

1 DEPARTMENT OF REAL ESTATE
P. O. Box 187000
2 Sacramento, CA 95818-7000
3 Telephone: (916) 227-0425

FILED
APR 18 1997
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

| | | |
|----|--------------------------------------|----------------------------------|
| 12 | In the Matter of the Accusation of) | NO. H-7384 SF |
| 13 | ORBIT PROPERTY CORPORATION,) | <u>STIPULATION AND AGREEMENT</u> |
| 14 | et al.,) | <u>IN SETTLEMENT AND ORDER</u> |
| 15 | Respondent.) | AS TO ORBIT PROPERTY |
| 16 |) | CORPORATION ONLY. |

17 It is hereby stipulated by and between ORBIT PROPERTY
18 CORPORATION (Respondent), represented by its attorney Robert S.
19 Miller, Attorney at Law, Stein & Lubin LLP, and the Complainant,
20 acting by and through Deidre L. Johnson, Counsel for the
21 Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation as to it filed on
23 August 29, 1996:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

1 Procedures Act (APA), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement in Settlement.

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

8 3. On September 16, 1996, Respondent filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that it
13 understands that by withdrawing said Notice of Defense it will
14 thereby waive the right to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA, and that it will waive
17 other rights afforded to it in connection with the hearing such as
18 the right to present evidence in defense of the allegations in the
19 Accusation and the right to cross-examine witnesses.

20 4. Respondent, pursuant to the limitations set forth
21 below, hereby admits that the factual allegations set forth in the
22 Accusation as to it, are true and correct and the Real Estate
23 Commissioner shall not be required to provide further evidence of
24 such allegations. A true copy of the Accusation is attached
25 hereto as Annex A and incorporated herein by reference.

26 5. It is understood by the parties that the Real Estate
27 Commissioner may adopt the Stipulation and Agreement in Settlement



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

4 I

5 The acts and/or omissions of Respondent ORBIT PROPERTY
6 CORPORATION as stipulated in Paragraph 4 above, violate Sections
7 10145(a) and 10145(d) of the California Business and Professions
8 Code (the Code), and Sections 2830, 2831, 2832.1, 2834 and 2835 of
9 Title 10, California Code of Regulations, and constitute grounds
10 for disciplinary action under the provisions of Sections 10176(e)
11 and 10177(d) of the Code.

12 ORDER

- 13 A. All real estate license(s) and license rights of Respondent
14 ORBIT PROPERTY CORPORATION are revoked.
- 15 B. A restricted corporate real estate broker license shall be
16 issued to Respondent pursuant to Section 10156.6 of the Code if
17 it makes application therefor and pays to the Department the
18 appropriate fee for said license within ninety (90) days of the
19 effective date of the Decision.
- 20 C. The restricted license issued to Respondent shall be subject to
21 all of the provisions of Section 10156.7 of the Business and
22 Professions Code and to the following limitations imposed under
23 authority of Section 10156.6 of said Code:
- 24 1) The restricted license issued to Respondent may be
25 suspended prior to hearing by order of the Real Estate
26 Commissioner in the event of Respondent's conviction or
27 plea of nolo contendere to a crime which bears a

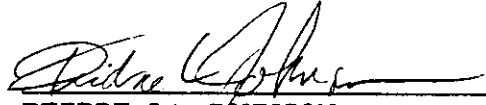


1 substantial relationship to Respondent's fitness or
2 capacity as a real estate licensee.

- 3 2) The restricted license may be suspended prior to hearing
4 by Order of the Real estate Commissioner on evidence
5 satisfactory to the Commissioner that Respondent has
6 violated provisions of the California Real Estate Law, the
7 Subdivided Lands Law, Regulations of the Real Estate
8 Commissioner or conditions attaching to the restricted
9 license.
- 10 3) Respondent shall not be eligible to apply for the issuance
11 of an unrestricted real estate license, nor the removal of
12 any of the conditions of the restricted license, until one
13 (1) year has elapsed from the effective date of this
14 Decision.
- 15 4) Pursuant to Section 10148 of the Business and Professions
16 Code, Respondent shall pay the Commissioner's reasonable
17 cost for an audit. In calculating the amount of the
18 Commissioner's reasonable cost, the Commissioner may use
19 the estimated average hourly salary for all Department
20 Audit Section personnel performing audits of real estate
21 brokers, and shall include an allocation for travel time to
22 and from the auditor's place of work. Respondent shall pay
23 such cost within forty-five (45) days of receiving an
24 invoice from the Commissioner detailing the activities
25 performed during the audit and the amount of time spent
26 performing those activities. The total cost shall not
27 exceed \$4,500. The Commissioner may suspend the restricted



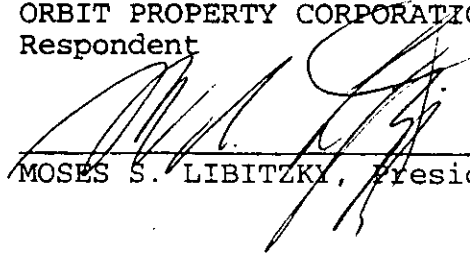
1 license issued to Respondent pending a hearing held in
2 accordance with Section 11500, et seq., of the Government
3 Code, if payment is not timely made as provided for
4 therein, or as provided for in a subsequent agreement
5 between the Respondent and the Commissioner. The suspension
6 shall remain in effect until payment is made in full or
7 until Respondent enters into an agreement satisfactory to
8 the Commissioner to provide for payment, or until a
9 decision providing otherwise is adopted following a hearing
10 held pursuant to this condition.

11 DATED: March 18, 1997 
12 DEIDRE L. JOHNSON
13 Counsel for the Complainant

14 * * *

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

25 ORBIT PROPERTY CORPORATION
26 Respondent

27 3/12/97 By: 
DATED MOSES S. LIBITZKY, President

1 APPROVED AS TO FORM:

2
3 3/12/97

4 DATED

5
6
7 

8 ROBERT S. MILLER
9 Counsel for Respondent

10 * * *

11 DECISION AND ORDER

12 The foregoing Stipulation and Agreement in Settlement is
13 hereby adopted as my Decision and Order and shall become effective
14 at 12 o'clock noon on May 8, 1997.

15 IT IS SO ORDERED 4/8, 1997.

16 JIM ANTT, JR.
17 Real Estate Commissioner

18 



1 DEPARTMENT OF REAL ESTATE
P. O. Box 187000
2 Sacramento, CA 95818-7000
3 Telephone: (916) 227-0425
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FILED
APR 10 1997
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-7384 SF
12 ORBIT PROPERTY CORPORATION,)
13 and JAMES RONALD MARTIN, JR.,) STIPULATION AND AGREEMENT
14 Respondents.) IN SETTLEMENT AND ORDER
15) AS TO JAMES RONALD
MARTIN, JR. ONLY.

16 It is hereby stipulated by and between JAMES RONALD
17 MARTIN, JR. (Respondent), and the Complainant, acting by and
18 through Deidre L. Johnson, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of
20 the Accusation as to him filed on August 29, 1996 in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27 Stipulation and Agreement in Settlement.



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

5 3. On September 16, 1996, Respondent filed a Notice
6 of Defense pursuant to Section 11505 of the Government Code
7 for the purpose of requesting a hearing on the allegations in
8 the Accusation. Respondent hereby freely and voluntarily
9 withdraws said Notice of Defense. Respondent acknowledges that
10 he understands that by withdrawing said Notice of Defense he
11 will thereby waive his rights to require the Commissioner to
12 prove the allegations in the Accusation at a contested hearing
13 held in accordance with the provisions of the APA and that he
14 will waive other rights afforded to him in connection with the
15 hearing such as the right to present evidence in defense of the
16 allegations in the Accusation and the right to cross-examine
17 witnesses.

18 4. Respondent, pursuant to the limitations set forth
19 below, hereby admits that the factual allegations as to him in the
20 Accusation filed in this proceeding are true and correct and the
21 Real Estate Commissioner shall not be required to provide further
22 evidence of such allegations. Respondent stipulates that the
23 Department may issue findings and determinations of issues that
24 the acts and/or omissions of Respondent as stipulated above
25 constitute grounds for disciplinary action as set forth herein.
26 A true copy of the Accusation is attached hereto as Annex A and
27 incorporated herein by reference.



1 California Code of Regulations, and constitute grounds for
2 disciplinary action under the provisions of Sections 10177(d),
3 10177(g) and 10177(h) of the Code.

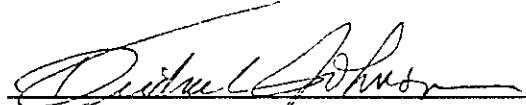
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5 ORDER

- 6 A. All real estate license(s) and license rights of Respondent
7 JAMES RONALD MARTIN, JR., shall be suspended for a period of
8 sixty (60) days from the effective date of the Order.
- 9 B. Said sixty (60) days of suspension shall be stayed for a
10 period of two (2) years on the condition that no cause for
11 disciplinary action against Respondent occurs within one (1)
12 year from the effective date of the Order. If the Real Estate
13 Commissioner determines that further cause for disciplinary
14 action against Respondent's license has occurred within one
15 (1) year from the effective date of the Order, the stay of
16 suspension hereby granted to Respondent, or such portion of
17 the stay as the Real Estate Commissioner shall deem
18 appropriate, shall be vacated. If no further cause for
19 disciplinary action occurs within said time period, the stay
20 hereby granted shall become permanent.
- 21 C. Said sixty (60) days of suspension are stayed for a period of
22 two (2) years on the further condition that Respondent shall,
23 within six (6) months from the effective date of this Order,
24 take and pass the Professional Responsibility Examination
25 administered by the Department including the payment of the
26 appropriate examination fee. If Respondent fails to satisfy
27 this condition, the Commissioner may order the stay of



1 suspension hereby granted to Respondent, or such portion of
2 the stay as the Real Estate Commissioner shall deem
3 appropriate, to be vacated. If Respondent timely passes the
4 examination, the stay hereby granted shall become permanent.
5

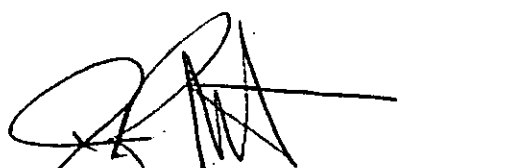
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7 March 18, 1997
8 DATED

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10 
11 DEIDRE L. JOHNSON
12 Counsel for Complainant.

13 * * *

14 I have read the Stipulation and Agreement in Settlement,
15 have consulted with an attorney or understand that I have the
16 right to consult with an attorney, and its terms are understood by
17 me and are agreeable and acceptable to me. I understand that I am
18 waiving rights given me by the California Administrative Procedure
19 Act (including but not limited to Sections 11506, 11508, 11509 and
20 11513 of the Government Code), and I willingly, intelligently and
21 voluntarily waive those rights, including the right of requiring
22 the Commissioner to prove the allegations in the Accusation at a
23 hearing at which I would have the right to cross-examine witnesses
24 against me and to present evidence in defense and mitigation of
25 the charges.
26
27

28 3/11/97
29 DATED

30 
31 JAMES RONALD MARTIN, JR.
32 Respondent

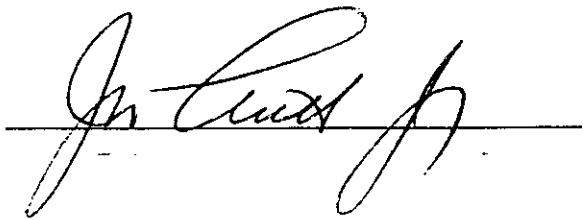
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The foregoing Stipulation and Agreement in Settlement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on April 30, 1997.

IT IS SO ORDERED 4/9, 1997.

JIM ANTT, JR.
Real Estate Commissioner



FILED
NOV 12 1996
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Shelley Ely

In the Matter of the Accusation of

ORBIT PROPERTY CORPORATION,
JAMES R. MARTIN, JR.

Case No. H-7384 SF

OAH No. N-9609138

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 The
Office of Administrative Hearings, World Savings Tower,
1970 Broadway, Second Floor, Oakland, California 94612
on Tuesday -- March 11, 1997, at the hour of 10:00 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: November 8, 1996

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

1 DEIDRE L. JOHNSON, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
San Francisco, CA 94107

4 Telephone: (415) 904-5917

FILED
AUG 29 1996

DEPARTMENT OF REAL ESTATE

By *Lynda Howell*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

| | |
|---|-------------------|
| 11 In the Matter of the Accusation of) | |
| 12 ORBIT PROPERTY CORPORATION) | No. H-7384 SF |
| 13 and JAMES RONALD MARTIN, JR.,) | <u>ACCUSATION</u> |
| 14 Respondents.) | |

15
16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for causes of
18 Accusation against ORBIT PROPERTY CORPORATION and JAMES RONALD
19 MARTIN, JR., is informed and alleges as follows:

20 FIRST CAUSE OF ACTION

I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation against Respondents in his official capacity and not
24 otherwise.

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II

Respondents ORBIT PROPERTY CORPORATION and JAMES RONALD MARTIN, JR. are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code).

III

At all times herein mentioned, Respondent ORBIT PROPERTY CORPORATION (hereafter OPC) was and is licensed by the Department of Real Estate (hereafter the Department) as a real estate broker corporation by and through designated broker officer JAMES RONALD MARTIN, JR. (hereafter MARTIN).

IV

At all times herein mentioned, Respondent MARTIN was and is licensed by the Department as a real estate broker, and also as the designated broker officer of OPC.

IV

At least within the last three years, OPC and MARTIN engaged in activities for which a real estate license is required, and leased or rented, offered to lease or rent, solicited prospective tenants, and/or collected rents on, and managed certain real properties in California on behalf of others, for or in expectation of compensation.

V

Beginning in September of 1995, the Department conducted an audit of OPC's business. During the course of the property management activities described above, Respondents OPC and MARTIN received and disbursed funds in trust on behalf of

1 others, and deposited the funds into a bank account at Bank of
2 America, College Avenue Branch, Oakland, California, Account No.
3 05447-11943, in the name of "Orbit Property Management Trust
4 Account."

5 VI

6 The authorized signatories on the above account were
7 JAMES MARTIN, JR., TRINH LANG, J.R. ORTON, MOSES LIBITZKY and
8 BARBARA GILBERT. Only one signature was required when signed by
9 an owner of shares of the corporation (ORTON or LIBITZKY); and two
10 signatures were required when signed by any of the other nonowner
11 signatories. Within the past three years, OPC and MARTIN
12 permitted or authorized withdrawals to be made from the trust
13 account by LANG, ORTON, LIBITZKY and GILBERT when they, and each
14 of them, were not licensed by the Department as either a real
15 estate broker or a real estate salesperson.

16 At no time herein was LANG, ORTON, LIBITZKY or GILBERT
17 duly bonded with the requisite fidelity bond insurance coverage to
18 conduct such trust account activities without any such real estate
19 license pursuant to Section 2834 of Title 10, California Code of
20 Regulations (hereafter the Regulations).

21 VII

22 In connection with the collection and disbursement of
23 the above trust funds, Respondents OPC and MARTIN failed to
24 deposit and maintain trust funds in a trust bank account in the
25 name of Respondent ORBIT PROPERTY CORPORATION as trustee.
26
27



VIII

1
2 In connection with the collection and disbursement of
3 the above trust funds, Respondents OPC and MARTIN failed to
4 deposit and maintain the trust funds in the trust bank account, or
5 in a neutral escrow depository, or to deliver them into the hands
6 of the owners of the funds, in such a manner that as of August 31,
7 1995, there was a trust fund shortage in the approximate sum of
8 \$81,232.13.

9 IX

10 As of August 31, 1995, most or all of the trust shortage
11 alleged above was caused by accountability to the owners of the
12 funds for interest earned on the account for the years 1990
13 through July 31, 1995, and not delivered into the hands of the
14 owners of the funds, but rather paid into the general funds of
15 OPC.

16 X

17 Through at least August of 1995, Respondents OPC and
18 MARTIN failed to maintain full and complete trust fund records in
19 connection with the above property management services, in that
20 the record of all trust funds received and disbursed (the
21 "control" record) failed to list the actual date of receipt of
22 trust funds in chronological order as required by Section 2831 of
23 the Regulations.

24 XI

25 OPC and MARTIN disbursed or diverted, or caused or
26 permitted the disbursement or diversion of trust funds in a manner
27 that reduced the balance of funds in the account to an amount less



1 than the existing aggregate trust fund liability of OPC to all
2 owners of the funds, without the prior written consent of all such
3 owners.

4 XII

5 Interest earned on the above trust account during at
6 least the last three years inured directly or indirectly to the
7 benefit of OPC and/or MARTIN.

8 XIII

9 The above trust account was an interest-bearing account
10 in which funds belonging to different owners of different
11 properties were commingled together. Respondents OPC and MARTIN
12 failed to keep each owner's trust funds in a separate account,
13 separate, distinct, and apart from funds belonging to any other
14 person for whom the broker held funds in trust as required by
15 Section 10145(d) of the Code.

16 XIV

17 During at least the past three years, Respondents OPC
18 and MARTIN deposited, or caused or permitted to be deposited,
19 commingled and disbursed general funds and fees of OPC to and from
20 the trust account for operating expenses of the company and other
21 non-trust purposes.

22 XV

23 The acts and/or omissions of Respondents OPC and
24 MARTIN as alleged above constitute grounds for disciplinary action
25 under the following provisions:

26 (a) As to Paragraph VI, under Section 2834 of the
27 Regulations, in conjunction with Section 10177(d) of the Code.



1 (b) As to Paragraph VII, under Section 2830 of the
2 Regulations in conjunction with Section 10177(d) of the Code.

3 (c) As to Paragraphs VIII and IX, under Section
4 10145(a) of the Code in conjunction with Section 10177(d) of the
5 Code.

6 (d) As to Paragraph X, under Section 2831 of the
7 Regulations in conjunction with Section 10177(d) of the Code.

8 (e) As to Paragraph XI, under Section 2832.1 of the
9 Regulations in conjunction with Section 10177(d) of the Code.

10 (f) As to Paragraphs XII and XIII, under Section
11 10145(d) of the Code in conjunction with Section 10177(d) of the
12 Code.

13 (g) As to Paragraph XIV, under Section 10176(e) of the
14 Code and Section 2835 of the Regulations in conjunction with
15 Section 10177(d) of the Code.

16 SECOND CAUSE OF ACTION.

17 XVI

18 All of the allegations contained in the first cause of
19 action above are incorporated herein as though fully set forth at
20 this point.

21 XVII

22 At all times above mentioned, MARTIN was responsible, as
23 the designated broker officer of OPC, for the supervision and
24 control of the activities conducted on behalf of OPC by its
25 officers and employees, and failed to so exercise reasonable
26 supervision and control. MARTIN was negligent and/or incompetent
27 in performing acts for which a real estate license is required, in



1 that he knew or should have known all the facts set forth in the
2 above allegations, and in that he could have and should have taken
3 steps to assure OPC's full compliance with the Real Estate Law and
4 failed to do so.

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XIX

The above acts and/or omissions of MARTIN constitute grounds for disciplinary action under the provisions of Sections 10177(g) and 10177(h) of the Code.

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



LES R. BETTENCOURT

Deputy Real Estate Commissioner

Dated at San Francisco, California,
this 30th day of July, 1996.