

COPY

Tracy
jac

K2

Department of Real Estate
185 Berry Street, Room 3400
San Francisco, CA 94107-1770

FILED
JAN 25 1993

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

Telephone: (415) 904-5917

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	No. H-6754 SF
GILBERT JOHN MARINO,	)	
	)	<u>STIPULATION AND AGREEMENT</u>
	)	<u>IN SETTLEMENT AND ORDER</u>
Respondent.	)	

It is hereby stipulated by and between GILBERT JOHN MARINO (Respondent) and the Complainant, acting by and through John Van Driel, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on July 28, 1992 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, 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 and Agreement in Settlement.

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA and
3 the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. On August 10, 1992, Respondent filed his Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense he will
11 thereby waive his right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA.

14 4. Respondent has read the Discovery Provisions of the
15 APA and is aware of his right to conduct discovery in the
16 proceeding, and by entering into this stipulation, freely and
17 voluntarily waives his right to conduct further discovery.

18 5. Respondent, pursuant to the limitations set forth
19 below, hereby admits that the factual allegations (or findings of
20 fact as set forth below) of the Accusation are true and correct
21 and the Real Estate Commissioner shall not be required to provide
22 further evidence of such allegations. The admissions of fact made
23 herein are made solely for the purpose of establishing
24 jurisdiction for the Commissioner to take disciplinary action and
25 are made solely in reference to this proceeding and any subsequent
26 proceeding before the Commissioner and may not be used in or as a
27 part of any other civil action or criminal action now pending or

1 which may be filed against Respondent pursuant to the provisions
2 of Section 1152 of the California Evidence Code. A true copy of
3 the Accusation is attached hereto as Annex A and incorporated
4 herein by reference.

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

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

22 DETERMINATION OF ISSUES

23 By reason of the foregoing stipulations, admissions and
24 waivers and for the purpose of settlement of the pending
25 Accusation without a hearing, it is stipulated and agreed that the
26 following determination of issues shall be made:
27

1 The acts and/or omissions of Respondent, as described in
2 Paragraphs IV through VIII and X through XII of the Accusation
3 are grounds for the suspension or revocation of the real estate
4 license and license rights of Respondent under the provisions of
5 Section 10177(j) of the Code.

6 ORDER

7 A. All real estate licenses and license rights of
8 Respondent GILBERT JOHN MARINO are revoked.

9 B. A restricted real estate broker license shall be issued
10 to Respondent pursuant to Section 10156.6 of the Code if he makes
11 application therefor and pays to the Department the appropriate
12 fee for said license within thirty (30) days of the effective date
13 of the decision.

14 C. The restricted license issued to Respondent shall be
15 subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following limitations
17 imposed under authority of Section 10156.6 of said Code:

18 1) The restricted license may be suspended prior to
19 hearing by order of the Real Estate Commissioner in the event of
20 Respondent's conviction or plea of nolo contendere to a crime
21 which bears a substantial relationship to Respondent's fitness or
22 capacity as a real estate licensee, or upon evidence satisfactory
23 to the Commissioner that Respondent has violated the provisions of
24 the California Real Estate Law, the Subdivided Lands Law,
25 Regulations of the Real Estate Commissioner or conditions
26 attaching to this restricted license.

27 ///

///

///

///

1 2) Respondent shall, within (6) months from the
2 effective date of this decision, present evidence satisfactory to
3 the Real Estate Commissioner that he has, since the most recent
4 issuance of an original or renewal real estate license, taken and
5 successfully completed the continuing education requirements of
6 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
7 real estate license. If Respondent fails to satisfy this
8 condition, the Commissioner may order the suspension of the
9 restricted license until the Respondent presents such evidence.
10 The Commissioner shall afford Respondent the opportunity for
11 hearing pursuant to the Administrative Procedure Act to present
12 such evidence.

13 3) Respondent shall, within six (6) months from the
14 effective date of the restricted license, take and pass the
15 Professional Responsibility Examination administered by the
16 Department including the payment of the appropriate examination
17 fee. If Respondent fails to satisfy this condition, the
18 Commissioner may order suspension of the restricted license until
19 Respondent passes the examination.

20 4) Respondent shall submit periodic reports to the
21 Commissioner regarding his compliance with the terms of this
22 restricted license, at such intervals and in such form as directed
23 by the Commissioner.

24 5) Respondent shall not be eligible to apply for the
25 issuance of an unrestricted real estate license, nor the removal
26 of any of the conditions of the restricted license, until one (1)
27 year has elapsed from the date of issuance of the restricted
license.

18 DATED: 12-29-92


JOHN VAN DRIEL
Counsel for the Complainant

21 APPROVED AS TO FORM:

22 DATED: 12/28/92


DOMINICK R. LIBONATI
Counsel for Respondent

I have read the Stipulation in Settlement and Agreement, have discussed it with my counsel, 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, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing 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: 12-28-92

Gilbert John Marino
GILBERT JOHN MARINO

DECISION AND ORDER

The foregoing Stipulation and Agreement in Settlement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on February 15, 1993.

IT IS SO ORDERED 1/15, 1993

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

COPY

FILED
SEP 15 1992
Flag

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

In the Matter of the Accusation of

GILBERT JOHN MARINO,

Case No. H-6754 SF

OAH No. N 41475

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

415 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

(2 days hearing)

on December 29 and December 30, 1992, 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.

DEPARTMENT OF REAL ESTATE

Dated: September 15, 1992

By

John Van Driel
JOHN VAN DRIEL,

Counsel

ml

Flag
Sac

FILED
JUL 28 1992

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

STATE OF CALIFORNIA

* * *

No. H-6754 SF

ACCUSATION

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against GILBERT JOHN MARINO, Respondent is informed and alleges as follows:

INTRODUCTORY PARAGRAPHS

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

GILBERT JOHN MARINO (MARINO) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code).

1 III

2 At all times mentioned herein MARINO was licensed as a
3 real estate broker by the Department of Real Estate of the State
4 of California (Department) in his individual capacity.

5 FIRST CAUSE OF ACCUSATION

6 IV

7 On or about July 17, 1989 MARINO, designating himself
8 "and/or assignee" as Buyer, made an offer to purchase the real
9 property known as 320 Clark Drive, San Mateo, California (the
10 property). A counter-offer was made and accepted by both parties
11 (the contract) on or about July 18, 1989. MARINO acted as a
12 principal in the purchase of the property. Grubb & Ellis acted as
13 his broker through its' agent, Elizabeth Spanjian (Spanjian).

14 V

15 On or about July 31, 1989 MARINO executed a document
16 designated as an "addendum" to the contract (the addendum). The
17 addendum was not signed by the Seller and therefor did not alter
18 the terms of the contract. The purpose of the addendum was to
19 give notice to the Seller of the property that 1) Spanjian "...has
20 decided to take an equity position as partner of Gil and Patrice
21 Marino in the purchase..." of the property; and 2) "...the intent
22 of the purchase is to remodel the property for resale." Spanjian
23 signed the addendum as a witness to Marino's signature.

24 VI

25 On or about July 31, 1989 MARINO completed and signed an
26 application for a loan to purchase the property (the application).
27 Patrice Marino signed the application as co-borrower. The

1 application stated that title to the property would be held by Mr.
2 & Mrs. Marino as joint tenants and that they did not intend to
3 occupy the property as their primary residence. Although Marino
4 submitted a copy of the contract to the lender, First Nationwide
5 Bank (First Nationwide), along with his application, he did not
6 submit a copy of the addendum. Neither the application nor any
7 other document or information given to the proposed lender
8 informed the lender of 1) Spanjian's decision to take an equity
9 position as partner in the property, or 2) borrower's intent to
10 remodel and resell the property.

11 VII

12 On or about August 29, 1989 First Nationwide funded the
13 loan which Marino applied for, as set out above, and escrow for the
14 purchase and sale of the property closed. Marino and his wife
15 took title to the property as joint tenants.

16 VIII

17 Throughout the loan application process, Marino
18 misrepresented his intended use of the property to First
19 Nationwide. Marino represented to First Nationwide that his
20 intended use was as a single family investment property. His real
21 intent was to remodel and resell the property. If First
22 Nationwide had known Marino's true intent in purchasing the
23 property, it would not have approved his loan application.

24 IX

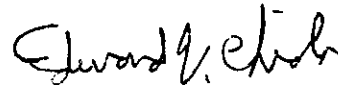
25 The acts and/or omissions of MARINO, as set out above,
26 are grounds for discipline under the provisions of Section
27 10177(j) of the Code.

1 Patrice Marino were the owners of a 1/2 undivided interest in the
2 property and that, as a group, the three borrowers were the owners
3 of 100% of the property. At no time during the loan application
4 process did Marino tell Nor Pen that 1) he did not own a 1/2
5 interest in the property; and 2) Markiewicz had purchased a 1/4
6 interest in the property from Marino in September 1989.

7 XIII

8 The acts and/or omissions of Marino, as set out in
9 Paragraphs X through XII are grounds for discipline under Section
10 10177(j) of the Code.

11 WHEREFORE, the Complainant prays that a hearing be
12 conducted on the allegations of the Accusation and that upon proof
13 thereof, a decision be rendered imposing disciplinary action
14 against all licenses and license rights of Respondents under the
15 Real Estate Law (Part 1 of Division 4 of the Business and
16 Professions Code) and for such other and further relief as may be
17 proper under other applicable provisions of law.

18 

19 _____
20 EDWARD V. CHIOLO
Deputy Real Estate Commissioner

21 Dated at San Francisco, California

22 this 28th day of July, 1992.