this 29th day of November, 1994.

J. CHRIS GRAVES

Deputy Real Estate Commissioner

cc: Brian Douglas McCray
McCray Gillberg & McCray Inc.
Sacto
FJJ