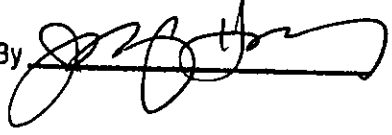


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FILED
AUG 17 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-28571 LA
MICHAEL SHAPIRO,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On January 4, 2001, a Decision was rendered herein, denying Respondent's application for a real estate license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on February 8, 2001 and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

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1 On or about June 17, 2003, Respondent petitioned for
2 the removal of restrictions attaching to Respondent's real
3 estate salesperson license.

4 I have considered the petition of Respondent and the
5 evidence submitted in support thereof. Respondent has
6 demonstrated to my satisfaction that Respondent meets the
7 requirements of law for the issuance to Respondent of an
8 unrestricted real estate salesperson license and that it would
9 not be against the public interest to issue said license to
10 Respondent.

11 NOW, THEREFORE, IT IS ORDERED that Respondent's
12 petition for removal of restrictions is granted and that a
13 real estate salesperson license be issued to him subject to
14 the following understanding and conditions:

15 1. The license issued pursuant to this order shall
16 be deemed to be the first renewal of respondent's real estate
17 salesperson license for the purpose of applying the provisions
18 of Section 10153.4.

19 2. Within nine (9) months from the date of this order
20 Respondent shall:

21 (a) Submit a completed application and pay the
22 appropriate fee for a real estate salesperson license, and

23 (b) Submit evidence of having taken and successfully
24 completed the courses specified in subdivisions (a) (1),
25 (2), (3) and (4) of Section 10170.5 of the Real Estate
26 Law for renewal of a real estate license.

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By *Anna B. [Signature]*

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	DRE No. H-28571 LA
MICHAEL S. SHAPIRO,	OAH No. L-2000060261
Respondent.	

DECISION AFTER REJECTION

The matter of MICHAEL S. SHAPIRO, came on for hearing before John Thomas Montag, Administrative Law Judge, of the Office of Administrative Hearings, in Los Angeles, California, on July 27, 2000.

Elliott Mac Lennan, Counsel, represented the Complainant. Respondent was personally present throughout the hearing and was represented by Phillip A. Toomey, Esq.

Evidence was received, the hearing was closed, and the matter was submitted.

On August 23, 2000, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein.

1 Pursuant to Section 11517(c) of the Government Code
2 of the State of California, Respondent was served with notice
3 of my determination not to adopt the Proposed Decision of the
4 Administrative Law Judge along with a copy of said Proposed
5 Decision. Respondent was notified that the case would be decided
6 by me upon the record, the transcript of proceedings held on
7 July 27, 2000, and upon any written argument offered by Respondent
8 and Complainant, which has now been submitted.

9 I have given careful consideration to the record in this
10 case including the transcript of proceedings of July 27, 2000. I
11 have also considered the Argument submitted by Respondent and the
12 Argument submitted by Complainant.

13 The following shall constitute the Decision of the Real
14 Estate Commissioner in this proceeding:

15 FINDINGS OF FACT

16 I

17 Pursuant to the agreement of the parties, Finding of
18 Fact 9 shall be added as follows:

19 9. On or about November 8, 2000, a Minute Order issued
20 from the Superior Court of California, County of Orange, State of
21 California, in the People of the State of California v. Michael
22 Schein Shapiro, Case No. FV98WM06839, pursuant to California Penal
23 Code Section 1203.4, dismissing the conviction against respondent
24 and terminating probation pursuant to California Penal Code
25 Section 1203.2.

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1 All other findings are accepted and those other
2 findings are adopted as the Findings of Fact of the Real Estate
3 Commissioner in this proceeding.

4 LEGAL CONCLUSIONS

5 I

6 The Legal Conclusions in the Proposed Decision dated August
7 23, 2000, are hereby adopted as a part of the Decision with the
8 substitution in Legal Conclusion I of "480" for "490" and the
9 addition of Legal Conclusion 3 as follows:

10 3. Pursuant to Title 10, Chapter 6, California Code of
11 Regulations, Sections 2911(c) and (d), it has been shown that
12 Respondent is partially rehabilitated based on evidence of the
13 dismissal of conviction pursuant to Penal Code Section 1203.4 and
14 the termination of probation pursuant to Penal Code Section
15 1203.2 as set forth in Finding of Fact 9.

16 II

17 Consideration has been given to all competent evidence
18 of mitigation and rehabilitation, and it has been determined
19 that protection of the public interest would not be undermined by
20 the issuance of a restricted real estate salesperson's license to
21 Respondent. Respondent's conviction, although dismissed, and the
22 factors underlying it, require additional protection of the public
23 interest.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:


The Order set forth in the Proposed Decision of the
Administrative Law Judge dated August 23, 2000, is hereby adopted.

This Decision shall become effective at 12 o'clock noon
on January 31, 2001.

IT IS SO ORDERED

January 4, 2001.

PAULA REDDISH ZINNEMANN.
Real Estate Commissioner



Sacks
Shapiro

By *Laura B. Stone*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Application of)	
)	No. H-28571 LA
MICHAEL S. SHAPIRO,)	
)	L-2000060261
)	
Respondent.)	

NOTICE

TO: Respondent MICHAEL S. SHAPIRO and PHILIP A. TOOMEY, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 23, 2000, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 23, 2000, is attached 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 July 27,

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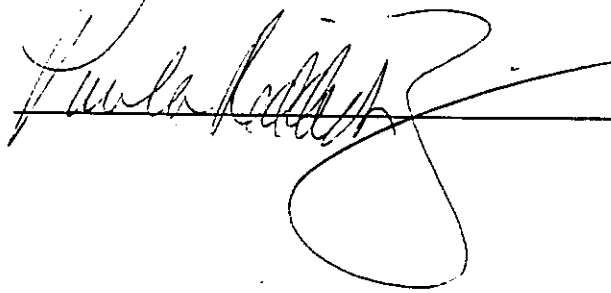
1 2000, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of July 27, 2000, at the Los Angeles office of
6 the Department of Real Estate unless an extension of the time is
7 granted for good cause shown.

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

13 DATED: September 12, 2000

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15 PAULA REDDISH ZINNEBANN
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHAEL S. SHAPIRO,

Respondent.

CASE NO. H-28571 LA

OAH NO. L 2000060261

PROPOSED DECISION

John Thomas Montag, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on July 27, 2000.

Elliot Mac Lennan, Real Estate Counsel, represented the Department of Real Estate.

Philip A. Toomey, Attorney at Law, represented respondent, Michael S. Shapiro, who was present throughout the hearing.

Evidence was received, the record was closed and the matter was submitted on July 27, 2000.

FACTUAL FINDINGS

1. On August 20, 1998, in the Municipal Court of the State of California, West Orange County Judicial District, in Case Number FV98WM06839, respondent, Michael Schein Shapiro, was convicted, upon his plea of guilty, of the misdemeanor crime of Petty Theft, in violation of Sections 484(a) - 488 of the California Penal Code. He was sentenced to pay a total of \$235.00 in fines and penalties. He was placed on summary probation to the Court for a period of three years. Said probation will terminate on August 20, 2001.

The circumstances of this offense are:

In May 1998 respondent purchased an external CD ROM for his computer from a Fry's Electronics store. The software to operate the CD ROM was included and was contained on a computer disk. When respondent set up the CD ROM at home, he found that the software disk was defective. He returned the unit to Fry's and was given a new software disk. The personnel

at Fry's told respondent that they were aware of the fact that many of the software disks for the CD ROM which he had purchased were defective.

When respondent attempted to use his CD ROM with the new disk, he found that the replacement disk which he had been given was also defective. Once again, he returned to Fry's to return the defective disk. The return line was long and respondent was extremely frustrated by the repeated failure of his CD ROM. His frustration caused him to make a serious error in judgment. Rather than wait in the long return line, he went to the shelf where the CD ROMs were located, opened a box containing the model which he had purchased, removed the software disk from the package and placed it in his pocket. He then joined his wife in the check-out line, waited with her while she purchased certain items and then left the store with the software disk in his pocket. He was stopped by security personnel outside the store. The police were called and he was issued a Citation to appear in court on the petty theft charge.

2. On December 1, 1999, respondent executed an application for issuance of a real Estate Salesperson's License by the Department and filed it, together with the required fee. Respondent's Application was received by the Department on December 20, 1999. The Department has refused to issue the requested license on the ground that respondent has been convicted of the criminal offense of petty theft, a crime involving moral turpitude, which bears a substantial relationship, under Section 2910 of Title 10, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee. Respondent appealed this denial of his application.

3. Thomas McGrady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, signed the Statement of Issues herein on May 23, 2000, seeking to deny respondent's application on the basis of his August 20, 1998 criminal conviction. The Statement of Issues was filed with the Department on May 23, 2000, and it was, thereafter, duly served on respondent. Respondent executed his Notice of Defense on June 2, 2000, and it was timely filed with the Department on the same date.

4. The offense of which respondent was convicted on August 20, 1998, is a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee, pursuant to Section 2910 of Title 10, California Code of Regulations. Such a conviction constitutes cause to refuse to issue a real estate's salesperson's license to respondent pursuant to the provisions of Sections 490 and 10177(b) of the California Business and Professions Code.

5. The letters of recommendation which were submitted on behalf of respondent (Exhibits D through G) and the testimony of the respondent and of his attorney, who testified on respondent's behalf at the hearing, however, indicate that this is an appropriate case in which to grant respondent a restricted license.

a. Greta Richardson has known respondent since July 1999, when he first commenced real estate license school. For the past seven years Ms. Richardson has given presentations concerning the requirements to be a successful salesperson in the real estate market. In Exhibit D, Ms. Richardson states:

In my communications with Mr. Shapiro, I have been impressed with his humility and attitude about the Fry's Electronics situation. Mr. Shapiro has taken complete responsibility for his actions and has not made up excuses. . . .

Based upon my knowledge and personal contact with Mr. Shapiro, I state that I would employ him without hesitation to represent me in buying or selling of real property.

b. James C. Utterback is the owner/broker of Century 21 Action in Long Beach, California. He holds Broker's License No. 00654804, issued by the Department. He has known respondent since respondent entered Century 21's real estate license school in July 1999. He is aware of respondent's petty theft conviction and the circumstances surrounding it. He discussed the conviction with respondent in detail during an interview with him in December 1999, at which time he agreed to employ respondent as soon as he might receive a license from the Department. In Exhibit E, Mr. Utterback states:

Mr. Shapiro has kept me apprised of his progress toward the goal of receiving his license from the Department of Real Estate. I am ready, willing and able to employ Mr. Shapiro at my firm as a real estate agent. . . in the event that the Department of Real Estate issues Mr. Shapiro a restricted license.

c. Robert H. Dewberry is an attorney at law, licensed to practice in the State of California, and a partner in the law firm of Bewley, Lassleben & Miller. He has known the respondent for approximately three years. He is aware of respondent's petty theft conviction. In Exhibit F, Mr. Dewberry states:

Based upon my personal observations of Mr. Shapiro, I find him to be a trustworthy person. I believe that the petty theft incident is an aberration from the high moral character that I have seen in Mr. Shapiro.

I have worked with hundreds of real estate agents in my practice for over 20 years, and I believe that Mr. Shapiro displays all necessary requirements to be an ethical and competent real estate agent.

d. Sharon Dickson is a licensed clinical social worker. She has been respondent's therapist for approximately three years. She knows that respondent has applied for a license from the Department of Real Estate. She is familiar with his arrest and conviction for petty theft in 1998. In Exhibit G, Ms. Dickson states:

It is my opinion that Michael Shapiro's action which led to his arrest and conviction for petty theft was an aberration of his otherwise stable emotional and ethical foundation. In my relationship with Mr. Shapiro, I have discovered no pathology or personality disorder which would prevent him from acting with the highest ethical standards if licensed as a real estate agent.

6. There was a traumatic incident in respondent's life which occurred prior to his petty theft incident, which is an important factor to consider in evaluating his case. For approximately fifteen (15) years, respondent operated a furniture sales business. He ordered the manufacture of furniture from overseas suppliers and sold the furniture to retail sales stores in the United States. In connection with the operation of this business, he had a line of credit with a bank in the mid-west of approximately seven million dollars.

Suddenly and unexpectedly, his largest customer canceled all of its orders with respondent. At the time this was done, respondent had large orders of furniture committed to by him, which were in overseas factories, on board ships en route to the United States and in the cargo holds of vessels already docked in this country. The bank demanded payment on his line of credit and respondent lost his entire business. He did not seek bankruptcy protection and he managed to pay all of the debts of his business.

7. Respondent's attorney also testified on behalf of respondent at the hearing herein. He has known respondent since 1986 and has acted as his attorney in business matters since that time. He noted that several years ago, the roof at respondent's warehouse collapsed following an earthquake and rain. Numerous insurance claims ensued as a result of this catastrophe. Respondent's attorney assisted him with the claims. His attorney testified that throughout this lengthy and complicated process, he never had any reason to doubt the accuracy of the information which he obtained from the respondent.

Attorney Toomey further testified that he had always found respondent to be completely honest in all of the business related matters which he handled for him. He also said that the manner in which respondent paid his debts following the failure of his business was quite unusual, in his experience.

Mr. Toomey also testified that respondent qualified for diversion on his petty theft incident, but, unfortunately, there was no diversion program available in the particular branch court which had jurisdiction of respondent's case.

8. Sufficient evidence of respondent's usually good character was introduced at the hearing to show that the petty theft incident was indeed an unusual aberration for respondent. The evidence as to his usual good character justifies granting him a restricted license. The restrictions which will be placed on his license will adequately protect the public.

LEGAL CONCLUSIONS

1. Cause exists, pursuant to Sections 490 and 10177(b) of the Business and Professions Code to refuse to issue a real estate salesperson's license to respondent upon the ground that he has been convicted of a crime involving moral turpitude, which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee, by reason of Findings 1, 2 and 4.

2. Although cause does exist to refuse to issue a real estate salesperson's license to respondent, in view of the matters set forth in Findings 5, 6, 7 and 8, this is an appropriate case in which to allow the respondent to have a restricted license, in accordance with certain specified terms, conditions and restrictions, as set forth hereinafter.

ORDER

The application of respondent, Michael S. Shapiro, for issuance of a real estate salesperson's license, is denied; provided, however, that a restricted real estate salesperson's license shall be issued to respondent, pursuant to Section 10156.5 of the Business and Professions Code. 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may, by appropriate order, suspend the right to exercise any privileges granted under this restricted license in the event of:

(a.) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b.) The receipt of evidence that respondent has violated any provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, nor for the removal of any of the conditions, limitations or restrictions attaching to the restricted license, until the period of two (2) years has elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real

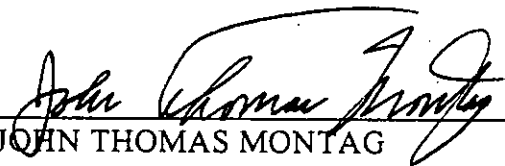
estate broker, on a form approved by the Department of Real Estate, (currently RE 552, Rev 4/88) which shall certify, as follows:

(a.) That the employing broker, has read the Decision which is the basis for the issuance of the restricted license; and

(b.) That the employing broker will carefully review all transaction documents prepared by the restricted licensee, and otherwise exercise close supervision over the licensee's performance of acts for which a real estate license is required.

4. Any restricted real estate salesperson's issued to respondent shall be issued subject to the provisions of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of respondent's original restricted real estate salesperson's license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. If respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended, effective eighteen (18) months after issuance of respondent's original real estate salesperson's license. Said suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of lifting of the suspension.

Dated: August 23, 2000


JOHN THOMAS MONTAG
Administrative Law Judge
Office of Administrative Hearings

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FILED
JUN 29 2000

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

By Leim B. Dun

In the Matter of the Application of) Case No. H-28571 LA
) L-2000060261
MICHAEL SHAPIRO,)
)
Respondent(s))

NOTICE OF HEARING ON APPLICATION

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 West Fourth Street, Suite 630, Los Angeles, California, on JULY 27, 2000 at the hour of 10:00 a.m., or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: June 29, 2000

DEPARTMENT OF REAL ESTATE

By: Elliott MacLennan
ELLIOTT MACLENNAN, Counsel

cc: Michael Shapiro
Philip A. Toomey, Esq.
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RE 500 EM:ibo

Shapiro

Elliott Mac Lennan, Counsel SBN 66674
Department of Real Estate
320 W. 4th Street, Suite 350
Los Angeles, CA 90113-1105

Telephone: (213) 576-6911

FILED
MAY 23 2000
DEPARTMENT OF REAL ESTATE

By Laura B. Olson

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	No. H-28571 LA
MICHAEL SHAPIRO,)
) <u>STATEMENT OF ISSUES</u>
Respondent.)
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)

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MICHAEL SHAPIRO aka Michael Schein Shapiro, is informed and alleges in his official capacity as follows:

1

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about December 20, 1999, with the knowledge and understanding that any license issued as a result of said application would be subject to Section 10153.4(c) under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

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On August 19, 1998, in the Municipal Court of California, West Orange County Judicial District, State of California, respondent was convicted upon a guilty plea of violating Sections 484-488 of the California Penal Code (petty theft), a misdemeanor crime that occurred on or about June 3, 1998. This crime, by its facts and circumstances, involves moral turpitude and is substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

The facts as alleged in Paragraph 2, constitute cause for denial of respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

These proceedings are brought under the provisions of Section 10100, Division 4 of the California Business and Professions Code and Sections 11500 through 11528 of the California Government Code.

WHEREFORE, the Complainant prays that above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, MICHAEL SHAPIRO, and for such other and further relief as may be proper in the premises.

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1 Dated at Los Angeles, California

2 This 23rd day of May, 2000.

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6 Deputy Real Estate Commissioner
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26 cc: Michael Shapiro
27 Sacto
RTG