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**FILED**  
**JUL 24 1995**

DEPARTMENT OF REAL ESTATE

*Laurie A. Zia*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )

No. H-7194 SF

MARCO ANTONIO GARCIA, )

Respondent. )

ORDER GRANTING RECONSIDERATION

On May 23, 1995, a Decision was rendered in the above-entitled matter. The Decision is to become effective July 24, 1995.

On June 1, 1995, Respondent petitioned for reconsideration of the Decision of May 23, 1995. I have considered said petition and said Decision and have concluded that cause exists to grant Respondent's petition.

Reconsideration is hereby granted and the Order in said Decision is modified to read as follows:

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to

1 Section 10156 of the Business and Professions Code. The  
2 restricted license issued to the Respondent shall be subject to  
3 all of the provisions of Section 10156.7 of the Business and  
4 Professions Code and to the following limitations, conditions  
5 and restrictions imposed under authority of Section 10156.6 of  
6 said Code:

7 A. The restricted license issued to Respondent may be  
8 suspended prior to hearing by Order of the Real Estate  
9 Commissioner in the event of Respondent's conviction or plea of  
10 nolo contendere to a crime which is substantially related to  
11 Respondent's fitness or capacity as a real estate licensee.

12 B. The restricted license issued to Respondent may be  
13 suspended prior to hearing by Order of the Real Estate  
14 Commissioner on evidence satisfactory to the Commissioner that  
15 Respondent has violated provisions of the California Real Estate  
16 Law, the Subdivided Lands Law, Regulations of the Real Estate  
17 Commissioner or conditions attaching to the restricted license.

18 C. Respondent shall submit with any application for  
19 license under an employing broker, or any application for transfer  
20 to a new employing broker, a statement signed by the prospective  
21 employing broker on a form approved by the Department of Real  
22 Estate which shall certify:

23 (1) That the employing broker has read the Decision of  
24 the Commissioner which granted the right to a  
25 restricted license; and

26 (2) That the employing broker will exercise close  
27 supervision over the performance by the restricted

1 licensee relating to activities for which a real  
2 estate license is required.

3 D. Respondent shall not be eligible to apply for the  
4 issuance of an unrestricted real estate license nor the removal of  
5 any of the limitations, conditions or restrictions of a restricted  
6 license until one (1) year has elapsed from the date of the  
7 issuance of the restricted license to Respondent.

8 E. Respondent's restricted real estate salesperson  
9 license is issued subject to the requirements of Section 10153.4  
10 of the Business and Professions Code, to wit: Respondent shall,  
11 within eighteen (18) months of the issuance of the restricted  
12 license, submit evidence satisfactory to the Commissioner of  
13 successful completion, at an a accredited institution, of two of  
14 the courses listed in Section 10153.2; other than real estate  
15 principles, advanced legal aspects of real estate, advanced real  
16 estate finance or advanced real estate appraisal. If Respondent  
17 fails to timely present to the Department satisfactory evidence  
18 of successful completion of the two required courses, the  
19 restricted license shall be automatically suspended effective  
20 eighteen (18) months after the date of its issuance. Said  
21 suspension shall not be lifted unless, prior to the expiration of  
22 the restricted license, Respondent has submitted the required  
23 evidence of course completion and the Commissioner has given  
24 written notice to Respondent of lifting of the suspension.

25 F. Pursuant to Section 10154, if Respondent has not  
26 satisfied the requirements for an unqualified license under  
27 Section 10153.4, Respondent shall not be entitled to renew the

1 restricted license, and shall not be entitled to the issuance of  
2 another license which is subject to Section 10153.4 until four  
3 years after the date of the issuance of the preceding restricted  
4 license.

5 This Order shall be effective immediately.

6 DATED: 7/24/95

7 JIM ANTT, JR.  
8 Real Estate Commissioner

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**FILED**  
JUL 14 1995  
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )  
MARCO ANTONIO GARCIA, )  
Respondent. )

NO. H-7194 SF

OAH NO. N-9502024

ORDER STAYING EFFECTIVE DATE

On May 23, 1995, a Decision was rendered on respondent's petition for reconsideration in the above-entitled matter. The Decision is to become effective July 14, 1995. Additional time is necessary to fully consider and evaluate respondent's petition.

IT IS HEREBY ORDERED that the effective date of the Decision of May 23, 1995, is stayed for a period of ten (10) days.

The Decision of May 23, 1995, shall become effective at 12 o'clock noon on July 24, 1995.

DATED: July 14, 1995.

JIM ANTT, JR.  
Real Estate Commissioner

By:

*Robin T. Wilson*

ROBIN T. WILSON  
Chief Counsel

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**FILED**  
JUN 02 1995

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*  
**Victoria Dillon**

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	NO. H-7194 SF
	)	
MARCO ANTONIO GARCIA,	)	OAH No. N 9502024
	)	
Respondent.	)	
_____	)	

ORDER STAYING EFFECTIVE DATE

On May 23, 1995, a Decision was rendered in the above-entitled matter to become effective June 15, 1995.

IT IS HEREBY ORDERED that the effective date of the Decision of May 23, 1995, is stayed for a period of twenty-nine (29) days.

The Decision of May 23, 1995, shall become effective at 12 o'clock noon on July 14, 1995.

DATED: June 2, 1995

JIM ANTT, JR.  
Real Estate Commissioner

*Les R. Bettencourt*  
By: LES R. BETTENCOURT  
Deputy Real Estate Commissioner

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**FILED**  
MAY 26 1995

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

\* \* \*

By *Victoria Dillon*  
Victoria Dillon

In the Matter of the Application of )  
MARCO ANTONIO GARCIA, )  
Respondent. )

No. H-7194 SF  
OAH N 9502024

DECISION

The Proposed Decision dated May 5, 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.

The application for a real estate salesperson  
license is denied. There is no statutory restriction when  
application may again be made for this license. If and when  
application is again made for this license, all competent evidence  
of rehabilitation presented by respondent will be considered by  
the Real Estate Commissioner. A copy of the Commissioner's  
Criteria of Rehabilitation is appended hereto for the information  
of respondent.

This Decision shall become effective at 12 o'clock noon  
on June 15, 1995.

IT IS SO ORDERED May 23, 1995.

JOHN R. LIBERATOR  
Interim Commissioner

*John R. Liberator*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of )

MARCO ANTONIO GARCIA, )

Respondent. )

Case No. H-7194 SF

OAH No. N 9502024

PROPOSED DECISION

This matter was heard before Robert E. Murphy, Administrative Law Judge, State of California, Office of Administrative Hearings, on March 31, 1995, in San Francisco, California.

The Department of Real Estate was represented by Susan Rossi, Counsel.

Respondent, Marco Antonio Garcia, was present and represented himself.

FINDINGS OF FACT

I

Pursuant to Business and Professions Code (hereafter the Code) section 10153.3, respondent applied to the Department of Real Estate for a real estate salesperson license on July 29, 1994 with the knowledge and understanding that any license issued as a result of the application would be subject to the conditions of section 10153.4 of the Code.

II

Respondent had previously applied for a real estate salesperson license on December 9, 1993. Following a hearing on May 25, 1994, a proposed decision was issued by Administrative Law Judge Jonathan Lew which denied respondent's application. That decision was adopted by Clark Wallace, Real Estate Commissioner, on June 20, 1994.

### III

Copies of the Decision and of the Order adopting it are attached and incorporated herein. The Findings of Fact of the Proposed Decision are adopted as the Findings of Fact of this Proposed Decision except to the extent they are modified or added to herein.

### IV

Respondent submitted a letter (Exhibit B) from Manuel E. Alvarez, a broker for the MFK Financial Corporation, in which Mr. Alvarez recommended the granting of a license to respondent and stated that he would hire and supervise respondent in his work. The nature of the business carried on by the MFK Corporation is unclear as is the work that respondent would do for the corporation.

### V

Respondent has neither completed his parole nor requested early discharge from parole.

### VI

Respondent has not paid the fines, a total of \$250, imposed on him as a result of the criminal conviction.

### VII

Respondent has neither complied with, nor made any plans to comply with, the requirements of Code section 10153.4.

### VIII

Respondent has neither completed nor enrolled in courses to further prepare himself to act as a licensed real estate salesperson in addition to those courses specified in section 10153.4 of the Code.

### IX

Respondent has not engaged in any activities relating to usage or sale of illegal drugs and respondent has removed himself from relationships with those who use drugs.

### X

The crime of which respondent was convicted, violation of Code Section 11352 (Sale of Cocaine), bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

DETERMINATION OF ISSUES

I

Cause exists for denial of respondent's application for a real estate license under Code sections 480(a) and 10177(b) by reason of the matters set forth in Findings V, VI, VII, VIII and X.

II

The matters set forth in the Findings of Fact were considered in making the following Order. It would not be in the public interest to issue respondent a restricted license at this time.

ORDER

The application of respondent Marco Antonio Garcia to the Department of Real Estate for a real estate salesperson license is denied.

DATED: May 5, 1995

Robert E. Murphy  
ROBERT E. MURPHY  
Administrative Law Judge  
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Victoria Dillon  
Victoria Dillon

In the Matter of the Application of

MARCO ANTONIO GARCIA,

Case No. H-7194 SF

OAH No. N 9502024

Respondent

NOTICE OF HEARING ON APPLICATION

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 Friday, March 31, 1995 (1 hr. hearing), at the hour of 9:00 a.m.,  
or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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: February 9, 1995

By John Van Driel  
JOHN VAN DRIEL, Counsel

nd

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1 JOHN VAN DRIEL, Counsel  
2 Department of Real Estate  
3 185 Berry Street, Room 3400  
San Francisco, CA 94107-1770

4 Telephone: (415) 904-5917

**FILED**  
JAN 06 1995

DEPARTMENT OF REAL ESTATE

By Victoria Dillon  
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

11 In the Matter of the Application of ) No. H-7194 SF  
12 MARCO ANTONIO GARCIA, )  
13 Respondent. )  
14 \_\_\_\_\_ )  
STATEMENT OF ISSUES

15 The Complainant, LES R. BETTENCOURT, a Deputy Real  
16 Estate Commissioner of the State of California, for Statement of  
17 Issues against MARCO ANTONIO GARCIA (hereinafter Respondent)  
18 alleges as follows:

I

20 Respondent, pursuant to the provisions of Section  
21 10153.3 of the Business and Professions Code (Code), made  
22 application to the Department of Real Estate of the State of  
23 California for a real estate salesperson license on or about  
24 July 29, 1994, with the knowledge and understanding that any  
25 license issued as a result of said application would be subject to  
26 the conditions of Section 10153.4 of the Code.  
27

II

Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about July 27, 1990, in the Superior Court of California, San Mateo County, Respondent was convicted of a violation of Section 11352/11370.4 (sale of more than 3 pounds of cocaine) of the California Health & Safety Code.

IV

The crime which Respondent was convicted of, as set out above, is a felony and bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (Regulations), to the qualifications, functions or duties of a real estate licensee.

V

The crime which Respondent was convicted of, as set out above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the Code.


PRIOR APPLICATION DENIAL

VI

On or about December 9, 1993, Respondent submitted an application for a real estate salesperson license. A Statement of Issues was filed on February 18, 1994, in case number H-7033 SF. A hearing was held on May 25, 1994, and on June 2, 1994 the Administrative Law Judge ordered that Respondent's application be

1 denied for violations of Business & Professions Code §§ 480 and  
2 10177(b). The Proposed Decision was adopted by the Commissioner  
3 on June 20, 1994.

4 WHEREFORE, the Complainant prays that the above-entitled  
5 matter be set for hearing and, upon proof of the charges contained  
6 herein, that the Commissioner refuse to authorize the issuance of,  
7 and deny the issuance of, a real estate salesperson license to  
8 Respondent, and for such other and further relief as may be proper  
9 in the premises.

10  
11   
12 LES R. BETTENCOURT  
Deputy Real Estate Commissioner

13 Dated at San Francisco, California,

14 this 16th day of December, 1994.  
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