

*Auto
glue*

FILED
MAY - 7 2008
DEPARTMENT OF REAL ESTATE

St. Meda...

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)	NO. H-28524 LA
)	
RUSS MACIAS,)	
)	
Respondent.)	
)	

ORDER DENYING REINSTATEMENT OF LICENSE

On December 13, 2000, a Decision was rendered herein revoking Respondent's real estate broker license, but granting Respondent the right to apply for and be issued a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on March 22, 2001.

On or about August 24, 2005, Respondent petitioned for reinstatement of Respondent's real estate broker license and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has

1 undergone sufficient rehabilitation to warrant the reinstatement
2 of Respondent's real estate broker license, in that:

3 I

4 In the Decision which revoked Respondent's real
5 estate broker license, there were Determination of Issues made
6 that there was cause to revoke Respondent's real estate license
7 pursuant to Business and Professions Code ("Code") Section
8 10177(d), for violation of Code Section 10145 and Sections 2831
9 and 2831.1, Title 10, Chapter 6, California Code of Regulations
10 ("Regulations").

11 II

12 On or about June 30, 2001 and May 10, 2006, the
13 Department of Real Estate ("Department") conducted an audit
14 examination of Respondent's books and records. Numerous
15 violations of the Real Estate Law were found.

16 III

17 The burden of proving rehabilitation rests with the
18 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).
19 A petitioner is required to show greater proof of honesty and
20 integrity than an applicant for first time licensure. The proof
21 must be sufficient to overcome the prior adverse judgment on the
22 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
23 395).

24 The Department has developed criteria in Regulation
25 2911 to assist in evaluating the rehabilitation of an applicant
26 for reinstatement of a license. Among the criteria relevant in
27 this proceeding are:

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

2911(k) - Respondent has not shown correction of business practices resulting in injury to others or with the potential to cause such injury.

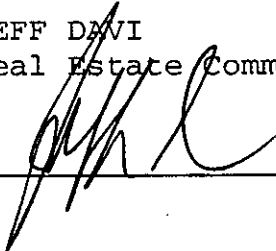
2911 (n) (1) - Respondent has not shown a change in attitude from that which existed at the time of the conduct in question.

Given the fact that Respondent has not established that Respondent has complied with Regulations 2911(k) and 2911(n) (1), I am not satisfied that Respondent is sufficiently rehabilitated to receive a real estate broker license.

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

This Order shall become effective at 12 o'clock noon
on MAY 27 2008.

DATED: 4-22-08

JEFF DAVIS
Real Estate Commissioner


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
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
-or- (213) 576-6910 (Direct)

FILED
DEC 19 2000
DEPARTMENT OF REAL ESTATE

By CS

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-28524 LA
RUSS MACIAS, individually)	
and dba Main St. Funding Group)	L-2000080213
and Main St. Investments,)	
)	
Respondent.)	

STIPULATION AND AGREEMENT

It is hereby stipulated by and between RUSS MACIAS, individually and dba Main St. Funding Group and Main St. Investments (hereinafter "Respondent"), representing himself, and the Complainant, acting by and through Chris Leong, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on May 5, 2000, in this matter:

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

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

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

8 3. On June 26, 2000, Respondent filed a Notice of
9 Defense pursuant to Section 11506 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily
12 withdraws said Notice of Defense. Respondent acknowledges
13 that he understands that by withdrawing said Notice of Defense
14 he will thereby waive his right to require the Commissioner to
15 prove the allegations in the Accusation at a contested hearing
16 held in accordance with the provisions of the APA and that
17 Respondent will waive other rights afforded to him in
18 connection with the hearing, such as the right to present
19 evidence in defense of the allegations in the Accusation and
20 the right to cross-examine witnesses.

21 4. In the interest of expedience and economy,
22 Respondent chooses not to contest the factual allegations in
23 Paragraphs 1 through 12 of the Accusation, but to remain
24 silent and understands that, as a result thereof, these
25 factual statements, without being admitted or denied, will
26 serve as a prima facie basis for the disciplinary action
27 stipulated to herein. The Real Estate Commissioner shall not

1 be required to provide further evidence to prove such
2 allegations.

3 5. It is understood by the parties that the Real
4 Estate Commissioner may adopt the Stipulation and Agreement as
5 her Decision in this matter thereby imposing the penalty and
6 sanctions on Respondent's real estate licenses and license
7 rights as set forth in the "Order" below. In the event that
8 the Commissioner in her discretion does not adopt the
9 Stipulation and Agreement, it shall be void and of no effect,
10 and Respondent shall retain the right to a hearing and
11 proceeding on the Accusation under all the provisions of the
12 APA and shall not be bound by any admission or waiver made
13 herein.

14 DETERMINATION OF ISSUES

15 By reason of the foregoing stipulations, admissions
16 and waivers and solely for the purpose of settlement of the
17 pending Accusation without a hearing, it is stipulated and
18 agreed that the following Determination of Issues shall be
19 made:

20 The acts and omissions of Respondent, described in
21 Paragraphs 1 through 12 of the Accusation, are violations of
22 Section 10145 of the Business and Professions Code and
23 Sections 2831 and 2831.1 of the Regulations, which are cause
24 for the suspension or revocation of all real estate licenses
25 and license rights of Respondent under the provisions of
26 Section 10177(d) of the Code.

27 //

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

ALL licenses and licensing rights of Respondent RUSS MACIAS, individually and dba Main St. Funding Group and Main St. Investments, under the Real Estate Law are hereby revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays 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 license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

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

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real



1 Estate Commissioner or conditions attaching to the restricted
2 license.

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

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

20 5. Respondent shall, within six months from the
21 effective date of this Decision, take and pass the
22 Professional Responsibility Examination administered by the
23 Department including the payment of the appropriate
24 examination fee. If Respondent fails to satisfy this
25 condition, the Commissioner may order suspension of
26 Respondent's license until Respondent passes the examination.

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

6. Respondent shall pay, pursuant to Section 10148
of the Business and Professions 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 cost, 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 cost, including mileage, time to and from the auditor's
place of work, and per diem. The Commissioner's reasonable
costs shall in no event exceed \$3,631.43. Respondent shall
pay such cost within 45 days of receiving an invoice from the
Commissioner detailing the activities performed during the
audit and the amount of time spent performing those
activities. Notwithstanding the provisions of any other
paragraph herein, if Respondent fails to pay, within 45 days
from receipt of the invoice specified above, the
Commissioner's reasonable cost 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 license 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

1 estate license and license rights as part of any such
2 agreement.

3 7. As a further condition of receiving a restricted
4 real estate broker license, Respondent shall pay the
5 Department, \$3,631.43 for the audits performed for the period
6 November 1998 to November 30, 1999, Audit Numbers LA 990156
7 and LA 990304, prior to the date any such restricted license
8 is issued.

9 8. No real estate license shall be issued unless
10 Respondent provides proof to the satisfaction of the Real
11 Estate Commissioner that the November 30, 1999 shortage is
12 cured.

13
14
15 DATED: 12/6/00

CHRIS LEONG
CHRIS LEONG, ESQ.
Counsel for Complainant

17 * * *

18 I have read the Stipulation and Agreement and its
19 terms are understood by me and are agreeable and acceptable to
20 me. I understand that I am waiving rights given to me by the
21 California Administrative Procedure Act (including but not
22 limited to Sections 11506, 11508, 11509 and 11513 of the
23 Government Code), and I willingly, intelligently and
24 voluntarily waive those rights, including the right of
25 requiring the Commissioner to prove the allegations in the
26 Accusation at a hearing at which I would have the right to
27 cross-examine witnesses against me and to present evidence in

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

defense and mitigation of the charges.

DATED:

12/4/00

[Signature]
RUSS MACIAS, individually and
dba Main St. Funding Group and
Main St. Investments
Respondent

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision in this matter and shall become
effective at 12 o'clock noon on January 9, 2001

IT IS SO ORDERED

DECEMBER 13, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

[Signature]

52

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
RUSS MACIAS,)
)
_____)
Respondent (s)

Case No. **H-28524 LA**

OAH No. L-2000080213

FILED
NOV -9 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED 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 the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on WEDNESDAY, JANUARY 17, 2001, 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

CHRIS LEONG

Dated: November 9, 2000

By _____
CHRIS LEONG, Counsel

cc: Russ Macias
Lisa Kwong/Audits
Sacto.
OAH

1 CHRIS LEONG, Counsel (SBN 141079)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6910 (Direct)

FILED
MAY - 5 2000
DEPARTMENT OF REAL ESTATE

By

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-28524 LA
12 RUSS MACIAS, individually)	<u>A C C U S A T I O N</u>
13 and dba Main St. Funding Group)	
14 and Main Street Investments,)	
15 Respondent.)	

16 The Complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against RUSS MACIAS, individually and dba Main St. Funding Group
19 and Main Street Investments, is informed and alleges in his
20 official capacity as follows:

21 1.

22 RUSS MACIAS, individually and dba Main St. Funding
23 Group and Main Street Investments, is presently licensed and/or
24 has license rights under the Real Estate Law, Part 1 of
25 Division 4 of the California Business and Professions Code
26 (Code).

27 /////

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 for others in the State of California, within the meaning of Code Section 10131(d), including the operation and conduct of a mortgage loan business with the public wherein Respondent solicited borrowers or lenders and negotiated loans secured by an interest in real property. Respondent also conducted broker escrow activity.

FIRST CAUSE OF ACCUSATION

(Audit Findings)

3.

On January 27, 2000, the Department concluded its examination of Respondent's books and records pertaining to his activities as a real estate broker covering a period from approximately November 1, 1998 to November 30, 1999. The examination revealed violations of the Code and of Title 10, Chapter 6, California Code of Regulations (Regulations), as set forth below.

4.

At all times herein, in connection with the mortgage loan activity described in Paragraph 3, above, Respondent accepted or received funds including funds in trust (trust funds) from or on behalf of actual and prospective parties to transactions handled by Respondent and thereafter made deposits and/or disbursements of such funds. From time to time herein mentioned, said trust funds were deposited and/or maintained by



1 Respondent in bank accounts including, but not necessarily
2 limited to, two trust accounts. The trust accounts were
3 maintained at Washington Mutual located at 31960 Mission Trail,
4 Lake Elsinore, California.

5 5.

6 As of November 30, 1999, a bank reconciliation was
7 performed on each of the following trust accounts: "Main Street
8 Funding Group Trust Account", Account No. 879-026399-6, formerly
9 Home Savings account number 825-330035-7 (T/A #1); and "Main
10 Street Funding Group Escrow Trust Account", Account No.
11 879-026445-7, formerly Home Savings account number 825-330086-6
12 (T/A #2).

13 6.

14 Respondent acted in violation of the Code and the
15 Regulations in that:

16 (a) As of November 30, 1999, T/A #1 had a shortage in
17 the amount of approximately \$1,661.11; T/A #2 had a shortage in
18 the amount of approximately \$1,820.75. Respondent caused,
19 permitted and/or allowed the withdrawal or disbursement of trust
20 funds from T/A #1 and T/A #2 without the prior written consent of
21 every principal who then was an owner of funds in the account
22 thereby reducing the balance of funds in the said account to an
23 amount less than the existing aggregate trust fund liability of
24 the broker to all owners of said trust funds, in violation of
25 Code Section 10145 and Regulation 2832.1.

26 (b) Respondent failed to maintain a columnar record of
27 all trust funds received and disbursed, including all the daily



1 balance in columnar form for T/A #1 since January 1999 and failed
2 to maintain a columnar record of all trust funds received and
3 disbursed, including all the daily balance in columnar form for
4 T/A #2 since April 10 1999, in violation of Regulation 2831.2.

5 (c) Respondent failed to maintain a separate trust
6 fund record for each beneficiary for the collected credit report
7 and appraisal fees, in violation of Regulation 2831.1.

8 (d) Respondent failed to maintain a record of a
9 monthly reconciliation of the columnar record and the total
10 balance of separate records for T/A #1 and T/A #2, in violation
11 of Regulation 2831.2.

12 7.

13 The conduct, acts and omissions of Respondent, as
14 described in Paragraph 6, violated the Code and the Regulations
15 as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
6(a)	Code Section 10145 and Regulation 2832.1
6(b)	Regulation 2831
6(c)	Regulation 2831.1
6(d)	Regulation 2831.2

22 Each of the foregoing violations constitute cause for
23 the suspension or revocation of all real estate licenses and
24 license rights of Respondent under the provisions of Code Section
25 10177(d).

26 /////

27

SECOND CAUSE OF ACCUSATION

1
2
3 In about August of 1998, Gabriel and Araselis Huerta
4 (Buyers) were purchasing real property located at 20525 Santa
5 Rosa Mine Road, Perris, CA. Buyers employed Respondent dba Main
6 Street Funding, as their agent to obtain a loan to purchase said
7 property. Ron Hefington as Quality Appraisal Service (Quality)
8 performed an appraisal of said property in the transaction.
9

9.

10 On or about August 1, 1998, Nancy Gasparini
11 (Gasparini), an escrow officer from Main Street Funding, and
12 employee of Respondent, asked Buyers to submit a \$300.00 check
13 made payable to Quality Appraisal Service for the appraisal.
14 On August 1, 1989, Buyers delivered check number 1273, dated
15 August 1, 1998, in the amount of \$300.00, payable to Quality, to
16 Gasparini at Respondent's office.
17

10.

18 On or about November 24, 1998, Gasparini requested a
19 second check in the amount of \$200.00 for escrow. Buyers issued
20 check number 1307, dated November 24, 1998, in the amount of
21 "\$200.00", made payable to "Main Street Funding Group" and
22 delivered it to Main Street Funding. On or about November 25,
23 1998, escrow closed. Buyers were charged an additional \$300.00
24 for the appraisal fee as indicated on the settlement statement
25 dated November 25, 1998.
26

11.

27 On about June 8, 1999, Hefington realized that he had



1 not been paid for the appraisal. Hefington contacted Respondent
2 and asked for the \$300.00 payment. Respondent notified Hefington
3 that he had already paid for the appraisal fee and provided
4 Hefington with an altered copy of Check number 1307. The payee
5 of Check number 1307 had been changed to "Quality Appraisal
6 Service" and the amount had been changed to "\$300.00".

7 12.

8 The conduct of Respondent, as alleged in Paragraphs 8
9 through 11, above, constitutes cause for the suspension or
10 revocation of all real estate licenses and license rights of
11 Respondent under the provisions of Code Sections 10177(g) and
12 10177(j).

13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof, a decision be rendered imposing disciplinary
16 action against all licenses and/or license rights of Respondent
17 RUSS MACIAS, individually and dba Main St. Funding Group and Main
18 Street Investments, under the Real Estate Law (Part 1 of Division
19 4 of the Business and Professions Code), and for such other and
20 further relief as may be proper under other applicable provisions
21 of law.

22 Dated at Los Angeles, California

23 this 5th day of May, 2000.

24 THOMAS MCCRADY

25 Deputy Real Estate Commissioner

26 cc: Russ Macias
27 Thomas McCrady
Sacto.
LA Audit/Kwong
EC

