Department of Real Estate 320 West Fourth Street, Suite 350 Los Angeles, California 90013-1105

Telephone: (213) 576-6982

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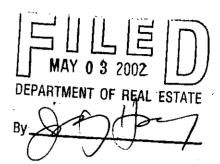
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BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Accusation of

OAH No. L-2001090098

No. H-29191 LA

MANUEL ELIAS GUERRERU,

STIPULATION AND AGREEMENT AND

Respondent.

DECISION AFTER REJECTION

I, MANUEL ELIAS GUERRERO, Respondent herein, acknowledge that I have received and read the Accusation filed by the Department of Real Estate of the State of California (Department) on August 22, 2001, and the Statement to Respondent sent to me in connection with the Accusation.

I hereby admit that the allegations contained in the Accusation filed against me are true and correct and constitute a basis for the denial of my real estate salesperson license.

I further acknowledge that the Real Estate Commissioner of the State of California (Commissioner) held a hearing on this Accusation on December 13, 2001, before the Office of Administrative Hearings for the purpose of proving the

allegations therein. I was present at the hearing and participated therein. Further, I have had an opportunity to read and review the Proposed Decision (PD) of the Administrative Law Judge (ALJ).

I understand that pursuant to Section 11517(c) of the California Government Code (Gov. Code), the Commissioner has rejected the ALJ's PD. I further understand that pursuant to the same Section 11517(c) of the Gov. Code, the Commissioner may decide this case upon the record, including the transcript, without taking any additional evidence, after affording me the opportunity to present written argument to the Commissioner.

I further understand that by signing this Stipulation and Agreement (Stipulation), I am waiving my right to obtain a dismissal of the Accusation through proceedings under Section 11517(c) of the Gov. Code if this Stipulation is accepted by the Commissioner. However, I also understand that I am not waiving my rights to further proceedings to obtain a dismissal of the Accusation if this Stipulation is not accepted by the Commissioner.

I hereby request that the Commissioner in her discretion revoke my real estate salesperson license and issue to me a restricted real estate salesperson license under the authority of Section 10156.5 of the California Business and Professions Code (Code) if I make application therefor and pay to the Department the appropriate fee for said license within 90

days from the effective date of the Decision After Rejection (Decision) herein.

I further understand that the restricted license shall be subject to the provisions of Section 10156.7 of the Code and the following conditions, limitations and restrictions will attach to the restricted license issued by the Department.

By reason of the foregoing and solely for the purpose of settlement of the Accusation without further administrative proceedings, it is stipulated and agreed that the Commissioner shall adopt the following Order:

ORDER

All licenses and licensing rights of Respondent, MANUEL ELIAS GUERRERO, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Code if he makes application therefor and pays to the Department the appropriate fee for said 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 Code and to the following conditions, limitations and restrictions imposed under the authority of Section 10156.6 of the Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner in the event of his conviction or plea of nolo contendere to a crime

1 which is substantially related to his fitness or capacity as a 2 real estate salesperson licensee. 3 2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner on 5 evidence satisfactory to the Commissioner that he has violated provisions of the Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions я attaching to the restricted license. 9 Respondent shall not be eligible to apply for 3. 10 issuance of an unrestricted real estate salesperson license nor 11 for the removal of any of the conditions, limitations or 12 restrictions of a restricted license until two (2) years have 13 elapsed from the effective date of this Decision. Respondent shall submit with any application for 16 license under an employing broker, or any application for 17 transfer to a new employing broker, a statement signed by the 18 prospective employing real estate broker, on a form approved by 19 the Department, which shall certify: 20 That the employing broker has read the Decision of 21 the Commissioner which granted the right to a restricted license; 22 and 23 (b) That the employing broker will exercise close supervision over the performance by the restricted licensee 25 relating to activities for which a real estate salesperson 26 license is required. 27

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

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DATED: 1/1/2002

DAVIS EDWARD BRUCE, Counselfor the Complainant, the Department of Real Estate

I have read the Stipulation, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including, but not limited to, Sections 11506, 11508, 11509 and 11513 of the Gov. Code) and I willingly, intelligently and voluntarily waive those rights.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of the signature page, as actually signed by Respondent, to the Department at the following fax number: (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation, that receipt of the fax copy by the Department shall be as binding on him as if the Department had received the original signed Stipulation.

DATED: 04-08-02

Respondent

I have reviewed the Stipulation as to form and content and have advised my client accordingly.

FRANK M. BUDA, ESQ, Attorney

for Respondent

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I have read the Accusation filed herein, the ALJ's PD dated herein and the foregoing Stipulation signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted real estate salesperson license to

Respondent. 27

Therefore, IT IS HEREBY ORDERED that the real estate salesperson license of Respondent be revoked and a restricted real estate salesperson license be issued to Respondent, MANUEL ELIAS GUERRERO, if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be conditioned, limited and restricted as specified in the foregoing Stipulation. This Order shall become effective on May 23, 2002. IT IS SO ORDERED W PAULA REDDISH ZINNEMANN Real Estate Commissioner

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of MANUEL ELIAS GUERRERO,

No. H-29191 LA L-2001090098

Respondents.

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NOTICE

TO: RESPONDENT MANUEL ELIAS GUERRERO AND HIS ATTORNEY OF RECORD, FRANK M. BUDA, ESQ.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 10, 2002, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 10, 2002, 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

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December 13, 2001, and any written argument hereafter submitted on behalf of Respondents and Complainant.

Written argument of Respondents to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of December 13, 2001, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

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

DATED: February 4, 2002

PAULA REDDISH ZINNEMANN Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of:)	No. H-29191 LA
MANUEL ELIAS GUERRERO,)	OAH No. L-2001090098
·	•	OAH No. L-2001090098
Respondent.)	
)	

PROPOSED DECISION

This case was tried before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on December 13, 2001.

David E. Bruce, Counsel, appeared on behalf of complainant. Frank M. Buda, attorney at law, represented respondent Manuel Elias Guerrero, who appeared personally.

The parties presented oral and documentary evidence, and submitted the matter for decision. The Administrative Law Judge proposes:

Findings of Fact

- 1. Thomas McCrady, complainant, is a Deputy Real Estate Commissioner, and caused the accusatory pleadings to be filed herein while acting solely in his official capacity.
- 2. Manuel Elias Guerrero, respondent, holds an unconditional real estate salesperson license together with incidental licensing rights under the California Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code¹).
- 2. Respondent was licensed pursuant to an application filed by him on or about July 10, 2000 in which he stated that he had never been convicted of any violation of law.

¹ All statutory references herein will be to this Code, unless otherwise indicated.

- 3. In fact, respondent had been convicted on September 12, 1995, upon a guilty plea, of a misdemeanor violation of section 148.9(a) of the Penal Code for having furnished custodial police officers with a false name.
- 4. This charge resulted from repeated calls by neighbors to a noisy, raucous baptismal party involving considerable drinking which was hosted by respondent at his residence. There were abusive interchanges of commentary between respondent and the police. Eventually, he was taken into custody, where the quarrel continued. Numerous variants of respondent's name were mentioned in the evidence, and it is unclear when, and to whom, and for what purpose a false name was given. However, respondent admits to having done so. He was booked, and was released on his cash deposit of \$500.00 bail.
- 5. The court accepted respondent's plea, and disposed of the case by fining respondent a total of \$100.00 and requiring 5 days community service of him. There was no jail time imposed, nor was respondent required to serve any probationary term.
- 6. In light of the underlying facts, and the court's lenient disposition of the criminal charge, the offense is clearly a minor one.
- 7. Respondent's offense neither involves moral turpitude nor does it bear any present substantial relationship, in view of the lapse of time, to the duties, qualifications or functions of a real estate licensee.
- 8. Respondent intended to practice no fraud or deceit upon the Department of Real Estate, nor to make any material mistatement of fact. It cannot be said with any degree of assurance, that the Real Estate Commissioner, on the facts set forth above, would have denied respondent's application for licensure. Hence the present record cannot support any finding of materiality in respondent's failure of disclosure.
- 9. Respondent has been successfully employed as a real estate salesperson by Re/Max of East Orange County for several months. He has over eleven closing, and has had no complaints against his activities as a realtor. He has continued his education in the field, taking courses in property management, principles and practice of real estate, and in escrow management. He satisfied the educational condition initially imposed on his license, and obtained their removal by the Department. His only income with which to support his wife and four minor children are his earnings from the practice of his profession. His broker is supportive, and knows of his past difficulty with the law.

Conclusions of Law

The foregoing facts fail to establish a basis for discipline of respondent's license, either by reason of his conviction, or by reason of his failure to disclose that conviction in his application, and does not constitute cause for denial of his application for a real estate license in accordance of sections 475(b), 498 and 10177(a) of the Code.

<u>Order</u>

The Accusation is dismissed.

January 10, 2002

PAUL MAY19GAN
Administrative Law Judge

Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Accusation of)

MANUEL ELIAS GUERRERO,

Respondent(s)

Case No. H-29191 LA

OAH No. L-2001090098

OCT 5 2001

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 THURSDAY, DECEMBER 13, 2001, at the hour of 1:30 P.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 subpenas 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: October 5, 2001

cc: Manuel Elias Guerrero
AWJ Investment Group Inc.

Frank M. Buda, Esq.

➤ Sacto.

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RE 501 (Rev. 8/97)

BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Accusation of)

Case No. H-29191 LA

MANUEL ELIAS GUERRERO,

OAH No. L-2001090098

Respondent.

DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on WEDNESDAY, OCTOBER 17, 2001, at the hour of 1:30 P.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 subpenas 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

EDWARD BRUG

Dated:

September 14. 2001

Manuel Elias Guerrero AWJ Investment Group Inc. Frank M. Buda, Esq.

♥Sacto.

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RE 501 (Rev. 8/97)

DAVID EDWARD BRUCE, Counsel (SBN 212539) Department of Real Estate 320 West Fourth Street, Suite 350 Los Angeles, California 90013-1105

DEPARTMENT OF REAL ESTATE

Telephone: (213) 576-6905 (direct)

(213) 576-6982 (office)

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

MANUEL ELIAS GUERRERO,

Respondent.

No. H-29191 LA

ACCUSATION

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MANUEL ELIAS GUERRERO (Respondent) aka Manuel Guerrero Elias, is informed and alleges in his official capacity as follows:

Respondent is presently licensed and/or has license rights as a real estate salesperson under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code). Respondent is subject to Section 10153.4 of the Code.

II

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate salesperson on or about July 10, 2000.

III

In response to Question 25 of said application, to wit: "Have you ever been convicted of any violation of law?",
Respondent answered "No". However, Respondent failed to reveal the conviction as set forth in Paragraph IV below.

IV

On or about September 12, 1995, in the Municipal Court of Central Orange County Judicial District, County of Orange, State of California, Respondent was convicted by a guilty plea to one count of violating Section 148.9(a) of the California Penal Code (False Representing Self to Peace Officer). This misdemeanor crime 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.

V

Respondent's failure to reveal the conviction, as set forth in Paragraph IV above, in said application constitutes an attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application. This failure is cause ///

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for denial of Respondent's application for a real estate license under Sectin 475(b), 498 and 10177(a) 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 the license and license rights of Respondent, MANUEL ELIAS GUERRERO, under the Real Estate Law (Part 1 of Division 4 of the California 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 22nd day of August, 2001.

Deputy Real Estate Commissioner

cc: Manuel Elias Guerrero
AWJ Investment Group Inc.
Thomas McCrady
Sacto