

FILED

FEB 08 1999

DEPARTMENT OF REAL ESTATE

By Juan Luna

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
DEAN KIRK DESTEFANI, )  
Respondent. )

No. H-2154 SD

ORDER GRANTING REINSTATEMENT OF LICENSE

On June 13, 1995, an Order was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on August 28, 1995, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On December 24, 1997, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

///

1 I have considered the petition of Respondent and the  
2 evidence and arguments in support thereof including Respondent's  
3 record as a restricted licensee. Respondent has demonstrated to  
4 my satisfaction that Respondent meets the requirements of law for  
5 the issuance to Respondent of an unrestricted real estate  
6 salesperson license and that it would not be against the public  
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's petition  
9 for reinstatement is granted and that a real estate salesperson  
10 license be issued to Respondent if Respondent satisfies the  
11 following conditions within nine months from the date of this  
12 Order:

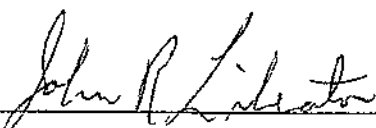
13 1. Submittal of a completed application and payment of  
14 the fee for a real estate salesperson license.

15 2. Submittal of evidence of having, since the most  
16 recent issuance of an original or renewal real estate license,  
17 taken and successfully completed the continuing education  
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: January 15, 1999.

22  
23 JOHN R. LIBERATOR  
24 Acting Real Estate Commissioner

25   
26 \_\_\_\_\_

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

3 (213) 897-3937

**FILED**  
JUL 14 1995  
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \* \*

11	In the Matter of the Accusation of )	No. H-2154 SD
12	DEAN KIRK DESTEFANI, )	<u>STIPULATION AND AGREEMENT</u>
13	)	<u>IN</u>
14	)	<u>SETTLEMENT AND ORDER</u>
15	Respondent. )	

16 It is hereby stipulated by and between DEAN KIRK  
17 DESTEFANI (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 March 28, 1995,  
21 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.

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 filed a Notice of Defense pursuant to  
8 Section 11505 of the Government Code for the purpose of requesting  
9 a hearing on the allegations in the Accusation. Respondent hereby  
10 freely and voluntarily withdraws said Notice of Defense.  
11 Respondent acknowledges that he understands that by withdrawing  
12 said Notice of Defense he thereby waives his right to require the  
13 Commissioner to prove the allegations in the Accusation at a  
14 contested hearing held in accordance with the provisions of the  
15 APA and that he will waive other rights afforded to him in  
16 connection with the hearing such as the right to present evidence  
17 in defense of the allegations in the Accusation and the right to  
18 cross-examine 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. This Stipulation is based on respondent's decision not to  
26 contest the Accusation. It is made solely for the purpose of  
27 effectuating this Stipulation and is intended to be non-binding

1 upon respondent in any action against respondent by third parties.  
2 The Real Estate Commissioner shall not be required to provide  
3 further evidence to prove said factual allegations.

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

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

27 /

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

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

9 DETERMINATION OF ISSUES

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

14 I

15 The conduct of respondent, as described in Paragraph 4  
16 is cause to suspend or revoke the real estate salesperson license  
17 and license rights of respondent under the provisions of Sections  
18 10145(c) and 10177(d) of the Business and Professions Code.

19 ORDER

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

22 I

23 The real estate salesperson license and license rights  
24 of respondent DEAN KIRK DESTEFANI under the Real Estate Law (Part  
25 1 of Division 4 of the Business and Professions Code) are hereby  
26 revoked.

27 /

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

6           The restricted real estate salesperson license issued to  
7 respondent shall be subject to all of the provisions of Section  
8 10156.7 of the Business and Professions Code and the following  
9 limitations, conditions and restrictions imposed under authority  
10 of Section 10156.6 of the Code:

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

16           B. The restricted license may be suspended prior to  
17 hearing by Order of the Real Estate Commissioner on evidence  
18 satisfactory to the Commissioner that respondent has, after the  
19 effective date of the Order herein, violated provisions of the  
20 California Real Estate Law, the Subdivided Lands Law, Regulations  
21 of the Real Estate Commissioner or conditions attaching to said  
22 restricted license.

23           C. Respondent shall obey all laws of the United States,  
24 the State of California and its political subdivisions, and shall  
25 further obey and comply with all rules and regulations of the Real  
26 Estate Commissioner.

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

E. Respondent shall prior to the issuance of any  
restricted salesperson license, present evidence satisfactory to  
the Real Estate Commissioner that he has since his original real  
estate license was issued on November 21, 1991 taken and  
successfully completed the courses specified in the continuing  
education requirements in subdivisions (a) and (b) of Section  
10170.5 of the Code.

DATED: 5-19-95

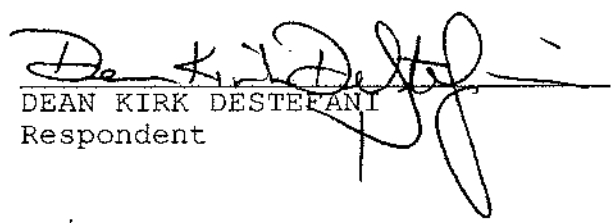
Robert E Baker for  
Elliott MacLennan  
ELLIOTT MAC LENNAN  
Counsel for Complainant

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

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14 DATED: 5/11/95

  
DEAN KIRK DESTEFANI  
Respondent

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2           The foregoing Stipulation and Agreement in Settlement  
3 and Order is hereby adopted by the Commissioner as Stipulation and  
4 Order and shall become effective at 12 o' clock noon on  
5 August 3 , 1995.


6           IT IS SO ORDERED 6-13 , 1995.

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8           JIM ANTT, JR.  
9           Real Estate Commissioner

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*gmc  
filed*

1 ELLIOTT MAC LENNAN, Counsel  
Department of Real Estate  
2 107 South Broadway, Room 8107  
Los Angeles, California 90012  
3 (213) 897-3937  
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**FILED**  
MAR 28 1995  
DEPARTMENT OF REAL ESTATE  
By 

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-2154 SD
	)	
DEAN KIRK DESTEFANI,	)	A C C U S A T I O N
	)	
Respondent.	)	
_____	)	

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against DEAN KIRK DESTEFANI (hereinafter "respondent") is informed and alleges in his official capacity as follows:

I

DEAN KIRK DESTEFANI (DESTEFANI) (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).

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.

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III

DESTEFANI is presently licensed and/or has license rights under the Real Estate Law. DESTEFANI was originally licensed as a real estate salesperson on November 21, 1991. Said license will expire on November 20, 1995. At all mentioned times, DESTEFANI was licensed as a real estate salesperson by the Department of Real Estate (Department).

IV

At all times herein mentioned, in the city of Vista, San Diego County, DESTEFANI was employed as a salesperson for Medallion Mortgage Company, a corporation that 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(d) of the Code, including the operation of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance.

V

On or about May 18, 1993, Barbara Ann Strout (Strout) met with DESTEFANI and applied to refinance her home located at 1212 Halley Court, Chula Vista, California, through respondent's employer, Medallion Mortgage Company. At DESTEFANI's request Strout gave DESTEFANI a \$350 personal check as payment for appraisal fees. DESTEFANI indicated in the loan file that the

1 \$350 was "Pd directly to Appraiser." In reality, DESTEFANI  
2 endorsed the check to himself, deposited it in his personal  
3 account and canceled the loan transaction without reimbursing  
4 Strout or notifying his employer and broker of the existence of  
5 Strout's \$350 check.

6 VI

7 The conduct of DESTEFANI in accepting trust funds in the  
8 form of a \$350 credit and appraisal fee on behalf of the broker  
9 under whom he was licensed, Medallion Mortgage Company, for the  
10 Strout transaction and in failing to deliver said fee into the  
11 hands of the broker, into a neutral escrow depository or into the  
12 broker's trust fund account, as described in Paragraph V, above,  
13 constitutes a violation of Section 10145(c) of the Code. This  
14 conduct and violation are cause to suspend or revoke the real  
15 estate license and license rights of DESTEFANI pursuant to  
16 Sections 10177(d) and 10177(g) of the Code.

17 VII

18 The conduct of DESTEFANI in having Strout make payable  
19 to him her \$350 check for credit and appraisal fees on her home  
20 that she sought to refinance through DESTEFANI's employer,  
21 Medallion Mortgage Company, and in endorsing and depositing her  
22 check into his personal account while annotating the Strout loan  
23 file to indicate that the \$350 fee was paid directly to the  
24 appraiser, as described in Paragraph V, is in violation of Section  
25 10176(i) of the Code and is a basis for the suspension or  
26 revocation of his license and license rights pursuant to said  
27 section.

1           WHEREFORE, Complainant prays that a hearing be conducted  
2 on the allegations of this Accusation and, that upon proof  
3 thereof, a decision be rendered imposing disciplinary action  
4 against the license and license rights of respondent DEAN KIRK  
5 DESTEFANI under the Real Estate Law (Part 1 of Division 4 of the  
6 Business and Professions Code) and for such other and further  
7 relief as may be proper under other applicable provisions of law.  
8 Dated at San Diego, California  
9 this 28th day of March, 1995.

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11   J. CHRIS GRAVES  
12   Deputy Real Estate Commissioner  
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25 cc: Dean Kirk Destefani  
26       Sacto.  
       DMB  
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