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By *Laura B. Dione*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DOUGLAS WESLEY MARTIN,) NO. H- 28328 LA
Respondent.) L- 1999120201

ORDER DENYING RECONSIDERATION

On September 13, 2000, a Decision After Rejection was rendered in the above-entitled matter. The Decision was to become effective on October 4, 2000, and was stayed by Order of September 22, 2000 to November 3, 2000.

On October 19, 2000, Respondent submitted a Declaration in Support of Petition for Reconsideration of the Decision of September 13, 2000.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of September 13, 2000, and reconsideration is hereby denied.

IT IS SO ORDERED *October 31, 2000.*

PAULA REDDISH ZINNEMANN
Real Estate Commissioner
Paula Reddish

gick

FILED
SEP 22 2000
DEPARTMENT OF REAL ESTATE
By *Sam P. Lion*

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-28328 LA
DOUGLAS WESLEY MARTIN,) L-1999121201
Respondent.)

ORDER STAYING EFFECTIVE DATE

On September 13, 2000, a Decision was rendered in the above-entitled matter to become effective October 4, 2000.

IT IS HEREBY ORDERED that the effective date of the Decision of September 13, 2000, is stayed for a period of 30 days.

The Decision of September 13, 2000, shall become effective at 12 o'clock noon on November 3, 2000.

DATED: September 22, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

By: *Randolph Brendia*
RANDOLPH BRENDIA
Regional Manager

lbo

1 Respondent was served with a copy of the Proposed Decision dated
2 March 14, 2000, and with notice of my determination not to adopt
3 the Proposed Decision. Respondent was notified that the case
4 would be decided by me upon the record, including the transcript
5 of proceedings held on February 15, 2000, and upon any written
6 argument offered by the parties.

7 Argument has been submitted by the Respondent and by
8 Complainant. I have given careful consideration to these
9 arguments and to the record in this case, including the
10 transcript of proceedings of February 15, 2000.

11 FINDINGS OF FACT

12 I have determined that the Findings of Fact in the
13 Proposed Decision of the Administrative Law Judge, dated
14 March 14, 2000, are appropriate with respect to Findings 1
15 through 9, and Finding 11. These findings are hereby adopted.

16 With respect to Finding 10, evidence does not support
17 a finding that Respondent is "truly remorseful." On the
18 contrary, Respondent continues to expressly refuse to take
19 responsibility for his misconduct. This finding is not adopted.

20 DETERMINATION OF ISSUES

21 The Administrative Law Judge's Legal Conclusions 1
22 through 6 are hereby adopted in their entirety. With regards to
23 Legal Conclusion 7, the legal analysis and reasoning is adopted,
24 but the proposed penalty is rejected. The following additional
25 Legal Conclusion is therefore made:

26 The fact remains that Respondent made a false
27 statement in the Contract and Receipt that he did not correct,



1 and the Bests foreseeably relied on such false statements to
2 their detriment, as set forth in Factual Findings 7, 8 and 9.
3 Respondent says he told the Bests' agent of the misstatement.
4 However, he did not make any further efforts to change the
5 statement in the Contract and Receipt so that there would be no
6 possibility that the Bests might rely on the representation that
7 a deposit check had been given to him for deposit into escrow.
8 Respondent also did not take any steps to ensure that his
9 clients complied with the escrow instructions that they had
10 signed which would have also precluded any potential adverse
11 effects from his misrepresentation in the Contract and Receipt.
12 The public is entitled to rely on written statements made and
13 signed by licensed real estate brokers, even if the broker
14 represents the other party to the transaction, as honesty and
15 truthfulness are requirements for the issuance of a real estate
16 broker's license. See Business and Professions Code section
17 10152 and Golde v. Fox, (1979) 98 Cal.App.3d 167, 178.

18
19 ORDER

20 WHEREFORE, THE FOLLOWING ORDER is hereby made:

21 All licenses and licensing rights of Respondent
22 DOUGLAS WESLEY MARTIN under the Real Estate Law are revoked;
23 provided, however, a restricted real estate broker license shall
24 be issued to Respondent pursuant to Section 10156.5 of the
25 Business and Professions Code if Respondent makes application
26 therefor and pays to the Department of Real Estate the
27 appropriate fee for the restricted license within 90 days from
the effective date of this Decision. The restricted license



1 issued to Respondent shall be subject to all of the provisions
2 of Section 10156.7 of the Business and Professions Code and to
3 the following limitations, conditions and restrictions imposed
4 under authority of Section 10156.6 of that Code:

5 1. The restricted license may be issued to Respondent
6 only upon proof of restitution to David Best in the
7 amount of \$1,000.

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

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

21 4. Respondent shall not be eligible to apply for the
22 issuance of an unrestricted real estate license nor
23 for the removal of any of the conditions, limitations
24 or restrictions of a restricted license until two
25 years have elapsed from the effective date of this
26 Decision.

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1 5. Respondent shall, within six months from the
2 effective date of this Decision, take and pass the
3 Professional Responsibility Examination administered
4 by the Department including the payment of the
5 appropriate examination fee. If Respondent fails to
6 satisfy this condition, the Commissioner may order
7 suspension of Respondent's license until Respondent
8 passes the examination.

9 6. Respondent shall, within nine months from the
10 effective date of this Decision, present evidence
11 satisfactory to the Real Estate Commissioner that
12 Respondent has, since the most recent issuance of an
13 original or renewal real estate license, taken and
14 successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real
16 Estate Law for renewal of a real estate license. If
17 Respondent fails to satisfy this condition, the
18 Commissioner may order the suspension of the
19 restricted license until the Respondent presents such
20 evidence. The Commissioner shall afford Respondent
21 the opportunity for a hearing pursuant to the
22 Administrative Procedure Act to present such evidence.

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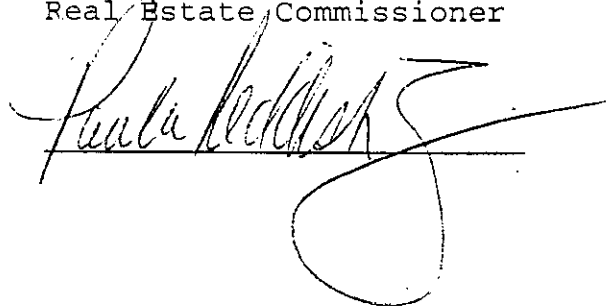
This Decision shall become effective at 12 o'clock

noon on October 4, 2000.

IT IS SO ORDERED

September 13, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner





FILED
APR 11 2000
DEPARTMENT OF REAL ESTATE

By K. Mederholt

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-28328 LA
DOUGLAS WESLEY MARTIN,)	L-1999120201
Respondent.)	

NOTICE

TO: DOUGLAS WESLEY MARTIN, Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 14, 2000, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 14, 2000, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on February 15, 2000, and any written argument hereafter submitted on behalf of respondent and complainant

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1 Written argument for respondent to be considered by
2 me must be submitted within 15 days after receipt of the
3 transcript of the proceedings of February 15, 2000, at the
4 Los Angeles office of the Department of Real Estate unless an
5 extension of the time is granted for good cause shown.

6 Written argument of complainant to be considered by
7 me must be submitted within 15 days after receipt of the
8 argument of respondent at the Los Angeles office of the
9 Department of Real Estate unless an extension of the time is
10 granted for good cause shown.

11 DATED: April 6, 2000.

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13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner
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Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

DOUGLAS WESLEY MARTIN,

Respondent.

DRE Case No. H-28328 LA

OAH No. L 1999120201

PROPOSED DECISION

This matter came on regularly for hearing before Felix W. Loya, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on February 15, 2000. Complainant Thomas McCrady was represented by Martha J. Rosett, Staff Counsel. Respondent Douglas Wesley Martin ("Respondent") was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. The Accusation was filed by Thomas McCrady in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (the "Department").
2. Respondent was issued a real estate broker license by the Department as of February 19, 1996 with an expiration date of February 18, 2000.
3. On November 30, 1999, the Department filed this accusation and the instant hearing ensued.
4. In September 1997, Respondent represented Bradley and Christiane Andersen who were looking to purchase real property. On September 11, 1997, Respondent prepared a Real Estate Purchase Contract and Receipt for Deposit (the "Contract and Receipt") for the Andersens' offer to purchase the real property known as 5032 West Avenue K-14, Lancaster, California from the sellers of the real property, David and Tammi Best, subject to, among other things, obtaining financing. On September 12, 1997, Respondent and the Andersens signed the Contract and Receipt. In the Contract and Receipt, Respondent represented that he had received a deposit of \$1,000 from the Andersens, which was to be deposited into escrow.

On September 13, 1997, the Bests made a counteroffer that did not change the representation that Respondent had received a deposit of \$1,000 to be deposited into escrow. On the same date, the Andersens made a counteroffer in response that also did not change the representation that Respondent had received a deposit of \$1,000 to be deposited into escrow. The Andersens' counteroffer requested a closing at the end of the month and provided that an interim occupancy agreement would follow if necessary. The Bests accepted the Andersens' counteroffer.

5. At no time did the Andersens give Respondent a deposit of \$1,000. Respondent told the Bests' agent that he had not received a check from the Andersens when he initially transmitted the Contract and Receipt to her. Respondent did not discuss the deposit with the Bests' agent or the Bests again.

6. On September 16, 1997, the Bests and the Andersens signed escrow instructions with Chicago Title Company that stated that the Andersens would deposit \$1,000 with the signed escrow instructions. The Andersens did not, however, deposit any money with the signed escrow instructions nor did Respondent. Respondent did not tell the Andersens to deposit money with the escrow instructions nor did he check with the Andersens or with Chicago Title Company to see if the Andersens had deposited any money with the signed escrow instructions.

7. By letter dated October 2, 1997, the Andersens asked Chicago Title Company to terminate the Contract and Receipt because the value of the real property was substantially below the purchase price. By letter dated October 2, 1997, the Bests communicated to Chicago Title Company their refusal to agree to the termination and to the release of any monies on deposit in escrow. The Bests demanded receipt of the monies that the Bests at that time thought were on deposit with Chicago Title Company and also demanded liquidated damages for the Andersens' termination of the sale. The Bests indicated a willingness to enter into mediation to resolve any dispute.

8. The Bests had incurred significant costs in reliance on the sale of their property to the Andersens. In particular, acting in reliance on the provision requiring a closing by the end of September 1997, and believing that an interim occupancy agreement was available to them only if they could not find alternative living space after diligent efforts to look for it, the Bests had entered into a lease for a house in Sylmar, California. The Bests had to forfeit a portion of the initial deposit when they terminated the lease upon the Andersens' termination of their agreement to buy the Bests' real property. The Bests incurred other expenses in reliance on the Contract and Receipt as well and believed that they were entitled to reimbursement for such expenses from the Andersens' deposit. Respondent could have reasonably anticipated that the Bests might incur expenses in reliance on his representation in the Contract and Receipt.

9. By letter dated October 22, 1997, the Bests asked Chicago Title Company to "transfer all actions" to a new escrow and to close out the escrow with the Andersens so that

the Bests could sell their property to new buyers. As a result of the October 22, 1997 letter, the Bests learned for the first time that no money had been deposited into escrow by or for the Andersens. The Bests later consummated the sale of their property to the new buyers.

10. The following factors, indicating rehabilitation, exist:

a. Respondent is remorseful and has changed his practice so that he no longer prepares a Real Estate Purchase Contract and Receipt for Deposit in advance of his meeting with the buyers who are to sign it in order to make sure that they have their deposit check with them to give to him.

b. Respondent has many years of experience in the industry and produced numerous letters praising his professionalism and attention to detail in many transactions over many years.

c. Respondent has been licensed as a real estate broker since 1993 and as a real estate salesperson since 1972 or 1973. In that time, Respondent has not had any other complaints filed against him in connection with his work as a real estate broker or real estate salesperson other than the current one.

11. The following factors, indicating mitigation, exist:

a. Respondent prepared and signed the Contract and Receipt the night before the Andersens came to his office to sign it. When he prepared and signed the Contract and Receipt, he expected the Andersens to bring a check for \$1,000 with them. The Andersens did not have their checkbook with them when they showed up to sign the Contract and Receipt and were in a hurry. Respondent told them that they would be required to deposit a check with the escrow company if their offer was accepted.

b. Respondent did not know that Chicago Title Company had not requested a check from the Andersens when the Andersens signed and submitted the escrow instructions. Respondent was not present when the Andersens signed and submitted the escrow instructions.

c. Chicago Title Company did not ask the Andersens for a deposit, notwithstanding that the escrow instructions provided that the Andersens would deposit a check with the escrow instructions. Chicago Title Company did not tell Respondent that his clients had not complied with the escrow instructions or contact him to obtain compliance.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

1. The Department maintains jurisdiction of Respondent for purposes of this proceeding even if Respondent has not renewed or been reissued a real estate broker's license on or after the February 18, 2000 expiration date of the license that was in effect at the time of the hearing. *See Business and Professions Code section 10103.*

2. The accusation was timely filed, as it was filed within three years of the occurrence of the fraud, misrepresentation or a false promise alleged therein. *See Business and Professions Code section 10101.*

3. Cause exists for disciplinary action against Respondent's license under Business and Professions Code section 10176(a) for making a substantial misrepresentation, as set forth in Findings 4, 5 and 6.

4. Cause does not exist for disciplinary action against Respondent's license under Business and Professions Code section 10176(i) for conduct constituting fraud or dishonest dealing because there is no evidence that Respondent intended to deceive the Bests into believing that a deposit had been made when the facts were otherwise, as set forth in Findings 5 and 11.

5. Cause exists for disciplinary action against Respondent's license under Business and Professions Code section 10177(g) for demonstrated negligence or incompetence in performing an act for which he is required to hold a license, as set forth in Findings 4, 5 and 6.

6. The facts indicating rehabilitation, as set forth in Finding 10, indicate that Respondent is substantially rehabilitated and that it is unlikely he will repeat his misconduct. Moreover, the factors indicating mitigation, as set forth in Finding 11, indicate that Respondent acted carelessly but not intentionally or for his own profit and that others may have also been at fault for failing to see to it that the terms of the Contract and Receipt and the escrow instructions were met. Therefore, it would not be against the public interest to allow Respondent to maintain his license.

7. Nonetheless, the fact remains that Respondent made a false statement in the Contract and Receipt that he did not correct, and the Bests foreseeably relied on such false statements to their detriment, as set forth in Findings 7, 8 and 9. Although Respondent told the Bests' agent of the misstatement, he did not make any further efforts to change the statement in the Contract and Receipt so that there would be no possibility that the Bests might rely on the representation that a deposit check had been given to him for deposit into escrow. Respondent also did not take any steps to ensure that his clients complied with the escrow instructions that they had signed which would have also precluded any potential adverse effects from his misrepresentation in the Contract and Receipt. The public is entitled to rely on written statements made and signed by licensed real estate brokers, even if the broker represents the other party to the transaction, as honesty and truthfulness are requirements for the issuance of a real estate broker's license. *See Business and Professions Code section 10152 and Glick v. Scudder (1945) 69 Cal.App.2d 717.* Accordingly, it would be in the public interest and public welfare to suspend Respondent's license for a short period

with a monetary penalty in lieu of suspension for Respondent's negligent misrepresentation and subsequent carelessness in accordance with Business and Professions Code section 10175.2.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Douglas Wesley Martin under the Real Estate Law are suspended for a period of twenty (20) days from the effective date of this Decision; provided, however, that if Respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$50.00 for each day of the suspension for a total monetary penalty of \$1,000.00.

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

3. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

Date: March 14, 2000



FELIX W. LOYA

Administrative Law Judge

Office of Administrative Hearings

John Doe
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 24 1999
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DOUGLAS WESLEY MARTIN,

By *K. Hederberg*
Case No. H-28328 LA

} OAH No. L-1999120201

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, 320 W. Fourth St., Ste. 630, Los Angeles, CA on February 15, 2000, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: December 24, 1999

By *Martha J. Krest*

Counsel

cc: Douglas Wesley Martin
Sacto
OAH
PM

RE 501 (Rev. 8/97)

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*facto
file*

MARTHA J. ROSETT, Counsel (SBN # 142072)
Department of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013

FILED
NOV 30 1999
DEPARTMENT OF REAL ESTATE

By *K. M. ...*

(213) 576-6982
(213) 576-6914

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H- 28328 LA
	)	
DOUGLAS WESLEY MARTIN, dba, "Doug	)	<u>A C C U S A T I O N</u>
Martin and Associates,"	)	
	)	
Respondent.	)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against DOUGLAS WESLEY MARTIN, (hereinafter "Respondent") is informed and alleges as follows:

I

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

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 (hereinafter "Code"), as a real estate broker.



III

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Section 10131(a), for another or others, for or in expectation of compensation. Said activity included the operation and conduct of a real estate sale business with the public, wherein he sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity.

IV

At all times material herein, Respondent was employed by Remax All-Pro Realty was and is the designated broker of Remax All-Pro.

V

In September 1997, Respondent represented the buyers, Bradley and Christiane Andersen, in the purchase of real property known as 5032 West Avenue K-14, Lancaster, CA. On or about September 12, 1997, Respondent prepared and signed a Real Estate Purchase Contract and Receipt for Deposit in which he represented that he had received a deposit of \$1,000 from the buyers which was to be deposited into escrow. In truth, Respondent had not in fact received any deposit from the buyers. When buyers subsequently cancelled the transaction, there was no money being held in escrow pending resolution of the dispute between buyer and seller.

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VI

The conduct, acts or omissions of Respondent as alleged above, in signing a Purchase Deposit Receipt indicating that he had received a \$1,000 from the buyers when in fact, no such deposit had been or was ever received constitutes the making of a substantial misrepresentation and/or demonstrates negligence or incompetence, and is grounds to discipline the license and licensing rights of Respondent under the provisions of Sections 10176(a), 10176(i) and/or 10177(g) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of DOUGLAS MARTIN, 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 30th day of November, 1999.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: DOUGLAS WESLEY MARTIN
Sacto.
PM

