

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED
OCT 20 2005
DEPARTMENT OF REAL ESTATE

By K. Hederholt

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

DRE No. H-31870 LA

12 THOMAS MAXIM, doing business)
13 as M&A Property Management,)

STIPULATION

14 Respondent.)

AND
AGREEMENT

15)
16 It is hereby stipulated by and between THOMAS MAXIM dba
17 as M&A Property Management (sometimes referred to as
18 "Respondent"), represented by Frank M. Buda, Esq., and the
19 Complainant, acting by and through Elliott Mac Lennan, Counsel
20 for the Department of Real Estate, as follows for the purpose of
21 settling and disposing of the Accusation filed on April 26, 2005,
22 in 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

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 (Stipulation).

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

20 4. This Stipulation is based on the allegations
21 contained in the Accusation. In the interest of expedience and
22 economy, Respondent chooses not to contest these allegations, but
23 to remain silent and understands that, as a result thereof, these
24 allegations, without being admitted or denied, will serve as a
25 prima facie basis for the disciplinary action stipulated to
26 herein. The Real Estate Commissioner shall not be required to
27 provide further evidence to prove said allegations.

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

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

18 7. The Order or any subsequent Order of the Real
19 Estate Commissioner made pursuant to this Stipulation shall not
20 constitute an estoppel, merger or bar to any further
21 administrative or civil proceedings by the Department of Real
22 Estate with respect to any matters which were not specifically
23 alleged to be causes for Accusation in this proceeding but do
24 constitute a bar, estoppel and merger as to any allegations
25 actually contained in the Accusation against Respondents herein.
26
27

1 8. Respondent understands that by agreeing to this
2 Stipulation, Respondent agrees to pay, pursuant to Business and
3 Professions Code Section 10148, the cost of the audit (LA 030414)
4 which led to this disciplinary action. The amount of said cost
5 is \$4,313.42.

6 9. Respondent has received, read, and understands the
7 "Notice Concerning Costs of Subsequent Audit". Respondent
8 further understands that by agreeing to this Stipulation, the
9 findings set forth below in the Determination of Issues become
10 final, and the Commissioner may charge Respondent for the cost of
11 any subsequent audit conducted pursuant to Business and
12 Professions Code Section 10148 to determine if the violations
13 have been corrected. The maximum cost of the subsequent audit
14 will not exceed \$4,313.42.

15 DETERMINATION OF ISSUES

16
17 By reason of the foregoing, it is stipulated and agreed
18 that the following determination of issues shall be made:

19 The conduct of THOMAS MAXIM, as described in Paragraph
20 4, above, constitutes a violation of Business and Professions
21 Code ("Code") Section 10145 and violations of Title 10, Chapter
22 6, California Code of Regulations Sections 2725, 2832.1, 2832 and
23 2834. This conduct is a basis for the suspension or revocation
24 of Respondent's license pursuant to Section 10177(d) of the
25 Business and Professions Code.
26
27

1 otherwise, for money paid to the Department under the terms of
2 this Decision.

3 5. If Respondent pays the monetary penalty and if no
4 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 6. The remaining ninety (90) days of the one-hundred
9 twenty (120) day suspension shall be stayed for two (2) years
10 upon the following terms and conditions:

11 (a) Respondent shall obey all laws, rules and
12 regulations governing the rights, duties and responsibilities of
13 a real estate licensee in the State of California; and

14 (b) That no final subsequent determination be made
15 after hearing or upon stipulation, that cause for disciplinary
16 action occurred within two (2) years of the effective date of
17 this Decision. Should such a determination be made, the
18 Commissioner may, in her discretion, vacate and set aside the
19 stay order and reimpose all or a portion of the stayed
20 suspension. Should no such determination be made, the stay
21 imposed herein shall become permanent.

22 ///

23 ///

24 ///

25 ///

26 ///

27

1 II. All licenses and licensing rights of Respondent

2 are indefinitely suspended unless or until Respondent provides
3 proof satisfactory to the Commissioner, of having taken and
4 successfully completed the continuing education course on trust
5 fund accounting and handling specified in paragraph (3) of
6 subdivision (a) of Section 10170.5 of the Business and
7 Professions Code. Proof of satisfaction of this requirement
8 includes evidence that respondent has successfully completed the
9 trust fund account and handling continuing education course
10 within 120 days prior to the effective date of the Decision in
11 this matter.

12 III. Pursuant to Section 10148 of the Business and

13 Professions Code, Respondent shall pay the Commissioner's
14 reasonable cost for (a) the audit which led to this disciplinary
15 action and (b) a subsequent audits to determine if Respondent
16 THOMAS MAXIM are now in compliance with the Real Estate Law.
17 The cost of the audit which led to this disciplinary action is
18 \$4,313,42. In calculating the amount of the Commissioner's
19 reasonable cost, the Commissioner may use the estimated average
20 hourly salary for all persons performing audits of real estate
21 brokers, and shall include an allocation for travel time to and
22 from the auditor's place of work. Said amount for the prior and
23 subsequent audits shall not exceed \$8,626.84.

24
25 Respondent shall pay such cost within 60 days of
26 receiving an invoice from the Commissioner detailing the
27

* * *

1
2 I have read the Stipulation and Agreement, have
3 discussed it with my counsel, and its terms are understood by me
4 and are agreeable and acceptable to me. I understand that I am
5 waiving rights given to me by the California Administrative
6 Procedure Act (including but not limited to Sections 11506,
7 11508, 11509 and 11513 of the Government Code), and I willingly,
8 intelligently and voluntarily waive those rights, including the
9 right of requiring the Commissioner to prove the allegations in
10 the Accusation at a hearing at which I would have the right to
11 cross-examine witnesses against me and to present evidence in
12 defense and mitigation of the charges.

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

24
25 ///

26 ///

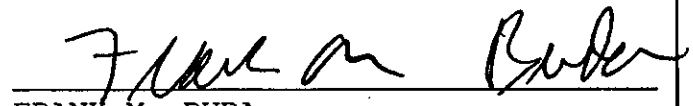
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED: 9-15-05


THOMAS MAXIM, Respondent

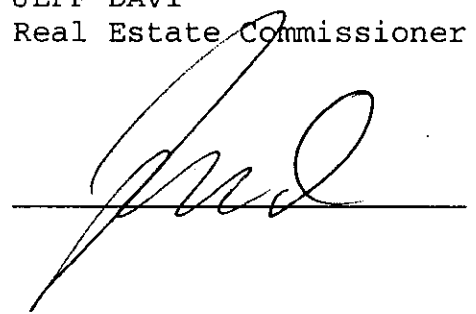
DATED: 9-13-05


FRANK M. BUDA,
Attorney for Respondent
Approved as to form

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at
12 o'clock noon on NOV 19, 2005.

IT IS SO ORDERED 10-12.

JEFF DAVI
Real Estate Commissioner


Handwritten signature

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

FILED
APR 26 2005
DEPARTMENT OF REAL ESTATE

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

By *K. Mederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-31870 LA
)	
THOMAS MAXIM dba M&A Management,)	<u>A C C U S A T I O N</u>
and M&A Property Management,)	
)	
Respondent.)	

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for cause of Accusation against THOMAS MAXIM dba M&A Management, and M&A Property Management, is informed and alleges as follows:

1:

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

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

2.

At all times mentioned, THOMAS MAXIM ("MAXIM"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On June 3, 1981, MAXIM was originally licensed as a real estate broker.

3.

At all times mentioned, in the City of Torrance, County of Los Angeles, MAXIM acted as real estate broker and conducted licensed activities within the meaning of Code Section 10131(b) in that MAXIM operated a property management brokerage dba M&A Management, and M&A Property Management.

4.

On July 15, 2004, the Department completed an audit examination of the books and records of MAXIM, pertaining to the property management activities described in Paragraph 3 that require a real estate license. The audit examination covered a period of time beginning on January 30, 2003 through May 31, 2004. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 030414 and the exhibits and workpapers attached to said audit report.

///
///
///
///

5.

1
2 At all times mentioned, in connection with the
3 activities described in Paragraph 4, MAXIM accepted or received
4 funds in trust (trust funds) from or on behalf of landlords and
5 tenants. Thereafter MAXIM made disposition of such funds. MAXIM
6 maintained the following trust accounts into which he deposited
7 certain of these funds:

8 "M&A Management Trust (T/A #1)
9 Account No. 165400027711"
10 Union Bank of California
Lomita, California

11 "M&A Management Watson Account (T/A #2)
12 Account No. 153491329477"
13 Union Bank of California
Lomita, California

14 "M&A Management Figueroa Street (T/A #3)
15 Account No. 153492664633"
16 Union Bank of California
Lomita, California

17
18 6.

19 With respect to the licensed property management
20 activities referred to in Paragraphs 3 and 5, and the audit
21 examination including the exhibits and workpapers referred to in
22 Paragraph 4, it is alleged that MAXIM:

23 (a) Permitted, allowed or caused the disbursement of
24 trust funds from T/A #1 where the disbursement of said funds
25 reduced the total of aggregate funds, to an amount which, on May
26 31, 2004, was \$2,975.30, less than the existing aggregate trust
27

1 fund liability of MAXIM to every principal who was an owner of
2 said funds, without first obtaining the prior written consent of
3 the owners of said funds, as required by Code Section 10145 and
4 Regulation 2832.1. The shortage was cured on June 17, 2004.

5 (b) Failed to place trust funds for T/A #1, accepted on
6 behalf of another into a trust fund account in the name of the
7 broker as trustee, as required by Code Section 10145 and
8 Regulation 2832.

9 (c) Permitted Sheri Ashman, a non-licensee unbonded
10 employee/partner of MAXIM, to be an authorized signatory on all
11 trust accounts T/A #1 - T/A #3, in violation of Code Section
12 10145 and Regulation 2834.

13 (d) mixed and commingled personal funds in the form of
14 management fees in the amount of at least \$34,916.51, with trust
15 funds in T/A #1, in violation of Code Section 10176(e).

16 (e) Accumulated and retained in T/A #1 broker funds
17 related to management fees in the amount of \$1,192.68 for more
18 than twenty-five (25) days of deposit, in violation of Code
19 Sections 10145 and 10176(e) and Regulation 2835.

20 (f) Used the fictitious names "M&A Management" and "M&A
21 Property Management to conduct activities without holding a
22 license bearing these fictitious business names, in violation of
23 Regulation 2731.

24 (g) Failed to notify the Department of the operation of
25 a branch office at 2166 W. Lomita Blvd., Ca 90717, without
26
27

1 obtaining a license for that branch, in violation of Code Section
2 10163 and Regulation 2715.

3 (h) Had no system in place for regularly monitoring
4 compliance with the Real Estate Law, in violation of Regulation
5 2725.

6 7.

7 The conduct of Respondent MAXIM, described in Paragraph
8 6, above, violated the Code and the Regulations as set forth:

9 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10 6(a)	Code Section 10145 and Regulation 2832.1
11	
12 6(b)	Code Section 10145 and Regulation 2832
13	
14 6(c)	Code Section 10145 and Regulation 2834
15	
16 6(d)	Code Section 10176(e)
17	
18 6(e)	Code Section 10145 and 10176(e) and 19 Regulation 2835
20	
21 6(f)	Regulation 2731
22	
23 6(g)	Code Section 10163 and Regulation 2715
24	
25 6(h)	Code Section 10177(h) and Regulation 26 2725
27	

Each of the foregoing violations constitute cause for the
suspension or revocation of the real estate license and license
rights of MAXIM under the provisions of Code Sections 10165,
10176(e), 10177(d), 10177(h) and/or 10177(g).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

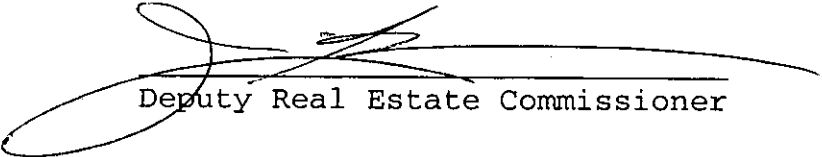
8.

The overall conduct of MAXIM constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondent MAXIM pursuant to Code Section 10177(g).

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 THOMAS MAXIM, under the Real Estate Law (Part 1 of Division 4 of the 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 *22 April 2005*


Deputy Real Estate Commissioner

cc: Thomas Maxim
Janice Waddell
Sacto
DKW
Audits - Eric Goff