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DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
GARY LOUIS DEMATTEI,)	No. H-6405 SF
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 9, 1991, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on August 2, 1991, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On September 5, 1995, Respondent petitioned for reinstatement of said real estate broker 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 broker
6 license and that it would not be against the public interest to
7 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 broker license
10 be issued to Respondent if Respondent satisfies the following
11 conditions within six months from the date of this Order:

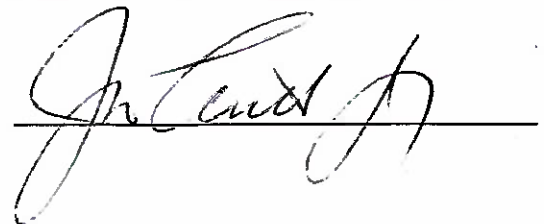
12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

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

19 This Order shall be effective immediately.

20 DATED: 7-11-96

21 JIM ANTT, JR.
22 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
GARY LOUIS DEMATTEI)	Case No. H-6405 SF
)	
)	OAH No. N-37579
Respondent.)	
<hr/>		

PROPOSED DECISION

This matter was heard before Nancy L. Rasmussen, Administrative Law, Judge, Office of Administrative Hearings, State of California, on May 17, 1991, at San Francisco, California.

The complainant was represented by Deidre L. Johnson, Staff Counsel.

Respondent Gary Louis DeMattei was present and represented himself.

FINDINGS OF FACT

I

Edward V. Chiolo made the accusation in his official capacity as the Deputy Real Estate Commissioner of the State of California.

* * *

Gary Louis DeMattei ("respondent"), with advice of counsel, stipulated to the following facts:

II

Respondent is presently, and at all times mentioned herein was, licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). At all times mentioned herein, respondent was licensed as a real estate broker doing business as San Leandro Property Management, also known as SLPM. That license will expire on September 22, 1991.

III

During the three year period immediately preceding the filing of the accusation, respondent engaged in activities for which a real estate license is required on behalf of others for, or in expectation of, compensation and leased or rented, offered to lease or rent, solicited prospective tenants, and/or collected rents from certain real properties located in the State of California. During the course of the above activities, respondent received and disbursed funds required under Business and Professions Code section 10145(a) to be held in trust on behalf of others ("property management trust funds").

IV

Within the three year period immediately preceding the filing of the accusation, respondent engaged in other activities that did not require a real estate license on behalf of others; and for, or in expectation of, compensation, respondent performed services on behalf of common interest development homeowners associations, including the receipt and disbursement of regular and reserve monthly assessments ("association funds"). Respondent conducted the above activities as a principal or general agent and owed fiduciary duties of trust and loyalty to the homeowners associations.

V

In or about November, 1988, the Department conducted an audit of respondent's books and records for the activities described in Findings III and IV above, and ascertained that respondent deposited both the property management trust funds and the association funds into one trust account located at Bay Bank of Commerce in San Leandro, California; and that as of October 31, 1988, the adjusted bank account balance of the trust account was approximately \$57,619.93.

VI

It was further ascertained by the audit that respondent's trust fund accountability and liability to the owners of the property management trust funds was in the approximate amount of \$53,911.08; and that respondent's total accountability and liability to the homeowners associations was in the approximate amount of \$45,277.07 as of August 31, 1988, for a total accountability of \$99,188.15.

VII

In connection with the collection and disbursement of all of the above funds, respondent failed to maintain the funds in the bank account or to disburse the funds in such a manner that as of October 31, 1988, there was a total shortage of approximately \$41,568.24 of all of the above funds in the bank

account. The shortage was caused in part by disbursing monies from the trust account to or on behalf of clients at times when funds allocable to those clients had not yet been received and deposited to the bank account.

VIII

It was further ascertained by the audit that respondent paid to himself management fees from the trust account and charged the fees to clients who at the times of payment had insufficient trust funds and/or association funds deposited in the bank account from which to pay any such management fees.

IX

Respondent failed to obtain the prior written consents of the owners of the property management trust funds as alleged in Paragraphs VII and VIII above prior to the disbursal of such funds, which reduced the aggregate balance of trust funds in the bank account to an amount less than the existing aggregate trust fund liability to said owners of the funds.

DETERMINATION OF ISSUES

Respondent, with advice of counsel, stipulated to the following determinations of issues:

I

Findings V, VI and VII (as to the property management trust funds): Cause for license discipline was established pursuant to Business and Professions Code section 10177(d) by reason of a violation of Business and Professions Code section 10145.

II

Findings V, VI and VII (as to the homeowners associations funds): Cause for license discipline was established pursuant to Business and Professions Code section 10177(g), or, in the alternative, pursuant to Business and Professions Code section 10176(i) and/or section 10177(j).

III

Finding VIII: Cause for license discipline was established pursuant to Business and Professions Code section 10177(g), or, in the alternative, pursuant to Business and Professions Code section 10176(i) and/or section 10177(j).

IV

Finding IX: Cause for license discipline was established pursuant to Business and Professions Code section

10177(d) by reason of a violation of Title 10, California Code of Regulations, section 2832.1.

ORDER

Respondent, upon advice of counsel, stipulated to the following order:

All licenses and licensing rights of respondent Gary Louis DeMattei under the Real Estate Law are revoked pursuant to Determinations I through IV separately and for all of them; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 30 days from the effective date of this Decision. Said application shall be accompanied by proof satisfactory to the Real Estate Commissioner that respondent has deposited \$178.94 into his trust account to make up for the remaining shortage in that account, and that respondent has designated this deposit in his records as trust funds, not personal funds.

The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 60 days from the date of issuance of said restricted license, provided, however, that if respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:
 - a. Respondent pays a monetary penalty pursuant to section 10175.2 of the Business and Professions Code at the rate of \$100.00 for each day of the suspension for a total monetary penalty of \$6,000.00.
 - b. Said payment shall be in the form of a cashier's check or certified check made payable to the Department of Real Estate. Said check must be delivered to the Department at the time respondent applies for the restricted license.
 - c. No final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one year of the effective date of the restricted

license. 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.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
3. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
5. Respondent shall, within six months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If

respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

DATED: 6/3/91

Nancy L. Rasmussen
NANCY L. RASMUSSEN
Administrative Law Judge

NLR:hen

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DEPARTMENT OF REAL ESTATE

DEIDRE L. JOHNSON, Counsel
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By Lynda Montiel
Lynda Montiel

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	H-6405 SF
GARY LOUIS DEMATTEI,)	<u>ACCUSATION</u>
Respondent.)	

The Complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against GARY LOUIS DEMATTEI (hereafter Respondent). is informed and alleges as follows:

I

The Complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, makes this accusation in his official capacity and not otherwise.

II

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

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III

At all times herein mentioned, Respondent was and is licensed as a real estate broker doing business as SAN LEANDRO PROPERTY MANAGEMENT, aka SLPM, and said license will expire on September 22, 1991.

IV

During the three-year period immediately preceding the filing of this Accusation, Respondent engaged in activities for which a real estate license is required on behalf of others, for or in expectation of compensation, and leased or rented, offered to lease or rent, solicited prospective tenants, and/or collected rents from certain real properties located in the State of California. During the course of the above activities, Respondent received and disbursed funds required under Section 10145(a) of the Code to be held in trust on behalf of others (hereafter, property management trust funds).

V

Within the three-year period immediately preceding the filing of this Accusation, Respondent engaged in other activities that did not require a real estate license on behalf of others; and, for or in expectation of compensation, Respondent performed services on behalf of common interest development homeowners associations, including the receipt and disbursement of regular and reserve monthly assessments (hereafter, association funds). Respondent conducted the above activities as a principal or general agent and owed fiduciary duties of trust and loyalty to the homeowners associations.

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VI

In or about November of 1988, the Department conducted an audit of the Respondent's books and records for the activities described in paragraphs IV and V above, and ascertained that Respondent deposited or caused to be deposited both the property management trust funds and the association funds into one trust account located at Bay Bank of Commerce in San Leandro, California; and that as of October 31, 1988, the adjusted bank account balance of the trust account was approximately FIFTY SEVEN THOUSAND SIX HUNDRED NINETEEN DOLLARS AND NINETY THREE CENTS (\$57,619.93).

VII

It was further ascertained by the audit that Respondent's trust fund accountability and liability to the owners of the property management trust funds was in the approximate sum of FIFTY THREE THOUSAND NINE HUNDRED ELEVEN DOLLARS AND EIGHT CENTS (\$53,911.08); and that Respondent's total accountability and liability to the homeowners associations was in the approximate amount of FORTY FIVE THOUSAND TWO HUNDRED SEVENTY SEVEN DOLLARS AND SEVEN CENTS (\$45,277.07) as of August 31, 1988, for a total accountability of NINETY NINE THOUSAND ONE HUNDRED EIGHTY EIGHT DOLLARS AND FIFTEEN CENTS (\$99,188.15).

VIII

In connection with the collection and disbursement of all of the above funds, Respondent failed to maintain the funds in the bank account or disburse the funds in such a manner that

1 as of October 31, 1988, there was a total shortage of
2 approximately FORTY ONE THOUSAND FIVE HUNDRED SIXTY EIGHT DOLLARS
3 AND TWENTY FOUR CENTS (\$41,568.24) of all of the above funds in
4 the bank account. The shortage was caused in part by disbursing
5 monies from the trust account to or on behalf of clients at times
6 when funds allocable to those clients had not yet been received
7 and deposited to the bank account.

8 IX

9 It was further ascertained by the audit that Respondent
10 paid to himself management fees from the trust account and
11 charged the fees to clients who at the times of payment had
12 insufficient trust funds and/or association funds deposited in
13 the bank account from which to pay any such management fees.

14 X

15 Respondent failed to obtain the prior written consents
16 of the owners of the property management trust funds as alleged
17 in paragraphs VII and VIII above prior to the disbursal of such
18 funds, which reduced the aggregate balance of trust funds in the
19 bank account to an amount less than the existing aggregate trust
20 fund liability to said owners of the funds.

21 XI

22 The acts and/or omissions of the Respondent as alleged
23 in paragraphs VI, VII and VIII as to the property management
24 trust funds violate Section 10145 of the Code, and constitute
25 grounds for disciplinary action under the provisions of Section
26 10177(d) of the Code.

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XII

The acts and/or omissions of Respondent as alleged in paragraphs VI, VI and VIII as to the homeowners associations funds above constitute grounds for disciplinary action under the provisions of Section 10177(g) of the Code.

XIII

In the alternative to paragraph XII above, the acts and/or omissions of Respondent as alleged in paragraphs VI, VII and VIII above constitute for grounds for disciplinary action under the provisions of Section 10176(i) and/or Section 10177(j) of the Code.

XIV

The acts and/or omissions of Respondent as alleged in paragraph IX above constitute grounds for disciplinary action under the provisions of Section 10177(g) of the Code; or in the alternative, under the provisions of Section 10176(i) and/or Section 10177(j) of the Code.

XV

The acts and/or omissions of Respondent as alleged in paragraph X above violate Section 2832.1 of Title 10 of the California Code of Regulations and constitute grounds for disciplinary action under the provisions of 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 licenses and license rights of respondent

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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.

Edward V. Chiolo

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated in San Francisco, California,
this 21ST day of SEPTEMBER, 1990.