

*Dacto
file*

1 ELLIOTT MAC LENNAN, Counsel (SBN 66674)
2 Department of Real Estate
3 320 W. 4TH Street, Suite 350
4 Los Angeles, CA 90013-1105

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FILED
OCT 29 2001
DEPARTMENT OF REAL ESTATE

By *R. K. Kuderholt*

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ELENA OROZCO ALVARADO,)
13 Respondent.)

No. H-29135 LA
STIPULATION
AND AGREEMENT

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15 It is hereby stipulated by and between Respondent
16 ELENA OROZCO ALVARADO (sometimes referred to herein as
17 "Respondent") and the Complainant, acting by and through Elliott
18 Mac Lennan, Counsel for the Department of Real Estate, as follows
19 for the purpose of settling and disposing of the Accusation filed
20 on July 20, 2001, in this matter.

21
22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act ("APA"), shall instead and in place thereof be
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1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement ("Stipulation").

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

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

19 4. This Stipulation and Agreement is based on the
20 factual allegations contained in the Accusation filed in this
21 proceeding. In the interest of expedience and economy,
22 Respondent chooses not to contest these factual allegations, but
23 to remain silent and understands that, as a result thereof, these
24 factual statements, without being admitted or denied, will serve
25 as a prima facie basis for the disciplinary action stipulated to
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1 herein. This Stipulation and Respondent's decision not to
2 contest the Accusation are hereby expressly limited to this
3 proceeding and made for the sole purpose of reaching an agreed
4 disposition of this proceeding. Respondent's decision not to
5 contest the factual allegations is made solely for the purpose of
6 effectuating this Stipulation and is intended by Respondent to be
7 non-binding upon Respondent in any actions against Respondent by
8 third parties. The Real Estate Commissioner shall not be
9 required to provide further evidence to prove such allegations.

10 5. This Stipulation and any Order made pursuant to
11 this Stipulation shall have no collateral estoppel or res
12 judicata effect in any proceedings in which the Respondent and
13 the Department (or the Department's representative) are not
14 parties. This Stipulation is made by Respondent and received
15 by the Commissioner and the Department, with the express
16 understanding and agreement that it is for the purpose of
17 settling these proceedings only, and that this Stipulation is
18 not intended as, and shall not be deemed, used, or accepted as
19 an acknowledgment or admission of fact in any other judicial,
20 administrative, or other proceeding to which the Department is
21 not a party.

23 6. It is understood by the parties that the Real
24 Estate Commissioner may adopt the Stipulation as her decision
25 in this matter, thereby imposing the penalty and sanctions on
26 Respondent's real estate license and license rights as set forth
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1 in the below "Order." In the event that the Commissioner in her
2 discretion does not adopt the Stipulation, the Stipulation shall
3 be void and of no effect, and Respondent shall retain the right
4 to a hearing on the Accusation under all the provisions of the
5 APA and shall not be bound by any stipulation or waiver made
6 herein.

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

13 8. Respondent understands that by agreeing to this
14 Stipulation, Respondent agrees to pay, pursuant to Business and
15 Professions Code Section 10148, the cost of the audit which led
16 to this disciplinary action. The amount of said cost is
17 \$3,152.37.
18

19 9. Respondent has received, read, and understands the
20 "Notice Concerning Costs of Subsequent Audit". Respondent
21 further understands that by agreeing to this Stipulation, the
22 findings set forth below in the Determination of Issues become
23 final, and the Commissioner may charge Respondent for the cost of
24 any subsequent audit conducted pursuant to Business and
25 Professions Code Section 10148 to determine if the violations
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1 have been corrected. The maximum cost of the subsequent audit
2 will not exceed \$3,152.37.

3 DETERMINATION OF ISSUES

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

8 The conduct, acts and/or omissions of Respondent
9 ELENA OROZCO ALVARADO, as set forth in the Paragraph 4,
10 constitutes cause to suspend or revoke the real estate broker
11 license and license rights of Respondent under the provisions of
12 Code Section 10177(d) of the Business and Professions Code for
13 violation of Section 10145 of said Code and Sections 2831,
14 2831.2, 2832(e) and 2832.1, 2950(d,f,g) and 2951 of Title 10,
15 Chapter 6, California Code of Regulations.
16

17 ORDER

18 WHEREFORE, THE FOLLOWING ORDER is hereby made:

19 I.

20 The real estate broker license and licensing rights of
21 Respondent ELENA OROZCO ALVARADO, under the Real Estate Law are
22 revoked; provided, however, a restricted real estate broker
23 license shall be issued to Respondent ELENA OROZCO ALVARADO,
24 pursuant to Section 10156.5 of the Business and Professions Code,
25 if Respondent:
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1 (A) makes application therefor and pays to the
2 Department of Real Estate the appropriate fee for the restricted
3 license within ninety (90) days from the effective date of this
4 Decision.

5 (B) The restricted license issued to Respondent shall
6 be subject to all of the provisions of Section 10156.7 of the
7 Code and the following limitations, conditions and restrictions
8 imposed under authority of Section 10156.6 of that Code:

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

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

20 3. Respondent shall not be eligible to apply for the
21 issuance of an unrestricted real estate license nor for the
22 removal of any of the conditions, limitations or restrictions of
23 a restricted license until two (2) years have elapsed from the
24 effective date of this Decision.

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

12 5. Respondent shall within six (6) months from the
13 effective date of the restricted license, 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 the restricted license
18 until respondent passes the examination.

19 6. Pursuant to Section 10148 of the Business and
20 Professions Code, Respondent shall pay the Commissioner's
21 reasonable cost for: (a) the audit which led to this
22 disciplinary action and (b) a subsequent audit to determine if
23 Respondent is now in compliance with the Real Estate Law. The
24 cost of the audit which led to this disciplinary action is
25 \$3,152.37. In calculating the amount of the Commissioner's
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1 reasonable cost, the Commissioner may use the estimated average
2 hourly salary for all persons performing audits of real estate
3 brokers, and shall include an allocation for travel time to and
4 from the auditor's place of work. Said amount for the prior and
5 subsequent audits shall not exceed \$6,304.74.

6 Respondents shall pay such cost within 60 days of
7 receiving an invoice from the Commissioner detailing the
8 activities performed during the audit and the amount of time
9 spent performing those activities.

10 The Commissioner may suspend the license of Respondents
11 pending a hearing held in accordance with Section 11500, et seq.,
12 of the Government Code, if payment is not timely made as provided
13 for herein, or as provided for in a subsequent agreement between
14 the Respondents and the Commissioner. The suspension shall
15 remain in effect until payment is made in full or until a
16 Respondent enters into an agreement satisfactory to the
17 Commissioner to provide for payment, or until a decision
18 providing otherwise is adopted following a hearing held pursuant
19 to this condition.
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23 DATED: 10-9-01

elliott mac lennan
24 ELLIOTT MAC LENNAN, Counsel for
25 the Department of Real Estate
26 /
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1 * * *

2 EXECUTION OF THE STIPULATION

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

14 FACSIMILE TRANSMISSION

15 Respondent can signify acceptance and approval of the
16 terms and conditions of this Stipulation and Agreement by faxing
17 a copy of its signature page, as actually signed by Respondent,
18 to the Department at the following telephone/fax number: (213)
19 576-6917, Attention: Elliott Mac Lennan. Respondent agrees,
20 acknowledges and understands that by electronically sending to
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1 the Department a fax copy of Respondent's actual signature as it
 2 appears on the Stipulation and Agreement, that receipt of the
 3 faxed copy by the Department shall be as binding on Respondent as
 4 if the Department had received the original signed Stipulation
 5 and Agreement.

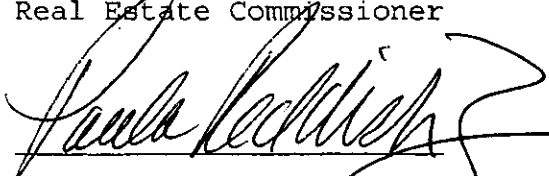
6
 7 DATED: 10-9-01 
 8 ELENA OROZCO ALVARADO,
 9 Respondent

10 * * *

11
 12 The foregoing Stipulation and Agreement is hereby
 13 adopted as my Decision as to Respondent ELENA OROZCO ALVARADO,
 14 and shall become effective at 12 o'clock noon
 15 on November 19, 2001.

16 IT IS SO ORDERED October 22, 2001

17
 18 PAULA REDDISH ZINNEBANN
 19 Real Estate Commissioner

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Handwritten initials

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

FILED
AUG 20 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By *K. Friederholt*

ELENA OROZCO ALVARADO,

}
}

Case No. H-29135 LA

OAH No. L-2001080338

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 October 30, 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

Dated: August 20, 2001

By *Elliott MacLennan*
ELLIOTT MAC LENNAN *Counsel*

cc: Elena Orozco Alvarado
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OAH
LF

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*Acts
guy*

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
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FILED
JUL 20 2001
DEPARTMENT OF REAL ESTATE

By *R. Niederhold*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-29135 LA
12 ELENA OROZCO ALVARADO,) ACCUSATION
13 Respondent.)
14

15 The Complainant, Maria Suárez, a Deputy Real Estate
16 Commissioner of the State of California, acting in her official
17 capacity, for cause of accusation against ELENA OROZCO ALVARADO
18 dbas Alvarado Financial Services, Alvarado Real Estate, Your
19 Home/Su Case Realty, and Your Home-Casa Realty Escrow Division,
20 is informed and alleges as follows:

21 1

22 ELENA OROZCO ALVARADO (ALVARADO) sometimes referred to
23 as Respondent, is presently licensed and/or has license rights
24 under the Real Estate Law (Part 1 of Division 4 of the California
25 Business and Professions Code).

1 2

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

5 3

6 At all times mentioned, ALVARADO was licensed or had
7 license rights issued by the Department of Real Estate
8 (Department) as a real estate broker. Since September 10, 1982,
9 ALVARADO has been licensed as a real estate broker.

10 4

11 At all times mentioned, in the City of Montebello,
12 County of Los Angeles, State of California, ALVARADO acted as
13 real estate broker within the meaning of Section:

14 A. 10131(a) as a residential resale broker dbas
15 "Alvarado Real Estate" and "Your Home/Su Casa".

16 B. 10131(d) as a mortgage and loan broker dba
17 "Alvarado Financial Services".

18 In addition, ALVARADO conducts broker controlled
19 escrows through the escrow division of Your Home-Casa Realty
20 Escrow Division under the exemption set forth in Section
21 17006(a)(4) of the California Financial Code for real estate
22 brokers performing escrows incidental to a real estate
23 transaction where the broker is a party and where is performing
24 acts for which a real estate license is required.

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2 At all times mentioned, in connection with the
3 activities described in Paragraph 4, ALVARADO accepted or
4 received funds in trust (trust funds) from or on behalf of buyers
5 and sellers and borrowers and lenders. Thereafter ALVARADO made
6 disposition of such funds. ALVARADO maintained the following
7 trust account for her broker-escrow activities into which she
8 deposited certain of these funds:

9 "Elena Orozco Alvarado dba Your Home/Su Case Realty Escrow
10 Division Trust Account
11 Account No. 00-03369915"
12 East West Bank
13 720 W. Garvey Boulevard
14 Monterey Park, California

14 On May 17, 2001, the Department completed an audit
15 examination (Audit Report LA 000363 and exhibits/workpapers
16 attached to said audit reports) of the books and records of
17 ALVARADO pertaining to the activities described in Paragraph 4
18 that require a real estate license. The audit examination
19 covered a period of time beginning on April 1, 1998 and
20 terminating on March 15, 2001. The audit examination revealed
21 violations of the Code and the Regulations as set forth in the
22 following paragraphs.

1 With respect to the trust funds referred to in
2 Paragraph 5 relating to Department of Real Estate Audit Report
3 LA 000363 dated May 17, 2001, and corresponding exhibits, it is
4 alleged that ALVARADO:

5 (a) Permitted, allowed or caused the disbursement of
6 trust funds from the escrow trust account where the disbursement
7 of funds reduced the total of aggregate funds in the trust
8 account, to an amount which, on March 15, 2001, the cut-off date
9 for the audit, was \$9,373.02 less than the existing aggregate
10 trust fund liability of ALVARADO to every principal who was an
11 owner of said funds, without first obtaining the prior written
12 consent of the owners of said funds, as required by Code Section
13 10145 and Regulations 2832.1, 2950(g), and 2951. The cause of
14 this deficit was Alvarado's failure to deposit all trust funds
15 into the escrow trust account and one overdrawn escrow for
16 Francisco Zavala. This deficit was cured on or before May 8,
17 2001.

18
19 (b) Failed to maintain a control record in the form of
20 a columnar record in chronological order of all escrowed trust
21 funds received, as required by Regulations 2831, 2950(d) and
22 2951.

23 (c) Failed to maintain a separate record for each
24 beneficiary or transaction, thereby failing to account for all
25 trust funds received, deposited into, and disbursed from the
26 trust account, as required by Regulation 2831.1.
27

1 (d) Failed to perform a monthly reconciliation of the
2 balance of all separate beneficiary or transaction records
3 maintained pursuant to Regulations 2831.1, 2950(d) and 2951 with
4 the record of all trust funds received and disbursed by the
5 escrow trust account, as required by Regulation 2831.2.

6 (e) While acting in the capacity of an escrow holder
7 in a real estate purchase and sale transaction requiring a real
8 estate license, Respondent failed to place all funds, accepted on
9 behalf of another into the hands of the owner of the funds, into
10 a neutral escrow depository or into a trust fund account in the
11 name of the broker or the broker's licensed fictitious name, as
12 trustee at a bank or other financial institution not later than
13 the next business day following receipt of the funds by the
14 broker or by the broker's salesperson, as required by Regulations
15 2832(e) and 2950(f), and 2951; and
16

17 (f) Failed to return the earnest money deposit of
18 Francisco Zavala ("Zavala") upon his request after escrow
19 cancellation, as required by Code Section 10145(a)(1). Escrow
20 was cancelled on July 21, 2000 for the real property he sought to
21 purchase located 6942 Eastondale, Long Beach, California.
22 Alvarado returned Zavala's deposit in amount to \$9,366.02, only
23 on May 7, 2001.

1
2 The conduct of Respondent ALVARADO, described in
3 Paragraph 7 violated the Code and the Regulations as set forth
4 below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10145 and Regulations 2832.1, 2950(g), and 2951
7(b)	Code Section 10145 and Regulations 2831, 2950(d), and 2951
7(c)	Code Section 10145 and Regulations 2831.1, 2950(d), and 2951
7(d)	Code Section 10145 and Regulations 2831.2, 2950(d), and 2951
7(e)	Code Sections 10145 and Regulations 2832(e) and 2950(f)
7(f)	Code Section 10145(a)(1)

23 The foregoing violations set forth in Paragraph 7 constitute
24 cause for the suspension or revocation of the real estate license
25 and license rights of ALVARADO under the provisions of Code
26 Sections 10177(d) and/or 10177(g).
27

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondent ELENA
5 OROZCO ALVARADO under the Real Estate Law (Part 1 of Division 4
6 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable provisions
8 of law.

9
10 Dated at Los Angeles, California

11 this 20th day of July, 2001.

12
13 MARIA SUAREZ

14 Deputy Real Estate Commissioner
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23 cc: Elena Orozco Alvarado
24 Sacto
25 LF
26 MS
27 Audits