

FILED

OCT 22 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

DAVID MICHAEL CONSTANTINO,

Respondent.

NO. H-10761 SF

ORDER ACCEPTING VOLUNTARY SURRENDER

On August 28, 2009, an Accusation was filed in this matter against Respondent
DAVID MICHAEL CONSTANTINO.

By Declaration signed September 23, 2009, Respondent DAVID MICHAEL
CONSTANTINO petitioned the Real Estate Commissioner to voluntarily surrender his real
estate license(s) pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that the petition of Respondent DAVID
MICHAEL CONSTANTINO for the voluntary surrender of his real estate license(s) is
accepted as of the effective date of this Order as set forth below, based upon the understanding

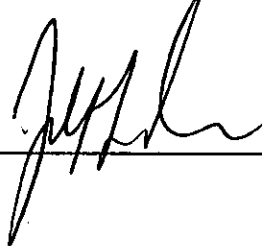
1 and agreement expressed in the Declaration of Respondent DAVID MICHAEL
2 CONSTANTINO dated September 23, 2009 (attached hereto as Exhibit "A").

3 This Order shall become effective at 12 o'clock noon on

4 November 12, 2009

5
6 DATED: 10-21-09

7 JEFF DAVI
8 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
DAVID MICHAEL CONSTANTINO,	)	NO. H-10761 SF
Respondent.	)	

DECLARATION

My name is DAVID MICHAEL CONSTANTINO, and I am currently licensed as a real estate broker and 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 Government Code), I wish to voluntarily surrender my real estate license(s) issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that by so voluntarily surrendering my license(s), I may be relicensed as a broker or as a salesperson only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. I also understand that by so voluntarily surrendering my license(s), I agree to the following:

1. The filing of this Declaration shall be deemed as my petition for voluntary surrender.



2. It shall also be deemed to be an understanding and agreement by me that I waive all rights I have to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that I also waive other rights afforded to me in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation, and the right to cross-examine witnesses.

3. I further agree that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-10761 SF, may be considered by the Department to be true and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code Section 11522.

4. I freely and voluntarily surrender all my licenses and license rights under the Real Estate Law.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed September 23, 2009, at San Mateo, California.


DAVID MICHAEL CONSTANTINO



1 MARY F. CLARKE, Real Estate Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
5 -or- (916) 227-0780 (Direct)

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AUG 28 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 DAVID MICHAEL CONSTANTINO,)
14)
Respondent.)

NO. H- 10761 .SF

ACCUSATION

15 The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of
16 the State of California, for cause of Accusation against DAVID MICHAEL CONSTANTINO
17 (herein "Respondent"), dba "Town & Country Property Management (herein "T&CPM"), is
18 informed and alleges as follows:

19 1

20 The Complainant makes this Accusation in his official capacity.

21 2

22 At all times herein mentioned, Respondent was and is now licensed and/or has
23 license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
24 Code) (herein "the Code").

25 3

26 At all times herein mentioned, Respondent was and now is licensed by the State
27 of California Department of Real Estate (herein "the Department") as a real estate broker.

1 4

2 At no time herein mentioned was Bernie G. Yanez-Pastor (herein "YANEZ-
3 PASTOR) licensed or had license rights under the Real Estate Law.

4 5

5 At no time herein mentioned was Lynne A. Thompson (herein "THOMPSON")
6 licensed or had license rights under the Real Estate Law.

7 6

8 At all times herein mentioned, Respondent engaged in the business of, acted in
9 the capacity of, advertised, or assumed to act as a real estate broker on behalf of others, for
10 compensation or in expectation of compensation within the State of California within the
11 meaning of Section 10131(b) of the Code wherein Respondent leased or rented or offered to
12 lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective
13 tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business
14 opportunity, or collected rents from real property, or improvements thereon, or from business
15 opportunities.

16 7

17 In so acting as a real estate broker, Respondent accepted or received funds in trust
18 (herein "trust funds") from or on behalf of lenders, investors, borrowers, and others in connection
19 with the property management activities described in Paragraph 6, above, and thereafter from
20 time to time made disbursements of said trust funds.

21 8

22 The aforesaid trust funds accepted or received by Respondent were deposited or
23 caused to be deposited by Respondent into one or more bank accounts (herein "trust fund
24 accounts") maintained by Respondent for the handling of trust funds at the San Mateo, California
25 branch of the United American Bank:

26 (a) "David M. Constantino dba Town & Country Property Management
27 Trust Account" account number 013001441 (herein "Trust #1"); and,

1 (b) "Bernie G. Yanez-Pastor dba Town & Country Real Estate
2 Management Trust Account," account number 014000798
3 (herein "Trust #2").
4

9

5 Between about January 1, 2006 and February 29, 2008, in connection with
6 Respondent's property management activities, as described in Paragraphs 6 through 8, above,
7 Respondent:

- 8 (a) employed and compensated YANEZ-PASTOR and THOMPSON,
9 unlicensed persons, for activities that require a real estate license, in
10 violation of Sections 10130 and 10137 of the Code;
11 (b) authorized YANEZ-PASTOR and THOMPSON, unlicensed persons
12 without fidelity bond coverage, to make withdrawals from Trusts #1
13 and #2, in violation of Section 2834 of Chapter 6, Title 10,
14 California Code of Regulations (herein "the Regulations");
15 (c) failed to place trust funds entrusted to Respondent into the hands of a
16 principal on whose behalf the funds were received, into a neutral
17 escrow depository, or into a trust fund account in the name of
18 Respondent as trustee at a bank or other financial institution, in
19 conformance with the requirements of Section 10145 of the Code
20 and Section 2832 of the Regulations, in that Respondent placed such
21 funds in Trust #2;
22 (d) caused, suffered or permitted the balance of funds in Trust #2 to be
23 reduced to an amount, which as of October 31, 2007, was
24 approximately \$15.00 less than the aggregate liability of
25 Respondents to all owners of such funds, without the prior written
26 consent of the owners of such funds, in violation of Section 2832.1
27 of the Regulations;

- 1 (e) failed to keep a columnar record in chronological sequence of all trust
2 funds received and disbursed from Trusts #1 and #2 containing all the
3 information required by Section 2831 of the Regulations;
- 4 (f) failed to keep a separate record for each beneficiary or transaction for
5 Trusts #1 and #2 containing all the information required by Section
6 2831.1 of the Regulations;
- 7 (g) failed to reconcile at least once a month, the balance of all separate
8 beneficiary or transaction records with Trusts #1 and #2, as required by
9 Section 2831.2 of the Regulations;
- 10 (h) failed to retain for three years copies of cancelled checks issued on
11 Trusts #1 and #2, in connection with transactions for which a real
12 estate license is required, in violation of Section 10148(a) of the Code;
- 13 (i) failed to obtain a real estate license bearing the fictitious business
14 names "Town & Country Real Estate Management" and "Town &
15 Country Real Estate Management, Inc." while conducting activities for
16 which a license was required in violation of Section 10159.5 of the
17 Code and Section 2731 of the Regulations; and,
- 18 (j) failed to maintain a definite place of business in the State of California
19 which serves as Respondent's office for the transaction of business, in
20 violation of 10162 of the Code.

21 10

22 The facts alleged above are grounds for the suspension or revocation of the license
23 and license rights of Respondent under the following provisions of the Code:

- 24 (a) as to Paragraph 9(a) under Sections 10130 and 10137 of the Code in
25 conjunction with Section 10177(d) of the Code;
- 26 (b) as to Paragraph 9(b) under Section 2834 of the Regulations in
27 conjunction with Section 10177(d) of the Code;

- 1 (c) as to Paragraph 9(c) under Section 10145 of the Code and Section
2 2832 of the Regulations in conjunction with Section 10177(d) of the
3 Code;
4 (d) as to Paragraph 9(d) under Section 2832.1 of the Regulations in
5 conjunction with Section 10177(d) of the Code;
6 (e) as to Paragraph 9(e) under Section 2831 of the Regulations in
7 conjunction with Section 10177(d) of the Code;
8 (f) as to Paragraph 9(f) under Section 2831.1 of the Regulations in
9 conjunction with Section 10177(d) of the Code;
10 (g) as to Paragraph 9(g) under Section 2831.2 of the Regulations in
11 conjunction with Section 10177(d) of the Code;
12 (h) as to Paragraph 9(h) under Section 10148(a) of the Code in
13 conjunction with Section 10177(d) of the Code;
14 (i) as to Paragraph 9(i) under Section 10159.5 of the Code and Section
15 2731 of the Regulations in conjunction with Section 10177(d) of the
16 Code; and,
17 (j) as to Paragraph 9(j) under Section 10162 of the Code in conjunction
18 with Section 10177(d) of the Code.

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

24
25
26 Dated at Oakland, California
27 this 6th day of May, 2009.


E. J. HABERER II
Deputy Real Estate Commissioner