

1 Department of Real Estate
320 West 4th Street, Ste. 350

FILED

2 Los Angeles, California 90013-1105

AUG 11 2008

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

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-33857 LA

12 BANKERS REALTY INC. and PETER)
13 JOSEPH MOTA, individually and as)
14 designated officer of)
15 Bankers Realty Inc.,)

STIPULATION
AND
AGREEMENT

16 Respondents.)

17 It is hereby stipulated by and between Respondents
18 BANKERS REALTY INC., a corporate real estate broker, and PETER
19 JOSEPH MOTA, individually and as designated officer of Bankers
20 Realty Inc. (sometimes collectively referred to as
21 "Respondents"), represented by Stephanie K. Leiter, Esq. of
22 Friedman, Stroff & Gerard, and the Complainant, acting by and
23 through Elliott Mac Lennan, Counsel for the Department of Real
24 Estate, as follows for the purpose of settling and disposing of
25 the Accusation ("Accusation") filed on March 28, 2007, in this
26 matter:
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

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

12 3. Respondents timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense and the right to cross-
23 examine witnesses.
24

25 4. This Stipulation is based on the factual
26 allegations contained in the Accusation. In the interest of
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1 expedience and economy. Respondents choose not to contest these
2 allegations, but to remain silent and understand that, as a
3 result thereof, these factual allegations, without being admitted
4 or denied, will serve as a prima facie basis for the disciplinary
5 action stipulated to herein. The Real Estate Commissioner shall
6 not be required to provide further evidence to prove said factual
7 allegations.

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

15 6. It is understood by the parties that the Real
16 Estate Commissioner may adopt this Stipulation as his Decision in
17 this matter thereby imposing the penalty and sanctions on
18 Respondents' real estate licenses and license rights as set forth
19 in the "Order" herein below. In the event that the Commissioner
20 in his discretion does not adopt the Stipulation, it shall be
21 void and of no effect and Respondents shall retain the right to a
22 hearing and proceeding on the Accusation under the provisions of
23 the APA and shall not be bound by any stipulation or waiver made
24 herein.
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26 7. The Order or any subsequent Order of the Real
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1 Estate Commissioner made pursuant to this Stipulation shall not
2 constitute an estoppel, merger or bar to any further
3 administrative or civil proceedings by the Department of Real
4 Estate with respect to any matters which were not specifically
5 alleged to be causes for Accusation in this proceeding but do
6 constitute a bar, estoppel and merger as to any allegations
7 actually contained in the Accusations against Respondent herein.

8 8. Respondents understand that by agreeing to this
9 Stipulation, Respondents agree to pay, pursuant to Business and
10 Professions Code Section 10148, the cost of the audit (LA 050379
11 & LA 060003) which led to this disciplinary action. The amount
12 of said cost for the audit is \$4,681.20.

13 9. Respondents have received, read, and understand the
14 "Notice Concerning Costs of Subsequent Audit". Respondents
15 further understand that by agreeing to this Stipulation, the
16 findings set forth below in the Determination of Issues become
17 final, and the Commissioner may charge Respondents for the cost
18 of any subsequent audit conducted pursuant to Business and
19 Professions Code Section 10148 to determine if the violations
20 have been corrected. The maximum cost of the subsequent audit
21 will not exceed \$4,681.20.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:
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I.

4 The conduct, acts or omissions of BANKERS REALTY INC.
5 and PETER JOSEPH MOTA as described in Paragraph 4, above, is in
6 violation of Section 10145 of the Business and Professions Code
7 ("Code") and Sections 2831, 2831.1 and 2832(a) and 2950(d) of
8 Title 10, Chapter 6 of the California Code of Regulations
9 ("Regulations") and is a basis for the suspension or revocation
10 of Respondent's license and license rights as a violation of the
11 Real Estate Law pursuant to Code Section 10177(d).
12

II.

13 The conduct, acts or omissions of PETER JOSEPH MOTA, as
14 described in Paragraph 4, constitutes a failure to keep BANKERS
15 REALTY INC. in compliance with the Real Estate Law during the
16 time that he was the officer designated by a corporate broker
17 licensee in violation of Section 10159.2 of the Code. This
18 conduct is a basis for the suspension or revocation of
19 Respondent's license pursuant to Code Sections 10177(h).
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I. . .

A. All licenses and licensing rights of Respondents BANKERS REALTY INC. and PETER JOSEPH MOTA under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

1. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

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

B. The initial thirty (30) day portion of said ninety (90) day suspension shall commence on the effective date of this Decision; provided, however, that if Respondents petition, said suspension shall be stayed upon condition that:

1. Pursuant to Section 10175.2 of the Business and

1 Professions Code, Respondents shall pay a monetary penalty of
2 eighty three dollars and thirty three cents (\$83.33) per day or
3 Two Thousand Five Hundred Dollars (\$2,500) each, totaling Five
4 Thousand Dollars (\$5,000) for both Respondents.

5 2. Said payment shall be in the form of a cashier's
6 check or certified check made payable to the Recovery
7 Account of the Real Estate Fund. Said check must be received
8 by the Department prior to the effective date of the Decision.

9 3. No further cause for disciplinary action against
10 the real estate license of Respondents occur within two (2) years
11 from the effective date of the Decision in this matter.

12 4. If Respondents fail to pay the monetary penalty in
13 accordance with the terms and conditions of the Decision, the
14 Commissioner may, without a hearing, order the immediate
15 execution of all or any part of the stayed suspension in which
16 event Respondents shall not be entitled to any repayment nor
17 credit, prorated or otherwise, for money paid to the Department
18 under the terms of this Decision.

19 5. If Respondents pay the monetary penalty and
20 provides evidence as required, above, and if no further cause for
21 disciplinary action against the real estate licenses of
22 Respondents occurs within two (2) years from the effective date
23 of the Decision, the stay hereby granted shall become permanent.

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II.

Pursuant to Section 10148 of the Business and

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3 Professions Code, Respondents BANKERS REALTY INC. and PETER
4 JOSEPH MOTA shall pay the Commissioner's reasonable cost for (a)
5 the audit which led to this disciplinary action (b) a subsequent
6 audit to determine if Respondents are now in compliance with the
7 Real Estate Law. The cost of the audit which led to this
8 disciplinary action is \$4,681.20. In calculating the amount of
9 the Commissioner's reasonable cost, the Commissioner may use the
10 estimated average hourly salary for all persons performing audits
11 of real estate brokers, and shall include an allocation for
12 travel time to and from the auditor's place of work. Said amount
13 for the prior and subsequent audits shall not exceed \$9,362.40.

14 Respondents shall pay such cost within 60 days of
15 receiving an invoice from the Commissioner detailing the
16 activities performed during the audit and the amount of time
17 spent performing those activities.

18
19 The Commissioner may suspend the license of Respondents
20 pending a hearing held in accordance with Section 11500, et seq.,
21 of the Government Code, if payment is not timely made as provided
22 for herein, or as provided for in a subsequent agreement between
23 the Respondent and the Commissioner. The suspension shall remain
24 in effect until payment is made in full or until Respondents
25 enter into an agreement satisfactory to the Commissioner to
26 provide for payment, or until a decision providing otherwise is
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1 adopted following a hearing held pursuant to this condition.

2 III.

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

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16 DATED:

2-27-08

EL
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

17
18 * * *

19 EXECUTION OF THE STIPULATION

20 We have read the Stipulation and discussed it with our
21 counsel. Its terms are understood by us and are agreeable and
22 acceptable to us. We understand that we are waiving rights given
23 to us by the California Administrative Procedure Act (including
24 but not limited to Sections 11506, 11508, 11509 and 11513 of the
25 Government Code), and we willingly, intelligently and voluntarily
26 waive those rights, including the right of requiring the
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1 Commissioner to prove the allegations in the Accusation at a
2 hearing at which we would have the right to cross-examine
3 witnesses against us and to present evidence in defense and
4 mitigation of the charges.

5 MAILING AND FACSIMILE

6 Respondents (1) shall mail the original signed
7 signature page of the stipulation herein to Elliott Mac Lennan:
8 Attention: Legal Section, Department of Real Estate, 320 W.
9 Fourth St., Suite 350, Los Angeles, California 90013-1105.
10 Additionally, Respondents shall also (2) facsimile a copy of
11 signed signature page, to the Department at the following
12 telephone/fax number: (213) 576-6917, Attention: Elliott Mac
13 Lennan.

14 A facsimile constitutes acceptance and approval of the
15 terms and conditions of this stipulation. Respondents agree,
16 acknowledge and understand that by electronically sending to the
17 Department a facsimile copy of Respondents' actual signature as
18 it appears on the stipulation that receipt of the facsimile copy
19 by the Department shall be as binding on Respondents as if the
20 Department had received the original signed stipulation.
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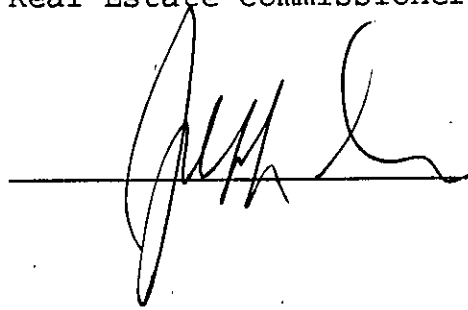
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* * *

1 The foregoing Stipulation and Agreement is hereby
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3 adopted as my Decision as to Respondents BANKERS REALTY INC. and
4 PETER JOSEPH MOTA, individually and as designated officer of
5 Bankers Realty Inc., and shall become effective at 12 o'clock
6 noon on September 10, 2008.

7 IT IS SO ORDERED 9/24, 2008.

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9 JEFF DAVI
 Real Estate Commissioner

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

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

FILED
MAR 28 2007
DEPARTMENT OF REAL ESTATE
By K. W. Riederholt

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-33857 LA
)	
BANKERS REALTY INC.)	<u>A C C U S A T I O N</u>
and PETER JOSEPH MOTA,)	
individually and as)	
designated officer of)	
Bankers Realty Inc.,)	
)	
Respondents.)	

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BANKERS REALTY INC. and PETER JOSEPH MOTA, individually and as designated officer of Bankers Realty Inc. alleges as follows:

1.

The Complainant, Janice Waddell, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against BANKERS REALTY INC. and PETER JOSEPH MOTA.

2.

1 All references to the "Code" are to the California
2 Business and Professions Code and all references to "Regulations"
3 are to Title 10, Chapter 6, California Code of Regulations.
4

5 LICENSE HISTORY

6 3.

7 A. At all times mentioned, BANKERS REALTY INC. ("BRI")
8 was licensed or had license rights issued by the Department of
9 Real Estate ("Department") as a real estate broker. On March 25,
10 2003, BRI was originally licensed as a real estate broker.

11 B. On August 29, 1995, in Case No. H-26290 LA, an
12 Accusation was filed against Respondent PETER JOSEPH MOTA, that
13 resulted in discipline as set forth below in Paragraph 11.
14

15 C. At all times mentioned, PETER JOSEPH MOTA ("MOTA")
16 was licensed or had license rights issued by the Department as a
17 real estate broker. On November 28, 1996, MOTA was originally
18 licensed as a real estate broker. On March 25, 2003, MOTA became
19 the designated officer of BRI.

20 D. At all times material herein, BRI was licensed by
21 the Department as a corporate real estate broker by and through
22 MOTA, as the designated officer and broker responsible, pursuant
23 to Code Section 10159.2 of the Business and Professions Code for
24 supervising the activities requiring a real estate license
25 conducted on behalf BRI of by BRI's officers, agents and
26 employees, including MOTA.
27

LICENSED ACTIVITIES AND BROKERAGE

4.

At all times mentioned, in the City of Torrance, County of Los Angeles, BRI acted as a real estate broker and conducted licensed activities within the meaning of:

A. Code Section 10131(a). BRI operated a residential resale brokerage; and

B. In addition, BRI conducted broker-controlled escrows through its escrow divisions, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

AUDIT

5.

On September 15, 2006, the Department completed an audit examination of the books and records of BRI pertaining to the (1) residential resale and (2) broker-escrow activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on May 1, 2005 to May 31, 2006. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully set forth in Audit Report LA 050379 and LA 060003 and the exhibits and workpapers attached thereto.

TRUST ACCOUNT

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, BRI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions including buyers, sellers, lenders and escrowholders handled by BRI. Thereafter BRI made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by BRI in the bank account as follows:

"Bankers Realty Inc. Escrow Division Account
1892385277"
Comerica Bank
El Segundo, California ("escrow trust account")

VIOLATIONS OF THE REAL ESTATE LAW

7.

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

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in escrow trust account, to an amount which, on May 31, 2006, was \$3,937.88, less

1 than the existing aggregate trust fund liability of BRI to every
2 principal who was an owner of said funds, without first obtaining
3 the prior written consent of the owners of said funds, as
4 required by Code Section 10145 and Regulations 2832.1, 2950(d),
5 2950(g) and 2951.

6 (b) Permitted escrow officer Elaine O'Brian and escrow
7 assistant Gus Saenz, unlicensed and unbonded persons, to be
8 authorized signatories on the escrow trust account, in violation
9 of Code Section 10145 and Regulation 2834.

10 (c) Failed to maintain a control record in the form of
11 a columnar record in chronological order of all trust funds
12 received, deposited and disbursed by the escrow trust account, in
13 violation of Code Section 10145 and Regulations 2831, 2950(d) and
14 2951.

15 (d) Failed to maintain a separate record for each
16 beneficiary or transaction, thereby failing to account for all
17 trust funds received, deposited and disbursed for by the escrow
18 trust account, as required by Code Section 10145 and Regulation
19 2831.1, 2950(d) and 2951.

20 (e) Failed to maintain a control record in the form of
21 a columnar record in chronological order of all "Trust Funds
22 Received, Not Placed Broker's Trust Account", in violation of
23 Code Section 10145 and Regulations 2831, 2950(d) and 2951.

24 (f) The escrow trust account was designated as a trust
25 account, in violation of Code Section 10145 of the Code and
26
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1 Regulations 2832(a), 2950(d) and 2951.

2 (g) Failed to notify the Department of the termination
3 of three salesperson James Ashbrook Tull, Peter Tsu-Hsin Wang and
4 Byron Alan Clark, as required by Code Section 10161.8 and
5 Regulation 2752.

6 (h) Misrepresentated to sellers that BRI held five
7 Earnest Money Deposits totaling \$48,000 for buyers Quizon,
8 Martinez, Bombarda, Choon and Singh, in violation of Code Section
9 10176(a) and/or 10177(g).

10 8.

11 The conduct of Respondents BRI and MOTA, described in
12 Paragraph 7, above, violated the Code and the Regulations as set
13 forth below:

14 PARAGRAPH

PROVISIONS VIOLATED

15 7(a)

16 Code Section 10145 and Regulations
17 2832.1, 2950(d), 2950(g) and 2951

18
19 7(b)

20 Code Section 10145 and Regulations
21 2834

22 7(c)

23 Code Section 10145 and Regulations
24 2831, 2950(d) and 2951

25 7(d)

26 Code Section 10145 and Regulations
27 2831.1, 2950(d) and 2951

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7(e) Code Section 10145 and Regulations
2831, 2950(d) and 2951

7(f) Code Section 10145 and Regulations
2832(a), 2950(d) and 2951

7(g) Code Section 10161.8 and Regulation
2752

7(h) Code Section 10176(a) and 10177(g)

The foregoing violations constitutes cause for the suspension or
revocation of the real estate license and license rights of BRI
and MOTA under the provisions of Code Sections 10176(a), 10177(d)
and/or 10177(g).

NEGLIGENCE

9.

The overall conduct of Respondents BRI and MOTA
constitutes negligence or incompetence especially in regard to
trust fund handling. This conduct and violation are cause for
the suspension or revocation of the real estate license and
license rights of said pursuant to Code Section 10177(g).

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SUPERVISION AND COMPLIANCE

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3 The overall conduct of Respondent MOTA constitutes a
4 failure on his part, as officer designated by a corporate broker
5 licensee, to exercise the reasonable supervision and control over
6 the licensed activities of BRI as required by Code Section
7 10159.2, and to keep BRI in compliance with the Real Estate Law,
8 and is cause for the suspension or revocation of the real estate
9 license and license rights of MOTA pursuant to the provisions of
10 Code Sections 10177(d), 10177(g) and 10177(h).

11 PRIOR DEPARTMENTAL ACTION

12 11.

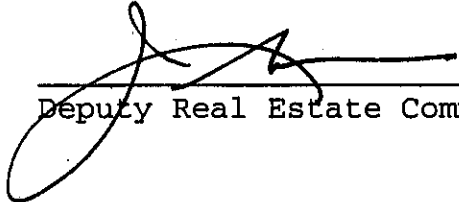
13
14 On August 29, 1995, in Case No. H-26290 LA, an
15 Accusation was filed against Respondent MOTA, that resulted in
16 discipline after hearing including revocation of license with
17 right to a restricted broker license on terms and conditions for
18 violations of Code Sections 10145, 10159.5, 10160 and 10240 and
19 Regulations 2725, 2726, 2753, 2830, 2831, 2831:1, 2831.2,
20 2950(h). Effective August 7, 1996, said license was revoked and
21 a restricted broker license was issued. On October 19, 1999,
22 MOTA was re-licensed as a real estate broker.

23 WHEREFORE, Complainant prays that a hearing be
24 conducted on the allegations of this Accusation and that upon
25 proof thereof, a decision be rendered imposing disciplinary
26 action against the license and license rights of Respondents
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1 BANKERS REALTY INC. and PETER JOSEPH MOTA, under the Real Estate
2 Law (Part 1 of Division 4 of the Business and Professions Code)
3 and for such other and further relief as may be proper under
4 other applicable provisions of law.

5 Dated at Los Angeles, California

6 this *26 March 2007*

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8 _____
9 Deputy Real Estate Commissioner

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24 cc: Bankers Realty Inc.
25 c/o Peter Joseph Mota D.O.
26 Janice Waddell
27 Sacto
Audits - Godswill Kerarou