

FILED  
APR - 3 2003

DEPARTMENT OF REAL ESTATE

By *Lucie L. [Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
 ) No. H-8175 SF  
PHILIP ANTHONY MASTROCOLA, )  
 )  
Respondent. )

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 22, 2002, an Accusation was filed in this matter against Respondent.

On March 7, 2003, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent's petition for voluntary surrender of his real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated March 7, 2003 (attached as Exhibit "A" hereto).

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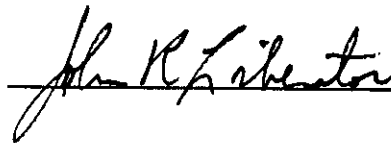
1 Respondent's license certificate and pocket card shall  
2 be sent to the below-listed address so that they reach the  
3 Department on or before the effective date of this Order:

4 DEPARTMENT OF REAL ESTATE  
5 Attention: Licensing Flag Section  
6 P. O. Box 187000  
7 Sacramento, CA 95818-7000

8 This Order shall become effective at 12 o'clock  
9 noon on APRIL 24, 2003.

10 DATED: March 17, 2003

11 PAULA REDDISH ZINNEBANN  
12 Real Estate Commissioner

13   
14 \_\_\_\_\_

15 BY: John R. Liberator  
16 Chief Deputy Commissioner  
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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
 ) No. H-8175 SF  
PHILIP ANTHONY MASTROCOLA, )  
 )  
Respondent. )  
 )

DECLARATION

My name is PHILIP ANTHONY MASTROCOLA, and that I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am representing myself in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

///  
///



1 I understand that by so voluntarily surrendering my  
2 license, that it can only be reinstated in accordance with the  
3 provisions of Section 11522 of the Government Code. I also  
4 understand that by so voluntarily surrendering my license, I  
5 agree to the following:

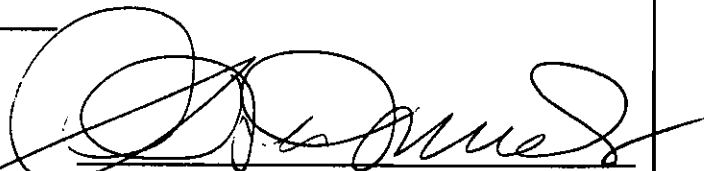
6 The filing of this Declaration shall be deemed as my  
7 petition for voluntary surrender. It shall also be deemed to be  
8 an understanding and agreement by me that, I waive all rights I  
9 have to require the Commissioner to prove the allegations  
10 contained in the Accusation filed in this matter at a hearing  
11 held in accordance with the provisions of the Administrative  
12 Procedures Act (Government Code Sections 11400 et seq.), and  
13 that I also waive other rights afforded to me in connection with  
14 the hearing such as the right to discovery, the right to present  
15 evidence in defense of the allegations in the Accusation and the  
16 right to cross examine witnesses. I further agree that upon  
17 acceptance by the Commissioner, as evidenced by an appropriate  
18 order, all affidavits and all relevant evidence obtained by the  
19 Department in this matter prior to the Commissioner's  
20 acceptance, and all allegations contained in the Accusation  
21 filed in the Department Case No. H-8175 SF, may be considered by  
22 the Department to be true and correct for the purpose of  
23 deciding whether or not to grant reinstatement of my license  
24 pursuant to Government Code Section 11522.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that I freely and voluntarily surrender my license and all license rights attached thereto.

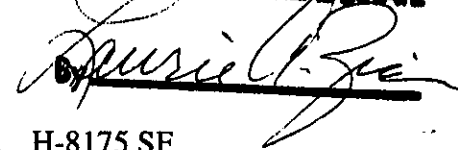
DATED: 3/7/05

  
PHILIP ANTHONY MASTROCOLA  
Respondent

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
DEC 11 2002

DEPARTMENT OF REAL ESTATE



In the Matter of the Accusation of

PHILIP ANTHONY MASTROCOLA,

}

Case No. H-8175 SF

OAH No. N-2002110173

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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 **MARCH 10 & 11, 2003**, at the hour of **9:00 A.M.**, 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: DECEMBER 11, 2002

By David A. Peters  
DAVID A. PETERS, Counsel 

1 DAVID A. PETERS, Counsel (SBN 99528)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000  
5 Telephone: (916) 227-0789  
6 -or- (916) 227-0781 (Direct)  
7

FILED  
AUG 22 2002

DEPARTMENT OF REAL ESTATE  
By Luisel B...

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 PHILIP ANTHONY MASTROCOLA, ) No. H-8175 SF  
13 Respondent. ) ACCUSATION

14  
15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 accusation against PHILIP ANTHONY MASTROCOLA (hereinafter  
18 "Respondent") is informed and alleges as follows:

19 FIRST CAUSE OF ACCUSATION

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.

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II

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code") as a real estate broker.

III

At various times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(b) of the Code, wherein Respondent for or in expectation of a compensation solicited prospective tenants for, negotiated rental agreements for and collected rents from real properties owned by another or others and otherwise managed real properties located in or near San Jose, California.

IV

Beginning on or about August 8, 1998, in connection with the property management activities described in Paragraph III above, Respondent began managing a real property commonly known as 1667 Topeka Avenue, San Jose, California (hereinafter "the Subject Property") owned by Keh Chang Ho (hereinafter "the Owner").

V

On or about August 8, 1998, Respondent negotiated a residential lease on the Subject Property to Charles Cox and Diana Hamlet-Cox (hereinafter "the Tenants"). Said lease was to begin on April 10, 1999 and to terminate on April 9, 2000. In



1 connection with said lease Respondent received a security  
2 deposit from the Tenants in the amount of \$3,700.00 to be held  
3 in Respondent's trust account.

4 VI

5 On or about September 3, 1999, the Owner terminated  
6 the property management agreement with Respondent for the  
7 Management of the Subject Property.

8 VII

9 Beginning on or about September 3, 1999, and  
10 continuing thereafter, Respondent refused and/or failed to pay  
11 to the Owners all or any portion of the \$3,700.00 security  
12 deposit.

13 VIII

14 The acts and/or omissions of Respondent described  
15 above are grounds for the suspension or revocation of the  
16 license and/or license rights of Respondent under Section  
17 10176(i) or 10177(j) of the Code.

18 SECOND CAUSE OF ACCUSATION

19 IX

20 There is hereby incorporated in this second, separate  
21 and distinct cause of Accusation, all of the allegations  
22 contained in Paragraphs I, II, and III of the First Cause of  
23 Accusation with the same force and effect as if herein fully set  
24 forth.

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X

Respondent has abandoned his business office at 2136 The Alameda, San Jose, California and has failed to maintain on file with the Real Estate Commissioner a new address for the principal place of business for his real estate brokerage activities.

XI

The facts alleged above in this Second Cause of Accusation, are a violation of Section 10162 of the Code and are grounds for the suspension or revocation of the license and/or license rights of Respondent under Sections 10165 and 10177(d) of the Code.

THIRD CAUSE OF ACCUSATION

XII

There is hereby incorporated in this third, separate and distinct cause of Accusation, all of the allegations contained in Paragraphs I, II, and III of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIII

On or about February 28, 2001, in the Superior Court of the State of California for the County of Solano, in Case No. 012836, a final judgment was entered against Respondent based on grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required.

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XIV

The facts set forth in this Third Cause of Accusation constitute cause under Section 10177.5 of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

FOURTH CAUSE OF ACCUSATION

XV

There is hereby incorporated in this fourth, separate and distinct cause of Accusation, all of the allegations contained in Paragraphs I and II, of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XVI

Beginning on or before October 10, 1999, and continuing thereafter, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(a) of the Code, by selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of real property.

XVII

On or about October 10, 1999, in connection with the real estate sales activities described in Paragraph XVI above, Respondent caused an offer in the form of a "Real Estate Purchase Contract" to be made by Mark Rokovich (hereinafter "the Buyer") on the purchase of a real property commonly known as

1 1625 Emory Street, San Jose, California (hereinafter "the  
2 Subject Property") owned by Steven, Kevin and Ralph Salmon  
3 (hereinafter "the Sellers").

4 XVIII

5 On or about November 23, 1999, the Sellers made a  
6 counter-offer to the offer described in Paragraph XVII above.

7 XIX

8 On or about November 23, 1999, said counter-offer  
9 described in Paragraph XVIII above, was accepted by the Buyer.

10 XX

11 On or about November 23, 1999, in connection with the  
12 counter-offer described in Paragraph XVIII above, the Buyer  
13 provided Respondent with a deposit on the purchase of the  
14 Subject Property in the amount of \$32,000.00 in the form of a  
15 check from the Buyer made payable to "First Continental Title".

16 XXI

17 On or before December 2, 1999, Respondent altered or  
18 caused to be altered the deposit check described in Paragraph  
19 XVIII above, by changing the payee name from "First Continental"  
20 to "Philip Mastrocola".

21 XXII

22 On or about December 2, 1999, converted said  
23 \$32,000.00 deposit to his own use or uses or for purposes not  
24 authorized the owner of said funds.

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XXIII

The acts and/or omissions of Respondent described in this Fourth Cause of Accusation are grounds for the suspension or revocation of the license and/or license rights of Respondent under Section 10176(i) and/or 10177(j) 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 Sacramento, California,  
this 21st day of August, 2002.