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FILED
MAR 27 2003
DEPARTMENT OF REAL ESTATE

James B. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-27284 LA
MICHAEL TERRY CASTELLANO,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On February 5, 1997, 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 May 19, 1998.

On November 19, 2001, Respondent petitioned for
reinstatement of said license and the Attorney General of the
State of California has been given notice of the filing of the
petition.

///

1 I have considered Respondent's petition and
2 the evidence and arguments in support thereof. Respondent has
3 failed to demonstrate to my satisfaction that Respondent has
4 undergone sufficient rehabilitation to warrant the
5 reinstatement of Respondent's real estate broker license, in
6 that:
7

8 I

9 In the Decision which revoked Respondent's real
10 estate broker license, there was a Determination of Issues made
11 that there was cause to revoke Respondent's license pursuant to
12 Business and Professions Code ("Code") Section 10177(d).
13

14 A Department of Real Estate ("Department") audit of
15 Respondent's books and records in 1997, found numerous trust
16 fund handling and record keeping violations. Respondent was
17 found to be in violation of Code Sections 10145 and 10148 and
18 Sections 2831, 2831.1, 2831.2, 2832 and 2834 of Title 10,
19 Chapter 6, California Code of Regulations ("Regulations").
20

21 II

22 Respondent's petition for reinstatement of his
23 license is governed by the Criteria of Rehabilitation set forth
24 in the California Administrative Code, Section 2911, Title 10,
25 Chapter 6, California Code of Regulations ("Regulations").
26 Section 2911 provides as follows: "The following criteria have
27 been developed by the department pursuant to Section 482(a) of

the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant."

It appears that Respondent has met the following applicable Criteria of Rehabilitation, Regulation 2911

(a) two (2) years since audit violations; (c) expungement of conviction(s) is not applicable; (d) registration pursuant to Penal Code Section 290 is not applicable; (e) completion of probation is not applicable; (f) abstinence from use of alcohol does not appear to be applicable; (g) payment of fine or monetary penalty is not applicable; (i) completion of educational or vocational training courses, as Respondent has completed 45 hours of continuing education within the past four (4) years; (l) significant or conscientious involvement in community or social programs, as Respondent has been working as a teacher since 1998; (m) new social and business relationships.

III

It does not appear that Respondent paid restitution to persons who suffered monetary losses through substantially related acts or omissions. Respondent filed Chapter 7 bankruptcy in 1998 and in 1999 he had approximately \$63,000

1 in trust funds debt discharged. This evidences a lack of
2 rehabilitation and is cause to deny Respondent's petition
3 pursuant to Regulations 2911(b) and 2911(j). Brookman vs.
4 State Bar of California (1988) 46 Cal. 3rd 1004.
5

6 IV

7 As part of the petition application process
8 Respondent had an interview with a Deputy Real Estate
9 Commissioner ("Deputy"). Respondent told the Deputy that he
10 not only lost his license, but his home, his wife, his business
11 and his credit. Respondent has not presented evidence of
12 stability of family life. This evidences a lack of
13 rehabilitation and is cause to deny Respondent's petition
14 pursuant to Regulation 2911(h).
15

16 V

17 Respondent informed the Deputy that he has not worked
18 in real estate since his license was revoked and failed to show
19 a correction of business practices. This evidences a lack of
20 rehabilitation and is cause to deny Respondent's petition
21 pursuant to Regulation 2911(k).
22

23 VI

24 Respondent informed the Deputy that the main reason
25 he wants his license reinstated is for his integrity, which is
26 the only thing he has left. Respondent did not present
27 evidence of a change in attitude. This evidences lack of

1 rehabilitation and is cause to deny Respondent's petition
2 pursuant to Regulation 2911(n)(1).

3 NOW, THEREFORE, IT IS ORDERED that Respondent's
4 petition for reinstatement of Respondent's broker license is
5 denied.

6
7 This Order shall become effective at 12 o'clock noon
8 on April 16, 2003.

9 DATED: March 24, 2003.

10 PAULA REDDISH ZINNEBANN
11 Real Estate Commissioner

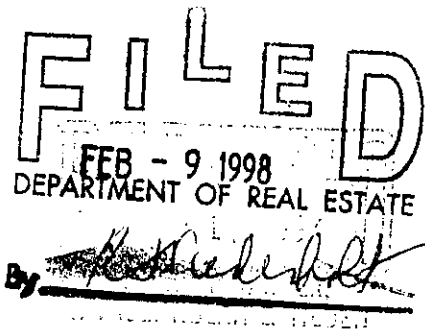
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16 BY: John R. Liberator
17 Chief Deputy Commissioner

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21
22
23
24
25 cc: Michael Terry Castellano
26 20636 Shawnee Road
27 Apple Valley, CA 92308

1 Department of Real Estate
2 107 South Broadway, Room 8107
3 Los Angeles, California 90012

4 (213) 897-3937



8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-27284 LA
12 MICHAEL TERRY CASTELLANO,) STIPULATION AND AGREEMENT
13)
14)
15 Respondent.)

16 It is hereby stipulated by and between Thomas N.
17 Jacobson, Counsel for MICHAEL TERRY CASTELLANO (sometimes referred
18 to as Respondent), and the Complainant, acting by and through
19 Elliott Mac Lennan, Counsel for the Department of Real Estate, as
20 follows for the purpose of settling and disposing of the
21 Accusation filed on July 15, 1997, in this matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act (APA), shall instead and in place thereof be
27



1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement (Stipulation).

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

7 3. Respondent filed a Notice of Defense on May 29,
8 1997, pursuant to Section 11506 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that he
12 understands that by withdrawing said Notice of Defense he thereby
13 waives his right to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that he will waive
16 other rights afforded to him in connection with the hearing such
17 as the right to present evidence in his defense of the allegations
18 in the Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual allegations
20 contained in the Accusation. In the interest of expedience and
21 economy, Respondent chooses not to contest these allegations, but
22 to remain silent and understands that, as a result thereof, these
23 factual allegations, without being admitted or denied, will serve
24 as a prima facie basis for the disciplinary action stipulated to
25 herein. The Real Estate Commissioner shall not be required to
26 provide further evidence to prove said factual allegations.

27



1 5. This Stipulation is based on Respondent's decision
2 not to contest the allegations set forth in the Accusation as a
3 result of the agreement negotiated between the parties. This
4 Stipulation is expressly limited to this proceeding and any
5 further proceeding initiated by or brought before the Department
6 of Real Estate based upon the facts and circumstances alleged in
7 the Accusation, for the sole purpose of reaching an agreed
8 disposition of this proceeding. The decision of Respondent not to
9 contest the factual statements alleged, and contained in the
10 "Order" herein below, is made solely for the purpose of
11 effectuating this Stipulation. It is the intent and understanding
12 of the parties that this Stipulation shall not be binding or
13 admissible against Respondent in any actions against Respondent by
14 third parties.

15 6. It is understood by the parties that the Real Estate
16 Commissioner may adopt the Stipulation as his Decision in this
17 matter thereby imposing the penalty and sanctions on Respondent's
18 real estate license and license rights as set forth in the "Order"
19 herein below. In the event that the Commissioner in his
20 discretion does not adopt the Stipulation, the Stipulation shall
21 be void and of no effect, and Respondent shall retain the right to
22 a hearing and proceeding on the Accusation under the provisions of
23 the APA and shall not be bound by any admission or waiver made
24 herein.

25 7. The Order or any subsequent Order of the Real Estate
26 Commissioner made pursuant to this Stipulation shall not
27 constitute an estoppel, merger or bar to any further



1 administrative or civil proceedings by the Department of Real
2 Estate with respect to any matters which were not specifically
3 alleged to be causes for accusation in this proceeding.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulation and solely for
6 the purpose of settlement of the pending Accusation without a
7 hearing, it is stipulated and agreed that the following
8 determination of issues shall be made:

9 I

10 The conduct of Respondent MICHAEL TERRY CASTELLANO, as
11 described in Paragraph 4, above, is in violation of Sections 10145
12 and 10148 of the Business and Professions Code (Code) and Sections
13 2831, 2831.1, 2831.2, 2832 and 2834 of Title 10, Chapter 6 of the
14 California Code of Regulations (Regulations) and is a basis for
15 the suspension or revocation of Respondent's license and license
16 rights pursuant to Section 10177(d) of the Code.

17 ORDER

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

20 I

21 The real estate broker license and license rights of
22 Respondent MICHAEL TERRY CASTELLANO under the Real Estate Law
23 (Part 1 of Division 4 of the Business and Professions Code) are
24 hereby revoked.

25 However, Respondent shall be entitled to apply for and
26 be issued a restricted real estate broker license if he makes
27 application therefor and pays to the Department of Real Estate the

1 appropriate fee for said license within ninety (90) days of the
2 effective date of the Stipulation herein.

3 The restricted real estate broker license issued to
4 Respondent shall be subject to all of the provisions of Section
5 10156.7 of the Business and Professions Code and the following
6 limitations, conditions and restrictions imposed under authority
7 of Section 10156.6 of the Code:

8 A. The restricted license may be suspended prior to
9 hearing by Order of the Real Estate Commissioner in the event of
10 Respondent's conviction (including conviction on a plea of nolo
11 contendere) to a crime which bears a significant relationship to
12 Respondent's fitness or capacity as a real estate licensee.

13 B. The restricted license may be suspended prior to
14 hearing by Order of the Real Estate Commissioner on evidence
15 satisfactory to the Commissioner that Respondent has, after the
16 effective date of the Order herein, violated provisions of the
17 California Real Estate Law, the Subdivided Lands Law, Regulations
18 of the Real Estate Commissioner or conditions attaching to said
19 restricted license.

20 C. Respondent shall obey all laws of the United States,
21 the State of California and its political subdivisions, and shall
22 further obey and comply with all rules and regulations of the Real
23 Estate Commissioner.

24 D. Respondent shall, within twelve months from the
25 effective date of this Decision, present evidence satisfactory to
26 the Real Estate Commissioner that Respondent has, since the most
27 recent issuance of an original or renewal real estate license,

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

8 E. While his license is restricted Respondent shall not
9 maintain any trust account which does not require both his
10 signature and the signature of a real estate salesperson licensed
11 to Respondent, or the signature of an unlicensed employee of
12 Respondent with fidelity bond coverage at least equal to the
13 maximum amount of the trust funds to which the employee has access
14 at any time to withdraw trust funds.

15 F. Respondent shall not be eligible for the issuance of
16 an unrestricted real estate license nor the removal of any of the
17 conditions, limitations or restrictions of the restricted license
18 until at least two years has elapsed.

19 G. As a further condition of any restricted license
20 being issued to Respondent, he shall first provide evidence
21 satisfactory to the Commissioner that the deficit in the
22 approximate amount of \$180,000 in his trust account, as of April
23 30, 1997, described in Paragraph VII(a) of the Accusation, has
24 been cured including the identity of the source of funds used to
25 cure the deficit.

26 H. During the restricted period, Respondent shall
27 provide to the Commissioner quarterly trust fund status reports.

II

Respondent shall pay, pursuant to Section 10148 of the
Code, the Commissioner's reasonable cost for an audit to determine
if Respondent has corrected the trust fund violations found in the
Determination of Issues. In calculating the amount of the
Commissioner's reasonable costs, the Commissioner may use the
estimated average hourly salary for all persons performing audits
of real estate brokers, and shall include an allocation for travel
costs, including mileage, time to and from the auditor's place of
work, and per diem in the total amount not to exceed \$5,900.

(1) Respondent shall pay such cost within 45 days of
receipt of an invoice from the Commissioner detailing the
activities performed during the audit and the amount of time spent
performing those activities;

(2) Notwithstanding the provisions of paragraph "I"
herein, if Respondent fails to pay, within forty-five (45) days
from receipt of the invoice specified above, the Commissioner's
reasonable costs for an audit to determine if Respondent has
corrected the violations found in the Determination of Issues, the
Commissioner may order the indefinite suspension of Respondent's
real estate licenses and license rights. The suspension shall
remain in effect until payment is made in full, or until
Respondent enters into an agreement satisfactory to the
Commissioner to provide for such payment. The Commissioner may
impose further reasonable disciplinary terms and conditions upon
Respondent's real estate license and license rights as part of any
such agreement.



1 DATED: 9-11-97

ELLIOTT MAC LENNAN
Counsel for Complainant

2 * * * *

3
4
5 I have read the Stipulation and Agreement and its terms
6 are understood by me and are agreeable and acceptable to me. I
7 understand that I am waiving rights given to me by the California
8 Administrative Procedure Act (including but not limited to
9 Sections 11506, 11508, 11509 and 11513 of the Government Code),
10 and I willingly, intelligently and voluntarily waive those rights,
11 including the right of requiring the Commissioner to prove the
12 allegations in the Accusation at a hearing at which I would have
13 the right to cross-examine witnesses against me and to present
14 evidence in defense and mitigation of the charges.

15 DATED: October 21, 1997

Michael T. Castellano
MICHAEL TERRY CASTELLANO
Respondent

17 DATED: October 21, 1997

Thomas N. Jacobson
THOMAS N. JACOBSON,
Counsel for Respondent

18 * * * *

19
20
21 The foregoing Stipulation and Agreement is hereby
22 adopted as my Decision and shall become effective at 12 o' clock
23 noon on March 3, 1997.

24 IT IS SO ORDERED 2/5, 1997.

25 JIM ANTT JR.
Real Estate Commissioner

26
27 J. Antt Jr.

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 16 1997
DEPARTMENT OF REAL ESTATE

By K. Studebaker

In the Matter of the Accusation of

MICHAEL TERRY CASTELLANO,

}

Case No. H-27284 LA

OAH No. L-1997070576

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 November 19, 1997, 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: OCT 16 1997

By

Elliott Mac Lennan

ELLIOTT MAC LENNAN,

Counsel

cc: Michael Terry Castellano
Thomas N. Jacobson, Esq.
Sacto OAH

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yes*

ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
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Los Angeles, California 90012

Telephone (213) 897-3937

FILED
JUL 15 1997
DEPARTMENT OF REAL ESTATE

By *H. Mederholt*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
MICHAEL TERRY CASTELLANO,)
Respondent.)

No. H-27284 LA
A C C U S A T I O N

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MICHAEL TERRY CASTELLANO dba Regal Realty, is informed and alleges as follows:

I

MICHAEL TERRY CASTELLANO (CASTELLANO), sometimes referred to as Respondent, is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

1 II

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

5 III

6 At all times mentioned, CASTELLANO was licensed or had
7 license rights issued by the Department of Real Estate
8 (Department) as a real estate broker. CASTELLANO was initially
9 licensed by the Department on February 27, 1981.

10 IV

11 At all times mentioned, in the City of Victorville, San
12 Bernardino County, California, Respondent CASTELLANO acted as a
13 real estate broker, in the State of California, within the meaning
14 of Section 10131(b) of the Code including the operation and
15 conduct of a property management business with the public wherein,
16 for or in expectation of compensation, for another or others,
17 Respondent leased or rented or offered to lease or rent, or placed
18 for rent, or solicited listings of places for rent, or solicited
19 for prospective tenants, or collected rents from real property, or
20 improvements thereon.

21 V

22 On April 30, 1997, the Department completed a field
23 audit examination of the books and records of CASTELLANO dba Regal
24 Realty pertaining to the activities described in Paragraph IV,
25 above, for the period beginning on March 1, 1994 and ending on
26 February 28, 1997, which revealed violations of the Code and the
27 Regulations as set forth in the following paragraphs.



VII

With respect to the trust funds referred to in Paragraph VI, it is alleged that CASTELLANO:

(a) Prevented a determination of trust fund accountability in any of the trust accounts due to insufficient and inaccurate records, in violation of Section 10145 of the Code. On or about April 28, 1997, Respondent CASTELLANO calculated that his bookkeeper, Mary Kay Hans, had embezzled approximately \$180,000 from the trust accounts. Between November 25, 1996, to January 17, 1997, \$176,311.34 was deposited into the trust accounts to replace trust funds purportedly embezzled;

(b) Failed to maintain a control record for the daily balance of the receipt and disposition of all trust funds in the trust accounts received, as required by Regulation 2831. Specifically, the check registers for T/A # 1 and T/A # 3 were inaccurate. There was no cash receipt of disbursement records for T/A # 2;

(c) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and disbursed by the trust accounts, as required by Regulation 2831.1;

(d) Failed to perform a monthly reconciliation for the receipt and disposition of all trust funds received by the trust accounts, and the balance of all separate beneficiary or transaction records, as required by Regulation 2831.2;

(e) Failed to maintain T/A #1 and T/A #2 in the name of the broker; failed to maintain T/A/ # 3 in the name of the broker



1 or to designate it as a trust account, as required by Section
2 10145 of the Code and Section 2832 of the Regulations; and

3 (f) Permitted an unlicensed person, Mary Kay Hans, who
4 was not bonded, to be a signatory on T/A #1 and T/A #2, in
5 violation of Section 2834 of the Regulations.

6 VIII

7 The conduct of Respondent CASTELLANO, described in
8 Paragraph VII above, violated the Code and the Regulations as set
9 forth below:

10 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
11 VII(a)	Section 10145 of the Code
12	
13 VII(b)	Section 10145 of the Code and
14	Section 2831 of the Regulations
15	
16 VII(c)	Section 10145 of the Code and
17	Section 2831.1 of the Regulations
18	
19 VII(d)	Section 10145 of the Code and
20	Section 2831.2 of the Regulations
21	
22 VII(e)	Section 10145 of the Code and
23	Section 2832 of the Regulations
24	
25 VII(f)	Section 10145 of the Code and
26	Section 2834 of the Regulations
27	

1 Each of the foregoing violations separately constitutes cause for
2 the suspension or revocation of the real estate license and
3 license rights of Respondent CASTELLANO under the provisions of
4 Section 10177(d) of the Code.

5 IX

6 On April 30, 1997, the Department complete a field audit
7 examination of the books and records of CASTELLANO pertaining to
8 the activities described in Paragraph IV, above. Respondent
9 failed to produce or maintain all records of Regal Realty during
10 this period, including the manual accounting records for the trust
11 accounts, bank accounting records and trust account
12 reconciliations, bank statements, cancelled checks, and check and
13 deposit registers, requiring a real estate license for certain
14 property owners clients under his management, in violation of
15 Section 10148 of the Code. This conduct and violation are cause
16 for the suspension or revocation of the real estate license and
17 license rights of Respondent CASTELLANO under the provisions of
18 Section 10177(d) of the Code.

19 X

20 The overall conduct of Respondent CASTELLANO in
21 violating Sections 10145 and 10148 of the Code and Regulations
22 Sections 2830, 2831, 2831.1, 2831.2, 2832 and 2834, as described
23 in Paragraphs IV through IX above, constitutes negligence or
24 incompetence. This conduct and violation are cause for the
25 suspension or revocation of the real estate license and license
26 rights of Respondent CASTELLANO under the provisions of Section
27 10177(g) of the Code.



Dated at Los Angeles, California
this 15th day of July, 1997.

Deputy Real Estate Commissioner


COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 3-95)
95 28391