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FILED

JUL 05 2001

DEPARTMENT OF REAL ESTATE

By *Juan Alvarez*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
MELLA J. ANDERS, )	No. H-2241 SD
Respondent. )	

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 8, 1997, a Decision After Rejection 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 February 20, 1997, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent.

On August 9, 2000, 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  
9 petition for reinstatement is granted and that a real estate  
10 salesperson license be issued to Respondent if Respondent  
11 satisfies the following conditions within nine months from the  
12 date of this Order:

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

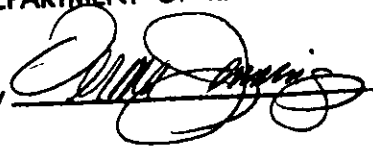
15 2. Submittal of evidence of having, since the most  
16 recent issuance of an original or renewal real estate license,  
17 taken and successfully completed the continuing education  
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
19 for renewal of a real estate license. This requirement shall not  
20 apply if Respondent renewed her restricted real estate  
21 salesperson license.

22 This Order shall be effective immediately.

23 DATED: June 25, 2001

24 PAULA REDDISH ZINNEMANN  
25 Real Estate Commissioner  
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**FILED**  
JAN 31 1997  
DEPARTMENT OF REAL ESTATE  
By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of ) DRE No. H-2241 SD  
)  
MELLA J. ANDERS, ) OAH No. L-9607113  
)  
Respondent. )  
\_\_\_\_\_ )

DECISION AFTER REJECTION

The matter came on for hearing before Myrna Pascual-Peña, Administrative Law Judge of the Office of Administrative hearings, in San Diego, California, on August 23, 1996.

Elliott Mac Lennan, Counsel, represented the complainant. Respondent appeared without counsel.

Evidence was received, the hearing was closed, and the matter was submitted.

On September 11, 1996, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the

1 Administrative Law Judge along with a copy of said Proposed  
2 Decision. Respondent was notified that the case would be decided  
3 by me upon the record, the transcript of proceedings held on  
4 August 23, 1996, and upon any written argument offered by  
5 Respondent.

6 No argument has been submitted on behalf of Respondent.

7 I have given careful consideration to the record in this  
8 case, including the transcript of proceedings of August 23, 1996.

9 The following shall constitute the Decision of the Real  
10 Estate Commissioner in the above entitled matter:

11 FINDINGS OF FACT

12 The Findings Of Fact set forth in the Proposed Decision  
13 dated September 11, 1996 of the Administrative Law Judge are  
14 hereby adopted as the Findings of Fact of the Real Estate  
15 Commissioner.

16 DETERMINATION OF ISSUES

17 Determination of Issues Number I is hereby adopted by  
18 the Real Estate Commissioner.

19 Determination of Issues Number II is not adopted as I do  
20 not feel that a suspension, all stayed, is the type of discipline  
21 that will protect the public interest in this matter.

22 ORDER

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



1           However, respondent shall be entitled to apply for and be  
2 issued a restricted real estate salesperson license if she 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 Order herein.  
6

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

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

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

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





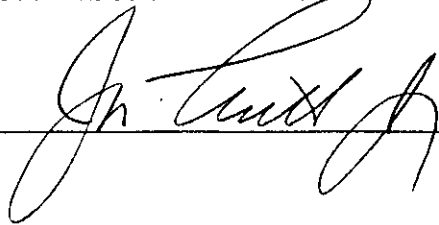
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This Decision shall become effective at 12 o'clock noon  
on February 20, 1997

IT IS SO ORDERED

1/8/97

JIM ANTT, JR.  
Real Estate Commissioner



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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the	)	Case No. H-2241 SD
Accusation Against:	)	
	)	OAH No. L-9607113
MELLA J. ANDERS,	)	
	)	
Respondent.	)	
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PROPOSED DECISION

On August 23, 1996, in San Diego, California, Myrna Pascual-Peña, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Elliott Mac Lennan, Staff Counsel, Department of Real Estate, represented complainant.

Respondent, Mella J. Anders, also known as Mella Jean Anders, Mella Kennedy and Mella Walker, was present and represented herself.

Evidence was received, the record was closed, and the matter was submitted.

FINDINGS OF FACT

I

J. Chris Graves (complainant), signed the Accusation dated June 20, 1996, against Mella J. Anders (respondent), in his official capacity as Deputy Real Estate Commissioner. The Accusation is based on respondent's failure to reveal the conviction described in Finding III below and such failure constituting procurement of a real estate license by fraud, deceit, or misrepresentation. Respondent filed a timely Notice of Defense and this hearing ensued.

II

On about March 14, 1994 respondent filed a salesperson license application with the Department of Real Estate (Department). The Department issued respondent a real estate salesperson license on April 5, 1994.

Respondent fully completed the license application, including question 25 which asks: "Have you ever been convicted of any violation of law? (You may omit any traffic violation

where the disposition was a fine and the amount was \$100 or less)." The application also states, "'Convicted' as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned."

Respondent answered "YES" to question 25 and completed Box #27. In #27, respondent mentioned a conviction in March 1987 for a misdemeanor violation of Penal Code Section 602 in which she paid a \$100 fine. She made an additional statement that she "utilized all local agencies as well as the CA State Police in Sacramento to obtain a case number" for the conviction she mentioned, but she was unsuccessful. Respondent mentioned no other conviction in her application. She certified, under penalty of perjury, that the answers and statements given in her application were true and correct.

Respondent submitted her real estate salesperson's license application on March 14, 1994 making no mention whatsoever of a conviction on August 15, 1992. The facts and circumstances of the 1992 conviction is described below.

### III

On August 15, 1992, in the Municipal Court of the State of California, County of San Diego, El Cajon Judicial District, in the case entitled People of the State of California v. Mella J. Anders, Case No. CF132490, upon her plea of guilty, respondent was convicted of Grand Theft, section 487.1 of the California Penal Code. The crime was a misdemeanor and occurred on and between January 2, 1992 and January 30, 1992.

As a consequence of the conviction, the Court suspended imposition of sentence and granted respondent three years summary probation on the following terms and conditions:

- a. be committed to the custody of the Sheriff for 2 days;
- b. perform 40 hours of work at a nonprofit organization,
- c. Pay full restitution to K-Mart Department Store of \$1,837.00; and
- d. Stay away from K-Mart Department Store at 935 Sweetwater Road, Spring Valley, CA.

Respondent has fully met all terms of probation and has filed a Petition under Penal Code section 1203.4 to set aside the conviction.

#### IV

The conduct which led to the August 15, 1992 conviction occurred at the K-Mart Department Store in Spring Valley, California. In January, 1992, respondent used the credit card of a friend's mother to purchase merchandise at K-Mart. Respondent was then 35 years old, and was not in a financial bind. A friend owed her money and authorized respondent to use the mother's credit card. Respondent believed that it was permissible to use it. Respondent was arrested when the credit card was reported stolen. She said she pleaded guilty to the theft because she could not locate and get her friend to testify.

When asked by the Department about the specific circumstances of the arrest, respondent could not give full and accurate details. However, she did not appear to be untruthful or evasive. She appeared to have been confused about her authority to use the credit card, and she acted quickly to resolve the matter and to put it behind her. She paid restitution to K-Mart and served her community service at St. Rita Catholic Church. She completed probation in August, 1995.

John Francis Hartman, a former police officer and current employer of respondent, vouched for respondent's good moral character, financial stability, and great credit record.

#### V

The crime of theft is a crime involving moral turpitude. It is the taking of the property of another for personal gain. People v. Waldecker (1987) 195 Cal. App. 3d 1152, 1156. Pursuant to the criteria set forth in California Code of Regulations section 2910 (a)(1), Title 10, the crime bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

Real estate licensees must demonstrate good moral character, and essential are the traits of honesty and integrity. The crime is substantially related to the qualifications, functions, and duties of a real estate licensee who has an obligation to safeguard property, to make accurate statements and to be truthful.

#### VI

Respondent was not entirely truthful when she did not disclose the 1992 criminal conviction. At the time she completed the real estate license application, the arrest was only two

years before, and she had not yet completed her probation of three years. The failure to mention the conviction is doubly disconcerting given the nature of the criminal offense, theft, a crime involving the taking of property of another.

Respondent's explanation that she thought the conviction was automatically dismissed is not fully plausible, especially since she had not yet completed probation when she filled out the license application. However, the failure to mention the 1992 conviction did not appear to be a conscious attempt to conceal it. Respondent appeared to have been embarrassed by having the conviction. Respondent had already paid restitution and performed community service. She thought it was behind her. She did not realize that she had to affirmatively seek to set aside the conviction after probation has been completed. Although probation was completed a year ago, she only recently petitioned to set the conviction aside. Respondent did not show deliberate deceit or the lack of honesty and integrity to which the public is entitled. The 1992 conviction is behind her, but the experience lingers with respondent, and she is mindful of the continuing responsibility of being truthful.

## VII

In setting the discipline to be imposed, consideration is given to the following:

1. The K-Mart arrest and ensuing conviction occurred more than two years ago;
2. Respondent has fully met all terms of probation including complete restitution to K-Mart and performance of community service at a local church;
3. The conduct resulting in the conviction did not arise out of any licensed activity;
4. Respondent has petitioned to set aside the 1992 conviction and a court order is forthcoming;
5. Her current employer has vouched for her good moral character, financial stability and outstanding credit history/record;
6. The 1992 arrest was an isolated event which, by itself, does not indicate respondent's lack of honesty or integrity; and
7. Respondent's failure to disclose the 1992 conviction in her real estate salesperson's license application was not a deliberate attempt to conceal the truth.

DETERMINATION OF ISSUES

I

Cause was established, as set forth in Findings II, III, IV, V and VI, to discipline respondent's license pursuant to Business and Professions Code sections 498 and 10177(a) for failure to disclose a crime involving moral turpitude and which is substantially related to the qualifications, functions and duties of a real estate licensee.

II

By reason of Finding VII, a disciplinary order of license suspension, stayed, and a reasonable period of probation will protect the public interest.

ORDER

All licenses and licensing rights of respondent Mella J. Anders, also known as Mella Jean Anders, Mella Kennedy and Mella Walker, are suspended for a period of ninety (90) days from the effective date of this decision; provided however, that the period of suspension is stayed for a period of one (1) year on the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

2. That no final subsequent determination be made after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

Dated: September 11, 1996



MYRNA PASCUAL-PENA  
Administrative Law Judge  
Office of Administrative Hearings

NOT ADOPTED

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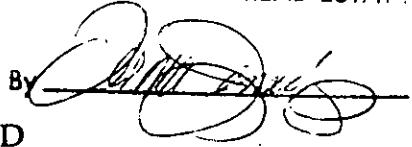
BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JUL 24 1996  
DEPARTMENT OF REAL ESTATE

\* \* \* \*

In the Matter of the Accusation of )  
 )  
 MELLA J. ANDERS, )  
 )  
 Respondent. )

Case No. H-2241 SD  
OAH No. L-9607113

By 

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 6022, San Diego, California, on August 23, 1996, at the hour of 9:00 a.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.

Dated: July 24, 1996.

DEPARTMENT OF REAL ESTATE

cc: Mella J. Anders  
John Francis Hartman  
J. Chris Graves  
Sacto.  
OAH-SD/LA

  
ELLIOTT MAC LENNAN, Counsel

*Handwritten initials/signature*

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ELLIOTT MAC LENNAN, Counsel  
Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, California 90012

(213) 897-3937

**FILED**  
JUN 20 1996  
DEPARTMENT OF REAL ESTATE

By *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-2241 SD
	)	
MELLA J. ANDERS,	)	<u>A C C U S A T I O N</u>
	)	
Respondent.	)	
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The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MELLA J. ANDERS, aka Mella Jean Anders (hereinafter "respondent"), is informed and alleges in his official capacity as follows:

I

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) as a real estate salesperson.

II

Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate



1 salesperson on April 5, 1994.

2 III

3 In response to Question 25 on the Salesperson License  
4 Application, to wit: "Have you ever been convicted of any  
5 violations of law? (You may omit any traffic violations where the  
6 disposition was a fine and the amount was \$100 or less)",  
7 respondent marked the answer box denoting "No".

8 IV

9 On August 15, 1992, in the Municipal Court of  
10 California, County of San Diego, El Cajon Branch, State of  
11 California, respondent was convicted upon a guilty plea to one  
12 count of violating Section 487.1 of the California Penal Code  
13 (Grand Theft) for a misdemeanor crime that occurred on and between  
14 January 2, 1992, and January 30, 1992.

15 V

16 The crime of which respondent was convicted bears a  
17 substantial relationship under Section 2910, Title 10, Chapter 6  
18 of the California Code of Regulations, to the qualifications,  
19 functions or duties of a real estate licensee.

20 VI

21 Respondent's failure to reveal the conviction against  
22 her, as set forth in Paragraph IV above, in said Salesperson  
23 License Application constitutes the procurement of a real estate  
24 license by fraud, misrepresentation or deceit, or by making a  
25 material misstatement of fact in said Application, which is cause  
26 for suspension or revocation of respondent's real estate license  
27 and license rights under Sections 498 and 10177(a) of the Business

1 and Professions Code.

2 WHEREFORE, Complainant prays that a hearing be conducted  
3 on the allegations of this Accusation and that upon proof thereof,  
4 a decision be rendered imposing disciplinary action against the  
5 license and license rights of respondent MELLA J. ANDERS under the  
6 Real Estate Law (Part 1 of Division 4 of the Business and  
7 Professions Code) and for such other and further relief as may be  
8 proper under other applicable provisions of law.

9 Dated at San Diego, California

10 this 20th day of June, 1996.

11 J. CHRIS GRAVES

12 Deputy Real Estate Commissioner

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25 cc: Mella J. Anders  
26 John Francis Hartman  
27 Sacto.  
RMS