

By Jean Carroto

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondent
3 at a formal hearing on the Accusation and the Statement of
4 Issues, which hearing was to be held in accordance with the
5 provisions of the Administrative Procedures Act (APA), shall
6 instead and in place thereof be submitted solely on the basis of
7 the provisions of this Stipulation and Agreement.

8 2. Respondent has received, read and understands the
9 Statement to Respondent, and the Discovery Provisions of the APA
10 filed by the Department of Real Estate in these proceedings.

11 3. On May 20, 1999, Respondent filed a Notice of
12 Defense in the matter of the Accusation, and on July 30, 1999, he
13 filed a Notice of Defense in the matter of the Statement of
14 Issues herein; pursuant to Section 11505 of the Government Code,
15 for the purpose of requesting a hearing on the allegations in the
16 Accusation and the Statement of Issues. Respondent hereby freely
17 and voluntarily withdraws said Notices of Defense. Respondent
18 acknowledges that he understands that by withdrawing said Notices
19 of Defense he will thereby waive his rights to require the
20 Commissioner to prove the allegations in the Accusation and the
21 Statement of Issues at a contested hearing held in accordance
22 with the provisions of the APA, and that he will waive other
23 rights afforded to him in connection with the hearing, such as
24 the right to present evidence in defense of the allegations and
25 the right to cross-examine witnesses.

26 4. Respondent, pursuant to the limitations set forth
27 below, hereby admits that the factual allegations pertaining to



1 him in Paragraphs I through VI of the Accusation filed in this
2 proceeding are true and correct and the Real Estate Commissioner
3 shall not be required to provide further evidence of such
4 allegations.

5 5. Without admitting the truth of the allegations
6 pertaining to him contained in Paragraphs VII through XIV of the
7 Accusation, Respondent stipulates that he will not interpose a
8 defense thereto. This Stipulation is based on the factual
9 allegations contained in the Accusation. In the interests of
10 expedience and economy, Respondent chooses not to contest these
11 allegations, but to remain silent and understands that, as a
12 result thereof, these factual allegations pertaining to him,
13 without being admitted or denied, will serve as a basis for the
14 disciplinary action stipulated to herein. The Real Estate
15 Commissioner shall not be required to provide further evidence to
16 prove said factual allegations.

17 6. In connection with the Statement of Issues,
18 Respondent understands that by filing the Statement of Issues the
19 Real Estate Commissioner has shifted the burden to him to make a
20 satisfactory showing that he meets all requirements for issuance
21 of a real estate broker license, and that by entering into this
22 stipulation and agreement he stipulates that the Real Estate
23 Commissioner has found that he has failed to make such a showing,
24 thereby justifying the denial of the issuance to him of a real
25 estate broker license.

26 7. It is understood by the parties that the Real
27 Estate Commissioner may adopt the Stipulation and Agreement as



1 the decision in this matter as to this Respondent, thereby
2 denying the application and imposing the penalty and sanctions on
3 the real estate licenses and license rights of Respondent, and
4 as set forth in the below "Order". In the event that the
5 Commissioner in his discretion does not adopt the Stipulation and
6 Agreement as to this Respondent, it shall be void and of no
7 effect, and Respondent shall retain the right to a hearing and
8 proceeding on the Accusation and the Statement of Issues under
9 all the provisions of the APA and shall not be bound by any
10 admission or waiver made herein.

11 8. The Order or any subsequent Order of the Real
12 Estate Commissioner made pursuant to this Stipulation and
13 Agreement shall not constitute an estoppel, merger or bar to any
14 further administrative or civil proceedings by the Department of
15 Real Estate with respect to any matters which were not
16 specifically alleged to be causes for accusation or statement of
17 issues in these proceedings.

18 DETERMINATION OF ISSUES

19 By reason of the foregoing stipulations, admissions and
20 waivers and for the purpose of settlement of the pending
21 Accusation and Statement of Issues as to Respondent without a
22 hearing, it is stipulated and agreed that the following
23 determinations of issues shall be made:

24 I

25 The acts and/or omissions of Respondent GREGORY S.
26 KELSICKY as stipulated in Paragraphs 4 and 5 above violate Section
27 10130 of the Code and constitute grounds for disciplinary action



1 against the real estate salesperson license and license rights of
2 Respondent under the provisions of Sections 10137 and 10177(d) of
3 the Code.

4 II

5 The acts, omissions and/or waivers of Respondent
6 GREGORY S. KELSIKY as stipulated in Paragraphs 4, 5, and 6 above
7 constitute cause for denial of Respondent's application for a
8 real estate broker license under Sections 10177(d) and 10177(f)
9 of the Code.

10
11 ORDER

12 A. All real estate license(s) and license rights of
13 Respondent GREGORY S. KELISKY are hereby revoked.

14 B. A restricted real estate salesperson license shall
15 be issued to Respondent pursuant to Section 10156.6 of the Code
16 if he makes application therefor and pays to the Department of
17 Real Estate the appropriate fee for said license within ninety
18 (90) days from the effective date of the decision.

19 C. The restricted license issued to Respondent shall
20 be subject to all of the provisions of Section 10156.7 of the
21 Business and Professions Code and to the following limitations,
22 conditions and restrictions imposed under authority of Section
23 10156.6 of that Code:

- 24 (1) The restricted license issued to Respondent may
25 be suspended prior to hearing by Order of the
26 Real Estate Commissioner in the event of
27 Respondent's conviction or plea of nolo



1 contendere to a crime which is substantial
2 related to Respondent's fitness or capacity as a
3 real estate licensee.

4 (2) The restricted license issued to Respondent may
5 be suspended prior to hearing by Order of the
6 Real estate Commissioner on evidence
7 satisfactory to the Commissioner that Respondent
8 has violated provisions of the California Real
9 Estate Law, the Subdivided Lands Law,
10 Regulations of the Real Estate Commissioner or
11 conditions attaching to the restricted license.

12 (3) Respondent shall not be eligible to apply for
13 the issuance of an unrestricted real estate
14 license, nor the removal of any of the
15 conditions of the restricted license, until one
16 (1) year has elapsed from the effective date of
17 this Decision.

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

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



1 (b) That the employing broker will exercise

2 close supervision over the performance by the
3 restricted licensee relating to activities for
4 which a real estate license is required.

5 (5) Respondent shall, within nine (9) months from
6 the effective date of this Decision, present
7 evidence satisfactory to the Real Estate
8 Commissioner that Respondent has, since the most
9 recent issuance of an original or renewal real
10 estate license, taken and successfully completed
11 the continuing education requirements of Article
12 2.5 of Chapter 3 of the Real Estate Law for
13 renewal of a real estate license. If Respondent
14 fails to satisfy this condition, the
15 Commissioner may order the suspension of the
16 restricted license until the Respondent presents
17 such evidence. The Commissioner shall afford
18 Respondent the opportunity for hearing pursuant
19 to the Administrative Procedure Act to present
20 such evidence.

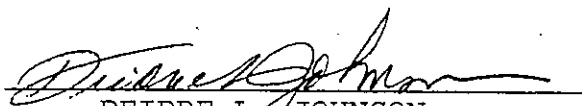
21 (6) Respondent shall, within six (6) months from the
22 effective date of this Decision, take and pass
23 the Professional Responsibility Examination
24 administered by the Department including the
25 payment of the appropriate examination fee. If
26 Respondent fails to satisfy this condition, the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



1 restricted license until Respondent passes the
2 examination.

3
4 D. The application of Respondent GREGORY S. KELISKY
5 for a real estate broker license is hereby denied.

6 DATED: November 16, 1999

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9 
10 DEIDRE L. JOHNSON
11 Counsel for the Complainant

12 * * *

13 I have read the Stipulation and Agreement, have
14 discussed it with my counsel or understand that I have the right
15 to consult with counsel, and its terms are understood by me and
16 are agreeable and acceptable to me. I understand that I am
17 waiving rights given to me by the California Administrative
18 Procedure Act, and I willingly, intelligently and voluntarily
19 waive those rights, including but not limited to the right of
20 requiring the Commissioner to prove the allegations in the
21 Accusation at a hearing at which I would have the right to cross-
22 examine witnesses against me and to present evidence in defense
23 and mitigation of the charges; as well as the right of presenting
24 evidence to prove my qualifications for licensure as to the
25 allegations in the Statement of Issues.
26
27



1 DATED: 11/1/99

2
3 GREGORY S. KELISKY
4 Respondent

5 APPROVED AS TO FORM:

6 DATED: 11/9/99

7
8
9 LAWRENCE R. JANNUZZI
10 Attorney for Respondent
11 * * *

12
13 The foregoing Stipulation and Agreement is hereby
14 adopted as my Decision and shall become effective at 12 o'clock
15 noon on December 28, 1999.

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17
18 IT IS SO ORDERED December 3, 1999.

19 PAULA REDDISH ZINNEBANN
20 Real Estate Commissioner

21
22 John R. Liberator

23
24
25 BY: John R. Liberator
26 Chief Deputy Commissioner
27



FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

OCT - 7 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contenza

In the Matter of the Accusation/Application of

GREGORY S. KELISKY,

Case No. H-7699 SF/H-7700 SF

OAH No. N-1999060119

Respondent

SECOND 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 25, 1999, 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: October 6, 1999

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

FILED

OCT - 7 1999

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation / Application of

GREGORY S. KELISKY,

Case No. H-7699 SF/H-7700 SFOAH No. N-1999060199RespondentAMENDED SECOND 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 TheOffice of Administrative Hearings, the Elihu Harris StateBuilding, 1515 Clay Street, Suite 206, Oakland, CA 94612

on October 22, 1999, 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: October 7, 1999By 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

APR 22 1999

DEPARTMENT OF REAL ESTATE

By Jean Bunch

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 GREGORY S. KELISKY,)
13 Respondent.)

NO. H-7700 SF

STATEMENT OF ISSUES

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Statement of Issues against GREGORY S. KELISKY, alleges as
18 follows:

19 I

20 GREGORY S. KELISKY (hereafter Respondent) made
21 application to the Department of Real Estate of the State of
22 California for a real estate broker license on or about
23 August 25, 1998.

24 II

25 The Complainant, Les R. Bettencourt, a Deputy Real Estate
26 Commissioner of the State of California, makes this Statement of
27 Issues in his official capacity and not otherwise.

III

On or about July 26, 1998, the restricted real estate salesperson license issued to GREGORY S. KELISKY (hereafter KELISKY) expired. At no time herein between about July 26, 1998, and January 7, 1999, was KELISKY licensed by the Department as either a real estate broker or salesperson. On or about January 7, 1999, KELISKY was licensed by the Department as a restricted real estate salesperson.

IV

During the period from at least July 26, 1998, to about January 7, 1999, when KELISKY's license was expired, KELISKY was employed or associated with MD MORTGAGE DIRECT, INC. (hereafter MD MORTGAGE) and its designated broker officer DEAN NICHOLAS DELIS, and performed activities for MD MORTGAGE for which a real estate license is required, for or in expectation of compensation. KELISKY solicited and/or negotiated sales and purchases of real property and was paid commissions by MD MORTGAGE in various transactions, including but not limited to the following:

DATE	CLIENT	PROPERTY	COMMISSION
7/31/98	CASALE, et al.	Known to Respondents	\$9,271
8/21/98	TURNER	285 Brook Drive, Boulder Creek CA	\$4,770
9/4/98	NOLL	1926 Ortega Avenue, San Francisco CA	\$2,862
10/9/98	ABELE, et al.	8407 Chenin Blanc Lane, San Jose CA	\$8,235
10/16/98	FEWER	642 Girard Street, San Francisco, CA	\$2,100
10/16/98	SALAZAR	358 Swaps Drive, San Jose, CA	\$3,600
10/23/98	BENSON	1998 Belle Avenue San Carlos, CA	\$7,864

DATE	CLIENT	PROPERTY	COMMISSION
10/30/98	GARATE	1600 Treat Street San Francisco, CA	\$1,980
11/6/98	KORNAROS	866 Morningside Drive Millbrae, CA	\$2,740
11/13/98	ROSAS	801 S. Norfolk San Mateo, CA	\$3,747
11/17/98	THOMPSON	15 Rocca Ct., South San Francisco, CA	\$6,363
11/24/98	MCJUNKIN	460 Distel Drive Los Altos, CA	\$5,381

V

Effective May 4, 1994, in Action No. H-7069 SF, before the State of California Department of Real Estate, the application of Respondent for a real estate salesperson license was denied. Respondent was granted the right to a restricted salesperson license, pursuant to Sections 480(a) and 10177(b) of the Business and Professions Code. The grounds for denial were based in whole or in part on acts which if done by a real estate licensee would be grounds for the suspension or revocation of a California real estate license.


VI

The acts and/or omissions of Respondent KELISKY as alleged in Paragraph IV above violate Sections 10130 and 10137 of the Code, and constitute cause for denial of Respondent's application for a real estate broker license under Sections 10177(d) and 10177(f) of the Code.

VII

The facts alleged in Paragraph V above constitute cause for denial of Respondent's application for a real estate broker license under Section 10177(f) of the Code, separately and/or in conjunction with Paragraph VI above.

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

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9
10 
11 LES R. BETTENCOURT
12 Deputy Real Estate Commissioner

13
14 Dated at Oakland, California,
15 this 16th day of April, 1999.