

1 Department of Real Estate
2 320 West Fourth Street, #350
3 Los Angeles, California 90013
4 (213) 576-6982
5 (213) 576-6907

FILED
DEC 22 2004
DEPARTMENT OF REAL ESTATE

By Jana B. Orme

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 SUPERLATIVE REALTY INC., and) DRE No. H-30704 LA
14 GARY SMALL, individually and as) OAH No. L-2004060453
15 Designated broker-officer of) STIPULATION AND AGREEMENT
16 Superlative Realty, Inc.,)
17 Respondent.)

18 It is hereby stipulated by and between SUPERLATIVE
19 REALTY, INC., and GARY SMALL (sometimes referred to herein as
20 "Respondents"), represented in this matter by Laurence H.
21 Lishner, Esq., and the Complainant, acting by and through
22 Martha J. Rosett, Counsel for the Department of Real Estate, as
23 follows for the purpose of settling and disposing of the
24 Accusation filed on February 5, 2004 in this matter:

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and
27 Respondent at a formal hearing on the Accusation, which hearing

1 was to be held in accordance with the provisions of the
2 Administrative Procedure Act (APA), shall instead and in place
3 thereof be submitted solely on the basis of the provisions of
4 this Stipulation and Agreement.

5 2. Respondents have received, read and understand
6 the Statement to Respondent, the Discovery Provisions of the
7 APA and the Accusation filed by the Department of Real Estate
8 in this proceeding.

9 3. On June 7, 2004, Respondents filed a Notice of
10 Defense pursuant to Section 11506 of the Government Code for
11 the purpose of requesting a hearing on the allegations in the
12 Accusation. In order to effectuate this settlement,
13 Respondents hereby freely and voluntarily withdraw said Notice
14 of Defense. Respondents acknowledge that they understand that
15 by withdrawing said Notice of Defense, they will thereby waive
16 rights to require the Commissioner to prove the allegations in
17 the Accusation at a contested hearing held in accordance with
18 the provisions of the APA and that they will waive other rights
19 afforded to them in connection with the hearing such as the
20 right to present evidence in defense of the allegations in the
21 Accusation and the right to cross-examine witnesses.

22 4. Respondents, pursuant to the limitations set
23 forth below, although not admitting or denying the truth of the
24 allegations, will not contest the factual allegations contained
25 in the Accusation filed in this proceeding and the Real Estate
26 Commissioner shall not be required to provide further evidence
27 of such allegations.

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

12 6. The Order or any subsequent Order of the Real
13 Estate Commissioner made pursuant to this Stipulation and
14 Agreement shall not constitute an estoppel, merger or bar to
15 any further administrative proceedings by the Department of
16 Real Estate with respect to any matters which were not
17 specifically alleged to be causes for accusation in this
18 proceeding.

19 7. The stipulations herein, and Respondents'
20 decision not to contest the Accusation, are made solely for the
21 purpose of reaching an agreed disposition of this proceeding
22 and are expressly limited to this proceeding, and any other
23 proceeding or case in which the Department of Real Estate or
24 another licensing agency of this state, another state, or if
25 the federal government is involved, and otherwise shall not be
26 admissible in any other criminal or civil proceedings.

27

1 (60) days of said suspension shall be stayed for two (2) years
2 upon the following terms and conditions:

3 A. Prior to the effective date of this Decision,

4 Respondent provides evidence satisfactory to the Commissioner.
5 that Prior to the effective date of this Decision, Respondents
6 provide evidence satisfactory to the Commissioner that the
7 property owners listed in Paragraph 8 of the Accusation have
8 been reimbursed for the amounts set forth in the Accusation
9 that they were charged which were in excess of the amounts
10 called for in the property management agreements.

11 B. Upon satisfaction of this condition, the sixty

12 (60) day suspension shall be stayed for two (2) years upon the
13 following terms and conditions:

14 1. Respondent shall obey all laws, rules and

15 regulations governing the rights, duties and responsibilities
16 of a real estate licensee in the State of California; and

17 2. That no final subsequent determination be made,

18 after hearing or upon stipulation, that cause for disciplinary
19 action occurred within two (2) years of the effective date of
20 this Decision. Should such a determination be made, the
21 Commissioner may, in his discretion, vacate and set aside the
22 stay order and reimpose all or a portion of the stayed
23 suspension. Should no such determination be made, the stay
24 imposed herein shall become permanent.
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1 3. As to the remaining thirty days of said ninety
2 day suspension, all licenses and licensing rights of Respondent
3 GARY SMALL are suspended for a period of thirty days from the
4 effective date of this Decision; provided, however, that if
5 Respondent petitions, the remaining thirty (30) days of said
6 ninety (90) day suspension shall be stayed upon condition that:

7 a. Respondent pays a monetary penalty pursuant to
8 Section 10175.2 of the Business and Professions Code at the
9 rate of \$75 for each day of the suspension for a total monetary
10 penalty of \$2,250.00.


11 b. Said payment shall be in the form of a cashier's
12 check or certified check made payable to the Recovery Account
13 of the Real Estate Fund. Said check must be received by the
14 Department prior to the effective date of the Decision in this
15 matter.

16 c. No further cause for disciplinary action against
17 the real estate license of Respondent occurs within two years
18 of the Decision in this matter.


19 d. If Respondent fails to pay the monetary penalty
20 in accordance with the terms and conditions of the Decision,
21 the Commissioner may, without a hearing, order the immediate
22 execution of all or any part of the stayed suspension in which
23 event the Respondent shall not be entitled to any repayment nor
24 credit, prorated or otherwise, for the money paid to the
25 Department under the terms of this Decision.
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1 Respondents agree, acknowledge and understand that by
 2 electronically sending to the Department a fax copy of the actual
 3 signatures as they appear on the Stipulation, that receipt of the
 4 faxed copy by the Department shall be as binding on Respondents
 5 as if the Department had received the original signed Stipulation
 6 and Agreement.

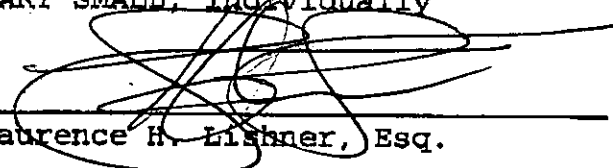
7 DATED: 11-16-04


 SUPERLATIVE REALTY, INC., by
 Gary Small, designated officer

10 DATED: 11-16-04


 GARY SMALL, individually

12 DATED: 11/17/04

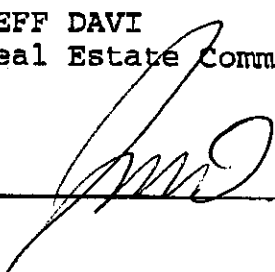

 Laurence H. Lishner, Esq.

14 * * *

15 The foregoing Stipulation and Agreement is hereby
 16 adopted as my Decision in this matter and shall become
 17 effective at 12 o'clock noon on JAN 11 2005

18 IT IS SO ORDERED December 19 2004

20 JEFF DAVI
 Real Estate Commissioner



*Sacto
2/2/04*

FILED
JUL 2 2004
DEPARTMENT OF REAL ESTATE

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

By *Sama B. Chan*

In the Matter of the Accusation of
SUPERLATIVE REALTY, INC. and
GARY SMALL, individually and as designated
broker-officer of Superlative Realty, Inc.,

}
}

Case No. H-30704 LA

OAH No. L-2004060453

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 the **Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California** on **NOVEMBER 30, DECEMBER 1 & 2, 2004**, 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: July 2, 2004

By *Martina J. Rosett*
MARTHA J. ROSETT, Counsel

cc: Superlative Realty, Inc./Gary Small
Laurence H. Lishner, Esq./Sacto./OAH

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

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(213) 576-6914

FILED
FEB 5 2004
DEPARTMENT OF REAL ESTATE
By Jana B. Done

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-30704 LA
)	
SUPERLATIVE REALTY, INC., and)	<u>A C C U S A T I O N</u>
GARY SMALL, individually and as)	
designated broker-officer of)	
Superlative Realty, Inc.,)	
)	
Respondent.)	
)	
)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner, for cause of Accusation against SUPERLATIVE REALTY, INC. and GARY SMALL, individually and as designated broker-officer of Superlative Realty, Inc., is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

Respondent SUPERLATIVE REALTY, INC. (hereinafter "SRI"), is presently licensed and at all times relevant herein was licensed under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a corporate real estate broker. Respondent has been licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a corporate real estate broker since December 7, 1988. Respondent SRI is authorized to act by and through Respondent GARY SMALL as the designated officer and broker responsible, pursuant to the provisions of Code Section 10159.2 for the supervision and control of the activities conducted on behalf of SRI by SRI's officers and employees.

3.

Respondent GARY SMALL (hereinafter "SMALL"), is presently licensed and at all times relevant herein was licensed under Code as the designated officer-broker of Respondent SRI. Between March 17, 1988 and March 16, 1996, Respondent was individually licensed by the Department as a real estate broker, and on or about March 16, 1996, his individual broker license expired. At all times relevant herein, Respondent SMALL was the broker-officer of SRI designated pursuant to Code Section 10159.2 to be responsible for the supervision and control of the activities conducted on behalf of SRI by its officers and employees as necessary to secure full compliance with the Real Estate Law.

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1 4.

2 At all times material herein, Respondent SRI and
3 Respondent SMALL were engaged in the business of, acted in the
4 capacity of, advertised or assumed to act as a real estate broker
5 in the State of California within the meaning of Code Section
6 10131(b) for another or others in expectation of compensation.
7 Said activity included leasing, renting and/or collecting rents
8 from real properties and performing property management
9 activities on behalf of owners of rental properties.

10 5.

11 All further references to "Respondents" include
12 Respondents SRI and SMALL and also include the employees, agents
13 and real estate licensees employed by or associated with
14 Respondent SRI and Respondent SMALL, who at all times material
15 herein were engaged in the furtherance of the business or
16 operations of said parties and who were acting within the course
17 and scope of their authority, agency or employment.

18 6.

19 During the period between July 1, 2000 through
20 August 30, 2002, in connection with the aforesaid mortgage loan
21 brokerage activities, Respondents accepted or received funds,
22 including funds in trust (hereinafter "trust funds") from or on
23 behalf of actual and prospective tenants and owners of rental
24 properties and made deposits and/or disbursements of such funds.
25 From time to time herein mentioned, said trust funds were
26 deposited into trust accounts maintained by Respondents at Bank
27 of America in Los Angeles, identified as follows:

8.

In the course of activities described in Paragraphs 4 and 6 above, and during the examination period described in Paragraph 7, Respondents acted in violation of the Code and the Regulations in that Respondents marked-up third party service providers' invoices for repairs and maintenance and charged the property owners marked-up amounts in excess of the mark-up percentage of 10% disclosed in Respondents' property management agreements. Examples of undisclosed mark-ups discovered during the audit include:

<u>Ppty Owner</u>	<u>Amt. Pd. to Vendor</u>	<u>Amt. Owner Charged (Date)</u>	<u>Mark-up (Excess)</u>
D. Jackson	\$350.00	\$600.00 (1/4/02)	\$250.00 (215.00)
R. Good	\$285.00	\$485.00 (3/19/02)	\$200.00 (171.50)
R. Good	\$449.00	\$549.00 (3/19/02)	\$100.00 (55.10)
R. Good	\$ 70.00	\$130.00 (3/19/02)	\$ 60.00 (53.00)

9.

The mark-ups in amounts charged to owners of properties by Respondents which exceed the contractually agreed upon amounts, as set forth in Paragraph 8 above constituted undisclosed compensation and as such are grounds to discipline Respondent SRI's license and license rights pursuant to Business and Professions Code ("Code") Section 10176(g).

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The acts, conduct and omissions set forth in Paragraph 8 above constitute grounds to discipline Respondent SMALL's license and license rights as the broker-officer designated to be responsible for failing to supervise the activities of Respondent SRI pursuant to Code Section 10177(h).

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of Respondent SUPERLATIVE REALTY, INC. and Respondent GARY SMALL under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California
this 29th day of January, 2004.


Deputy Real Estate Commissioner

cc: Gary Small
Superlative Realty, Inc.
Sacto.
Maria Suarez
RJ
Audits