

1 I have considered Respondent's petition and the
2 evidence submitted and arguments in support thereof.

3 Respondent has failed to demonstrate to my satisfaction that
4 Respondent has undergone sufficient rehabilitation to warrant
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license, in that:

7
8 I

9 In the Decision which revoked the real estate license
10 of Respondent there was a Determination of Issues made that
11 there was cause to revoke Respondent's real estate license
12 pursuant to Business and Professions Code ("Code") Section
13 10176(a).

14 (a) In or about January, 1996, Respondent was
15 licensed as a real estate salesperson. He represented that he
16 was employed by a licensed real estate broker and executed a
17 Real Estate Purchase Contract and Receipt for Deposit ("Deposit
18 Receipt") for buyers to purchase certain real property owned by
19 Mission Savings and Loan Association ("Seller").

20 The Deposit Receipt, which was prepared by Respondent
21 and delivered to the Seller represented that Respondent had
22 received from the buyers \$500 as a down payment/deposit for the
23 purchase of the property. In truth and in fact Respondent had
24 not received the deposit.

25 ///

26 ///

27 ///

1 (b) In or about March, 1997, Respondent was licensed
2 as a real estate salesperson. He represented that he was
3 employed by a licensed real estate broker and executed a
4 Deposit Receipt for buyers to purchase certain real property
5 owned by Bank of America ("Seller #2").
6

7 The Deposit Receipt, which was prepared by Respondent
8 and delivered to the Seller #2 represented that Respondent had
9 received from the buyers \$3,000 as a down payment/deposit for
10 the purchase of the property. In truth and in fact Respondent
11 had not received the deposit.

12 II

13 Due to the serious nature of the misconduct which
14 led to the loss of Respondent's real estate salesperson, and
15 the fact that Respondent has not been licensed to engage in
16 acts requiring a real estate license for over four (4) years,
17 additional time is needed to measure rehabilitation. This
18 is cause to deny Respondent's petition pursuant to Section
19 2911(a), Title 10, Chapter 6, California Code of Regulations.

20 I am satisfied, however, that it will not be against
21 the public interest to issue a restricted real estate
22 salesperson license to Respondent.

23 NOW, THEREFORE, IT IS ORDERED that Respondent's
24 petition for reinstatement of Respondent's real estate
25 salesperson license is denied.

26 ///

27 ///

1 A restricted real estate salesperson license shall
2 be issued to Respondent pursuant to Code Section 10156.5 if
3 Respondent first:

4 (a) makes application therefor and pays the
5 appropriate fee for said license within nine (9) months from
6 the date hereof.

7
8 (b) takes and passes the Professional Responsibility
9 Examination administered by the Department including the
10 payment of the appropriate examination fee.

11 The restricted license issued to Respondent shall be
12 subject to all of the provisions of Code Section 10156.7 and to
13 the following limitations, conditions and restrictions imposed
14 under authority of Code Section 10156.6:

15 1. The restricted license issued to Respondent
16 may be suspended prior to hearing by Order of the Real Estate
17 Commissioner in the event of Respondent's conviction or plea
18 of nolo contendere to a crime which is substantially related
19 to Respondent's fitness or capacity as a real estate licensee.

20 . 2. The restricted license issued to Respondent
21 may be suspended prior to hearing by Order of the Real Estate
22 Commissioner on evidence satisfactory to the Commissioner that
23 Respondent has violated provisions of the California Real
24 Estate Law, the Subdivided Lands Law, Regulations of the Real
25 Estate Commissioner or conditions attaching to the restricted
26 license.

27 ///

1
2 3. Respondent shall not be eligible to apply for
3 the issuance of an unrestricted real estate license nor for the
4 removal of any of the conditions, limitations or restrictions
5 of a restricted license until two (2) years have elapsed from
6 the effective date of this Decision.

7 4. Respondent shall submit with any application for
8 license under an employing broker, or with any application for
9 transfer to a new employing broker, a statement signed by the
10 prospective employing real estate broker on a form approved by
11 the Department which shall certify:

12 (a) That the employing broker has read the Decision
13 of the Commissioner which granted the right to a restricted
14 license; and

15 (b) That the employing broker will exercise close
16 supervision over the performance by the restricted licensee
17 relating to activities for which a real estate license is
18 required.

19 5. Respondent shall within nine (9) months from the
20 date hereof, submit evidence satisfactory to the Real Estate
21 Commissioner that Respondent has, since Respondent's license
22 was revoked, taken and successfully completed the continuing
23 education requirements of Article 2.5 of Chapter 3 of the Real
24 Estate Law for renewal of a real estate license.

25 ///

26 ///

27 ///

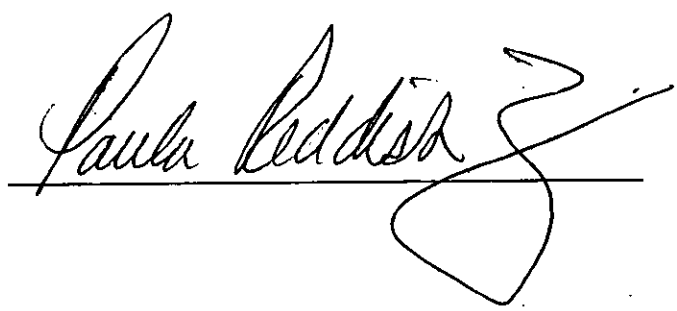
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

This Order shall become effective at 12 o'clock noon

on November 18, 2002.

DATED: October 22, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

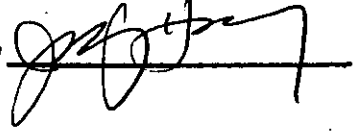


cc: Marcos Cruz Martinez
12301 Osborne Avenue, Apt. 20
Pacoima, CA 91331

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
OCT 23 2002

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-27207 LA
)
CARLOS C. MARTINEZ,)
)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On August 10, 1998, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to the issuance of a restricted
real estate broker license. A restricted real estate broker
license was issued to Respondent or about October 19, 1998, and
Respondent has operated as a restricted licensee without cause
for disciplinary action against Respondent since that time.

On March 2, 2001, Respondent petitioned for
reinstatement of said real estate broker license and the
Attorney General of the State of California has been given
notice of the filing of said petition.

///

1 I have considered the petition of Respondent and
2 the evidence and arguments in support thereof including
3 Respondent's record as a restricted licensee. Respondent
4 has demonstrated to my satisfaction that Respondent meets
5 the requirements of law for the issuance to Respondent of
6 an unrestricted real estate broker license and that it would
7 not be against the public interest to issue said license to
8 Respondent CARLOS C. MARTINEZ.
9

10 NOW, THEREFORE, IT IS ORDERED that Respondent's
11 petition for reinstatement is granted and that a real estate
12 broker license be issued to Respondent if Respondent satisfies
13 the following conditions within nine (9) months from the date
14 of this Order:

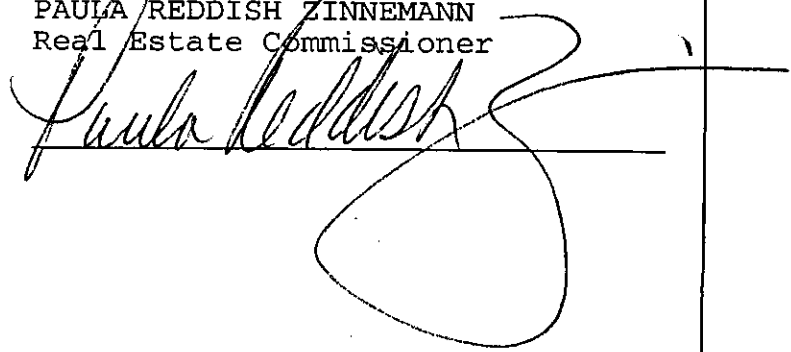
15 1. Submittal of a completed application and payment
16 of the fee for a real estate broker license.

17 2. Submittal of evidence of having, since the most
18 recent issuance of an original or renewal real estate license,
19 taken and successfully completed the continuing education
20 requirements of Article 2.5 of Chapter 3 of the Real Estate
21 Law for renewal of a real estate license.

22 This Order shall become effective immediately.

23 DATED: October 16, 2002.

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner



26 cc: Carlos C. Martinez
27 13643 Polk St.
Sylmar, CA 91342

1

2

3

4

5

6

7

8

BEFORE THE DEPARTMENT OF REAL ESTATE

9

STATE OF CALIFORNIA

10

* * * *

11

In the Matter of the Accusation of)

12

METRO BROTHERS, INC.,)

13

a California corporate broker;)

14

and CARLOS C. MARTINEZ,)

individually and as)

designated officer of)

Metro Brothers, Inc.,)

No. H-27207 LA

15

16

Respondents.)

17

In the Matter of the Accusation of)

18

MARCOS CRUZ MARTINEZ)

19

and CARLOS C. MARTINEZ,)

20

No. H-27207 LA

21

22

Respondents.)

23

ORDER STAYING EFFECTIVE DATE

24

25

26

The Order in the Stipulation and Agreement in the above-entitled matter was to become effective September 8, 1998.

27

IT IS HEREBY ORDERED that the effective date of said Stipulation and Agreement, is stayed for a period of 30 days.

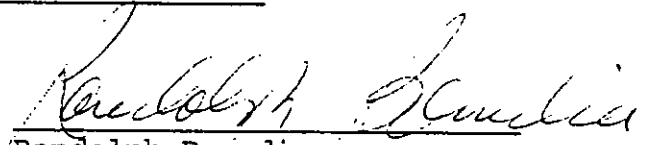


1 An ORDER STAYING EFFECTIVE DATE stayed the effective date of
2 September 8, 1998, for 30 days, staying the effective date until
3 October 8, 1998.

4 IT IS HEREBY ORDERED that the effective date of the
5 Decision of October 8, 1998, is stayed for an additional period of
6 10 days.

7 The Stipulation and Agreement shall become effective
8 at 12 o'clock noon on October 19, 1998.

9 DATED 8 Oct. 1998

10
11 
12 Randolph Brendia
13 Regional Manager
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)
METRO BROTHERS, INC.,)
a California corporate broker;)
and CARLOS C. MARTINEZ,)
individually and as)
designated officer of)
Metro Brothers, Inc.,)
Respondents.)

No. H-27207 LA

In the Matter of the Accusation of)
MARCOS CRUZ MARTINEZ)
and CARLOS C. MARTINEZ,)
Respondents.)

No. H-27207 LA

ORDER STAYING EFFECTIVE DATE

The Order in the Stipulation and Agreement in the above-entitled matter was to become effective September 8, 1998.

IT IS HEREBY ORDERED that the effective date of said Stipulation and Agreement, is stayed for a period of 30 days.



1 The Stipulation and Agreement shall become effective
2 at 12 o'clock noon on October 8, 1998.

3 DATED

8 Sept. 1998

4
5 *Randolph Brenda*
6 Randolph Brenda
7 Regional Manager
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



1 ELLIOTT MAC LENNAN, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012

5 (213) 897-3937

FILED
AUG 19 1998
DEPARTMENT OF REAL ESTATE

By K. Kriegerheld

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)
12 METRO BROTHERS, INC.,)
13 a California corporate broker;)
14 and CARLOS C. MARTINEZ,)
15 individually and as)
16 designated officer of)
17 Metro Brothers, Inc.,)
18 Respondents.)

No. H-27207 LA

19 In the Matter of the Accusation of)
20 MARCOS CRUZ MARTINEZ)
21 and CARLOS C. MARTINEZ,)
22 Respondents.)

STIPULATION AND AGREEMENT

23
24 It is hereby stipulated by and between METRO BROTHERS,
25 INC., and CARLOS C. MARTINEZ individually and as designated
26 officer of Metro Brother, Inc., and MARCOS CRUZ MARTINEZ
27 (sometimes collectively referred to as Respondents), and the

1 Complainant, acting by and through Elliott Mac Lennan, Counsel for
2 the Department of Real Estate, as follows for the purpose of
3 settling and disposing of the Accusation as amended filed on June
4 10, 1997, the Amendment to Accusation as amended filed on October
5 7, 1997, and the Second Amendment to Accusation as amended filed
6 March 4, 1998, in this matter:

7 1. All issues which were to be contested and all evidence
8 which was to be presented by Complainant and Respondents at a
9 formal hearing on the Accusation as amended, which hearing was to
10 be held in accordance with the provisions of the Administrative
11 Procedure Act (APA), shall instead and in place thereof be
12 submitted solely on the basis of the provisions of this
13 Stipulation and Agreement (Stipulation).

14 2. Respondents have received, read and understand the
15 Statement to Respondent, the Discovery Provisions of the APA and
16 the Accusation as amended filed by the Department of Real Estate
17 in this proceeding.

18 3. Respondents filed a Notice of Defense pursuant to Section
19 11506 of the Government Code for the purpose of requesting a
20 hearing on the allegations in the Accusation as amended.
21 Respondents hereby freely and voluntarily withdraw said Notice of
22 Defense. Respondents acknowledge that they understand that by
23 withdrawing said Notice of Defense they thereby waive their right
24 to require the Real Estate Commissioner to prove the allegations
25 in the Accusation as amended at a contested hearing held in
26 accordance with the provisions of the APA and that they will waive
27 other rights afforded to them in connection with the hearing such



1 as the right to present evidence in their defense and the right to
2 cross-examine witnesses.

3 4. This Stipulation is based on the factual allegations
4 contained in the Accusation as amended. In the interest of
5 expedience and economy, Respondents choose not to contest these
6 allegations, but to remain silent and understand that, as a result
7 thereof, these factual allegations, without being admitted or
8 denied, will serve as a prima facie basis for the disciplinary
9 action stipulated to herein. The Real Estate Commissioner shall
10 not be required to provide further evidence to prove said factual
11 allegations.

12 5. This Stipulation is based on Respondents' decision not to
13 contest the allegations set forth in the Accusation as amended as
14 a result of the agreement negotiated between the parties. This
15 Stipulation is expressly limited to this proceeding and any
16 further proceeding initiated by or brought before the Department
17 of Real Estate based upon the facts and circumstances alleged in
18 the Accusation as amended for the sole purpose of reaching an
19 agreed disposition of this proceeding without a hearing. The
20 decision of Respondents not to contest the factual statements
21 alleged is made solely for the purpose of effectuating this
22 Stipulation. It is the intent and understanding of the parties
23 that this Stipulation shall not be binding or admissible against
24 Respondents in any actions against Respondents by third parties.

25 6. It is understood by the parties that the Real Estate
26 Commissioner may adopt this Stipulation as his Decision in this
27 matter thereby imposing the penalty and sanctions on Respondents'



1 real estate licenses and license rights as set forth in the
2 "Order" herein below. In the event that the Real Estate
3 Commissioner in his discretion does not adopt the Stipulation, it
4 shall be void and of no effect and Respondents shall retain the
5 right to a hearing and proceeding on the Accusation as amended
6 under the provisions of the APA and shall not be bound by any
7 stipulation or waiver made herein.

8 7. The Order or any subsequent Order of the Real Estate
9 Commissioner made pursuant to this Stipulation shall not
10 constitute an estoppel, merger or bar to any further
11 administrative or civil proceedings by the Department of Real
12 Estate with respect to any matters which were not specifically
13 alleged to be causes for Accusation as amended in this proceeding.

14 DETERMINATION OF ISSUES

15 By reason of the foregoing stipulations, it is stipulated and
16 agreed that the following determination of issues shall be made:

17 I

18 The conduct of Respondent METRO BROTHERS, INC., as described
19 in Paragraph 4, is in violation of Section 10145 of the Business
20 and Professions Code (Code) and Sections 2831, 2831.1, 2831.2,
21 2832.1, 2950 and 2951 of Title 10, Chapter 6 of the California
22 Code of Regulations (Regulations) and is a basis for the
23 suspension or revocation of Respondent's license and license
24 rights as a violation of the Real Estate Law pursuant to Section
25 10177(d) of the Code.
26 /
27



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

The conduct of CARLOS C. MARTINEZ, as described in Paragraph 4, constitutes a failure to keep METRO BROTHERS, INC., in compliance with the Real Estate Law during the time that he was the officer designated by a corporate broker licensee and further constitutes a failure to exercise reasonable supervision and control over the licensed activities of METRO BROTHERS, INC., and its salespersons which require a real estate license and is a basis for the suspension or revocation of Respondent's license pursuant to Sections 10159.2 and 10177(h) of the Code.

III

The conduct of MARCOS CRUZ MARTINEZ, as described in Paragraph 4, is cause to suspend or revoke the real estate license and license rights of said Respondent under the provisions of Section 10176(a) of the Code.

ORDER

WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE WRITTEN STIPULATION OF THE PARTIES:

I

All licenses and licensed rights of Respondents METRO BROTHERS, INC., and CARLOS C. MARTINEZ under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondents pursuant to Section 10156.5 of the Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted licenses issued to Respondents shall be



1 subject to all of the provisions of Section 10156.7 of the Code
2 and to the following limitations, conditions and restrictions
3 imposed under authority of Section 10156.6 of that Code:

4 1. The restricted license issued to a Respondent may be
5 suspended prior to hearing by Order of the Real Estate
6 Commissioner in the event of a Respondent's conviction or
7 plea of nolo contendere to a crime which is substantially
8 related to a Respondent's fitness or capacity as a real
9 estate licensee.

10
11 2. The restricted license issued to a Respondent may be
12 suspended prior to hearing by Order of the Real Estate
13 Commissioner on evidence satisfactory to the Real Estate
14 Commissioner that a Respondent has violated provisions of the
15 California Real Estate Law, the Subdivided Lands Law,
16 Regulations of the Real Estate Commissioner or conditions
17 attaching to the restricted license.

18
19 3. Respondents shall not be eligible to apply for the
20 issuance of an unrestricted real estate license nor for
21 the removal of any of the conditions, limitations or
22 restrictions of a restricted license until two years has
23 elapsed from the effective date of this Decision.

24 4. Respondent CARLOS C. MARTINEZ shall, within nine
25 months from the effective date of this Decision, present
26 evidence satisfactory to the Real Estate Commissioner that
27 Respondent has, since the most recent issuance of an original



1 or renewal real estate license, taken and successfully
2 completed the continuing education requirements of Article
3 2.5 of Chapter 3 of the Real Estate Law for renewal of a real
4 estate license. If Respondent fails to satisfy this
5 condition, the Real Estate Commissioner may order suspension
6 of the restricted license until the Respondent presents such
7 evidence. The Real Estate Commissioner shall afford a
8 Respondent the opportunity for a hearing pursuant to the
9 Administrative Procedure Act to present such evidence.

10 5. Respondent CARLOS C. MARTINEZ shall within six months
11 from the effective date of this Decision, take and pass the
12 Professional Responsibility Examination administered by the
13 Department including the payment of the appropriate
14 examination fee. If Respondent fails to satisfy this
15 condition, the Commissioner may order suspension of
16 Respondent's license until Respondent passes the examination.

17 6. Prior to the Issuance of any restricted real estate
18 broker license, METRO BROTHERS, INC. shall provide evidence
19 satisfactory to the Real Estate Commissioner that the
20 deficit, as of May 30, 1997, set forth in combined Audit
21 Report Nos. LA 960463 and LA 960518 dated August 11, 1997,
22 has been cured including the identity of the source of
23 funds used to cure the \$3,953.61.

24 /

25 /



1
2
3 Any restricted real estate broker licenses Respondents METRO
4 BROTHERS, INC., and CARLOS C. MARTINEZ under the Real Estate Law
5 shall be suspended for a period of thirty (30) days from the date
6 any such restricted license or licenses is issued, however, that
7 if a Respondent petitions; said suspension (or a portion thereof)
8 shall be permanently stayed upon condition that:

9 1. Respondents pay a monetary penalty pursuant to
10 Section 10175.2 of the Code at the rate of \$100.00 for each
11 day of said suspension stayed, for a total monetary penalty
12 of \$3,000 each.

13 2. Said payment shall be in the form of a cashier's check or
14 certified check made payable to the Recovery Account of the
15 Real Estate Fund. Said check must be delivered to the
16 Department prior to the effective date of the Decision in
17 this matter.
18

19 /
20 /
21 /
22 /
23 /
24 /
25 /
26 /
27 /



IV

1
2 All license and license rights of Respondent MARCOS CRUZ
3 MARTINEZ under the Real Estate Law (Part 1 of Division 4 of the
4 Business and Professions Code) are hereby revoked; provided,
5 however, a restricted real estate salesperson license shall be
6 issued to Respondent pursuant to Section 10156.5 of the Code if
7 Respondent makes application therefor and pays to the Department
8 of Real Estate the appropriate fee for the restricted license
9 within ninety (90) days of the effective date of the Decision.
10 The restricted license issued to Respondent shall be subject to
11 all of the provisions of Section 10156.7 of the Code and the
12 following limitations, conditions and restrictions imposed under
13 authority of Section 10156.6 of the Code:

14 1. The restricted license issued to Respondent may be
15 suspended prior to hearing by Order of the Real Estate
16 Commissioner in the event of Respondent's conviction or plea
17 of nolo contendere to a crime which bears a significant
18 relationship to Respondent's fitness or capacity as a real
19 estate licensee.

20
21 2. The restricted license issued to Respondent may be
22 suspended prior to hearing by Order of the Real Estate
23 Commissioner on evidence satisfactory to the Commissioner
24 that Respondent has violated provisions of the California
25 Real Estate Law, the Subdivided Lands Law, Regulations of the
26 Real Estate Commissioner or conditions attaching to said
27 restricted license.



1 3. Respondent shall not be eligible for the issuance of an
2 unrestricted real estate license nor the removal of any of
3 the conditions, limitations or restrictions of the restricted
4 license until one year has elapsed from the effective date of
5 this Decision.

6
7 4. Respondent shall submit with any application for license
8 under an employing broker, or any application for transfer to
9 a new employing broker, a statement signed by the prospective
10 broker on a form approved by the Department of Real Estate
11 which shall certify:

12 (a) That the employing broker has read the Decision of
13 the Real Estate Commissioner which granted the right to
14 a restricted license; and

15 (b) That the employing broker will exercise close
16 supervision over the performance by the restricted
17 licensee of the activities for which a real estate
18 license is required.

19
20 5. Respondent MARCOS CRUZ MARTINEZ shall, within nine
21 months from the effective date of this Decision, present
22 evidence satisfactory to the Real Estate Commissioner that
23 Respondent has, since the most recent issuance of an original
24 or renewal real estate license, taken and successfully
25 completed the continuing education requirements of Article
26 2.5 of Chapter 3 of the Real Estate Law for renewal of a real
27 estate license. If Respondent fails to satisfy this



1 condition, the Real Estate Commissioner may order the
2 suspension of Respondent's license until said Respondent
3 presents such evidence. The Real Estate Commissioner shall
4 afford Respondent the opportunity for a hearing pursuant to
5 the Administrative Procedure Act to present such evidence.

6
7 6. Respondent MARCOS CRUZ MARTINEZ shall within six months
8 from the effective date of this Decision, take and pass the
9 Professional Responsibility Examination administered by the
10 Department including the payment of the appropriate
11 examination fee. If Respondent fails to satisfy this
12 condition, the Commissioner may order suspension of
13 Respondent's license until Respondent passes the examination.

14 V

15 Any real estate salesperson license issued to MARCOS CRUZ
16 MARTINEZ under the Real Estate Law shall be suspended for a period
17 of thirty (30) days from the date any such license is issued;
18 provided, however, that if Respondent petitions; said suspension
19 (or a portion thereof) shall be permanently stayed upon condition
20 that:

21
22 1. Respondent pays a monetary penalty pursuant to
23 Section 10175.2 of the Code at the rate of \$50.00 for each
24 day of said suspension stayed, for a total monetary penalty
25 of \$1,500.



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

6 VI

7 Pursuant to Section 10148 of the Code, Respondents METRO
8 BROTHERS, INC. or CARLOS C. MARTINEZ, or either of them shall pay
9 the Real Estate Commissioner's reasonable cost for an audit to
10 determine if Respondents are presently in compliance with the Real
11 Estate Law. In calculating the amount of the Real Estate
12 Commissioner's reasonable cost, the Real Estate Commissioner may
13 use the estimated average hourly salary for all persons performing
14 audits of real estate brokers, and shall include an allocation for
15 travel time to and from the auditor's place of work. Respondents
16 shall pay such cost, not to exceed \$8,600, within 45 days of
17 receiving an invoice from the Real Estate Commissioner detailing
18 the activities performed during the audit and the amount of time
19 spent performing those activities. The Real Estate Commissioner
20 may suspend the restricted license issued to either Respondent
21 pending a hearing held in accordance with Section 11500, et seq.,
22 of the Government Code, if payment is not timely made as provided
23 for herein, or as provided for in a subsequent agreement between
24 the Respondents and the Real Estate Commissioner. The suspension
25 shall remain in effect until payment is made in full or until
26 Respondents enter into an agreement satisfactory to the Real
27 Estate Commissioner to provide for payment, or until a decision



EXECUTION OF THE STIPULATION AND AGREEMENT

* * * *

We have read the Stipulation and Agreement and its terms are
understood by us and are agreeable and acceptable to us. We
understand that we are waiving rights given to us by the
California Administrative Procedure Act (including but not limited
to Sections 11506, 11508, 11509 and 11513 of the Government Code),
and we willingly, intelligently and voluntarily waive those
rights, including the right of requiring the Real Estate
Commissioner to prove the allegations in the Accusation as amended
at a hearing at which we would have the right to cross-examine
witnesses against us and to present evidence in defense and
mitigation of the charges.

DATED: July 15, 1998

Carl C. Martinez
METRO BROTHERS, INC.
Respondent,
BY: CARLOS C. MARTINEZ, D.O.

DATED: July 15, 1998

Carlos C. Martinez
CARLOS C. MARTINEZ,
Individually and as designated
officer of Metro Brother, Inc.
Respondent

DATED: July 15, 1998

Marcos Cruz Martinez
MARCOS CRUZ MARTINEZ,
Respondent

DATED: June 4, 1998

David L. Shane
DAVID L. SHANE, ESQ.
Respondent



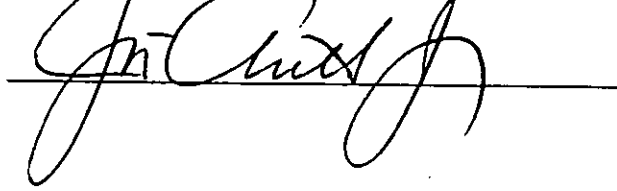
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

* * * *

The foregoing Stipulation and Agreement is hereby adopted as
my Decision and Order and shall become effective at 12 o' clock
noon on September 8, 1998.

IT IS SO ORDERED 8/10, 1998.

JIM ANTT JR.
Real Estate Real Estate Commissioner



Handwritten notes:
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
MAR - 4 1998

DEPARTMENT OF REAL ESTATE

By *R. M. ...*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
METRO BROTHERS, INC.,)
a California corporate broker;)
CARLOS C. MARTINEZ,)
individually and as)
designated officer of)
Metro Brothers, Inc.,)
and MARCOS CRUZ MARTINEZ,)
Respondents.)

No. H-27207 LA

SECOND AMENDMENT
TO ACCUSATION

The Accusation filed on June 10, 1997, and the Amendment to Accusation filed October 7, 1997 are amended in their entirety, as follows:

I

The Complainant, Thomas McCrady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against METRO BROTHERS, INC., dba Re/Max Metro Realty or Metro Realty; CARLOS C. MARTINEZ, individually and as designated officer of Metro Brothers, Inc., and MARCOS CRUZ MARTINEZ, is informed and alleges as follows:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

METRO BROTHERS, INC. (MBI), CARLOS C. MARTINEZ (CARLOS), individually and as designated officer of Metro Brothers, Inc., and MARCOS CRUZ MARTINEZ (MARCOS) (sometimes collectively referred to as Respondents, 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).

III

At all times mentioned, MBI was licensed by the Department as a corporate real estate broker by and through CARLOS as designated officer. MBI was originally licensed by the Department on July 9, 1993.

IV

At all times mentioned, CARLOS was licensed by the Department as designated officer of MBI to qualify MBI and to act for MBI as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of MBI by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required by Section 10159.2 of the Code. Respondent CARLOS was originally licensed by the Department of Real Estate on June 14, 1991, as a real estate salesperson. On September 9, 1993, he was licensed as a real estate broker. In addition to holding an



1 individual broker license, on May 16, 1994, CARLOS became the
2 designated broker for Metro Brothers, Inc.

3 V

4 Whenever reference is made in an allegation in the
5 Second Amendment to Accusation to an act or omission of MBI such
6 allegation shall be deemed to mean that the officers, directors,
7 managers, employees, agents and real estate licensees employed by
8 or associated with MBI, including CARLOS, committed such act or
9 omission while engaged in the furtherance of the business or
10 operation of MBI and while acting within the course and scope of
11 its corporate authority, agency and employment.

12 VI

13 At all times mentioned, MBI and CARLOS were acting as
14 the agent or employee of the other and within the course and scope
15 of such agency or employment.

16 VII

17 Respondent MARCOS was originally licensed by the
18 Department of Real Estate on June 14, 1991, as a real estate
19 salesperson.

20 VIII

21 At all times mentioned, in the City of San Fernando, Los
22 Angeles County, Respondent MBI and Respondent CARLOS acted as real
23 estate brokers within this meaning of:

24 A. Section 10131(a) of the Code, including the
25 operation and conduct of a real estate sales brokerage with the
26 public wherein Respondents solicited prospective sellers and
27



1 purchasers and negotiated the purchase and sale of real property,
2 for and in expectation of compensation for others;

3 B. Section 10131(d) of the Code, including the
4 operation of a mortgage and loan brokerage business with the
5 public wherein lenders and borrowers were solicited for loans
6 secured directly or collaterally by liens on real property,
7 wherein such loans were arranged, negotiated, processed, and
8 consummated on behalf of others for compensation or in expectation
9 of compensation and for fees often collected in advance.

10 C. In addition, Respondents MBI and CARLOS
11 conducted broker controlled escrows under the exemption set forth
12 in Section 17006(a)(4) of the California Financial Code.

13 D. At all times herein mentioned, in the city of
14 Sun Valley, Riverside County, Respondent MARCOS was employed as a
15 real estate salesperson under the individual license of CARLOS and
16 not the corporate license of MBI.

17 IX

18 On August 11, 1997, the Department completed a field
19 audit examination of the books and records of MBI pertaining to
20 its broker escrow activities (LA 960463) and its sales activities
21 (LA 960518) described in Paragraph VIII. The audit examination
22 covered the period of time beginning on January 1, 1996, and
23 ending on May 30, 1997. The audit examination revealed violations
24 of the Code and the Regulations as set forth in the following
25 paragraphs.

26 /
27 /

At all times mentioned, in connection with the activities described in Paragraph VIII, Respondents MBI and CARLOS accepted or received funds in trust (trust funds) from or on behalf of actual or prospective buyers and sellers and on behalf of borrowers and lenders, and thereafter made disposition of such funds. Respondents MBI and CARLOS maintained the following trust accounts into which they deposited certain of these trust funds:

"Metro Brothers, Inc. DBA RE/MAX Metro Realty Escrow Division Trust Account No. 1110007120" (T/A #1) Union Bank of California 14360 Roscoe Blvd. Panorama City, California 91402

"Metro Brothers, Inc. DBA RE/MAX Metro Realty Escrow Division Trust Account No. 8941000427" (T/A #2) Comercia (formerly Metro Bank) 21530 Oxnard St. Woodland Hills, California 91367

"Mountainside Escrow, Inc., Escrow Trust Account No. 9120050955" (T/A #3) Union Bank of California

Additionally, Respondents MBI and CARLOS maintained the following general accounts into which they deposited certain of these trust funds:

"Metro Brothers, Inc. DBA RE/MAX Metro Realty Escrow Division General Account No. 1110007007" (MBI G/A) Union Bank of California

"Mountainside Escrow, Inc., Escrow Trust Account No. 9120051285" (MEI G/A) Union Bank of California



With respect to the trust funds referred to in Paragraph X, it is alleged that MBI and CARLOS:

(a) Permitted, allowed or caused the disbursement of trust funds from T/A #1, and caused a deficit to accumulate, where the disbursement of said funds reduced the aggregate funds in T/A #1, to an amount which, on May 30, 1997, was \$1,375.56 less than the existing aggregate trust fund liability of every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Section 10145 of the Code and Section 2832.1 of the Regulations. This shortage was cured during the audit;

(b) Permitted, allowed or caused the disbursement of trust funds from T/A #2, and caused a deficit to accumulate, where the disbursement of said funds reduced the aggregate funds in T/A #2, to an amount which, on May 30, 1997, was \$2,218.05 less than the existing aggregate trust fund liability of every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Section 10145 of the Code and Section 2832.1 of the Regulations. This shortage was cured during the audit;

(c) Failed to maintain an accurate columnar record in chronological order of all trust funds received by T/A #1, as required by Sections 2831, 2950(d) and 2951 of the Regulations;

(d) Failed to maintain an accurate separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and disbursed out of T/A #1,



1 as required by Sections 2831.1, 2950(d) and 2951 of the
2 Regulations;

3 (e) Failed to perform an accurate monthly
4 reconciliation of the balance of all separate beneficiary or
5 transaction records maintained pursuant to Section 2831.1 of the
6 Regulations with the record of all trust funds received and
7 disbursed by T/A #1, as required by Sections 2831.2, 2950(d) and
8 2951 of the Regulations;

9 (f) Permitted an unlicensed person who was not bonded,
10 Arce Gomez, and permitted real estate salesperson, Juan Mora, to
11 sign on T/A #1 without either of them being authorized
12 signatories, in violation of Section 2834 of the Regulations.
13 This violation was corrected during the audit; and

14 (g) Commingled trust funds with broker-owned funds in
15 the amount of \$966.21 on February 19, 1997, transferred from
16 T/A #2 to MBI G/A, in violation of Section 10176(e) of the Code
17 and Section 2835 of the Regulations.

18 XII

19 The conduct of Respondents MBI and CARLOS, described in
20 Paragraph XI, above, violated the Code and the Regulations as set
21 forth below:

22	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
23	X (a)	Section 10145 and 10159.2 of the Code, and
24		Section 2832.1 of the Regulations
25		/
26		/
27		



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- X (b) Section 10145 and 10159.2 of the Code, and
Section 2832.1 of the Regulations
- X (c) Section 10145 and 10159.2 of the Code, and
Sections 2831, 2950(d) and 2951 of the
Regulations
- X (d) Section 10145 and 10159.2 of the Code, and
Sections 2831.1, 2950(d) and 2951 of the
Regulations
- X (e) Section 10145 and 10159.2 of the Code, and
Sections 2831.2, 2950(d) and 2951 of the
Regulations
- X (f) Section 10145 and 10159.2 of the Code, and
Section 2834 of the Regulations
- X (g) Section 10176(e) of the Code, and
Section 2835 of the Regulations

Each of the foregoing violations separately constitutes cause for the suspension or revocation of the real estate licenses and license rights of Respondents MBI and CARLOS under the provisions of Section 10177(d) of the Code.

/

/

/

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XIII

The audit examination further revealed that Respondents MBI and CARLOS used the fictitious name of "Mountainside Escrow, Inc." to conduct licensed activities on behalf of MBI without holding a license bearing said fictitious business name. The conduct of Respondents in failing to obtain a license for use of the aforesaid name is in violation of Regulation 2731 and is cause to suspend or revoke Respondents' real estate licenses and license rights under Section 10177(d) of the Code.

XIV

The investigative audit further revealed that Respondent MBI's escrow instructions for its broker-controlled escrow operation failed to contain a statement which included the name of the licensee and the State of California department issuing the license or authority under which MBI operated said escrow company including, but not limited to, the Avelar and Legospi escrows. This conduct constitutes a violation of Section 17403.4 of the California Financial Code and is cause to suspend or revoke the real estate license and license rights of Respondents under Sections 10177(d) and 10177(g).

XV

The audit moreover revealed that Respondents MBI and CARLOS failed to advise all parties of MBI's ownership in the broker-controlled escrow operation, to wit, including the Diaz, Cavanaugh and Diosdado escrow instructions, in violation of Regulation 2950(h). Said conduct is cause to suspend or revoke



1 Respondents' licenses and license rights under Sections 10177(d)
2 and 10177(g) of the Code.

3 XVI

4 The audit also revealed that MBI conducted escrow for
5 the Sandoval, Meza, Galasso, Vergara and Mojarro transactions when
6 MBI was not a party to the escrow and therefore engaged in
7 conducting unauthorized third party escrows; in failing to place a
8 \$3,000.00 earnest money deposit it had receipted for into escrow
9 for the property known as 9036 Varna Avenue, Arleta, California;
10 in accepting a referral fee in the amount of \$150 for the Curiel
11 Realty transaction when it had not referred either the buyer or
12 seller; and for closing the Avelar/Aguila escrow while a negative
13 balance of \$1,301.62 existed, is cause to suspend or revoke the
14 real estate license and license of MBI under the provisions of
15 Section 10177(g) of the Code.

16 XVII

17 The overall conduct of Respondent CARLOS, in allowing
18 Respondent MBI to violate Sections 10145, 10165, 10176(e) and of
19 the Code and Regulations 2726, 2731, 2831, 2831.1, 2931.2, 2832.1,
20 2834, 2950(d), 2950(h) and 2951, as described in Paragraphs X
21 through XXIV herein above, during the time that CARLOS was the
22 designated officer of MBI, constitutes negligence or incompetence.
23 This conduct and violation are cause for the suspension or
24 revocation of the real estate license and license rights of
25 Respondent CARLOS under the provisions of Section 10177(g) of the
26 Code.
27



XVIII

1
2 The overall conduct of Respondent CARLOS, in failing to
3 supervise MBI, during the time that CARLOS was its designated
4 officer, constitutes a failure by Respondent CARLOS to exercise
5 reasonable supervision of the activities of Respondent MBI, which
6 require a real estate license. This conduct and violation are
7 cause to suspend or revoke the real estate license and license
8 rights of Respondent CARLOS under the provisions of Sections
9 10159.2 and 10177(h) of the Code.

10 XIX

11 On or about January 16, 1996, MARCOS, representing
12 himself as being employed by Metro Realty, executed a Real Estate
13 Purchase Contract and Receipt for Deposit (Deposit Receipt) on
14 behalf of Rene De La Hoya and Fernando Oronco (Buyers) to purchase
15 the property commonly known as 19545 Sherman Way, #11, Winnetka,
16 California (the Sherman Way property). This property was owned by
17 Mission Savings and Loan Association (Seller).

18 XX

19 The Deposit Receipt prepared by MARCOS and delivered to
20 the seller represented that he had received from the buyers the
21 sum of \$500.00 as a down payment for the purchase of the Sherman
22 way property. In truth and in fact, MARCOS had received no such
23 deposit.

24 XXI

25 The conduct of MARCOS, as described in Paragraph XIX and
26 XX, constitutes the making of a substantial misrepresentation by
27 representing to Mission Savings and Loan Association that he had



1 collected a down payment of \$500.00 from the buyers of the Sherman
2 Way property when in fact he had not. Nor had he received
3 permission from the seller not to collect it. This conduct and
4 violation are cause to suspend or revoke the real estate license
5 and license rights of Respondent MARCOS under the provisions of
6 Section 10176(a) of the Code.

7 XXII

8 On or about March 10, 1997, MARCOS, representing himself
9 as being employed by Re/Max Metro Realty, executed a Real Estate
10 Purchase Contract and Receipt for Deposit (Deposit Receipt) on
11 behalf of Joshua Serrano and Susan Nava (Buyers) to purchase the
12 property commonly known as 9036 Varna Avenue, Arleta, California
13 (the Varna Avenue property). This property was owned by the Bank
14 of America (Seller).

15 XXIII

16 The Deposit Receipt prepared by MARCOS and delivered to
17 the seller represented that he had received from the buyers the
18 sum of \$3,000.00 as a down payment for the purchase of the Varna
19 Avenue property. In truth and in fact, MARCOS had received no
20 such deposit.

21 XXIV

22 The conduct of MARCOS, as described in Paragraph XXII
23 and XXIII, constitutes the making of a substantial
24 misrepresentation by representing to the Bank of America that he
25 had collected a down payment of \$3,000.00 from the buyers of the
26 Varna Avenue property when in fact he had not. Nor had he
27



1 received permission from the seller not to collect it. This
2 conduct and violation are cause to suspend or revoke the real
3 estate license and license rights of Respondent MARCOS under the
4 provisions of Section 10176(a) of the Code.

5 XXV

6 CARLOS failed to review, initial and date each
7 instrument prepared by real estate salespeople under his
8 supervision, including MARCOS, which may have a material effect
9 upon the rights or obligations of parties to the transaction
10 including, but not limited to, the Sherman Way property sale and
11 purchase transaction, in violation of Regulation 2725. In
12 addition, CARLOS failed to properly supervise MARCOS to ensure
13 that the facts set forth in the Deposit Receipt were true and that
14 the alleged deposit was properly handled. This conduct and
15 violation are cause to suspend or revoke the license and license
16 rights of Respondent CARLOS under Sections 10177(d) and 10177(h)
17 of the Code.

18 XXVI

19 The audit investigation further revealed that Respondent
20 CARLOS did not have a system in place for regularly monitoring
21 MBI's or his individual brokerage activities requiring a real
22 estate real license estate for salespeople under his supervision,
23 including MARCOS, with respect to the handling of documents which
24 may have a material effect upon the rights. or obligation of a
25 party to the transaction including the Varna Avenue property, in
26 violation of Regulation 2725 of the Regulations. This conduct and
27 violation are cause to suspend or revoke the license and license



1 rights of Respondent CARLOS under Sections 10177(d) and 10177(h)
2 of the Code.

3 XVII

4 The overall conduct of Respondent CARLOS with respect to
5 his individual license with reference to the Sherman Way and the
6 Varna Avenue property transactions, as described in Paragraphs XIX
7 and XX, XXII and XXIII above, constitutes negligence and/or
8 incompetence. This conduct and violations are cause to suspend or
9 revoke the real estate license and license rights of Respondent
10 CARLOS pursuant to Section 10177(g) of the Code.

11 WHEREFORE, Complainant prays that a hearing be conducted on
12 the allegations made by the accusation and, that upon proof
13 thereof, a decision be rendered imposing disciplinary action
14 against the license and license rights of METRO BROTHERS, INC.,
15 CARLOS C. MARTINEZ, individually and as designated officer of
16 Metro Brothers, Inc., and MARTIN CRUZ MARTINEZ, under the Real
17 Estate Law (Part 1 of Division 4 of the Business and Professions
18 Code) and for such other and further relief as may be proper under
19 other applicable provisions of law.

20 Dated at Los Angeles, California

21 this 4th day of March, 1998.

22 THOMAS MC CRADY

23 Deputy Real Estate Commissioner

24
25 cc: Metro Brothers, Inc.
26 c/o Carlos C. Martinez, D.O.
27 Martin Cruz Martinez
Sacto.
DR
David L. Shane, Esq.



Sacto

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR - 2 1998
DEPARTMENT OF REAL ESTATE

By *R. H. ...*

In the Matter of the Accusation of

METRO BROTHERS, INC., et al.,

Case No. H-27207 LA

OAH No. L-1997110295

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 _____
Office of Administrative Hearings, 107 South Broadway, Second Floor,
Los Angeles, CA 90012

on June 4 & 5, 1998, 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

APR - 2 1998

Dated: _____

By *[Signature]*

Counsel

cc: Metro Brothers Inc.
Marcos Cruz Martinez
Carlos C. Martinez
David L. Shane, Esq.

RE 501 (Rev. 8/97) Sacto OAH DR
kw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
OCT - 7 1997
DEPARTMENT OF REAL ESTATE

By Laura A. Cruz

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
METRO BROTHERS, INC.,)
a California corporate broker;)
and CARLOS C. MARTINEZ,)
individually and as)
designated officer of)
Metro Brothers, Inc.,)
Respondents.)

No. H-27207 LA

AMENDMENT TO ACCUSATION

In the Matter of the Accusation of)
MARCOS CRUZ MARTINEZ)
and CARLOS C. MARTINEZ,)
Respondents.)

No. H-27207 LA

ACCUSATION

The Accusation filed against Marcos Cruz Martinez and
CARLOS C. MARTINEZ filed on June 10, 1997, is amended as to CARLOS
C. MARTINEZ only, and adds METRO BROTHERS, INC., a California
corporate broker as a Respondent, as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

X

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against METRO BROTHERS, INC., dba Re/Max Metro Realty or Metro Realty and for cause of Amendment to Accusation against CARLOS C. MARTINEZ, individually and as designated officer of Metro Brothers, Inc., is informed and alleges in his official capacity as follows:

XI

METRO BROTHERS, INC. (MBI), and CARLOS C. MARTINEZ (MARTINEZ), individually and as designated officer of Metro Brothers, Inc., sometimes collectively referred to as Respondents, 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).

XII

At all times mentioned, MBI was licensed by the Department as a corporate real estate broker by and through MARTINEZ as designated officer. MBI was originally licensed by the Department on July 9, 1993.

XIII

At all times mentioned, MARTINEZ was licensed by the Department as designated officer of MBI to qualify MBI and to act for MBI as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of MBI by its



1 officers, managers and employees as necessary to secure full
2 compliance with the provisions of the Real Estate Law including
3 the supervision of the salespersons licensed to the corporation in
4 the performance of acts for which a real estate license is
5 required by Section 10159.2 of the Code.

6 XIV

7 Whenever reference is made in an allegation in the
8 Amendment to Accusation to an act or omission of MBI such
9 allegation shall be deemed to mean that the officers, directors,
10 managers, employees, agents and real estate licensees employed by
11 or associated with MBI, including MARTINEZ, committed such act or
12 omission while engaged in the furtherance of the business or
13 operation of MBI and while acting within the course and scope of
14 its corporate authority, agency and employment.

15 XV

16 At all times mentioned, MBI and MARTINEZ were acting as
17 the agent or employee of the other and within the course and scope
18 of such agency or employment.

19 XVI

20 At all times mentioned, in the City of San Fernando, Los
21 Angeles County, Respondent MBI and Respondent MARTINEZ acted as
22 real estate brokers within this meaning of:

23 A. Section 10131(a) of the Code, including the
24 operation and conduct of a real estate sales brokerage with the
25 public wherein Respondents solicited prospective sellers and
26 purchasers and negotiated the purchase and sale of real property,
27 for and in expectation of compensation for others;



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

"Metro Brothers, Inc. DBA RE/MAX Metro Realty Escrow Division
Trust Account
No. 1110007120" (T/A #1)
Union Bank of California
14360 Roscoe Blvd.
Panorama City, California 91402

"Metro Brothers, Inc. DBA RE/MAX Metro Realty Escrow Division
Trust Account
No. 8941000427" (T/A #2)
Comercia (formerly Metro Bank)
21530 Oxnard St.
Woodland Hills, California 91367

"Mountainside Escrow, Inc., Escrow Trust Account
No. 9120050955" (T/A #3)
Union Bank of California

Additionally, Respondents MBI and MARTINEZ maintained the
following general accounts into which they deposited certain of
these funds:

"Metro Brothers, Inc. DBA RE/MAX Metro Realty Escrow Division
General Account
No. 1110007007" (MBI G/A)
Union Bank of California

"Mountainside Escrow, Inc., Escrow Trust Account
No. 9120051285" (MEI G/A)
Union Bank of California

XIX

With respect to the trust funds referred to in Paragraph
XVIII, it is alleged that MBI and MARTINEZ:

(a) Permitted, allowed or caused the disbursement of
trust funds from T/A #1, and caused a deficit to accumulate, where
the disbursement of said funds reduced the aggregate funds in
T/A #1, to an amount which, on May 30, 1997, was \$1,375.56 less
than the existing aggregate trust fund liability of every
principal who was an owner of said funds, without first obtaining

1 the prior written consent of the owners of said funds, as required
2 by Section 10145 of the Code and Section 2832.1 of the
3 Regulations. This shortage was cured during the audit;

4 (b) Permitted, allowed or caused the disbursement of
5 trust funds from T/A #2, and caused a deficit to accumulate, where
6 the disbursement of said funds reduced the aggregate funds in T/A
7 #2, to an amount which, on May 30, 1997, was \$2,218.05 less than
8 the existing aggregate trust fund liability of every principal who
9 was an owner of said funds, without first obtaining the prior
10 written consent of the owners of said funds, as required by
11 Section 10145 of the Code and Section 2832.1 of the Regulations.
12 This shortage was cured during the audit;

13 (c) Failed to maintain an adequate columnar record in
14 chronological order of all trust funds received by T/A #1, as
15 required by Sections 2831, 2950(d) and 2951 of the Regulations;

16 (d) Failed to maintain a separate record for each
17 beneficiary or transaction, thereby failing to account for all
18 trust funds received, deposited, and disbursed out of T/A #1, as
19 required by Sections 2831.1, 2950(d) and 2951 of the Regulations;

20 (e) Failed to perform a monthly reconciliation of the
21 balance of all separate beneficiary or transaction records
22 maintained pursuant to Section 2831.1 of the Regulations with the
23 record of all trust funds received and disbursed by T/A #1, as
24 required by Sections 2831.2, 2950(d) and 2951 of the Regulations;

25 (f) Permitted an unlicensed person who was not bonded,
26 Arce Gomez, and permitted real estate salesperson, Juan Mora, to
27 sign on T/A #1 without either of them being authorized signatories



1 on the T/A #1, in violation of Section 2834 of the Regulations.
2 This violation was corrected during the audit; and

3 (g) Commingled trust funds with broker-owned funds in
4 the amount of \$966.21 on February 19, 1997, transferred from
5 T/A #2 to MBI G/A, in violation of Section 10176(e) of the Code
6 and Section 2835 of the Regulations.

7 XX

8 The conduct of Respondents MBI and MARTINEZ, described
9 in Paragraph XIX, above, violated the Code and the Regulations as
10 set forth below:

11	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
12	XIX (a)	Section 10145 and 10159.2 of the Code, and
13		Section 2832.1 of the Regulations
14		
15	XIX (b)	Section 10145 and 10159.2 of the Code, and
16		Section 2832.1 of the Regulations
17		
18	XIX (c)	Section 10145 and 10159.2 of the Code, and
19		Sections 2831, 2950(d) and 2951 of the
20		Regulations
21		
22	XIX (d)	Section 10145 and 10159.2 of the Code, and
23		Sections 2831.1, 2950(d) and 2951 of the
24		Regulations

25 /

26 /

27



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XXII

The audit examination further revealed that Respondents MBI and MARTINEZ used the fictitious name of "Mountainside Escrow, Inc." to conduct licensed activities on behalf of MBI without holding a license bearing this fictitious business name. The conduct of Respondents in failing to obtain a license for use of the aforesaid name is in violation of Regulation 2731 and is cause to suspend or revoke Respondents' real estate licenses and license rights under Section 10177(d) of the Code.

XXIII

The investigative audit also revealed that Respondent MBI's escrow instructions for its broker-controlled escrow operation failed to contain a statement which included the name of the licensee and the State of California department issuing the license or authority under which MBI operated said escrow company. This conduct constitutes a violation of Section 17403.4 of the California Financial Code and is cause to suspend or revoke the real estate license and license rights of Respondents under Sections 10177(d) and 10177(g).

XXIV

The audit revealed that Respondents MBI and MARTINEZ failed to advise all parties of MBI's ownership in the broker-controlled escrow operation, to wit, including the Diaz, Cavanaugh and Diosdado escrow instructions, in violation of Regulation 2950(h). Said conduct is cause to suspend or revoke Respondents' licenses and license rights under Sections 10177(d) and 10177(g) of the Code.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XXV

The overall conduct of Respondent MARTINEZ, in allowing Respondent MBI to violate Sections 10145, 10161.8, 10165, 10176(e) and of the Code and Regulations 2726, 2731, 2831, 2831.1, 2931.2, 2832.1, 2834, 2950(d), 2950(h) and 2951, as described in Paragraphs X through XXIV herein above, during the time that MARTINEZ was the designated officer of MBI, constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondent MARTINEZ under the provisions of Section 10177(g) of the Code.

XXVI

The overall conduct of Respondent MARTINEZ, in failing to supervise MBI, during the time that MARTINEZ was its designated officer, constitutes a failure by Respondent MARTINEZ to exercise reasonable supervision of the activities of Respondent MBI, which require a real estate license. This conduct and violation are cause to suspend or revoke the real estate license and license rights of Respondent MARTINEZ under the provisions of Sections 10159.2 and 10177(h) of the Code.

/

/

/

/

/

/

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WHEREFORE, Complainant prays that a hearing be conducted on the allegations made by the accusation and, that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of METRO BROTHERS, INC., and CARLOS C. MARTINEZ, individually and as designated officer of Metro Brothers, Inc., 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 applicable provisions of law.

Dated at Los Angeles, California
this 7th day of October, 1997.


Deputy Real Estate Commissioner

cc: Metro Brothers, Inc.
c/o Carlos C. Martinez, D.O.
Sacto.
DR

*Auto
flow*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 16 1997
DEPARTMENT OF REAL ESTATE

By *R. Mederholt*

In the Matter of the Accusation of

METRO BROTHERS, et al.,

}

Case No. H-27207 LA

OAH No. L-1997110295

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 _____

Office of Administrative Hearings, 107 South Broadway, Second Floor

Los Angeles, CA 90012

on February 19 & 20, 1998, 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: DEC 16 1997

By *ei 7. i*

Counsel

cc: Metro Brothers
Marcos Cruz Martinez
Carlos C. Martinez
David L. Shane, Esq.

RE 501 (Rev. 8/97) Sacto OAH DR

kw

Handwritten initials

MARJORIE P. MERSEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
JUN 10 1997
DEPARTMENT OF REAL ESTATE

By *K. [Signature]*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-27207 LA
MARCOS CRUZ MARTINEZ,)	A C C U S A T I O N
and CARLOS C. MARTINEZ,)	
Respondents.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MARCOS CRUZ MARTINEZ and CARLOS C. MARTINEZ, is informed and alleges as follows:

I

MARCOS CRUZ MARTINEZ (MARCOS) and CARLOS C. MARTINEZ (CARLOS), sometimes referred to as Respondents, 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).

/
/

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

III

Respondent MARCOS was originally licensed by the Department of Real Estate on June 14, 1991, as a real estate salesperson.

IV

Respondent CARLOS was originally licensed by the Department of Real Estate on June 14, 1991, as a real estate salesperson. On September 9, 1993, he was licensed as a real estate broker. In addition to holding an individual broker license, on May 16, 1994, CARLOS became the designated broker for Metro Brothers, Inc., a real estate corporation operating under the fictitious business names of Re/Max Metro Realty or Metro Realty.

V

At all times herein mentioned, in the City of Mission Hills, Riverside County, Respondents CARLOS and MARCOS engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the meaning of Section 10131(a) of the Code, including the operation of a real estate resale business with the public wherein, on behalf of others and for compensation or in expectation of compensation, Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained

1 listings of, or negotiated the purchase, sale or exchange of real
2 property. At all times herein mentioned, in the city of Sun
3 Valley, Riverside County, Respondent MARCOS was employed as a real
4 estate salesperson under the individual license of CARLOS and not
5 the corporate license of Metro Brothers, Inc., dbas Re/Max Metro
6 Realty or Metro Realty.
7

8 VI

9 On or about January 16, 1996, MARCOS, representing
10 himself as being employed by Metro Realty, executed a Real Estate
11 Purchase Contract and Receipt for Deposit (Deposit Receipt) on
12 behalf of Rene De La Hoya and Fernando Oronco (Buyers) to purchase
13 the property commonly known as 19545 Sherman Way, #11, Winnetka,
14 California (the Sherman Way property). This property was owned by
15 Mission Savings and Loan Association (Seller).
16

17 VII

18 The Deposit Receipt prepared by MARCOS and delivered to
19 the seller represented that he had received from the buyers the
20 sum of \$500.00 as a down payment for the purchase of the Sherman
21 way property. In truth and in fact, MARCOS had receive no such
22 deposit.
23

24 VIII

25 The conduct of MARCOS, as described in Paragraph VI
26 through VII, constitutes the making of a substantial
27 misrepresentation by representing to Mission Savings and Loan
28 Association that he had collected a down payment of \$500.00 from
29 the buyers of the Sherman Way property when in fact he had not.
30 Nor had he received permission from the seller not to collect it.
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

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 MARCOS CRUZ MARTINEZ and CARLOS C. MARTINEZ, 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 applicable provisions of law.

Dated at Los Angeles, California
this 10th day of June, 1997.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: Marcos Cruz Martinez
Carlos C. Martinez
Sacto
DR