

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED

DEC 14 2011

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13) NO. H-2598 FR
14 RICHARD RAYMOND McGRATH,)
15 Respondent.) STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between Respondent RICHARD RAYMOND
17 McGRATH (herein "Respondent") and Complainant, acting by and through Mary F. Clarke,
18 Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose
19 of settling and disposing of the Accusation filed on March 8, 2011, in this matter:

20 1. All issues which were to be contested and all evidence which was to be
21 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing
22 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
23 shall instead and in place thereof be submitted solely on the basis of the provisions of this
24 Stipulation and Agreement in Settlement and Order.

25 2. Respondent has received, read and understands the Statement to Respondent,
26 the Discovery Provisions of the APA, and the Accusation filed by the Department in this
27 proceeding.

1 3. A Notice of Defense was filed on March 18, 2011, by Respondent, pursuant to
2 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
3 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
4 Respondent acknowledges that he understands that by withdrawing said Notice of Defense, he
5 will thereby waive his right to require the Real Estate Commissioner (herein "the Commissioner")
6 to prove the allegations in the Accusation at a contested hearing held in accordance with the
7 provisions of the APA and that he will waive other rights afforded to him in connection with the
8 hearing such as the right to present evidence in defense of the allegations in the Accusation and
9 the right to cross-examine witnesses.

10 4. Respondent, pursuant to the limitations set forth below, hereby admits that the
11 factual allegations pertaining to him in the Accusation filed in this proceeding are true and correct
12 and the Commissioner shall not be required to provide further evidence of such allegations.

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

20 6. The Order or any subsequent Order of the Commissioner made pursuant to this
21 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or
22 bar to any further administrative or civil proceedings by the Department with respect to any
23 matters which were not specifically alleged to be causes for accusation in this proceeding.

24 DETERMINATION OF ISSUES

25 The acts and omissions of Respondent as described in the Accusation are
26 grounds for the suspension or revocation of the license and license rights of Respondent under
27 Sections 10085, 10085.5 and 10085.6 of Part 1 of Division 4 of the Business and Professions

1 Code (herein the "Code"), and Section 2970 of Chapter 6, Title 10, California Code of
2 Regulations (herein "the Regulations"), in conjunction with Section 10177(d) of the Code.

3 ORDER

4 A. All licenses and licensing rights of Respondent RICHARD RAYMOND
5 McGRATH under the Real Estate Law are indefinitely suspended until Respondent submits
6 proof satisfactory to the Commissioner that Respondent has taken and completed at an accredited
7 institution the continuing education course on trust fund accounting and handling specified in
8 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Said course must have been
9 completed not earlier than 120 days prior to the effective date of the Decision herein.

10 B. All licenses and licensing rights of Respondent RICHARD RAYMOND
11 McGRATH under the Real Estate Law are suspended for a period of thirty (30) days from the
12 effective date of the Decision herein; provided, however:

13 1. The thirty (30) days suspension shall be stayed upon condition that:

14 (a) No final subsequent determination be made, after hearing or upon
15 stipulation, that cause for disciplinary action against Respondent
16 occurred within two (2) years of the effective date of the Decision
17 herein.

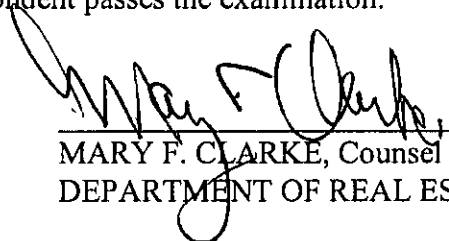
18 (b) Should such a determination be made, the Commissioner may, in
19 his/her discretion, vacate and set aside the stay order, and order the
20 execution of all or any part of the stayed suspension.

21 (c) If no order vacating the stay is issued, and if no further cause for
22 disciplinary action against the real estate license of Respondent
23 occurs within two (2) years from the effective date of the Decision,
24 then the stay hereby granted shall become permanent.

25 2. Respondent RICHARD RAYMOND McGRATH shall, within six (6)
26 months from the issuance of the restricted license, take and pass the
27 Professional Responsibility Examination administered by the Department,

1 including the payment of the appropriate examination fee. If Respondent
2 fails to satisfy this condition, the Commissioner may order the suspension of
3 Respondent's license until Respondent passes the examination.

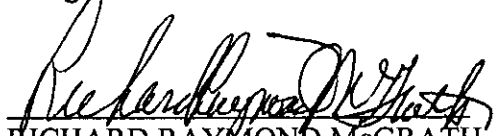
4
5 11-7-11
6 DATED


7 MARY F. CLARKE, Counsel
8 DEPARTMENT OF REAL ESTATE

9 * * *

10 I have read the Stipulation and Agreement in Settlement and Order and its terms
11 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
12 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
13 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
14 those rights, including the right of requiring the Commissioner to prove the allegations in the
15 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
16 and to present evidence in defense and mitigation of the charges.

17 11-3-11
18 DATED


19 RICHARD RAYMOND McGRATH
20 Respondent

21 * * *

22 The foregoing Stipulation and Agreement in Settlement and Order is hereby
23 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

24 January 3, 2012

25 IT IS SO ORDERED

12/7/11
26 BARBARA J. BIGBY
27 Acting Real Estate Commissioner



MARY F. CLARKE, Counsel (SBN 186744)
DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0780 (Direct)

FILED

MAR - 8 2011

DEPARTMENT OF REAL ESTATE

By H. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-2598 FR
RICHARD RAYMOND McGRATH,	)	
	)	<u>ACCUSATION</u>
Respondent.	)	
	)	

The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against RICHARD RAYMOND McGRATH (herein "Respondent") dba's "Best Choice Realty", "Best Properties by Owner", "California Real Estate Properties", "Emergency Mortgage Relief", and "Realty World - Venture Properties".

1

The Complainant makes this Accusation in his official capacity.

2

At all times herein mentioned, Respondent was and now is licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

3

At all times herein mentioned, Respondent was and now is licensed by the State of California Department of Real Estate (herein "the Department") as a real estate broker.

At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker on behalf of others for a compensation or in expectation of a compensation within the State of California within the meaning of:

- a) Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage wherein Respondent sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity; and
- b) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage wherein Respondent solicited lenders or borrowers for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property including loan modifications or on a business opportunity.

In so acting as a real estate broker, Respondent accepted or received funds in trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and/or others in connection with the mortgage loan brokerage activities described in Paragraph 4, above.

The aforesaid trust funds accepted and/or received by Respondent were cashed or deposited or caused to be deposited by Respondent into a bank account (herein "trust fund account") maintained by Respondent for the handling of trust funds with the Ceres, California branch of Bank of the West, 2501 E. Whitmore Avenue; account name Rick McGrath Emergency Mortgage Relief Trust Account; Account #388084188 (herein "Trust Account").

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Between about June 1, 2008 and February 1, 2010, in connection with the collection and disbursement of trust funds, Respondent failed to maintain an accurate record of all trust funds received but not placed into a trust account, in violation of Section 2831(c) of Chapter 6, Title 10, California Code of Regulations (herein "the Regulations").

Between about October 23, 2009 and February 8, 2010, Respondent charged and collected advanced fees in the amount of about \$749.00 from each of the following individuals in exchange for providing services in connection with loan modifications secured by real property prior to completion of said services, in violation of Sections 10085, 10085.5 and/or 10085.6 of the Code, and Section 2970 of the Regulations:

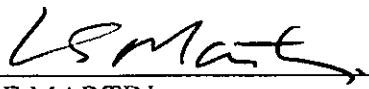
<u>Name</u>	<u>Property Address</u>	<u>Date Fees Collected</u>
Linda Navarro	2904 Grange Avenue Stockton, CA 95504	10/23/09
R. W. Chandler	19825 Somers Drive Hilmar, CA 95324	12/16/09
Kimberly Franck	1490 Neil Avenue Turlock, CA 95380	12/17/09
James and Kathy Batey	312 East Roseburg Avenue Modesto, CA 95350	1/15/10
Salvador and Virginia Rodriguez	564 Joseph Road Manteca, CA 95336	2/8/10

The facts alleged above are grounds for the suspension or revocation of the license and license rights of Respondent under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 7 under Section 2831(c) of the Regulations, in conjunction with Section 10177(d) of the Code; and,

1 (b) as to Paragraph 8 and Sections 10085, 10085.5 and/or 10085.6 of the
2 Code and/or Section 2970 of the Regulations, in conjunction with
3 Section 10177(d) of the Code.

4 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
5 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
6 action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of
7 Division 4 of the Business and Professions Code) and for such other and further relief as may be
8 proper under other applicable provisions of law.
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12 
13 LUKE MARTIN
14 Deputy Real Estate Commissioner
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16 Dated at Fresno, California

17 this 16th day of November, 2010.
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