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FILED

MAR 22 2006

DEPARTMENT OF REAL ESTATE

By *John A. ...*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-7024 SF
)	
MARY BRIDGET DOYLE (MURPHY),)	
)	
)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 23, 1995, a Decision 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. No restricted real estate salesperson license was ever issued to Respondent.

On April 15, 2005, 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 the petition:

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the

1 requirements of law for the issuance to Respondent of a real
2 estate salesperson license and that it would not be against the
3 public interest to issue said license to Respondent.

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

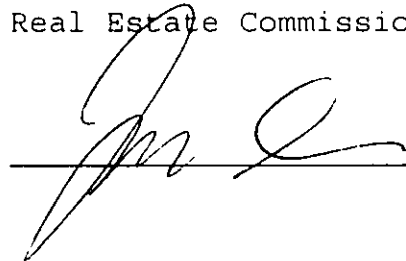
9 1. Respondent shall take and pass the real estate
10 salesperson license examination.

11 2. Respondent shall submit a completed application and
12 pay the fee for a real estate salesperson license.

13 This Order shall become effective immediately.

14 DATED: 2/28, 2006.

15 JEFF DAVI
16 Real Estate Commissioner

17 
18 _____

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COPY

FILED
MAR 30 1995

DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*
Lynda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARY BRIDGET DOYLE,)
Respondent.)
_____)

No. H-7024 SF
OAH No. N 9403219

DECISION

The Proposed Decision dated March 8, 1995,
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on April 19th, 1995.

IT IS SO ORDERED March 23, 1995.

JOHN R. LIBERATOR
Interim Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)		
)	Case No. H-7024 SF
MARY BRIDGET DOYLE*)	
)	OAH No. N 9403219
Respondent.)	
<hr/>		

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Francisco, California on February 6, 1995.

Deidre L. Johnson, Counsel, represented complainant.

Respondent Mary Bridget Doyle was present and was represented by her former husband, Richard Doyle.

FINDINGS OF FACT

1. Mary Bridget Doyle ("respondent") stipulated to the truth of the matters set forth in Findings 2 through 15, below.

2. Complainant Les R. Bettencourt made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

3. Respondent is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). At all times relevant, respondent was licensed as a real estate salesperson in the employ of real estate broker Today, Inc., dba RE/Max Today ("RE/Max Today").

This matter was originally entitled, "In the Matter of the Accusation of: Mary Bridget Doyle, Vickie Lynn Banti, Sherry E. Arce and Regino Messineo, Respondents." The Department has reached a settlement with Banti, Arce and Messineo, leaving Mary Bridget Doyle as the sole remaining respondent in this proceeding.

4. Vickie Lynn Banti and Sherry E. Arce (also known as Sherry Mischio) are also presently licensed and have license rights under the Real Estate Law.

a) At all times relevant until December 30, 1990, Banti was licensed as a real estate salesperson in the employ of RML Realty, Inc., dba Prudential California Realty ("Prudential"). On or about February 6, 1991 Banti was employed by Daco Realty, dba RE/Max Mid-Peninsula Realtors ("RE/Max Mid-Peninsula").

b) At all times relevant until December 20, 1990, Arce was licensed as a real estate salesperson in the employ of Prudential. On or about January 7, 1991 Arce was employed by RE/Max Mid-Peninsula.

First Cause of Action

5. Beginning in or about August 1990, Herman and Nancy Bates ("sellers"), the owners of real property known as and located at 283 Devonshire Boulevard, San Carlos ("the property"), listed the property for sale with RE/Max Today, with respondent as their listing agent.

6. On or about December 4, 1990, Banti and Arce of Prudential prepared and/or participated in the preparation of a real estate purchase contract and receipt for deposit and an addendum on behalf of prospective buyer Larry Neely ("buyer"), which constituted buyer's offer to purchase the property. The offer, which was presented by Banti and Arce to sellers and respondent, consisted in pertinent part of:

(A) In the body of the purchase contract and receipt for deposit:

(1)	purchase price of \$500,000	
(2)	earnest money deposit evidenced by a promissory note	\$ 10,000
(3)	balance of cash downpayment	215,000
(4)	new first deed of trust	375,000
(5)	new second deed of trust	none or blank
(6)	addenda attached	none or blank

(B) In the body of the addendum:

(7)	cash back to buyer	\$100,000
(8)	seller-carryback note and second deed of trust	200,000

7. On or about December 8, 1990 Doyle prepared a counteroffer or second addendum on behalf of sellers to "clarify" the intent of the parties. It included, among other terms, a reduction in the stated purchase price to \$485,000 and

an increase in the seller-carryback note and second deed of trust to \$215,000. On or about December 9, 1990 buyer accepted the counteroffer and the parties entered into a contract.

8. Between about December 31, 1990 and January 9, 1991 respondent, Banti and Arce rewrote or participated in the rewriting of the contract on behalf of the parties, including a second real estate purchase contract and receipt for deposit dated January 9, 1991 and a third addendum dated December 31, 1990. In pertinent part, the rewritten contract consisted of:

(A) In the body of the purchase contract and receipt for deposit:

- | | | |
|-----|--|---------------|
| (1) | purchase price of \$500,000 | |
| (2) | earnest money deposit evidenced by a promissory note | \$ 10,000 |
| (3) | additional deposit in unspecified form | 115,000 |
| (4) | new first deed of trust | 375,000 |
| (5) | new second deed of trust | none or blank |
| (6) | addenda attached | none or blank |

(B) In the body of the addendum:

- | | | |
|-----|--|-----------|
| (7) | cash back to buyer | \$100,000 |
| (8) | seller-carryback note and second deed of trust | 210,000 |

Between January 12 and January 16, 1991 sellers signed and accepted the rewritten contract.

9. Between about January 15 and January 17, 1991 respondent, Banti and Arce prepared or participated in the preparation of a fourth addendum which specified, among other terms, that the source of funds for buyer's cash back in the sum of \$100,000 would be buyer's purchase money loan funds secured by the first deed of trust. Buyer and sellers signed this addendum.

10. On or about January 15, 1991 Banti and Arce prepared or participated in the preparation of two promissory notes, approved by respondent and executed by the parties, as follows:

- (A) A note from sellers to buyer in the sum of \$125,000, to be credited at close of escrow and appear to be a loan to sellers from buyer that would cancel buyer's obligation to pay a deposit or downpayment of \$125,000 into escrow; and
- (B) A note from buyer to sellers in the sum of \$125,000 to be used to cancel out the above note.

11. Beginning on or after about January 15, 1991 buyer applied to Great Western Bank ("lender") for a purchase money loan to be secured by a first deed of trust to the property and submitted to lender the real estate purchase contract and receipt for deposit dated January 9, 1991. At no time did buyer, respondent, Arce or Banti submit to lender either any of the accompanying addenda which reflected the complete contract between the parties or the above-described promissory notes.

In reliance upon the information submitted, lender approved the loan and escrow closed on or about January 25, 1991. Had lender known the true facts regarding the purchase terms, including but not limited to: (1) no money downpayment, (2) cash back to buyer, and (3) seller-carryback financing with a second deed of trust, lender would not have approved the loan.

12. Respondent participated in concert with Banti and Arce to conspire with buyer in a scheme to mislead lender and/or was negligent or incompetent in that respondent knew or should have known that the transaction, as structured, was intended to and did create hidden and undisclosed terms from lender by failing to reveal the existence of any seller-carryback financing or any cash back to buyer at the close of escrow; that buyer did not intend to and did not submit to lender any of the addenda which would have disclosed the true terms of the transaction; and that buyer did not intend to and did not pay any cash to purchase the property by virtue of the structured terms and promissory notes.

13. Respondent failed and refused to submit most or all of the above offers, addenda, contracts and notes to her employing broker for review and approval in that she knew or believed the above-described material terms and agreements would not have been approved.

Second Cause of Action

14. Respondent, in negotiating the above transaction on behalf of sellers, owed to sellers fiduciary duties of due care and disclosure. She knew or should have known that buyer's offers involved material risks of nonperformance and loss to sellers, and she failed to exercise due care to fully inform sellers of the risks in a manner to ensure their knowing understanding and appreciation in order to make decisions regarding the proposals described above, including but not limited to the risk that buyers who do not invest any money in a real estate transaction and obtain cash out of the purchase have little incentive to perform and often default in performance. In fact, buyer subsequently defaulted in performance. If respondent had explained the risks fully, sellers would

have negotiated differently or would not have completed the transaction.

15. Prior and/or subsequent to close of escrow, without the knowledge or consent of sellers, respondent signed and forged sellers' names to various documents in the transaction, including but not limited to a seller financing disclosure statement and the last page of the rewritten contract of January 9, 1991. Respondent's conduct violated Title 10, California Code of Regulations section 2785(a)(8).

Additional Findings

16. Respondent has been licensed as a real estate salesperson for about 15 years. She was terminated from her position with RE/Max Today when the circumstances of the above-described transaction came to light, apparently in early to mid-1992, through a lawsuit filed by sellers against respondent, RE/Max Today and its owner/broker, Jeanne Garde. Since June 1992 respondent has been employed as a real estate salesperson by RE/Max Mid-Peninsula, where respondent has developed a reputation as a very thorough and detail-oriented salesperson who makes copious notes of her transactions, records every conversation and gets her paper work done in a timely fashion. Respondent has shown sincere remorse for her actions in this transaction and has used her own experience to encourage other agents to be forthcoming and truthful in their dealings. Her current broker is satisfied with her performance since coming to RE/Max Mid-Peninsula. No problems have been observed in her contracts, which are thoroughly reviewed by the firm's sales manager. Respondent's current broker would like her to remain in the employ of RE/Max Mid-Peninsula and opined that respondent is "the last person in the world I would expect to do this again."

17. Garde testified that when the lawsuit was filed respondent freely admitted her responsibility. Respondent offered to resign, telling Garde that she was distressed she had caused trouble and expense for Garde and sellers. Although respondent had confessed to fellow salesperson Olivia Reese just after close of escrow that she had done "something I shouldn't be doing," respondent neither disclosed any further details of what she had done to Reese nor did she advise her broker at any time prior to 1992 that she had engaged in fraudulent dealings in the transaction.

18. Respondent is unable to explain why she participated in activities which she admits she knew at the time were wrong and "would come back to bite me" except to say that she was under a lot of pressure at the time and her mind "was not clear" because she does not "think too well under pressure." The particular pressures respondent felt at the time were primarily personal ones--her husband had left her at about the

time of the transaction and her 15-year old son was having academic and disciplinary problems and had to be placed outside the home due to emotional difficulties. There is also some evidence that respondent was having financial difficulties because although she was earning about \$100,000 a year she did not manage her financial affairs well. In fact, just after the lawsuit described in Finding 16 was filed respondent filed for Chapter 13 bankruptcy reorganization and more recently filed a Chapter 7 bankruptcy.

19. In late December 1990, during the course of the transaction, respondent received a letter from the attorneys for buyer's broker, Prudential, expressing their concerns about the transaction, including a question about disclosures being made to lender and possible misrepresentations, the fact the buyer was getting cash back out of the transaction, and the fact that sellers were carrying back financing which resulted in the debt against the property being in excess of its value, creating a "high likelihood" buyer would default. The attorneys notified respondent they were unable to communicate directly with sellers and were therefore "relying on you to make sure that the sellers have investigated each of these issues and concerns to their full satisfaction..." Although respondent testified she had "reservations" about buyer at the time of the transaction, and maintains that she explained the risks of the transactions to sellers, respondent admits she never disclosed the attorneys' letter to sellers. One of the sellers, Herman Bates, credibly testified that the only risk which was explained to him and his wife related to their holding a second from buyer. At the hearing, respondent did not explain why, if she had made full disclosure to sellers, she felt compelled to forge their signatures on various documents during the transaction.

20. Buyer did default on his obligations and lender foreclosed on the property. Respondent was aware of this fact well before the lawsuit referred to in Finding 16 was filed, yet it was not until the lawsuit was filed that respondent admitted her culpability to her broker. As a result of buyer's default sellers have out-of-pocket losses, even considering the settlement they received as a result of the lawsuit, of at least \$117,000.

21. The settlement mentioned in Finding 20 occurred in September 1993 and was between sellers and RE/Max Today, Garde, Prudential, Banti and Arce. The settlement specifically did not release any claims sellers had against respondent. Following the settlement, respondent voluntarily offered to repay RE/Max Today a portion of the costs it incurred in defending the lawsuit. RE/Max Today has so far received \$800 or \$900 from respondent in payments which are paid directly to RE/Max Today by RE/Max Mid-Peninsula from respondent's commission checks.

DETERMINATION OF ISSUES

First Cause of Action

1. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 10177(g) (gross negligence), 10176(i) (fraud or dishonest dealing) and 10177(j) (fraud or dishonest dealing) by reason of the matters set forth in Findings 12 and 13.

Second Cause of Action

2. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 10177(g), 10176(i) and 10177(j) by reason of the matters set forth in Findings 14 and 15.

Supplemental Determinations

3. In mitigation of respondent's illegal and unethical conduct it is noted that the conduct occurred in a single transaction, at a time when she was undergoing serious personal stress; that respondent is recognized as a thorough and diligent real estate salesperson; that respondent freely admitted and took responsibility for her conduct when that conduct came to light; that respondent has exhibited sincere remorse for her actions; that she has used herself as an example in encouraging other agents to be forthcoming and truthful in their dealings; and that she has made some voluntary repayments to help her former broker recoup its losses resulting from her conduct.

4. On other side of the ledger, in aggravation of respondent's conduct it is noted that respondent's dishonesty was flagrant and egregious; that she participated in the scheme even though she had reservations about buyer and had been advised by Prudential's attorneys of the high likelihood he would default on his obligations; that her actions resulted in losses well in excess of \$100,000; and that respondent did not advise her broker of any problems in the transaction until 1992, when a lawsuit was filed, even though respondent was aware much earlier that buyer had defaulted.

5. Considering all the circumstances set forth above, it is determined that it would not be against the public interest to permit respondent to retain her real estate salesperson license upon specified terms and conditions. It is further determined, however, that significant discipline, including a period of actual suspension is warranted.

ORDER

All licenses and licensing rights of respondent Mary Bridget Doyle under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson 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 90 days from the effective date of this Decision. 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 license issued to respondent pursuant to this Decision shall be suspended for ninety (90) days from the date of issuance of the restricted license.
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 submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to

activities for which a real estate license is required.

5. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has 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 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 (6) months from the effective date of this Decision, 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.

7. 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 (2) years have elapsed from the effective date of this decision.

DATED: March 8, 1995

Michael C. Cohn
MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

Flag

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

FILED
MAR 10 1995

3 Telephone: (415) 904-5917
4

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

H-7024 SF

12 MARY BRIDGET DOYLE,)
13 VICKIE LYNN BANTI,)
14 SHERRY E. ARCE, and)
15 REGINA MESSINEO,)

Respondents.)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER AS
TO VICKIE LYNN BANTI AND
SHERRY E. ARCE

16 It is hereby stipulated by and between VICKIE LYNN BANTI
17 and SHERRY E. ARCE (referred to as Respondents), and their
18 attorney of record, Edward L. Blum, and the Complainant, acting by
19 and through Deldre L. Johnson, Counsel for the Department of Real
20 Estate, as follows for the purpose of settling and disposing of
21 the Accusation filed on January 24, 1994, in this matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondents
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
27

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement in Settlement.

3 2. Respondents have read and understands the Statement
4 to Respondent, the Discovery Provisions of the APA, and the
5 Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. On February 23, 1994, Respondents filed their
8 Notices of Defense pursuant to Section 11505 of the Government
9 Code for the purpose of requesting a hearing on the allegations in
10 the Accusation. Respondents hereby freely and voluntarily
11 withdraw said Notices of Defense. Respondents acknowledge that
12 they understand that by withdrawing said Notices of Defense they
13 will thereby waive their rights to require the Commissioner to
14 prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA and that they
16 will waive other rights afforded to them in connection with the
17 hearing such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. Respondents, pursuant to the limitations set forth
21 below, hereby admit that the factual allegations as to them in
22 Paragraphs I through V of the Accusation filed in this proceeding
23 are true and correct and the Real Estate Commissioner shall not be
24 required to provide further evidence of such allegations; except
25 that Respondents deny the dates of termination from Prudential
26 California Realty. The parties stipulate that as of December 20,
27 1990, Respondents became duly employed by Daco Realty, Inc.

1 5. Without admitting the truth of the allegations as to
2 them contained in Paragraphs VII through XX of the First Cause of
3 Action in the Accusation, Respondents stipulate that they will not
4 interpose a defense thereto. Respondents stipulate that the
5 Department may issue findings and determinations of issues that
6 the acts and/or omissions of Respondents as stipulated above
7 constitute grounds for disciplinary action as set forth in the
8 Accusation. A true copy of the Accusation is attached hereto as
9 Annex A and incorporated herein by reference.

10 6. No additional documentary, testimonial, or other
11 evidence, except that which is necessary to establish
12 Complainant's jurisdiction, shall be required to be presented by
13 Complainant at any hearing in this proceeding in order to prove
14 the Accusation as above stipulated.

15 7. Respondents enter into this stipulation for purposes
16 of this Accusation only, and the execution of this stipulation
17 shall not be construed to be an admission of liability except as
18 may pertain to the grounds for the stipulation, and shall not be
19 construed to be an admission for any purpose whatsoever, pursuant
20 to the provisions of California Evidence Code Section 1152.

21 8. It is understood by the parties that the Real Estate
22 Commissioner may adopt the Stipulation and Agreement in Settlement
23 as his decision in this matter thereby imposing the penalty and
24 sanctions on Respondent' real estate license(s) and license rights
25 as set forth in the below "Order". In the event that the
26 Commissioner in his discretion does not adopt the Stipulation and
27 Agreement in Settlement, it shall be void and of no effect, and

1 Respondents shall retain the right to a hearing and proceeding on
2 the Accusation under all the provisions of the APA and shall not
3 be bound by any admission or waiver made herein.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions and
6 waivers and solely for the purpose of settlement of the pending
7 Accusation without a hearing, it is stipulated and agreed that the
8 following determination of issues shall be made:

9 I

10 The acts and/or admissions of Respondents VICKIE LYNN
11 BANTI and SHERRY E. ARCE as stipulated in Paragraphs 4 and 5 above
12 constitute grounds for disciplinary action pursuant to the
13 provisions of Sections 10176(i) and 10177(g) of the California
14 Business and Professions Code.

15 ORDER

16 All real estate licenses and license rights of
17 Respondent VICKIE LYNN BANTI shall be suspended for a period of
18 sixty (60) days from the effective date of the Decision.

19 A. Said suspension shall be stayed for a period of one
20 (1) year on the condition that no cause for disciplinary action
21 against Respondent occurs within one (1) year from the effective
22 date of the Decision.

23 B. If the Real Estate Commissioner determines that
24 further cause for disciplinary action against Respondent's license
25 has occurred within one (1) year from the effective date of the
26 Decision, the stay of suspension hereby granted to Respondent, or
27 such portion of the stay as the Real Estate Commissioner shall

1 deem appropriate, shall be vacated. If no further cause for
2 disciplinary action occurs within said time period, the stay
3 hereby granted to Respondent shall become permanent.

4 II

5 All real estate licenses and license rights of
6 Respondent SHERRY E. ARCE shall be suspended for a period of
7 thirty (30) days from the effective date of the Decision.

8 A. Said suspension shall be stayed for a period of one
9 (1) year on the condition that no cause for disciplinary action
10 against Respondent occurs within one (1) year from the effective
11 date of the Decision.

12 B. If the Real Estate Commissioner determines that
13 further cause for disciplinary action against Respondent's license
14 has occurred within one (1) year from the effective date of the
15 Decision, the stay of suspension hereby granted to Respondent, or
16 such portion of the stay as the Real Estate Commissioner shall
17 deem appropriate, shall be vacated. If no further cause for
18 disciplinary action occurs within said time period, the stay
19 hereby granted to Respondent shall become permanent.

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DATED:

Jan. 9, 1995

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for Complainant

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I have read the Stipulation and Agreement in Settlement, have consulted with an attorney, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including that 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: Jan. 27, 1995

Vickie Lynn Banti
VICKIE LYNN BANTI
Respondent

DATED: Jan. 27, 1995

Sherry E. Arce
SHERRY E. ARCE
Respondent

DATED: 1-27-95

Edward L. Blum
EDWARD L. BLUM
Attorney for Respondents

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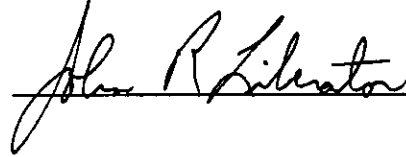
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* * *

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 March 30th, 1995.

IT IS SO ORDERED March 3, 1995.

JOHN R. LIBERATOR
Interim Commissioner



Flag

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

FILED
MAR 10 1995

DEPARTMENT OF REAL ESTATE

3 Telephone: (415) 904-5917

By *Linda Montiel*
~~Linda Montiel~~

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 MARY BRIDGET DOYLE,)
13 VICKIE LYNN BANTI,)
14 SHERRY E. ARCE, and)
15 REGINA MESSINEO,)
Respondents.)

H-7024 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER AS
TO REGINA MESSINEO

16 It is hereby stipulated by and between REGINA MESSINEO
17 (referred to as Respondent), and her attorney of record, Edward L.
18 Blum, and the Complainant, acting by and through Deidre L.
19 Johnson, Counsel for the Department of Real Estate, as follows for
20 the purpose of settling and disposing of the Accusation filed on
21 January 24, 1994, 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

27

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement in Settlement.

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

7 3. On February 23, 1994, Respondent filed her Notice of-
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that she
12 understand that by withdrawing said Notice of Defense she will
13 thereby waives her rights to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that she will waive
16 other rights afforded to her in connection with the hearing such
17 as the right to present evidence in defense of the allegations in
18 the Accusation and the right to cross-examine witnesses.

19 4. Respondent, pursuant to the limitations set forth
20 below, hereby admits that the factual allegations as to her in
21 Paragraphs I through V of the Accusation filed in this proceeding
22 are true and correct and the Real Estate Commissioner shall not be
23 required to provide further evidence of such allegations.

24 5. Without admitting the truth of the allegations as to
25 her contained in Paragraphs VII through XX of the First Cause of
26 Action in the Accusation, Respondent stipulates that she will not

27

1 interpose a defense thereto. Respondent stipulates that the
2 Department may issue findings and determinations of issues that
3 the acts and/or omissions of Respondent as stipulated above
4 constitute a violation of the Real Estate Law as set forth herein.
5 A true copy of the Accusation is attached hereto as Annex A and
6 incorporated herein by reference.

7 6. No additional documentary, testimonial, or other
8 evidence, except that which is necessary to establish
9 Complainant's jurisdiction, shall be required to be presented by
10 Complainant at any hearing in this proceeding in order to prove
11 the Accusation as above stipulated.

12 7. Respondent enters into this stipulation for purposes
13 of this Accusation only, and the execution of this stipulation
14 shall not be construed to be an admission of liability except as
15 may pertain to the grounds for the stipulation, and shall not be
16 construed to be an admission for any purpose whatsoever, pursuant
17 to the provisions of California Evidence Code Section 1152.

18 8. It is understood by the parties that the Real Estate
19 Commissioner may adopt the Stipulation and Agreement in Settlement
20 as his decision in this matter thereby finding the violation as to
21 Respondent's real estate license(s) and license rights as set
22 forth in the below "Order". In the event that the Commissioner in
23 his discretion does not adopt the Stipulation and Agreement in
24 Settlement, it shall be void and of no effect, and Respondent
25 shall retain the right to a hearing and proceeding on the

26
27

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

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and
5 waivers and solely for the purpose of settlement of the pending
6 Accusation without a hearing, it is stipulated and agreed that the
7 following determination of issues shall be made:

8 I

9 The acts and/or admissions of Respondent REGINA MESSINEO
10 as stipulated in Paragraphs 4 and 5 above constitute a violation
11 of 10177(g) of the California Business and Professions Code, and
12 constitute grounds for disciplinary action.

13 II

14 Due to matters of mitigation and rehabilitation shown,
15 no public interest would be served by imposing disciplinary action
16 at this time.

17 ORDER

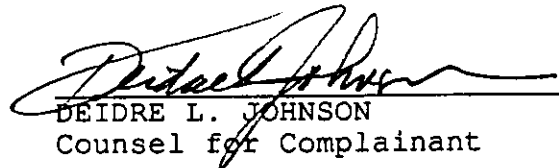
18 The within proceedings as to Respondent REGINA MESSINEO
19 are hereby terminated without imposition of discipline.

20

21

22 DATED:

Jan. 31, 1995


DEIDRE L. JOHNSON
Counsel for Complainant

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* * *

I have read the Stipulation and Agreement in Settlement, have consulted with an attorney, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including that 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: 1-27-95 *Regina Messineo*
REGINA MESSINEO
Respondent

DATED: 1-27-95 *Edward L. Blum*
EDWARD L. BLUM
Attorney for Respondent

* * *

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 March 30th, 1995.

IT IS SO ORDERED March 3, 1995.

JOHN R. LIBERATOR
Interim Commissioner

John R. Liberator

Flag

COPY

FILED
AUG 16 1994

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of
MARY BRIDGET DOYLE,
VICKIE LYNN BANTI,
SHERRY E. ARCE and
REGINA MESSINEO,

}

By Lynda Montiel
Lynda Montiel

Case No. H-7024 SF

OAH No. N 9403219

Respondent

CONTINUED
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, STATE BUILDING,

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

on Mon. & Tues., February 6 & 7, 1995 (2 days), at the hour of 9:00 am,
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: August 16, 1994

By Deidre L. Johnson
DEIDRE L. JOHNSON, *Counsel*

3/29/94

COPY

FILED
MAY 19 1994

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

MARY BRIDGET DOYLE, VICKIE LYNN
BANTI, SHERRY E. ARCE and
REGINA MESSINEO,

}

Case No. H-7024 SF

OAH No. N 9403219

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, STATE BUILDING,

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

on Mon. & Tues., August 15 & 16, 1994 (two days), at the hour of 9:00 am.
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: May 19, 1994

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

FILED
JAN 24 1994

DEPARTMENT OF REAL ESTATE

1 DEIDRE L. JOHNSON, Counsel
Department of Real Estate
2 185 Berry Street, Room 3400
San Francisco, CA 94107-1770

3 Telephone: (415) 904-5917

By Lynda Montiel
Lynda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Accusation of)	No. H-7024 SF
)	
12	MARY BRIDGET DOYLE,)	ACCUSATION
)	
13	VICKIE LYNN BANTI,)	
)	
14	SHERRY E. ARCE,)	
)	
15	REGINA MESSINEO,)	
)	
	Respondents.)	

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for causes of
18 Accusation against MARY BRIDGET DOYLE, VICKIE LYNN BANTI,
19 SHERRY E. ARCE, and REGINA MESSINEO is informed and alleges as
20 follows:

PRELIMINARY ALLEGATIONS

I

22 Respondents MARY BRIDGET DOYLE, VICKIE LYNN BANTI,
23 SHERRY E. ARCE, and REGINA MESSINEO are presently licensed and/or
24 have license rights under the Real Estate Law, (Part 1 of
25 Division 4 of the Business and Professions Code, hereafter the
26 Code).
27

1 II

2 The Complainant, Les R. Bettencourt, a Deputy Real
3 Estate Commissioner of the State of California, makes this
4 Accusation against Respondents in his official capacity and not
5 otherwise.

6 III

7 At all times herein mentioned, Respondent MARY BRIDGET
8 DOYLE (hereafter DOYLE) was and is licensed by the California
9 Department of Real Estate (hereafter Department) as a real estate
10 salesperson, and was employed by real estate broker TODAY INC.,
11 dba RE/MAX TODAY (hereafter RE/MAX TODAY).

12 IV

13 At all times herein mentioned, Respondent VICKIE LYNN
14 BANTI (hereafter BANTI) was and is licensed by the Department as a
15 real estate salesperson, and was employed by RML REALTY INC., dba
16 PRUDENTIAL CALIFORNIA REALTY until on or about December 30, 1990.
17 On or about February 6, 1991, BANTI was employed by DACO REALTY
18 INC., dba RE/MAX MID-PENINSULA REALTORS (hereafter RE/MAX MID-
19 PENINSULA). At no time between December 30, 1990 and February 6,
20 1991 was BANTI duly licensed under any employing broker.

21 V

22 At all times herein mentioned, Respondent SHERRY E. ARCE
23 also known as SHERRY MISCHIO (hereafter ARCE/MISCHIO), was and is
24 licensed by the Department as a real estate salesperson, and was
25 employed by RML REALTY INC., dba PRUDENTIAL CALIFORNIA REALTY
26 until on or about December 20, 1990. On or about January 7, 1991,
27 ARCE/MISCHIO was employed by DACO REALTY INC., dba RE/MAX MID-

1 PENINSULA REALTORS. At no time between December 20, 1990 and
2 January 7, 1991 was ARCE/MISCHIO duly licensed under any employing
3 broker.

4 VI

5 At all times herein mentioned, Respondent REGINA LOUISE
6 MESSINEO also known as REGINA NEEL (hereafter MESSINEO/NEEL), was
7 and is licensed by the Department as a real estate broker, and was
8 employed by or associated with RML REALTY INC., dba PRUDENTIAL
9 CALIFORNIA REALTY as office manager and the immediate supervisor
10 of BANTI and ARCE/MISCHIO.

11 FIRST CAUSE OF ACTION

12 VII

13 Beginning in or about August of 1990, Herman and Nancy
14 Bates (hereafter Sellers) were the owners of real property known
15 as and located at 283 Devonshire Blvd., San Carlos, California,
16 and listed the property for sale with RE/MAX TODAY, with DOYLE as
17 their listing agent.

18 VIII

19 On or about December 4, 1990, and while acting in the
20 capacity of real estate licensees, BANTI and ARCE/MISCHIO of
21 PRUDENTIAL prepared and/or participated in the preparation a real
22 estate purchase contract and receipt for deposit, and an addendum
23 on behalf of prospective buyer Larry Neeley (hereafter Buyer) to
24 constitute Buyer's offer to purchase the above property, and
25 presented the offer to Sellers and DOYLE. In pertinent part, the
26 offer consisted of:

27

1 (A) In the body of the purchase contract and receipt for
2 deposit:

- 3 (1) purchase price of \$500,000
4 (2) earnest money deposit evidenced by a promissory note \$ 10,000
5 (3) balance of cash downpayment \$215,000
6 (4) new first deed of trust \$375,000
7 (5) new second deed of trust None or blank
8 (6) addenda attached None or blank

9 (B) In the body of the addendum:

- 10 (7) cash back to Buyer \$100,000
11 (8) seller-carryback note and second deed of trust \$200,000

12 IX

13 On or about December 8, 1990, DOYLE prepared a
14 counteroffer or second addendum on behalf of Sellers to "clarify"
15 the intent of the parties, that included, among other terms, a
16 reduction in the stated purchase price to \$485,0000, and an
17 increase in the seller-carryback note and second deed of trust to
18 \$215,000. On or about December 9, 1990, Buyer accepted the
19 counter and the parties entered into a contract.

20 X

21 Between about December 31, 1990, and January 9, 1991,
22 DOYLE, BANTI and ARCE/MISCHIO rewrote or participated in the
23 rewriting of the contract on behalf of the parties, including a
24 second real estate purchase contract and receipt for deposit dated
25 January 9, 1991, and a third addendum dated December 31, 1990. In
26 pertinent part, the contract consisted of:

27 (A) In the body of the purchase contract and receipt for
deposit:

- 1 (1) purchase price of \$500,000
- 2 (2) earnest money deposit evidenced by a
3 promissory note \$ 10,000
- 4 (3) additional deposit in unspecified
form \$115,000
- 5 (4) new first deed of trust \$375,000
- 6 (5) new second deed of trust None or blank
- 7 (6) addenda attached None or blank

7 (B) In the body of the addendum:

- 8 (7) cash back to Buyer \$100,000
- 9 (8) seller-carryback note and
second deed of trust \$210,000

10 Between about January 12 and January 16, 1991, Sellers signed and
11 accepted the rewritten contract.

12 XI

13 Between about January 15 and January 17, 1991 DOYLE,
14 BANTI and ARCE/MISCHIO prepared or participated in the preparation
15 of a fourth addendum that specified, among other terms, that the
16 source of funds for Buyer's cash back in the sum of \$100,000 would
17 be Buyer's purchase money loan funds secured by the first deed of
18 trust. Buyer and Sellers signed this addendum.

19 XII

20 On or about January 15, 1991, BANTI and ARCE/MISCHIO
21 prepared or participated in the preparation of two promissory
22 notes, approved by DOYLE and executed by the parties, as follows:

- 23 (A) Note from Sellers to Buyer in the sum of \$125,000,
24 to be credited at close of escrow and appear to be a loan to
25 Sellers from Buyer, that would cancel Buyer's obligation to pay a
26 deposit or downpayment sum of \$125,000 into escrow; and

27

1 (B) Note from Buyer to Sellers in the sum of \$125,000,
2 to be used to cancel out the above note.

3 XIII

4 Beginning on or after about January 15, 1991, Buyer
5 applied to Great Western Bank (hereafter Lender) for a purchase
6 money loan to be secured by a first deed of trust to the property,
7 and submitted to the Lender the real estate purchase contract and
8 receipt for deposit dated January 9, 1991. At no time did the
9 Buyer or any of the Respondents submit to the Lender any of the
10 accompanying addenda that reflected the complete contract between
11 the parties, or the above promissory notes. In reliance on the
12 information submitted, Lender approved the loan and escrow closed
13 on or about January 25, 1991. Had Lender known the true facts
14 regarding the purchase terms, including but not limited to no
15 money down payment, cash back to the buyer, and seller-carryback
16 financing with a second deed of trust, Lender would not have
17 approved the loan.

18 XIV

19 DOYLE, BANTI and ARCE/MISCHIO participated in concert to
20 aid and conspire with Buyer in a scheme to mislead Lender, and/or
21 were negligent or incompetent in conduct for which a real estate
22 license is required, in that they, and each of them, knew or
23 should have known that the above transaction, as structured, was
24 intended to and did create hidden and undisclosed terms and
25 conditions from the Lender, in that the purchase contract itself
26 did not reveal the existence of any seller-carryback financing or
27 any cash back to the Buyer at the close of escrow; and that Buyer

1 did not intend to and did not submit any of the addendums to the
2 Lender that would have disclosed the true terms of the
3 transaction; and that Buyer did not intend to and did not pay any
4 cash to purchase the property by virtue of the structured terms
5 and the promissory notes.

6 XV

7 BANTI and ARCE/MISCHIO submitted most or all of the
8 above offers, addendums, contracts and notes to MESSINEO/NEEL for
9 review and approval. MESSINEO/NEEL reviewed, approved and/or
10 ratified the documents and the structure of the transaction, and
11 failed to exercise reasonable care to prohibit or prevent the
12 participation of BANTI and ARCE/MISCHIO in a scheme to mislead a
13 lending institution. MESSINEO/NEEL consented to, allowed,
14 acquiesced in or ratified the above acts of BANTI and
15 ARCE/MISCHIO, on behalf of PRUDENTIAL, both before and after BANTI
16 and ARCE/MISCHIO left PRUDENTIAL's employ, as alleged above.

17 XVI

18 DOYLE failed and refused to submit most or all of the
19 above offers, addendums, contracts and notes to her employing
20 broker for review and approval, in that she knew or believed the
21 above material terms and agreements would not have been approved.

22 XVII

23 By reason of the facts alleged above, Respondent DOYLE
24 has committed acts and/or omissions that constitute negligence
25 and/or fraud and/or dishonest dealing, and constitute grounds for
26 disciplinary action under the provisions of Sections 10177(g),
27 10176(i) and/or 10177(j) of the Code.

XVIII

1
2 By reason of the facts alleged above, Respondents BANTI
3 and ARCE/MISCHIO have committed acts and/or omissions that
4 constitute negligence and/or fraud and/or dishonest dealing, and
5 constitute grounds for disciplinary action under the provisions of
6 Sections 10177(g), 10176(i) and/or 10177(j) of the Code.

7 XIX

8 By reason of the facts alleged above, Respondent
9 MESSINEO/NEEL have committed acts and/or omissions that constitute
10 negligence, and constitute grounds for disciplinary action under
11 the provisions of Section 10177(g) of the Code.

12 XX

13 By reason of the facts alleged above, Respondents BANTI
14 and ARCE/MISCHIO engaged in activities for which a real estate
15 salesperson license is required under PRUDENTIAL as their
16 employing broker, when they were not so employed, and their acts
17 and/or omissions constitute grounds for disciplinary action under
18 the provisions of Section 10137 of the Code.

19 SECOND CAUSE OF ACTION

20 XXI

21 Respondent DOYLE, in negotiating the above transaction
22 on behalf of Sellers, owed to Sellers fiduciary duties of due care
23 and disclosure. She knew or should have known that Buyer's offers
24 involved material risks of nonperformance and loss to Sellers, and
25 failed to exercise due care to fully inform Sellers of the risks
26 in a manner to ensure their knowing understanding and appreciation
27 in order to make decisions regarding the proposals described

1 above, including but not limited to the risks that buyers who do
2 not invest any money in a real estate purchase transaction, and
3 obtain cash out of the purchase, have little incentive to perform,
4 and often default in performance. In fact, Buyer thereafter
5 defaulted in performance. If DOYLE had explained the risks fully,
6 Sellers would have negotiated differently or not completed the
7 transaction.

8 XXII

9 Prior and/or subsequent to close of escrow, DOYLE signed
10 and forged Sellers' names to various documents in the transaction,
11 including but not limited to a seller financing disclosure
12 statement, and the last page of the rewritten contract of
13 January 9, 1991, without the knowledge or consent of Sellers.


14 XXIII

15 The acts and/or omissions of DOYLE as alleged above
16 constitute cause for disciplinary action under the provisions of
17 Sections 10177(g), 10176(i), and/or 10177(j) of the Code, and
18 Section 2785(a)8 of Title 10, California Code of Regulations.

19 WHEREFORE, Complainant prays that a hearing be conducted
20 on the allegations of this Accusation and that upon proof thereof
21 a decision be rendered imposing disciplinary action against all
22 licenses and license rights of Respondent, under the Real Estate

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1 Law (Part 1 of Division 4 of the Business and Professions Code)
2 and for such other and further relief as may be proper under other
3 provisions of law.

4 
5 LES R. BETTENCOURT
6 Deputy Real Estate Commissioner

7 Dated at San Francisco, California,
8 this 24th day of January, 1994.

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