

FILED

APR 26 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARVIN LYLE DELLINGER,)
Respondent.)

No. H-27420 LA

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 4, 1998, an Order 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 on March 26, 1998, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On March 10, 2000, 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 the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

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

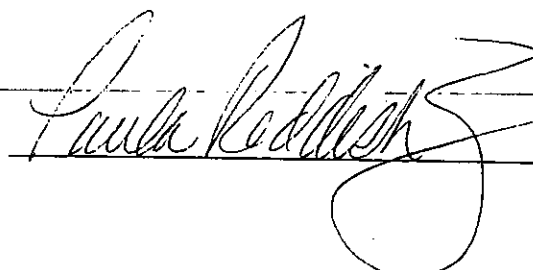
13 1. Submittal of a completed application and payment of
14 the fee for a real estate broker license.

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

20 This Order shall be effective immediately.

21 DATED: April 16, 2001
22

23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25
26 
27

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

5 (213) 897-3937
6
7

FILED
MAR - 6 1998
DEPARTMENT OF REAL ESTATE

By Laura B. Cline

8 DEPARTMENT OF REAL ESTATE
9

10 STATE OF CALIFORNIA

11 * * * * *

12 In the Matter of the Accusation of)
13 MARVIN LYLE DELLINGER,)
14 individually, dba MD Real)
15 Estate Services and as)
16 designated officer of)
17 M. D. Real Estate Services,)
18 Inc.)
19 Respondent.)

No. H-27420 LA

STIPULATION AND AGREEMENT

20 It is hereby stipulated by and between MARVIN LYLE
21 DELLINGER (referred to as Respondent), acting by and through his
22 attorney, Mark A. Brody, Esq. of Kimball, Tirey & St. John, and the
23 Complainant, acting by and through Sean Crahan, Counsel for the
24 Department of Real Estate, as follows for the purpose of settling
25 and disposing of the Accusation filed on October 21, 1997, in this
26 matter:

27 1. All issues which were to be contested and all
evidence which was to be presented by Complainant and Respondent at
a formal hearing on the Accusation, which hearing was to be held in
accordance with the provisions of the Administrative Procedure Act

1 (APA), shall instead and in place thereof be submitted solely on
2 the basis of the provisions of this Stipulation And Agreement
3 (hereafter Stipulation).

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

8 3. On October 31, 1997, Respondent filed a Notice of
9 Defense pursuant to Section 11506 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense, he will
14 thereby waive his right to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that he will waive
17 other rights afforded to him in connection with the hearing such as
18 the right to present evidence in defense of the allegations in the
19 Accusation and the right to cross-examine witnesses.

20 4. Respondent, pursuant to the limitations set forth
21 below, hereby admits that the factual allegations in Paragraphs one
22 (1) through four (4) in the Accusation filed in this proceeding are
23 true and correct and the Real Estate Commissioner shall not be
24 required to provide further evidence to prove such allegations.

25 5. 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 Respondent's



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

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

14 7. The below Determination of Issues contains a
15 determination that Respondent MARVIN LYLE DELLINGER has violated
16 Code Section 10145 and Regulations 2831, 2831.1, 2831.2 and 2832.1.
17 Respondent MARVIN LYLE DELLINGER is aware that by agreeing to this
18 Stipulation And Agreement, if the findings set forth below in the
19 Determination of Issues become final, the Commissioner may charge
20 Respondent MARVIN LYLE DELLINGER for the costs of any audit
21 conducted pursuant to Section 10148 of the Code to determine if
22 Respondent MARVIN LYLE DELLINGER, performing activities requiring a
23 real estate license in whatever business form respondent is so
24 acting, is in compliance with the Real Estate Law. The maximum
25 cost of said audit will not exceed \$7,200.00.

26 DETERMINATION OF ISSUES

27 By reason of the foregoing stipulations, admissions and

1 waivers, made solely for the purpose of settlement of the pending
2 Accusation without a hearing, it is stipulated and agreed that the
3 following Determination of Issues shall be made:

4 The conduct or omissions of Respondent, as set forth in
5 paragraph one (1) through four (4) of the Accusation constitute
6 cause to suspend or revoke his real estate broker license and/or
7 license rights under the provisions of Code Section 10177(d) for
8 violation of Code Sections 10145 and 10148 and Regulations 2731,
9 2831, 2831.1, 2831.2 and 2832.1

10 ORDER

11 WHEREFORE, THE FOLLOWING ORDER is hereby made:

12 All licenses and license rights of Respondent MARVIN LYLE
13 DELLINGER under Part 1 of Division 4 of the Business and
14 Professions Code are revoked; provided, however, a restricted real
15 estate broker license shall be issued to Respondent MARVIN LYLE
16 DELLINGER pursuant to Section 10156.5 of the Code if Respondent
17 makes application therefor and pays to the Department of Real
18 Estate the appropriate fee for said licenses within ninety (90)
19 days from the effective date of the Order. The restricted license
20 issued to Respondent DELLINGER shall be subject to all of the
21 provisions of Section 10156.7 of the Business and Professions Code
22 and to the following limitations, conditions and restrictions
23 imposed under authority of Section 10156.6 of said Code. The
24 restricted licenses issued to Respondent DELLINGER shall be subject
25 to all of the provisions of Section 10156.7 of the Business and
26 Professions Code and to the following limitations, conditions and
27 restrictions imposed under authority of Section 10156.6 of said



1 Code:

2 (1) The restricted license may be suspended prior
3 to hearing by order of the Real Estate Commissioner in the event of
4 Respondent DELLINGER'S conviction or plea of nolo contendere to a
5 crime which bears a significant relation to Respondent's fitness or
6 capacity as a real estate licensee.

7 (2) The restricted license may be suspended prior
8 to hearing by Order of the Real Estate Commissioner on evidence
9 satisfactory to the Commissioner that Respondent DELLINGER has,
10 during the time she holds a restricted license, violated provisions
11 of the California Real Estate Law, the Subdivided Lands Law,
12 Regulations of the Real Estate Commissioner, or the conditions
13 attaching to these restricted licenses.

14 (3) Respondent DELLINGER shall report in writing to
15 the Department of Real Estate as the Real Estate Commissioner shall
16 direct by his Order herein or by separate written order issued
17 while Respondent holds a restricted license, such information
18 concerning Respondent's activities for which a real estate license
19 is required as the Commissioner shall deem to be appropriate to
20 protect the public interest.

21 (4) Respondent MARVIN LYLE DELLINGER shall not be
22 eligible to apply for the issuance of an unrestricted real estate
23 license nor the removal of any of the conditions, limitations or
24 restrictions of a restricted license until two (2) years has
25 elapsed from the date of issuance of the restricted license to
26 Respondent.

27 (5) Respondent MARVIN LYLE DELLINGER shall, within

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

12 (6) Respondent MARVIN LYLE DELLINGER shall, within
13 six months from the effective date of this Order, take and pass the
14 Professional Responsibility Examination administered by the
15 Department including the payment of the appropriate examination
16 fee. If Respondent fails to satisfy this condition, the
17 Commissioner may order suspension of Respondent's license until
18 Respondent passes the examination.

19 (7) Within two years from the effective date of
20 this Order, the Commissioner may audit the books and records of
21 respondent MARVIN LYLE DELLINGER to determine compliance with the
22 Real Estate Law and Regulations of the Real Estate Commissioner,
23 pursuant to Code Section 10148.

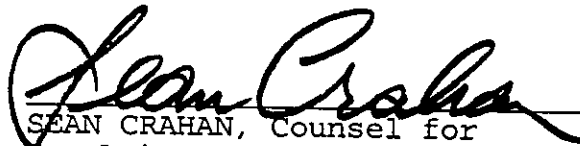
24 (a) The Real Estate Commissioner may charge
25 respondent the reasonable cost of this audit. In calculating the
26 amount of the reasonable costs, the Commissioner may use the
27 estimated average hourly salary for all persons performing audits

1 of real estate brokers, and shall include an allocation for travel
2 costs, including mileage, time to and from the auditor's place of
3 work, and per diem. The Commissioner's reasonable costs shall in
4 no event exceed \$7,200.00.

5 (b) Respondent MARVIN LYLE DELLINGER shall
6 pay, within 45 days from receipt of the invoice, the Commissioner's
7 reasonable costs for the chargeable follow-up audit;

8 (c) If Respondent fails to pay, within 45 days
9 from receipt of the invoice, for the Commissioner's reasonable
10 costs for an audit, the Commissioner may order the suspension of
11 Respondent's real estate license and license rights. The
12 suspension shall remain in effect until Respondent pays the
13 invoiced costs or enters into an agreement satisfactory to the
14 Commissioner to provide for such payment. The Commissioner may
15 impose further reasonable disciplinary terms and conditions upon
16 Respondent's real estate license and license rights as part of any
17 such agreement;

18 DATED: 2-3-98


19 SEAN CRAHAN, Counsel for
20 Complainant.

21 * * * * *

22 I have read the Stipulation And Agreement, and its terms
23 are understood by me and are agreeable and acceptable to me. I
24 understand that I am waiving rights given to me by the California
25 Administrative Procedure Act (including but not limited to Sections
26 11506, 11508, 11509 and 11513 of the Government Code), and I
27 willingly, intelligently and voluntarily waive those rights,
including the right of requiring the Commissioner to prove the

1 allegations in the Accusation at a hearing at which I would have
2 the right to cross-examine witnesses against me and to present
3 evidence in defense and mitigation of the charges.

4 DATED: Jan 29, 1998 Marvin Lyle Dellinger
5 MARVIN LYLE DELLINGER, Respondent.

6 DATED: _____
7
8 MARK A. BRODY, ESQ, Kimball, Tirey &
9 St. John, Counsel for Respondent
Marvin Lyle Dellinger, approved as to
form.

10 2/3/98 4:49 PM Dellinger, stip transmittal (note stip
11 not signed by Mark Brody, but so recited in cover letter
dated 2-2-98 by Brody)

12 * * * * *

13
14
15 The foregoing Stipulation And Agreement is hereby adopted
16 as my Decision in this matter and shall become effective at 12
17 o'clock noon on March 26, 1998.

18
19 IT IS SO ORDERED 3/4 1998.

20
21 JIM ANTT, JR.
22 Real Estate Commissioner
23 Jh Antt Jr
24
25
26
27

*Sacto
2/10/97*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILE
DEC - 1 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. H-27420 LA
MARVIN LYLE DELLINGER,) OAH No. L-1997110318
Respondent.)

By *Sean Crahan*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 1350 Front Street, Room 6022, San Diego, California, on FEBRUARY 17 & 18, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of 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.

Dated: DEC - 1 1997

DEPARTMENT OF REAL ESTATE

By:

Sean Crahan
SEAN CRAHAN, Counsel

cc: Marvyn Lyle Dellinger
Mark A. Brody, Esq.
Sacto.
OAH LA & SD

Seal

FILED
OCT 21 1997
DEPARTMENT OF REAL ESTATE

By *Guss. B. Crane*

SEAN CRAHAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012
California Bar #49351
(213) 897-3937

THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-27420 LA
MARVIN LYLE DELLINGER,)	<u>A C C U S A T I O N</u>
individually, dba MD Real)	
Estate Services and as)	
designated officer of)	
M. D. Real Estate Services,)	
Inc.)	
Respondent.)	

The Complainant, Thomas Mc Crady, a Deputy Real Estate Commissioner of the State of California for cause of accusation against MARVIN LYLE DELLINGER, individually, doing business as M.D. Real Estate Services and as designated officer of M. D. Real Estate Services, Inc., alleges as follows.

1.

The Complainant, Thomas Mc Crady, a deputy real estate commissioner, brings this accusation in his official capacity.

/

/

2.

MARVIN LYLE DELLINGER (hereafter 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 (hereafter cited as the Code).

(a) At all times herein mentioned, Respondent was licensed by the Department of Real Estate of the State of California (hereafter the Department) as a real estate broker, individually, doing business as M.D. Real Estate Services, since July 24, 1997, and as designated officer of M.D. Real Estate Services, Inc., since July 28, 1997.

(b) M.D. Real Estate Services, Inc. is not a Respondent in this Accusation.

3.

At all times mentioned herein, for or in expectation of compensation, Respondent, doing business as M.D. Real Estate Services (hereafter MDRES), conducted activities within the definition of Code Section 10131(b) wherein he solicited and negotiated on behalf of owners with tenants to rent real property and collected rents in trust from tenants on real property and disbursed said trust funds to or on behalf of the owners, for or in expectation of compensation (hereafter property management).

4.

Between July 8, 1997 through August 19, 1997, an auditor from the Department examined the books and records of Respondent doing business as MDRES covering a period of time from July 1, 1995 through May 31, 1997 (hereafter the "audit period"), and found that



1 Respondent violated the following Code Sections and Regulations from
2 Title 10, Chapter 6 of the California Code of Regulations (hereafter
3 the Regulations) as set forth in the following paragraph.

4 (a) At a time unknown, Respondent commenced doing
5 business as M.D. Real Estate Services (MDRES). Respondent failed to
6 obtain a license bearing that fictitious business name in willful
7 violation of Code Section 10159.5 and Regulation 2731 until on or
8 about July 24, 1997.

9 (b) In connection with the collection of rents from
10 tenants on behalf of owners, Respondent received funds in trust and
11 deposited them into a trust account at Wells Fargo Bank in Solana
12 Beach, California and was Account number 0636-028409, hereafter TA.

13 (c) Respondent failed to maintain columnar records
14 showing trust funds received and disbursed in compliance with
15 Regulation 2831. The dates when funds were received and deposited
16 were not recorded in willful violation of Regulation 2831.

17 (d) Respondent failed to maintain separate records for
18 each transaction in compliance with Regulation 2831.1. The dates
19 when funds were deposited were not recorded in willful violation of
20 Regulation 2831.1.

21 (e) Respondent failed to monthly reconcile his control
22 records with his separate records, in willful violation of
23 Regulation 2831.2.

24 (f) Respondent caused, allowed or permitted a shortage of
25 \$11,372.39 to exist in the trust account as of May 31, 1997, without
26 the written consent of each and every owner of the funds in said
27 trust account, in willful violation of Code Section 10145 and



1 Regulation 2832.1.

2 (g) Respondent was requested to produce control records
3 and separate records bearing identifiers of CARMEC, CARQUI, CLAMAT,
4 HIGHLA and FREEMA. Respondent failed to produce those records in
5 willful violation of Code Section 10148.

6 5.

7 The conduct or omissions of Respondent as set forth above
8 subject his real estate license and license rights to suspension or
9 revocation under Code Section 10177(d) for willful violations of the
10 following Code Sections and Regulations:

11 (a) Code Section 10159.5 and Regulation 2731 for
12 conducting business under the fictitious business name of MDRES
13 without a license, as set forth in paragraph 4(a) above.

14 (b) Code Section 10145 and Regulation 2831 for
15 inadequate columnar records, as set forth in paragraph 4(c) above.

16 (c) Code Section 10145 and Regulation 2831.1 for
17 inadequate separate records, as set forth in paragraph 4(d) above.

18 (d) Regulation 2831.2 for failure to perform monthly
19 reconciliations, as set forth in paragraph 4(e) above.

20 (e) Code Section 10145 and Regulation 2832.1 for the
21 trust fund shortage, as set forth in paragraph 4(f) above.

22 (f) Code Section 10148 for failure to produce
23 requested separate records, as set forth in paragraph 4(g) above.

24 /

25 /

26 /

27 /



1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations of this Accusation and, that upon proof thereof,
3 a decision be rendered imposing disciplinary action against all
4 licenses and license rights of Respondent MARVIN LYLE DELLINGER,
5 individually, doing business as M.D. Real Estate Services and as
6 designated officer of M.D. Real Estate Services, Inc., under the
7 Real Estate Law (Part 1 of Division 4 of the Business and
8 Professions Code) and for such other and further relief as may be
9 proper under other applicable provisions of law.

10 Dated at Los Angeles, California this 21st day of October, 1997.

Thomas McCrady

Thomas Mc Crady,
Deputy Real Estate Commissioner

cc: Marvin Lyle Dellinger
Sacto
PI

27 SC/sc