

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

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

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

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation filed in this
23 proceeding. In the interest of expedience and economy,
24 Respondents choose not to contest these factual allegations, but
25 to remain silent and understand that, as a result thereof, these
26 factual statements, will serve as a prima facie basis for the
27 disciplinary action stipulated to herein. The Real Estate

1 Commissioner shall not be required to provide further evidence
2 to prove such allegations.

3 5. This Stipulation and Respondents' decision not to
4 contest the Accusation is made for the purpose of reaching an
5 agreed disposition of this proceeding and is expressly limited
6 to this proceeding and any other proceeding or case in which the
7 Department of Real Estate ("Department"), the state or federal
8 government, or an agency of this state, another state or the
9 federal government is involved.

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

20 7. The Order or any subsequent Order of the Real
21 Estate Commissioner made pursuant to this Stipulation and
22 Agreement shall not constitute an estoppel, merger or bar to any
23 further administrative or civil proceedings by the Department of
24 Real Estate with respect to any matters which were not
25 specifically alleged to be causes for accusation in this
26 proceeding.

27

DETERMINATION OF ISSUES

1
2 By reason of the foregoing stipulations and waivers
3 and solely for the purpose of settlement of the pending
4 Accusation without a hearing, it is stipulated and agreed that
5 the following determination of issues shall be made:

6 The conduct, acts and/or omissions of Respondents
7 PRIMETIME MANAGEMENT, INC. and RICHARD TAMAYO, as described in
8 Paragraph 4 above, are grounds for the suspension or revocation
9 of all of the real estate licenses and license rights of
10 Respondents under the provisions of Section 10177(d) of the
11 Business and Professions Code ("Code") for violations of Code
12 Section 10145(a), and Sections 2832 and 2832.1, Title 10,
13 Chapter 6, California Code of Regulations.

ORDER

I

14
15
16 All licenses and licensing rights of Respondent
17 RICHARD TAMAYO under the Real Estate Law are revoked, provided,
18 however, a restricted real estate broker license shall be issued
19 to Respondent pursuant to Section 10156.5 of the Business and
20 Professions Code if Respondent makes application therefor and
21 pays to the Department of Real Estate the appropriate fee for
22 the restricted license within 90 days from the effective date of
23 this Decision. The restricted license issued to Respondent
24 shall be subject to all of the provisions of Section 10156.7 of
25 the Business and Professions Code and to the following
26
27

1 limitations, conditions, and restrictions imposed under
2 authority of Section 10156.6 of that Code:

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

8 2. The restricted license issued to Respondent may be
9 suspended prior to hearing by Order of the Real Estate
10 Commissioner on evidence satisfactory to the Commissioner that
11 Respondent has violated provisions of the California Real Estate
12 Law, the Subdivided Lands Law, Regulations of the Real Estate
13 Commissioner or conditions attaching to the restricted license.

14 3. Respondent shall not be eligible to apply for the
15 issuance of an unrestricted real estate license nor for the
16 removal of any of the conditions, limitations or restrictions of
17 a restricted license until two years have elapsed from the
18 effective date of this Decision.

19 4. Respondent shall, within nine months from the
20 effective date of the Decision, present evidence satisfactory to
21 the Real Estate Commissioner that he has, since the most recent
22 issuance of an original or renewal real estate license, taken
23 and successfully completed the continuing education requirements
24 of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
25 of a real estate license. If Respondent fails to satisfy this
26 condition, the Commissioner may order the suspension of the
27 restricted license until the Respondent presents such evidence.

1 The Commissioner shall afford Respondent the opportunity for a
2 hearing pursuant to the Administrative Procedure Act to present
3 such evidence.

4 5. Respondent shall, within six months from the
5 effective date of this Decision, take and pass the Professional
6 Responsibility Examination administered by the Department
7 including the payment of the appropriate examination fee. If
8 Respondent fails to satisfy this condition, the Commissioner may
9 order suspension of Respondent's license until Respondent passes
10 the examination.

11 6. Respondent shall, within six months from the
12 effective date of this Decision submit proof satisfactory to the
13 Commissioner of having taken and completed the trust fund
14 accounting and handling course specified in paragraph (3),
15 subdivision (a) of Section 10170.5 of the Business and
16 Professions Code. If Respondent fails to satisfy this
17 condition, the Commissioner may order suspension of Respondent's
18 license until Respondent submits such proof.

19 7. 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 Respondents have corrected the violations found in the
24 Determination of Issues. In calculating the amount of the
25 Commissioner's reasonable cost, the Commissioner may use the
26 estimated average hourly salary for all persons performing
27 audits of real estate brokers, and shall include an allocation

1 for travel costs, including mileage, time to and from the
2 auditor' place of work and per diem. Respondent shall pay such
3 cost within 45 days of receiving an invoice from the
4 Commissioner detailing the activities performed during the audit
5 and the amount of time spent performing those activities. The
6 Commissioner may suspend the restricted license issued to
7 Respondent pending a hearing held in accordance with Section
8 11500, et seq., of the Government Code, if payment is not timely
9 made as provided for herein, or as provided for in a subsequent
10 agreement between Respondent and the Commissioner. The
11 suspension shall remain in effect until payment is made in full
12 or until Respondent enters into an agreement satisfactory to the
13 Commissioner to provide for payment, or until a decision
14 providing otherwise is adopted following a hearing held pursuant
15 to this condition.

16 II

17 All licenses and licensing rights of Respondent
18 PRIMETIME MANAGEMENT, INC. under the Real Estate Law are
19 suspended for a period of ninety (90) days from the effective
20 date of this Decision; provided, however, that sixty (60) days
21 of said suspension shall be stayed for two (2) years upon the
22 following terms and conditions:

23 1. Respondent shall obey all laws, rules and
24 regulations governing the rights, duties and responsibilities of
25 a real estate licensee in the State of California; and

26 2. That no final subsequent determination be made,
27 after hearing or upon stipulation that cause for disciplinary

1 action occurred within two (2) years of the effective date of
2 this Decision. Should such a determination be made, the
3 Commissioner may, in his discretion, vacate and set aside the
4 stay order and reimpose all or a portion of the stayed
5 suspension. Should no such determination be made, the stay
6 imposed herein shall become permanent.

7 3. Provided, however, that if Respondent petitions,
8 the remaining thirty (30) days of said ninety (90) day
9 suspension shall be stayed upon condition that:

10 a. Respondent pays a monetary penalty pursuant to
11 Section 10175.2 of the Business and Professions Code at the rate
12 of \$33.33 for each day of the suspension for a total monetary
13 penalty of \$1,000.

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

19 c. No further cause for disciplinary action
20 against the real estate licenses of Respondent occurs within two
21 (2) years from the effective date of the Decision in this
22 matter.

23 d. If Respondent fails to pay the monetary
24 penalty in accordance with the terms and conditions of the
25 Decision, the Commissioner may, without a hearing, order the
26 immediate execution of all or any part of the stayed suspension
27 in which event the Respondent shall not be entitled to any

1 repayment nor credit, prorated or otherwise, for money paid to
2 the Department under the terms of this Decision.

3 e. If Respondent pays the monetary penalty and if
4 no further cause for disciplinary action against the real estate
5 license of Respondent occurs within two (2) years from the
6 effective date of the Decision, the stay hereby granted shall
7 become permanent.

8 4. Pursuant to Section 10148 of the Business and
9 Professions Code, Respondent shall be jointly and severally
10 liable for all audit costs specified in I, paragraph 7, above.
11 The Commissioner may, in his discretion, vacate and set aside
12 the stay order, if payment is not timely made as provided for
13 herein, or as provided for in a subsequent agreement between the
14 Respondent and the Commissioner. The vacation and the set aside
15 of the stay shall remain in effect until payment is made in
16 full, or until Respondent enters into an agreement satisfactory
17 to the Commissioner to provide for payment. Should no order
18 vacating the stay be issued, either in accordance with this
19 condition or condition "2", the stay imposed herein shall become
20 permanent.

21 DATED: April 11, 2005

22
23 James R. Peel
24 JAMES R. PEEL
25 Counsel for Complainant
26
27

///

///

1 * * *

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

14 Respondents can signify acceptance and approval of
15 the terms and conditions of this Stipulation and Agreement by
16 faxing a copy of the signature page, as actually signed by
17 Respondents, to the Department at the following telephone/fax
18 number: (213) 576-6917. Respondents agree, acknowledge and
19 understand that by electronically sending to the Department a
20 fax copy of their actual signature as it appears on the
21 Stipulation and Agreement that receipt of the faxed copy by the
22 Department shall be as binding on Respondents as if the
23 Department had received the original signed Stipulation and
24 Agreement.

25 Further, if the Respondents are represented in these
26 proceedings, the Respondents' counsel can signify his agreement
27 to the terms and conditions of the Stipulation and Agreement by

APR-08-05 FRI 08:56 AM

FAX NO. 2135788917

P. 11

1 submitting that signature via fax. The Commissioner has asked
 2 that the attorney's signature be under penalty of perjury that
 3 he will concurrently or within 24 hours of obtaining
 4 Respondents' signatures to the agreement deposit in the mail the
 5 original settlement/stipulation containing the original
 6 signatures of both the Respondents and Respondents' attorney.

7 DATED: April 8, 2005

[Signature]
 PRIMETIME MANAGEMENT, INC.
 Respondent

10 DATED: April 8, 2005

[Signature]
 RICHARD TAMAYO
 Respondent

13 DATED: 4-8-05

[Signature]
 FRANK M. BUDA
 Counsel for Respondents

17 * * *

18 The foregoing Stipulation and Agreement is hereby
 19 adopted as my Decision in this matter and shall become effective
 20 at 12 o'clock noon on _____, 2005.

21 IT IS SO ORDERED _____, 2005.

22 JEFF DAVI
 Real Estate Commissioner

25 _____

1 submitting that signature via fax. The Commissioner has asked
2 that the attorney's signature be under penalty of perjury that
3 he will concurrently or within 24 hours of obtaining
4 Respondents' signatures to the agreement deposit in the mail the
5 original settlement/stipulation containing the original
6 signatures of both the Respondents and Respondents' attorney.

7
8 DATED: _____

PRIMETIME MANAGEMENT, INC.
Respondent

9
10 DATED: _____

RICHARD TAMAYO
Respondent

11
12
13 DATED: _____


FRANK M. BUDA
Counsel for Respondents

14
15
16
17 * * *

18 The foregoing Stipulation and Agreement is hereby
19 adopted as my Decision in this matter and shall become effective
20 at 12 o'clock noon on July 11, 2005.

21 IT IS SO ORDERED 4-28, 2005.

22 JEFF DAVI
23 Real Estate Commissioner

24
25 
26
27

2005
File

FILED
JAN 26 2005
DEPARTMENT OF REAL ESTATE

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

[Handwritten signature]

In the Matter of the Accusation of

PRIMETIME MANAGEMENT,
INC., et al.

}
}

Case No. H-31244 LA

OAH No. L-2004100521

Respondents

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

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 April 11 and 12, 2005**, 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

By *James R. Peel*
JAMES R. PEEL, Counsel


Dated: January 26, 2005

cc: Primetime Management Inc.
Richard Tamayo/Frank M. Buda Esq.
Sacto./OAH

SACTO
HAY

FILED
DEC - 7 2004

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

DEPARTMENT OF REAL ESTATE
BY 

In the Matter of the Accusation of

PRIMETIME MANAGEMENT,
INC., et al.

}

Case No. H-31244 LA

OAH No. L-2004100521

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

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 **February 10, 2005**, 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: December 7, 2004

By 
JAMES R. PEEL, Counsel

cc: Primetime Management Inc.
Richard Tamayo/Frank M. Buda Esq.
Sacto./OAH

SACCO
Flay

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105
5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
AUG 30 2004
DEPARTMENT OF REAL ESTATE
BY *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-31244 LA
12	PRIMETIME MANAGEMENT, INC.,)	A C C U S A T I O N
13	dba Century 21 Prime Time;)	
14	and RICHARD TAMAYO,)	
15	individually and as)	
16	designated officer of)	
	Primetime Management, Inc.,)	
	Respondents.)	

17 The Complainant, Janice A. Waddell, a Deputy Real
18 Estate Commissioner of the State of California, for cause of
19 accusation against PRIMETIME MANAGEMENT, INC., dba Century 21
20 Prime Time; and RICHARD TAMAYO, individually and as designated
21 officer of Primetime Management, Inc., alleges as follows:

22 I

23 The Complainant, Janice A. Waddell, acting in her
24 official capacity as a Deputy Real Estate Commissioner of the
25 State of California, makes this Accusation against PRIMETIME
26 MANAGEMENT, INC., dba Century 21 Prime Time, and RICHARD TAMAYO.

27 ///

1 II

2 PRIMETIME MANAGEMENT, INC., and RICHARD TAMAYO,
3 individually and as designated officer of said corporation
4 (hereinafter referred to as "Respondents"), are presently
5 licensed and/or have license rights under the Real Estate Law
6 (Part 1 of Division 4 of the Business and Professions Code)
7 (hereinafter Code).

8 III

9 Respondent PRIMETIME MANAGEMENT, INC., was originally
10 licensed as a real estate broker on June 28, 2001, through
11 Respondent RICHARD TAMAYO as its designated broker-officer. The
12 license of Respondent RICHARD TAMAYO was restricted as a result
13 of the Decision in Case No. H-28164 LA as of June 12, 2001.

14 IV

15 At all times material herein, Respondents engaged in
16 the business of, acted in the capacity of, advertised or assumed
17 to act as a real estate broker in the State of California, within
18 the meaning of Section 10131(a) of the Code, including soliciting
19 buyers and sellers and negotiating the sale of real property.

20 V

21 On or about May 28, 2003, the Department completed an
22 examination of Respondent's books and records, pertaining to the
23 activities described in Paragraph IV above, covering a period
24 from January 1, 2002, through February 28, 2003, which
25 examination revealed violations of the Code and of Title 10,
26 Chapter 6, California Code of Regulations (hereinafter
27 Regulations) as set forth below.

1 VI

2 The examination described in Paragraph V, above,
3 determined that, in connection with the activities described in
4 Paragraph IV above, Respondents accepted or received funds,
5 including funds in trust (hereinafter "trust funds") from or on
6 behalf of principals, and thereafter made deposits or
7 disbursements of such funds.

8 VII

9 In the course of activities described in Paragraphs IV
10 through VI and during the examination period described in
11 Paragraph V, Respondents acted in violation of the Code and the
12 Regulations as follows, and as more specifically set forth in
13 Audit Report Nos. LA 020279 and LA 020295 and related exhibits:

14 (1) Violated Section 10145(a) of the Code and
15 Regulation 2832.1 by maintaining as of February 28, 2003, a
16 shortage in the trust account in the amount of \$6,466.01.

17 (2) Violated Regulation 2831 in that the columnar
18 record of trust funds received but not placed in the trust
19 account and certain records maintained in connection with escrow
20 activities were not complete and accurate.

21 (3) Violated Regulation 2832 by not always depositing
22 trust funds received on behalf of another into a neutral escrow
23 or into the hands of the principal within three business days
24 following acceptance of an offer.

25 (4) Violated Code Section 10161.8/Regulation 2752 by
26 failing to notify the Department in a timely manner when
27 salespersons were employed or terminated.

1 (5) Violated Code Section 10160/Regulation 2753 by
2 failing to maintain the license certificate for Angel Cervantes
3 in Respondents' possession at all times.

4 (6) Violated Regulation 2731 by using the unlicensed
5 fictitious business names Primetime Escrow, Century 21 Prime
6 Time, and Primetime Inc. in Respondents' real estate brokerage
7 business.

8 (7) Violated Regulation 2831.2 by failing to perform a
9 monthly reconciliation of the control record with the separate
10 records which is accurate and adequate.

11 (8) Violated Regulation 2950(d) by failing to maintain
12 records and accounts in accordance with accepted principles of
13 accounting and good business practices.

14 (9) Violated Regulation 2950(f) by not always placing
15 funds received on behalf of another into the trust account no
16 later than the next business day.

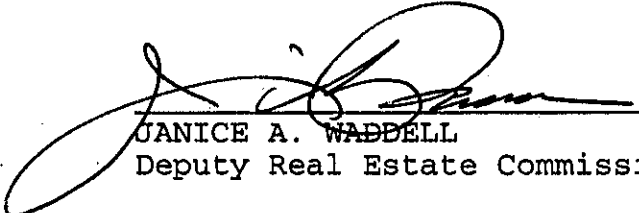
17 (10) Violated Regulation 2950(h) by failing to advise
18 all parties in writing of Respondents' ownership interest in the
19 escrow division.

20 VIII

21 The conduct of Respondents, PRIMETIME MANAGEMENT, INC.,
22 and RICHARD TAMAYO, as alleged above, subjects their real estate
23 licenses and license rights to suspension or revocation pursuant
24 to Section 10177(d) of the Code. The conduct of Respondent
25 RICHARD TAMAYO, as alleged above, subjects his real estate
26 licenses and license rights to suspension or revocation pursuant
27 to Section 10177(h) of the Code.

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 all licenses and license rights of Respondents
5 PRIMETIME MANAGEMENT, INC., dba Century 21 Prime Time; and
6 RICHARD TAMAYO, individually and as designated officer of
7 Primetime Management, Inc., under the Real Estate Law (Part 1 of
8 Division 4 of the Business and Professions Code) and for such
9 other and further relief as may be proper under other applicable
10 provisions of law.

11 Dated at Los Angeles, California
12 this 29 day of July, 2004.

13
14 
15 JANICE A. WADDELL
16 Deputy Real Estate Commissioner
17
18
19
20
21
22

23 cc: Primetime Management, Inc.
24 Richard Tamayo
25 Janice A. Waddell
26 Audit Section/Manijeh Khazrai
27 Sacto.
RLJ