

Sacto

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4
5 Telephone: (213) 576-6982
6
7

FILED

MAR - 8 2009

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-35260 LA
	)	
12 MARTIN ALVARADO, doing business as	)	<u>STIPULATION</u>
13 Town & Country Properties,	)	<u>AND</u>
	)	<u>AGREEMENT</u>
14	)	
15 Respondent.	)	
16	)	

17 It is hereby stipulated by and between Respondent
18 MARTIN ALVARADO (sometimes referred to as "Respondent"),
19 represented by Robert Dewberry, Esq., Attorney At Law, and the
20 Complainant, acting by and through Elliott Mac Lennan, Counsel
21 for the Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation ("Accusation") filed on
23 August 29, 2008, in this matter:

- 24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
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1 held in accordance with the provisions of the Administrative
2 Procedure Act ("APA"), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement ("Stipulation").

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

9 3. Respondent timely filed a Notice of Defense
10 pursuant to Section 11506 of the Government Code for the purpose
11 of requesting a hearing on the allegations in the Accusation.
12 Respondent hereby freely and voluntarily withdraws said Notice of
13 Defense. Respondent acknowledges that he understands that by
14 withdrawing said Notice of Defense he thereby waives his right to
15 require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA and that he will waive other rights
18 afforded to him in connection with the hearing such as the right
19 to present evidence in his defense the right to cross-examine
20 witnesses.
21

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

5 5. This Stipulation is made for the purpose of
6 reaching an agreed disposition of this proceeding and is
7 expressly limited to this proceeding and any other proceeding or
8 case in which the Department of Real Estate ("Department"), the
9 state or federal government, or any agency of this state, another
10 state or federal government is involved, and otherwise shall not
11 be admissible in any other criminal or civil proceedings.

12 6. It is understood by the parties that the Real
13 Estate Commissioner may adopt this Stipulation as his Decision in
14 this matter thereby imposing the penalty and sanctions on
15 Respondent's real estate licenses and license rights as set forth
16 in the "Order" herein below. In the event that the Commissioner
17 in his discretion does not adopt the Stipulation, it shall be
18 void and of no effect and Respondent shall retain the right to a
19 hearing and proceeding on the Accusation under the provisions of
20 the APA and shall not be bound by any stipulation or waiver made
21 herein.
22

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

5 8. Respondent understands that by agreeing to this
6 Stipulation, Respondent agrees to pay, pursuant to Business and
7 Professions Code Section 10148, the cost of audit. The total
8 amount of said cost is \$4,184.50.

9 9. Respondent has received, read, and understands the
10 "Notice Concerning Costs of Subsequent Audit". Respondent
11 further understands that by agreeing to this Stipulation, the
12 findings set forth below in the Determination of Issues become
13 final, and the Commissioner may charge Respondent for the cost of
14 any subsequent audit conducted pursuant to Business and
15 Professions Code Section 10148 to determine if the violations
16 have been corrected. The maximum cost of the subsequent audit
17 will not exceed \$4,184.50.
18

19 DETERMINATION OF ISSUES

20 By reason of the foregoing, it is stipulated and agreed
21 that the following determination of issues shall be made:

22 The conduct of MARTIN ALVARADO, as described in
23 Paragraph 4, above, is in violation of Business and Professions
24 Code Sections 10145 and Sections 2725, 2831, 2831.1, 2831.2,
25 2832(a), 2832(e) and 2950(d) of Title 10, Chapter 6 of the
26 California Code of Regulations and is a basis for discipline of
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Respondent's license and license rights as violations of the Real Estate Law pursuant to Code Sections 10177(d) and 10177(h).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I. All licenses and licensing rights of Respondent MARTIN ALVARADO under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision.

A. Provided, however, that if Respondent requests, the initial thirty (30) days of said suspension (or a portion thereof) shall be stayed for two (2) years upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$83.33 per day for each day of the suspension for a total monetary penalty of \$2,500.

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

3. No further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms of the Decision, the Commissioner may,

1 without a hearing, order the immediate execution of all or any
2 part of the stayed suspension, in which event the Respondent
3 shall not be entitled to any repayment nor credit, prorated or
4 otherwise, for money paid to the Department under the terms of
5 this Decision.

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

11 B. The remaining thirty (30) days of the sixty (60)
12 day suspension shall be stayed for two (2) years upon the
13 following terms and conditions:

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

17 (b) That no final subsequent determination be made
18 after hearing or upon stipulation, that cause for disciplinary
19 action occurred within two (2) years from 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 II. All licenses and licensing rights of Respondent
2 MARTIN ALVARADO are indefinitely suspended unless or until
3 Respondent provides proof satisfactory to the Commissioner, of
4 having taken and successfully completed the continuing education
5 course on trust fund accounting and handling specified in
6 paragraph (3) of subdivision (a) of Section 10170.5 of the
7 Business and Professions Code. Proof of satisfaction of this
8 requirement includes evidence that respondent has successfully
9 completed the trust fund account and handling continuing
10 education course within 120 days prior to the effective date of
11 the Decision in this matter.

12 III. Pursuant to Section 10148 of the Business and
13 Professions Code, Respondent MARTIN ALVARADO shall pay the
14 Commissioner's reasonable cost for (a) the underlying audit (b) a
15 subsequent audit to determine if Respondent is now in compliance
16 with the Real Estate Law. The cost of the audit which led to
17 this disciplinary action is \$4,184.50. In calculating the amount
18 of the Commissioner's reasonable cost, the Commissioner may use
19 the estimated average hourly salary for all persons performing
20 audits of real estate brokers, and shall include an allocation
21 for travel time to and from the auditor's place of work. Said
22 amount for the prior and subsequent audits shall not exceed
23 \$8,369.00.

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Respondent shall pay such cost within 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.

The Commissioner may suspend the license of Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The 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, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

IV. All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner that the trust fund deficit set forth in the Accusation and in Audit Report LA 070270 has been cured, including the identification of the source of funds used to cure the deficit.

DATED: 2-17-09

ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

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* * *

EXECUTION OF THE STIPULATION

I have read the Stipulation. 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 I 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.

MAILING AND FACSIMILE

Respondent (1) shall mail the original signed signature page of the stipulation herein to Elliott Mac Lennan: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondent shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan. A facsimile constitutes acceptance and approval of the terms and conditions of this stipulation.

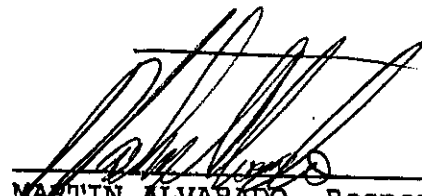
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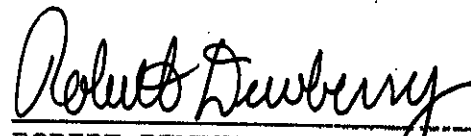
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1 Respondent agrees, acknowledges and understands that by
2 electronically sending to the Department a facsimile copy of
3 Respondent's actual signature as it appears on the stipulation
4 that receipt of the facsimile copy by the Department shall be as
5 binding on Respondent as if the Department had received the
6 original signed stipulation.

7
8 DATED: 12/15/08


MARTIN ALVARADO, Respondent

10
11 DATED: 12-16-08


ROBERT DEWBERRY, ESQ.
Attorney for Martin Alvarado,
Respondent
Approved as to form

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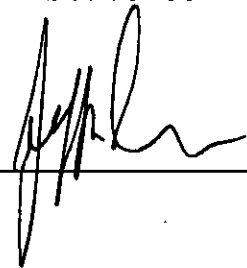
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* * *

1 The foregoing Stipulation and Agreement is hereby
2
3 adopted as my Decision as to Respondent MARTIN ALVARADO and shall
4 become effective at 12 o'clock noon on April 9, 2009
5 2009.

6 IT IS SO ORDERED 3/3, 2009.

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8 JEFF DAVI
9 Real Estate Commissioner

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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

AUG 29 2008

DEPARTMENT OF REAL ESTATE

BY: Healy

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 35260 LA

12 MARTIN ALVARADO, doing business)
13 as Town & Country Properties,)

A C C U S A T I O N

14 Respondent.)
15)

16 The Complainant, Robin Trujillo, a Deputy Real Estate
17 Commissioner of the State of California, acting in her official
18 capacity, for cause of Accusation against MARTIN ALVARADO dba
19 Town & Country Properties, is informed and alleges as follows:

20 1.

21 All references to the "Code" are to the California
22 Business and Professions Code and all references to "Regulations"
23 are to Title 10, Chapter 6, California Code of Regulations.
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1 LICENSE HISTORY

2 2.

3 At all times mentioned, MARTIN ALVARADO
4 ("ALVARADO"), was licensed or had license rights issued by the
5 Department of Real Estate ("Department") as a real estate broker.
6 On May 25, 1999, ALVARADO was originally licensed as a real
7 estate broker.

8 LICENSED ACTIVITIES AND BROKERAGE

9 3.

10 At all times mentioned, in the City and County of
11 Orange, ALVARADO acted as real estate broker and conducted
12 licensed activities within the meaning of:

13 A. Code Section 10131(a). ALVARADO operated a
14 residential resale brokerage dba Town & Country Properties; and

15 B. Conducted broker-controlled escrows through his
16 escrow division under the exemption set forth in California
17 Financial Code Section 17006(a)(4) for real estate brokers
18 performing escrows incidental to a real estate transaction where
19 the broker is a party and where the broker is performing acts for
20 which a real estate license is required.

21 AUDIT

22 4.

23
24 On June 30, 2008, the Department completed an audit
25 examination of the books and records of ALVARADO, pertaining to
26 the broker-controlled escrow activities described in Paragraph 3,
27 that require a real estate license. The audit examination

1 covered a period of time beginning on June 1, 2005 through April
2 30, 2008. The audit examination revealed violations of the Code
3 and the Regulations as set forth below, and more fully discussed
4 in Audit Report LA 070270 and the exhibits and workpapers
5 attached to said audit reports.

6 5.

7 At all times mentioned, in connection with the
8 activities described in Paragraph 4, ALVARADO accepted or
9 received funds in trust (trust funds) from or on behalf of
10 buyers, sellers borrowers and escrow holders. Thereafter
11 ALVARADO made disposition of such funds. ALVARADO maintained the
12 following trust accounts into which he deposited certain of these
13 funds:

14
15 "Town & Country Real Estate Inc. dba Town & Country Properties
16 Account No. 9466100053"
17 First Bank
18 Fullerton, CA 92832 ("escrow trust account")
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VIOLATIONS OF THE REAL ESTATE LAW

6.

With respect to the licensed activities referred to in Paragraphs 3 and 5, and the audit examination including the exhibits and workpapers referred to in Paragraph 4, it is alleged that ALVARADO:

(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 April 30, 2008, was \$2,781.66, less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951. The shortage is due to two negative escrow balances and bank charges.

(b) While acting in the capacity of an escrow holder in two purchase and sale transactions (Escrow Numbers #500048-AA and #500057-AA), failed to place trust funds accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the broker at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson, as required by Code Section 10145 and Regulations 2832(a), 2832(e), 2950(f) and 2951.

1 (c) Failed to maintain a control record in the form of
2 a columnar record in chronological order of all trust funds
3 received, deposited and disbursed by the escrow trust account, in
4 violation of Code Section 10145 and Regulations 2831, 2950(d) and
5 2951.

6 (d) Failed to maintain a separate record for each
7 beneficiary or transaction, thereby failing to account for all
8 trust funds received by and deposited into the escrow trust
9 account, as required by Code Section 10145 and Regulations
10 2831.1, 2950(d) and 2951.

11 (e) Failed to perform a monthly reconciliation of the
12 balance of all separate beneficiary or transaction records
13 maintained pursuant to Regulation 2831.1 with the record of all
14 trust funds received and disbursed by the escrow trust account,
15 as required by Code Section 10145 and Regulations 2831.2, 2950(d)
16 and 2951.

17 (f) Disbursed trust funds from the escrow trust account
18 without first obtaining the prior written consent of the owners
19 of said funds for Escrow Numbers #500048-AA and #500057-AA, as
20 required by Code Section 10145 and Regulations 2950(d), 2950(g)
21 and 2951.

22 (g) Failed to disburse from the escrow trust account
23 broker's escrow fees totaling \$1,449.55, in violation of Code
24 Section 10145 and Regulation 2835. The aforesaid monies were
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1 held in the escrow trust account beyond twenty-five days from
2 receipt.

3 DISCIPLINARY STATUTES AND REGULATIONS

4 7.

5 The conduct of Respondent ALVARADO, described in
6 Paragraph 6, violated the Code and the Regulations as set forth:

7 PARAGRAPH

PROVISIONS VIOLATED

8 6(a)	Code Section 10145 and Regulations
9	2832.1, 2950(d), 2950(g) and 2951
10	
11	
12 6(b)	Code Section 10145 and Regulations
13	2832(a), 2832(e), 2950(f) and 2951
14	
15 6(c)	Code Section 10145 and Regulations 2831,
16	2950(d) and 2951
17	
18 6(d)	Code Section 10145 and Regulations
19	2831.1, 2950(d) and 2951
20	
21 6(e)	Code Section 10145 and Regulations
22	2831.2, 2950(d) and 2951
23	
24 6(f)	Code Section 10145 and Regulations
25	2950(d), 2950(g) and 2951
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6(g)

Code Section 10145 and Regulation 2835

Each of the foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of ALVARADO under the provisions of Code Sections 10177(d) for violation of the real estate law and/or 10177(g) for negligence or incompetence.

NEGLIGENCE

8.

The overall conduct of ALVARADO constitutes negligence or incompetence and is cause for discipline of the real estate license and license rights of ALVARADO pursuant to Code Section 10177(g).

LACK OF SUPERVISION AND COMPLIANCE

9.

The overall conduct of ALVARADO constitutes a failure to exercise supervision and control over the licensed activities of his brokerage. Nor did ALVARADO maintain a system in place for regularly monitoring his compliance with the Real Estate Law especially in regard to establishing policies to review trust fund handling and record keeping for his client's trust funds, in violation. This conduct is cause for discipline of the real estate license and license rights of ALVARADO pursuant to Code Section 10177(h), 10177(d) and/or 10177(g) and Regulation 2725.

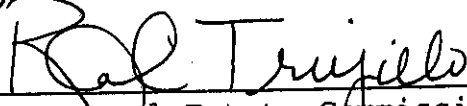
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondent
5 MARTIN ALVARADO, under the Real Estate Law (Part 1 of Division 4
6 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable provisions
8 of law.

9
10 Dated at Los Angeles, California

11 this 28 day of August 2008.

12 
13 Deputy Real Estate Commissioner

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24 cc: Martin Alvarado
25 Robin Trujillo
26 Sacto
Audits - Gina Chou
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