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FILED
OCT 20 1994

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

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

Telephone: (415) 904-5917

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-7058 SF
)	
)	STIPULATION AND
CRAIG PAUL DULING,)	AGREEMENT IN
)	SETTLEMENT AND
)	ORDER
Respondent.)	
_____)	

It is hereby stipulated by and between CRAIG PAUL DULING (Respondent), represented by Maxine Monaghan, Counsel, 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 of the Accusation filed on April 11, 1994, 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 Procedure Act (APA), shall instead and in place thereof be

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

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

7 3. On April 21, 1994, Respondent filed a 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 he
12 understands that by withdrawing said Notice of Defense he will
13 thereby waive his right 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.

16 4. Respondent has read the Discovery Provisions of the
17 APA and is aware of his right to conduct discovery in the
18 proceeding, and by entering into this Stipulation and Agreement in
19 Settlement, freely and voluntarily waives his right to conduct
20 further discovery.

21 5. Respondent hereby admits that the factual
22 allegations of the Accusation are true and correct. The Real
23 Estate Commissioner shall not be required to provide further
24 evidence of such allegations. The admissions of fact made herein
25 are made solely for the purposes of establishing jurisdiction for
26 the Commissioner to take disciplinary action against the licenses
27 and license rights of Respondent and are made solely in reference

1 to this proceeding and any subsequent proceeding before the
2 Commissioner and may not be used in or as a part of any other
3 civil action or criminal action now pending or which may be filed
4 against Respondent pursuant to the provisions of Section 1152 of
5 the California Evidence Code. A true copy of the Accusation is
6 attached hereto as Annex A and incorporated herein by reference.

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

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

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations, admissions and
26 waivers and for the purpose of settlement of the pending

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1 Accusation without a hearing, it is stipulated and agreed that the
2 following determination of issues shall be made:

3 I

4 The acts and/or omissions of Respondent, as described in
5 Paragraphs I through X of the Accusation, are grounds for
6 disciplinary action under the provisions of Section 10176(a) of
7 the Code.

8 ORDER

9 All licenses and licensing rights of Respondent CRAIG PAUL
10 DULING under the Real Estate Law are revoked; provided, however, a
11 restricted real estate broker license shall be issued to Respondent
12 pursuant to Section 10156.5 of the Business and Professions Code if
13 Respondent makes application therefor and pays to the Department of
14 Real Estate the appropriate fee for the restricted license within
15 60 days from the effective date of this Decision. The restricted
16 license issued to Respondent shall be subject to all of the
17 provisions of Section 10156.7 of the Business and Professions Code
18 and to the following limitations, conditions and restrictions
19 imposed under authority of Section 10156.6 of that Code:

20 1. The restricted license issued to Respondent may be
21 suspended prior to hearing by Order of the Real Estate Commissioner
22 in the event of Respondent's conviction or plea of nolo contendere
23 to a crime which is substantially related to Respondent's fitness
24 or capacity as a real estate licensee.

25 2. The restricted license issued to Respondent may be
26 suspended prior to hearing by Order of the Real Estate Commissioner
27 on evidence satisfactory to the Commissioner that Respondent has

1 violated provisions of the California Real Estate Law, the
2 Subdivided Lands Law, Regulations of the Real Estate Commissioner
3 or conditions attaching to the restricted license.

4 3. Respondent shall not be eligible to apply for the issuance
5 of an unrestricted real estate license nor for the removal of any
6 of the conditions, limitations or restrictions of a restricted
7 license until one year has elapsed from the effective date of this
8 Decision.

9 4. The restricted license issued to Respondent pursuant to
10 this Decision shall be suspended for thirty (30) days from the
11 effective date of this Decision; provided, however, that if
12 Respondent petitions, said 30 day suspension shall be stayed upon
13 condition that:

14 a. Respondent pays a monetary penalty pursuant to Section
15 10175.2 of the Business and Professions Code at the rate of
16 \$100.00 for each day of the suspension for a total monetary
17 penalty of \$3,000.00.

18 b. Said payment shall be in the form of a cashier's check
19 or certified check made payable to the Recovery Account of the
20 Real Estate Fund. Said check must be delivered to the Department
21 prior to the effective date of the Decision in this matter.

22 c. No further cause for disciplinary action against the
23 real estate license of Respondent occurs within one year from the
24 effective date of the Decision in this matter.

25 d. If Respondent fails to pay the monetary penalty in
26 accordance with the terms and conditions of the Decision, the stay
27 of the suspension shall be vacated and the order of suspension

1 shall be immediately executed, in which event the Respondent shall
2 not be entitled to any repayment nor credit, prorated or
3 otherwise, for money paid to the Department under the terms of
4 this Decision.

5 e. If Respondent pays the monetary penalty and if no
6 further cause for disciplinary action against the real estate
7 license of Respondent occurs within one year from the effective
8 date of the Decision, the stay hereby granted shall become
9 permanent.

10 5. Respondent shall, within nine months from the effective
11 date of this Decision, present evidence satisfactory to the Real
12 Estate Commissioner that Respondent has, since the most recent
13 issuance of an original or renewal real estate license, taken and
14 successfully completed the continuing education requirements of
15 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
16 real estate license. If Respondent fails to satisfy this
17 condition, the Commissioner may order the suspension of the
18 restricted license until the Respondent presents such evidence.
19 The Commissioner shall afford Respondent the opportunity for a
20 hearing pursuant to the Administrative Procedure Act to present
21 such evidence.

22 6. Respondent shall, within six months from the effective
23 date of this Decision, take and pass the Professional
24 Responsibility Examination administered by the Department
25 including the payment of the appropriate examination fee. If
26 Respondent fails to satisfy this condition, the Commissioner may

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1 order suspension of Respondent's license until Respondent passes
2 the examination.

3

4 DATED: 9-20-94 DEPARTMENT OF REAL ESTATE

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John Van Driel
JOHN VAN DRIEL
Counsel for Complainant

8 APPROVED AS TO FORM:

9

10 DATED:

Sept 19, 1994 Maxine Monaghan
MAXINE MONAGHAN
Counsel for Respondent

11

12

13 I have read the Stipulation and Agreement in Settlement,
14 discussed it with my attorney, and its terms are understood by me
15 and are agreeable and acceptable to me. I understand that I am
16 waiving rights given to me by the California Administrative
17 Procedure Act, and I willingly and voluntarily waive those rights,
18 including the right of requiring the Commissioner to prove the
19 allegations in the Accusation at a hearing at which I would have
20 the right to cross-examine witnesses against me and to present
21 evidence in defense and mitigation of the charges.

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DATED:

9/19/94

Craig P. Duling
CRAIG PAUL DULING
Respondent

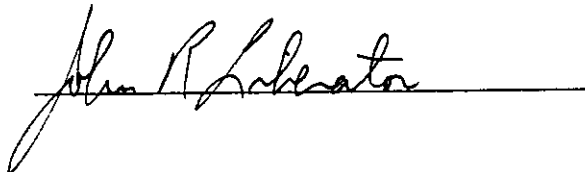
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DECISION AND ORDER

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 November 9, 1994.

IT IS SO ORDERED October 10, 1994.

JOHN R. LIBERATOR
Interim Commissioner



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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 17 1994

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

CRAIG PAUL DULING,

By Victoria Dillon
Case No. H-7058 SF Victoria Dillon
OAH No. N 9405042

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

455 Golden Gate Ave., Room 2248, San Francisco, CA 94102

on September 20, 1994 (1/2 Day Hearing), 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: May 17, 1994

By

John Van Driel
JOHN VAN DRIEL, Counsel

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Sac*

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Department of Real Estate
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4 Telephone: (415) 904-5917

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CRAIG PAUL DULING,)
13 Respondent.)
14 _____)

No. H-7058 SF

ACCUSATION

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against CRAIG PAUL DULING, Respondent is informed and
18 alleges as follows:

19 INTRODUCTORY PARAGRAPHS

20 I

21 The Complainant, LES R. BETTENCOURT, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity and not otherwise.

24 II

25 CRAIG PAUL DULING (Duling) is presently licensed and/or
26 has license rights under the Real Estate Law (Part 1 of Division 4
27 of the Business and Professions Code) (Code).

1 III

2 At all times mentioned herein Duling 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 and was
5 employed as an agent of Cornish & Carey.

6 IV

7 On or about December 1, 1991, Duling, acting on behalf
8 of Cornish & Carey, listed the real property located at 2526
9 Annapolis St., East Palo Alto, CA. (the property). The property
10 was owned by the Sambola Trust with John Oettinger acting as
11 Trustee, and was listed for sale for \$125,000 in "as is"
12 condition.

13 V

14 On or about January 26, 1992, Bhupinder and Malook Saini
15 (Buyer), made an offer to purchase the property for \$110,000.
16 After counter-offers were made by the parties, an agreement of
17 purchase and sale was finally reached on or about February 17,
18 1992 (the contract). The contract had a purchase price of
19 \$114,950 and called for both roof and pest control inspections
20 which were subject to Buyer's approval within 3 days of receipt.

21 VI

22 On or about February 17, 1992, and March 9, 1992, the
23 parties executed two separate addenda to the contract which
24 reduced the purchase price to \$108,450; acknowledged the
25 possibility of extensive roof and pest control repairs to the
26 property; and acknowledged that any cost for such repairs or any

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1 corrective work to those aspects of the property was to be borne
2 solely by the Buyer.

3 VII

4 On or about January 30, 1992, Buyer applied for a
5 purchase money loan from Great Western Bank (the lender). One of
6 the lender's conditions to fund the loan to Buyer was that a roof
7 inspection be done on the property and a report be furnished to
8 the lender before close of escrow.

9 VIII

10 On or about February 24, 1992, a roof inspection report
11 was issued by Regency Roofing stating that the roof on the
12 property was in "poor" condition and that the estimated repairs
13 would cost \$3,400.

14 IX

15 On or about March 9, 1992, Duling, in compliance with
16 the lender's condition that a roof inspection be done on the
17 property and a report be furnished to the lender before close of
18 escrow, faxed a copy of the Regency Roofing "roof inspection
19 sheet" dated 2-24-92 (the report) to the lender. Before he faxed
20 the report to the lender, he altered the document to show that the
21 roof on the property was in "good" rather than in "poor"
22 condition.

23 X

24 The lender funded Buyer's loan on or about March 20,
25 1992. Notwithstanding the fact that the pest control and roof
26 reports were issued and the work agreed to by the parties was
27 completed, and that the lender funded Buyer's loan, Duling's

1 misrepresentation to the lender of the condition of the roof on
2 the property was false and untrue and was done with the intent to
3 induce the lender to fund the loan without further inquiry into
4 the condition of the roof.

5 XI

6 The acts and/or omissions of Duling, as set out above,
7 violate Section 2785(b)(9) of Title 10, California Code of
8 Regulations and are grounds for discipline under the provisions of
9 Section 10176(i) of the Code.

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

17 
18 LES R. BETTENCOURT
19 Deputy Real Estate Commissioner

20 Dated at San Francisco, California
21 this 8th day of April, 1994.

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