

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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7

FILED
NOV 3 1998
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)
12) NO. H-7589 SF
13 NORMA M. LUCAS,)
14 Respondent.) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between NORMA M. LUCAS
16 (Respondent), represented by Charles W. Ashford, and the
17 Complainant, acting by and through Deidre L. Johnson, Counsel
18 for the Department of Real Estate, as follows for the purpose of
19 settling and disposing the Accusation filed on June 24, 1998, in
20 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 Procedures Act (APA), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27 Stipulation and Agreement.

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

4 3. On July 22, 1998, Respondent filed her Notice of
5 Defense pursuant to Section 11505 of the Government Code for the
6 purpose of requesting a hearing on the allegations in the
7 Accusation. Respondent hereby freely and voluntarily withdraws
8 said Notice of Defense. Respondent acknowledges that she
9 understands that by withdrawing said Notice of Defense she will
10 thereby waive her right to require the Commissioner to prove the
11 allegations in the Accusation at a contested hearing held in
12 accordance with the provisions of the APA, and that she will waive
13 other rights afforded to her in connection with the hearing such
14 as the right to present evidence in defense of the allegations in
15 the Accusation and the right to cross-examine witnesses.

16 4. Respondent, pursuant to the limitations set forth
17 below, hereby admits that the factual allegations in Paragraphs I
18 through IV of the Accusation filed in this proceeding are true and
19 correct and the Real Estate Commissioner shall not be required to
20 provide further evidence of such allegations. A true copy of the
21 Accusation is attached hereto as Annex A and incorporated herein
22 by reference.

23 5. This Stipulation is based on the factual allegations
24 contained in the Accusation. In the interests of expedience and
25 economy, Respondent chooses not to contest the allegations in
26 Paragraphs V through X of the Accusation, but to remain silent and
27 understands that, as a result thereof, those factual allegations,



1 without being admitted or denied, will serve as the basis for the
2 disciplinary action stipulated to herein. The Real Estate
3 Commissioner shall not be required to provide further evidence to
4 prove said factual allegations.

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

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

21 DETERMINATION OF ISSUES

22
23 By reason of the foregoing stipulations, admissions and
24 waivers, and for the purpose of settlement of the pending
25 Accusation as to Respondent without a hearing, it is stipulated
26 and agreed that the following determination of issues shall be
27 made:

1 The acts and/or omissions of Respondent NORMA M. LUCAS
2 as stipulated above constitute grounds for the suspension or
3 revocation of the restricted real estate license(s) and license
4 rights of Respondent under the provisions of Sections 10176(a),
5 10176(b), and 10176(i) of the Code.

6 ORDER

- 7 A. All real estate salesperson license(s) and license rights of
8 Respondent NORMA M. LUCAS are hereby revoked.
- 9 B. A new restricted real estate salesperson license shall be
10 issued to Respondent pursuant to Section 10156.6 of the Code if
11 she makes application therefor and pays to the Department the
12 appropriate fee for said license within ninety (90) days of the
13 effective date of the decision.
- 14 C. The restricted license issued to Respondent shall be subject to
15 all of the provisions of Section 10156.7 of the Business and
16 Professions Code and to the following limitations imposed under
17 authority of Section 10156.6 of said Code:
- 18 (1) The restricted license issued to Respondent shall be
19 suspended for a period of sixty (60) days from the
20 effective date of the Decision; provided, however that
21 thirty (30) days of said suspension shall be stayed for a
22 period of two (2) years upon the following terms and
23 conditions:
- 24 (a) Respondent shall obey all laws, rules and
25 regulations governing the rights, duties and
26 responsibilities of a real estate licensee in the
27 State of California; and,



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(b) That no final subsequent determination be made,
after hearing or upon stipulation, that cause for
disciplinary action occurred within two (2) years of
the effective date of this Decision. Should such a
determination be made, the Commissioner may, in his
discretion, vacate and set aside the stay order and
reimpose all or a portion of the stayed suspension.
Should no such determination be made, the stay
imposed herein shall become permanent.

(2) As to the remaining thirty days of said suspension, said
suspension (or a portion thereof) shall be stayed if
Respondent so petitions, upon condition that:

(a) Respondent pays a monetary penalty pursuant to
Section 10175.2 of the Code at the rate of \$100.00
for each day of suspension for a total monetary
penalty of \$3,000.00.

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

(c) No further cause for disciplinary action against the
real estate license of Respondent occurs within two
(2) years from the effective date of the Decision in
this matter. That no final subsequent determination
be made, after hearing or upon stipulation, that
cause for disciplinary action occurred within two

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(2) years of the effective date of this Decision.
Should such a determination be made, the
Commissioner may, in his discretion, vacate and set
aside the stay order and reimpose all or a portion
of the stayed suspension. Should no such
determination be made, the stay imposed herein shall
become permanent.

(d) If Respondent fails to pay the monetary penalty in
accordance with the terms and conditions of the
Decision, the Commissioner may, without a hearing,
order the immediate execution of all or any part of
the stayed suspension in which event Respondent
shall not be entitled to any repayment nor credit,
prorated or otherwise, for money paid to the
Department under the terms of the Decision.

(e) If Respondent pays the monetary penalty and if no
further cause for disciplinary action against the
real estate licenses of Respondent occurs within two
(2) years from the effective date of the Decision,
the stay hereby granted in this subparagraph to
Respondent shall become permanent.

(3) The restricted license 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 bears a substantial relationship to
Respondent's fitness or capacity as a real estate
licensee.

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(4) The restricted license 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.

(5) Respondent shall not be eligible to apply for the
issuance of an unrestricted real estate license, nor the
removal of any of the conditions of the restricted
license, until two (2) years have elapsed from the date
of issuance of the restricted license.

(6) Respondent shall, within nine (9) months from the
effective date of this decision, present evidence
satisfactory to the Real Estate Commissioner that she
has, since the most recent issuance of an original or
renewal real estate license, 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 the Respondent
presents such evidence. The Commissioner shall afford
Respondent the opportunity for hearing pursuant to the
Administrative Procedure Act to present such evidence.

(7) Respondent shall, within six (6) months from the
effective date of this Decision, take and pass the

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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 the restricted license until Respondent passes the examination.

(8) Respondent shall submit with any application for license under an employing broker, or any application for transfer to an 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.

October 8, 1998
DATED

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, have consulted with counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act,

1 and I willingly, intelligently and voluntarily waive those rights,
2 including the right of requiring the Commissioner to prove the
3 allegations in the Accusation at a hearing at which I would have
4 the right to cross-examine witnesses against me and to present
5 evidence in defense and mitigation of the charges.

6
7 October 1, 1998 *Norma M. Lucas*
8 DATED NORMA M. LUCAS
9 Respondent

10 APPROVED AS TO FORM:
11 10/1/98 *C. Ashford*
12 DATED CHARLES W. ASHFORD
13 Attorney for Respondent

14 * * *

15 DECISION AND ORDER

16 The foregoing Stipulation and Agreement is hereby
17 adopted as my Decision and Order and shall become effective at 12
18 o'clock noon on November 23, 1998.

19 IT IS SO ORDERED 10/26, 1998.

20 JIM ANTT, JR.
21 Real Estate Commissioner

22 *Jim Antt, Jr.*
23
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27

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 25 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

NORMA M. LUCAS,

By Kathleen Contreras

Case No. H-7589 SF

OAH No. N-1998080143

Respondent

FIRST 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 _____

The Office of Administrative Hearings, the Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, CA 94612

on October 13, 1998, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: September 25, 1998

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

FILED
AUG 17 1998

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

DEPARTMENT OF REAL ESTATE
By Laurie A. Zier

In the Matter of the Accusation of
NORMA M. LUCAS,

}

Case No. H-7589 SF
OAH No. N-1998080143

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, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Thursday, September 24th, 1998, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: August 17, 1998

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

1 DEIDRE L. JOHNSON, Counsel
2 State Bar No. 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED
JUN 24 1998

DEPARTMENT OF REAL ESTATE

By Shelly Ely

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

11 * * *

12 In the Matter of the Accusation of)
13 NORMA M. LUCAS,) NO. H-7589 SF
14 Respondent.) ACCUSATION
15 _____)

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against NORMA M. LUCAS, is informed and alleges as
19 follows:

20 I

21 Respondent NORMA M. LUCAS (hereafter Respondent), is
22 presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the California Business and
24 Professions Code (hereafter the Code).

25 II

26 The Complainant, Les R. Bettencourt, a Deputy Real
27 Estate Commissioner of the State of California, makes this



1 Accusation against Respondent in his official capacity and not
2 otherwise.

3 III

4 At all times herein mentioned, NORMA M. LUCAS was
5 and is licensed by the Department of Real Estate (hereafter the
6 Department) as a restricted real estate salesperson.

7 IV

8 Beginning at least in September of 1996, Respondent
9 was engaged as a salesperson in the employ of real estate
10 broker Olive Fox, doing business as FOX & FOX PROPERTIES. At
11 all times herein mentioned, Respondent acted in the capacity
12 of a real estate licensee in California within the meaning
13 of Section 10131(a) of the Code, for or in expectation of
14 compensation, wherein Respondent sold or offered to sell,
15 bought or offered to buy, solicited prospective sellers and
16 purchasers of, and negotiated the purchase, sale or exchange
17 of real property.

18 V

19 In or about September of 1996, while acting in the
20 capacity of a real estate licensee as alleged above on behalf of
21 FOX & FOX PROPERTIES, Respondent obtained a listing for the sale
22 of residential real property located at 94 Shelbourn Street, Daly
23 City, California (hereafter the Property) for the sellers. In
24 addition to the primary living area of the home, the Property had
25 a downstairs area with a separate living, bath and kitchen area
26 (hereafter the Unit).

27 ///



1 VI

2 On or about October 20, 1996, prospective buyers Ihsan
3 and Diane Zghoul (hereafter Buyers) made an offer to purchase the
4 property by and through their real estate broker. Respondent
5 thereafter persuaded Buyers to retain FOX & FOX PROPERTIES as
6 their real estate broker to obtain a lower price, and Buyers
7 agreed. On or about November 12, 1996, Respondent prepared a
8 "contract for the sale and purchase of real property" (hereafter
9 the Offer) on behalf of Buyers, to constitute their offer to
10 purchase the Property. During the negotiations, Buyers informed
11 Respondent that they intended to rent the Unit to help make their
12 house payments, and asked Respondent whether or not it was a legal
13 unit.

14 VII

15 The Offer provided at Section 15(E) for disclosure of
16 any "illegal unit", or a unit that may violate zoning ordinances,
17 that may have been built without a building permit, or for which a
18 certificate of final completion and occupancy may not have been
19 issued; and provided warnings to a buyer of potential completion
20 expenses, fines and/or inability to rent such unit. Respondent
21 expressly or impliedly represented to Buyers that Section 15(E)
22 was not applicable to their transaction.

23 VIII

24 At or about the time of the Offer, Respondent expressly
25 or impliedly represented to Buyers, and thereafter so advised,
26 promised and assured them throughout the purchase period, that the
27 Unit was legal and that Buyers would be able to rent it to others



1 should Buyers purchase the Property. In reliance thereon, Buyers
2 made the Offer and purchased the Property, with close of escrow on
3 or about December 20, 1996.

4 IX

5 The above representations by Respondent, each time they
6 were made to Buyers prior to close of escrow, were false and
7 untrue and were known, or should have been known, by Respondent to
8 be false and untrue at the times they were made. The true facts
9 were that the Unit was not legal because the permit for its
10 addition did not allow a kitchen; that the permit only allowed a
11 "wet bar" with cold running water, and that the design approved by
12 the permit was materially different from the Unit that had been
13 built; and/or that Respondent made such representations, promises
14 and assurances to Buyers with reckless disregard for whether or
15 not the Unit was legal. At no time prior to close of escrow did
16 Respondent disclose the true facts to Buyers, although she had a
17 fiduciary duty to them to do so.

18 X

19 The acts and/or omissions of Respondent as alleged above
20 constitute grounds for disciplinary action under the provisions of
21 Sections 10176(a), 10176(b), and 10176(i) of the Code.

22 PRIOR DISCIPLINARY ACTION


23
24 Effective March 14, 1995, in Case No. H-7049 SF, the
25 Real Estate Commissioner revoked the real estate salesperson
26 license of Respondent, and granted the right to a restricted real
27 estate salesperson license on terms and conditions, for violation



1 of Section 10177(j) of the California Business and Professions
2 Code.

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

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LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at San Francisco, California,
this 23rd day of June, 1998.

