

MULLEDA, GWENDOLYN
ID# 92 70 76

H-31819 LA

FLAGGED---4-12-05
REB PUBLICLY REPROVED---4-10-06

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982

FILED
MAR 10 2008
DEPARTMENT OF REAL ESTATE

By John B. Kim

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 GWENDOLYN MULLEDA, dba)

13 Marina Real Estate and)

14 Marina Properties)

15 Respondents.)

NO. H-31819 LA
L-2005060303

STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between Respondent
17 GWENDOLYN MULLEDA doing business as (dba) Marina Real Estate and
18 Marina Properties, and their attorney of record, Daniel Nassie,
19 Esq., and the Complainant, acting by and through Kelvin K. Lee,
20 Counsel for the Department of Real Estate, as follows for the
21 purpose of settling and disposing of the Accusation filed on
22 April 12, 2005 this matter.

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

submitted solely on the basis of the provisions of this
Stipulation and Agreement.

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

3. On May 10, 2005, Respondent filed a Notice of
Defense pursuant to Section 11506 of the Government Code for the
purpose of requesting a hearing on the allegations in the
Accusation. Respondent hereby freely and voluntarily withdraws
said Notice of Defense. Respondent acknowledges that she
understands that by withdrawing said Notice of Defense, she will
thereby waive her right to require the Commissioner to prove the
allegations in the Accusation at a contested hearing held in
accordance with the provisions of the APA and that she will
waive other rights afforded to her in connection with the
hearing, such as the right to present evidence in defense of the
allegations in the Accusation and the right to cross-examine
witnesses.

4. This Stipulation and Agreement ("Stipulation") is
based on the factual allegations contained in the Accusation
filed in this proceeding. In the interest of expedience and
economy, Respondent chooses not to contest these factual
allegations, but to remain silent and understands that, as a
result thereof, these factual statements, without being admitted
or denied, will serve as a prima facie basis for the
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 Respondent's decision not to
4 contest the Accusation are made for the purpose of reaching an
5 agreed disposition of this proceeding and are expressly limited
6 to this proceeding and any other proceeding or case in which the
7 Department of Real Estate ("Department"), or another licensing
8 agency of this state, another state, or if the federal
9 government is involved and otherwise shall not be admissible in
10 any other criminal or civil proceedings.

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

21 7. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation shall
23 not constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department of Real
25 Estate with respect to any matters which were not specifically
26 alleged to be causes for accusation in this proceeding.
27

1 8. Respondent has received, read, and understands
2 the "Notice Concerning Costs of Subsequent Audit". Respondent
3 further understands that by agreeing to this Stipulation, the
4 findings set forth below in the Determination Of Issues become
5 final, and the Commissioner may charge Respondent for the cost
6 of the audit which led to the disciplinary action and the cost
7 of any subsequent audit conducted pursuant to Business and
8 Professions Code Section 10148 to determine if the violations
9 have been corrected. The cost of the audit which led to this
10 disciplinary action is \$3,255.52. The Commissioner's reasonable
11 costs for a subsequent audit shall in no event exceed \$3,255.52.

12 DETERMINATION OF ISSUES

13 By reason of the foregoing stipulations and waivers
14 and solely for the purpose of settlement of the pending
15 Accusation without a hearing, it is stipulated and agreed that
16 the following determination of issues shall be made:

17 I

18 The conduct, acts and/or omissions of Respondent
19 GWENDOLYN MULLEDA, dba Marina Real Estate and Marina Properties,
20 as set forth in the Accusation, constitute cause for the
21 discipline of the real estate licenses and license rights of
22 Respondent GWENDOLYN MULLEDA, dba Marina Real Estate and Marina
23 Properties, under the provisions of Business and Professions
24 Code ("Code") Section 10177(d) for violation of Code Section
25 10145 and Section 2832.1 of Title 10, Chapter 6, California Code
26 of Regulations.

27 ///

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

I. The licenses and license rights held by Respondent GWENDOLYN MULLEDA, dba Marina Real Estate and Marina Properties, under the Real Estate Law, are hereby publicly reproved.

Respondent shall provide conclusive proof to the Department that the trust fund account shortage previously found for Marina Real Estate and Marina Properties has been cured.

II. Respondent shall submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that the Respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

III. Pursuant to Section 10148 of the Business and Professions Code, Respondent GWENDOLYN MULLEDA dba Marina Real Estate and Marina Properties shall pay the Commissioner's reasonable cost for both 1) the audit which led to the disciplinary action and 2) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost for the subsequent audit, the

Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. The cost of the audit which led to this disciplinary actions is \$3,255.52. The Commissioner's reasonable costs for a subsequent audit shall in no event exceed \$3,255.52. The total cost for both audits shall not exceed \$6,511.04

Respondent shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. If payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner, Respondent's license shall be suspended.

Said suspension shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

DATED: 12/19/05

Kelvin K. Lee
KELVIN K. LEE, Counsel for
the Department of Real Estate

* * *

I have read the Stipulation and Agreement, and 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 Government Code), and we
willingly, intelligently and voluntarily waive those rights,
including the right of requiring the Commissioner to prove the
allegations in the Accusation at a hearing at which I would have
the right to cross-examine witnesses against me and to present
evidence in defense and mitigation of the charges.

DATED: 12-19-05

Gwendolyn M. Mulleda
GWENDOLYN MULLEDA, Respondent

DATED: 12/19/05

DANIEL HASSIE, Counsel for
Respondent GWENDOLYN MULLEDA dba
Marina Real Estate and Marina
Properties

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my decision and Order as to GWENDOLYN MULLEDA dba
Marina Real Estate and Marina Properties and shall become
effective at 12 o'clock noon on _____.

IT IS SO ORDERED _____

JEFF DAVI
Real Estate Commissioner

1 11508, 11509 and 11513 of the Government Code), and we
2 willingly, intelligently and voluntarily waive those rights,
3 including the right of requiring the Commissioner to prove the
4 allegations in the Accusation at a hearing at which I would have
5 the right to cross-examine witnesses against me and to present
6 evidence in defense and mitigation of the charges.

7 DATED: _____

GWENDOLYN MULLEDA, Respondent

10 DATED: _____

11 DANIEL NASSIE, Counsel for
12 Respondent GWENDOLYN MULLEDA dba
13 Marina Real Estate and Marina
14 Properties

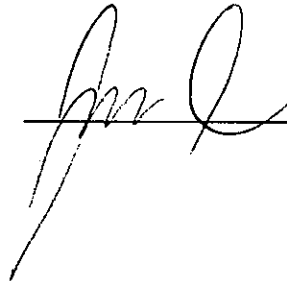
14 * * *

15 The foregoing Stipulation and Agreement is hereby
16 adopted as my Decision and Order as to GWENDOLYN MULLEDA dba
17 Marina Real Estate and Marina Properties and shall become
18 effective at 12 o'clock noon on APR 10 2008.

19 IT IS SO ORDERED

2-706

21 JEFF DAVI
22 Real Estate Commissioner

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26
27

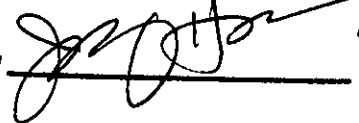
KELVIN K. LEE
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FILED
APR 12 2005

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H- 31819 LA
)	
)	<u>A C C U S A T I O N</u>
GWENDOLYN MULLEDA, dba Marina Real)	
Estate and Marina Properties)	
)	
Respondent.)	

The Complainant, Joseph Aiu, Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against, GWENDOLYN MULLEDA, dba Marina Real Estate and Marina
Properties (hereinafter "Respondent") is informed and alleges as
follows:

1.

The Complainant, Joseph Aiu, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
in his official capacity.

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2.

At all times material herein, Respondent Gwendolyn Mulleda, dba, Marina Real Estate and Marina Properties, (hereinafter "Respondent "), was and now is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code"), as a real estate broker. Respondent was first licensed by the Department as a broker on November 7, 1996.

3.

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Sections 10131(a) and 10131(b), for another or others, for or in expectation of compensation. Said activities included the operation and conduct of:

(a) a real property sales business with the public wherein Respondent engaged in the sale or offer to sell, the buying or offering to buy, the solicitation of prospective sellers or purchasers of, the solicitation or obtaining listings of, or the negotiation of the purchase, sale or exchange of real property; and

(b) a property management business with the public wherein Respondent leased or rented or offered for lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiates the sale, purchase or exchange of leases on real property, or on a

1 business opportunity, or collects rents from real property, or
2 improvements thereon, or from business opportunities.

3 4.

4 In connection with the activities described in
5 Paragraph 3, above, Respondent accepted or received funds in
6 trust (hereinafter "trust funds") from or on behalf of clients
7 she represented in residential lease transactions, and
8 thereafter made deposits and or disbursements of such funds.
9 From time to time herein mentioned, said trust funds were
10 deposited and/or maintained by Respondents, in bank accounts,
11 including but not necessarily limited to, Account No. 000-
12 7501854, known as the "Gwendolyn Mulleda dba Marina Properties
13 Trust Account" (hereinafter "Trust Account No. 1"), at Wells
14 Fargo Bank, 12527 Hesperia Road, Victorville, CA 92392. This
15 account was used for deposits collected from tenants for
16 residential transactions.

17 5.

18 On or about May 20, 2003, the Department completed an
19 examination of the books and records of Respondent's books and
20 records, pertaining to the real estate and trust fund handling
21 activities described in Paragraphs 3 and 4, above, covering a
22 period from approximately July 1, 2002, through May 20, 2003.
23 This examination revealed violations of the Code and of Title
24 10, Chapter 6, California Code of Regulations (hereinafter
25 "Regulations") as set forth below, and as more specifically set
26 forth in the audit reports and attached exhibits.

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1
2 FIRST CAUSE OF ACCUSATION
3 (Audit)

4 6.

5 In the course of activities described in Paragraphs 3
6 and 4, above, and during the examination period described in
7 Paragraph 5, Respondents acted in violation of the Code and the
8 Regulations in that:

9 a) The trust account had a shortage of \$230.06 as of
10 April 30, 2003, and this shortage represented funds belonging to
11 a client of the Respondent, property owner Gary Smith. These
12 funds were supposed to be on hold for repair since August 26,
13 2002. Instead, the funds appeared to have been erroneously
14 disbursed in a cash transaction that occurred on August 12,
15 2002.

16 Therefore, through the above actions, Respondent
17 caused, permitted and/or allowed, the withdrawal or disbursement
18 of trust funds from this account, without the prior written
19 consent of every principal who then was an owner of funds in the
20 account, thereby reducing the balance of funds in the said
21 account to an amount less than the existing aggregate trust fund
22 liability of the broker to all owners of said trust funds, in
23 violation of Code Section 10145 and Regulation 2832.1;

24 (b) The Respondent did not maintain a record of all
25 lease transactions funds that were received and disbursed during
26 the audit period of July 1, 2002 through May 20, 2003, in
27 violation of Code Section 10145 and Regulation 2831.

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1 (c) The Respondent did not maintain proper separate
2 records for each owner's property during the audit period of
3 July 1, 2002 through April 30, 2003. In some instances, the
4 dates of funds that were received and deposited were not
5 reflected on the separate records. In other instances, records
6 kept did not reflect check numbers of checks payable to cash
7 which were cashed by the Respondent and disbursed for her
8 commissions. With respect to the account managed on behalf of
9 Gary Smith, the separate records kept by the Respondent did not
10 reflect the cash disbursements she made for Smith's proceeds,
11 the payment for pool services, and her own commission. Said
12 conduct is in violation of Code Section 10145 and Regulations
13 2831.1

14 (d) The respondent did not perform a monthly
15 reconciliation of the separate records and the control account
16 records since no control account record was maintained. Said
17 conduct is in violation of Code Section 10145 and Regulations
18 2832.1.

19 7.

20 The conduct, acts and/or omission of Respondent, as
21 set forth in Paragraph 6, above, are in violation of the Code
22 and Regulations and constitute grounds to suspend or revoke
23 Respondent's license and license rights pursuant to Code
24 Sections 10177(d) and 10177(g).

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SECOND CAUSE OF ACCUSATION
(Misrepresentation, Fraud and Dishonest Dealing)

8.

On or about July 13, 2002, entered into an exclusive lease listing agreement with owner Gary Smith to rent and manage Smith's property, located at 10748 Alton Court, Adelanto, CA.

On August 7, Respondent procured a tenant and negotiated a residential lease agreement. At the time, the Respondent collected a total of \$3,000.00 and deposited the funds into Trust account No. 1.

9.

The Respondent held \$250.00 under the residential lease agreement for repairs on client Gary Smith's property and deposited the funds into the trust account. However, no additional repairs occurred during the audit period, and Respondent held this \$250.00 of funds for over seven (7) months before returning it to Gary Smith on May 16, 2003.

10.

The Respondent disbursed check number 1806 from the above described trust account for \$625.00, in order to pay her lease commission. This check was initially returned for insufficient funds, but was then reversed the same day by the bank.

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11.

1 The Respondent then issued check number 1808 from the
2 trust account for \$6,000.00 payable to cash, cashed this check
3 and purchased four (4) post office money orders totaling
4 \$1,825.00 payable to Gary Smith, the property owner which
5 represented his lease proceeds.
6

7 Respondent used some of the cash to pay \$175.00 to "A
8 Aqua Pro Pool", despite the owner's specific instructions to not
9 pay this vendor.

10 The Respondent paid herself \$125.00 out of the
11 cashed check number 1808 for her own management fee.

12 12.

13 The conduct, acts and/or omission of Respondent, as
14 set forth in Paragraphs 8 through 11 above, constitute grounds
15 to suspend or revoke Respondent's License pursuant to Code
16 Section 10176(e), 10176(a), 10176(i) and/or 10177(g).

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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 Respondent
5 GWENDOLYN MULLEDA, dba "Marina Real Estate and Marina
6 Properties," under the Real Estate Law (Part 1 of Division 4 of
7 the Business and Professions Code), and for such other and
8 further relief as may be proper under other applicable
9 provisions of law.

10 Dated at Los Angeles, California

11 this 7 day of April, 2005.

12 
13 _____
14 Joseph Aiu
15 Deputy Real Estate Commissioner

16
17 cc: Gwendolyn Mulleda
18 Joseph Aiu
19 Sacto.
20 AE
21 Audits
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