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FILED
AUG 21 2000

DEPARTMENT OF REAL ESTATE

By Jean Dumate

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARK ANDREW WINKLER,)
Respondent.)

No. H-2367 SD

ORDER GRANTING REINSTATEMENT OF LICENSE

On June 15, 1998, an Order was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on July 9, 1998, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On June 22, 1999, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

///

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 broker license be issued to Respondent if Respondent satisfies
11 the following conditions within nine months from the date of this
12 Order:

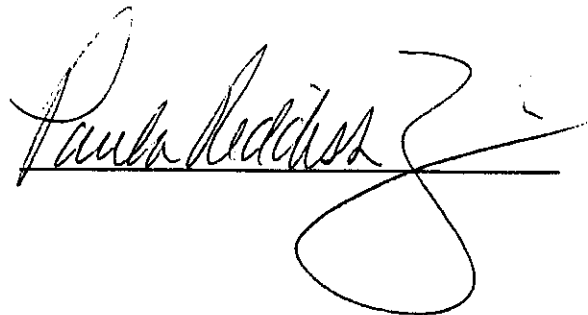
13 1. Submittal of a completed application and payment of
14 the fee for a real estate broker license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: July 25, 2000

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

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25
26
27


1 THOMAS C. LASKEN, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
JUN 19 1998
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	
12	MARK ANDREW WINKLER,)	NO. H-2367 SD
13	Respondent.)	<u>STIPULATION AND AGREEMENT</u>
14	_____)	

15 It is hereby stipulated by and between MARK ANDREW
16 WINKLER ("Respondent"), by and through his attorney, Steven A.
17 Micheli; and the Complainant, acting by and through Thomas C.
18 Lasken, Counsel for the Department of Real Estate; as follows,
19 for the purpose of settling and disposing of the Accusation filed
20 on December 24, 1997, in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA) (Government Code Section 11500 et seq.), shall
26 instead and in place thereof be submitted solely on the basis of
27 the provisions of this Stipulation and Agreement.

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

5 3. On January 26, 1998, Respondent filed his Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 his Notice of Defense. Respondent acknowledges that by
10 withdrawing said Notice of Defense he will thereby waive his right
11 to require the Commissioner to prove the allegations in the
12 Accusation at a contested hearing held in accordance with the
13 provisions of the APA and that he will waive other rights afforded
14 to him in connection with the hearing such as the right to present
15 evidence in defense of the allegations in the Accusation and the
16 right to cross-examine witnesses.

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

25 5. It is understood by the parties that the Real Estate
26 Commissioner may adopt the Stipulation and Agreement as his
27 Decision in this matter, thereby imposing the penalty and



ORDER

- 1
- 2 A. The real estate broker license and all license rights of
- 3 Respondent under the Real Estate Law are revoked.
- 4 B. A restricted real estate broker license shall be issued to
- 5 Respondent pursuant to Business and Professions Code Section
- 6 10156.5, if Respondent makes application therefor and pays to
- 7 the Department the appropriate fee for said license within
- 8 ninety (90) days from the effective date of this ORDER.
- 9 C. The restricted license issued to Respondent shall be subject
- 10 to all the provisions of Section 10156.7 of the Business and
- 11 Professions Code and to the following limitations, conditions
- 12 and restrictions imposed under authority of Section 10156.6
- 13 of said Code:
- 14 (1) The license shall not confer any property right in the
- 15 privileges to be exercised, and the Real Estate
- 16 Commissioner may by appropriate order suspend the right
- 17 to exercise any privileges granted under the restricted
- 18 license in the event of:
- 19 (a) The conviction of Respondent (including a plea of
- 20 nolo contendere) to a crime which bears a
- 21 significant relation to Respondent's fitness or
- 22 capacity as a real estate licensee; or,
- 23 (b) The receipt of evidence that Respondent has
- 24 violated provisions of the California Real Estate
- 25 Law, Subdivided Lands Law, Regulations of the Real
- 26 Estate Commissioner or conditions attaching to the
- 27 restricted license.



1 (2) Respondent shall not be eligible to apply for issuance
2 of an unrestricted real estate license nor the removal
3 of any of the conditions, limitations or restrictions
4 attaching to the restricted license until one (1) year
5 has elapsed from the date of issuance of a restricted
6 license to Respondent.

7 D. Respondent shall, within six (6) months from the effective
8 date of the restricted license, take and pass the
9 Professional Responsibility Examination administered by the
10 Department including the payment of the appropriate
11 examination fee. If Respondent fails to satisfy this
12 condition, the Commissioner may order the suspension of the
13 restricted license until Respondent passes the examination.

14 E. Respondent shall, within nine (9) months from the effective
15 date of this ORDER, present evidence satisfactory to the Real
16 Estate Commissioner that he has, since the most recent
17 issuance of an original or renewal real estate license, taken
18 and successfully completed the continuing education
19 requirements of Article 2.5 of Chapter 3 of the Real Estate
20 Law for renewal of a real estate license. If Respondent
21 fails to satisfy this condition, the Commissioner may order
22 the suspension of the restricted license until Respondent
23 presents such evidence. The Commissioner shall afford
24 Respondent the opportunity for a hearing pursuant to the
25 Administrative Procedure Act to present such evidence.

26 F. Any restricted real estate broker license issued to
27 Respondent may be suspended or revoked for a violation by



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Respondent of any of the conditions attaching to the
restricted license.

May 13, 1998

DATED

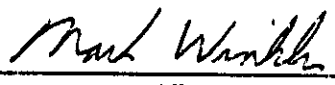


THOMAS C. LASKEN, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, 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 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.

DATED: 5/23/98



MARK ANDREW WINKLER
Respondent

DATED: 5/28/98



STEVEN A. MICHELI
Attorney for Respondent

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* * *

The foregoing Stipulation and Agreement is hereby
adopted by the Real Estate Commissioner as his Decision and Order
and shall become effective at 12 o'clock noon on
July 9, 1998.

IT IS SO ORDERED 6/15, 1998.

JIM ANTT, JR.
Real Estate Commissioner



FILED
MAR 17 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

MARK ANDREW WINKLER,

Case No. H-2367 SD

OAH No. L-1998020260

Respondent

CONTINUED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, 1350 Front Street,

Suite 6022, San Diego, California 92101

on May 26, 1998, at the hour of 9:00 AM,
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: March 10, 1998

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

1 THOMAS C. LASKEN, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
DEC 24 1997
DEPARTMENT OF REAL ESTATE

By Juan Sanchez

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MARK ANDREW WINKLER,)
13 Respondent.)
14 _____)

NO. H-2367 SD
ACCUSATION

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against MARK ANDREW WINKLER (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 The Complainant, J. Chris Graves, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 against Respondent in his official capacity.

23 II

24 Respondent is licensed and/or has license rights under
25 the Real Estate Law (Part 1 of Division 4 of the Business and
26 Professions Code) (hereinafter "the Code") as a real estate
27 broker.

1 III

2 During the period from June 25, 1995 through August 22,
3 1995, Respondent, acting as the listing agent for Thomas and
4 Candace Ward-McKinley (hereinafter "Sellers") negotiated the sale
5 of certain real property owned by the Sellers and commonly known
6 as 3706 Amaryllis Drive, San Diego, California (hereinafter "the
7 Subject Property") to Michael and Marthe Lawton (hereinafter
8 "Buyers").

9 IV

10 During the period described in Paragraph III above,
11 Respondent knew or should have known that an escrow had opened for
12 the sale of the Subject Property from Sellers to Jamie Ogle during
13 late 1994, in which transaction Respondent had also acted as
14 listing agent for the Sellers. Respondent further knew or should
15 have known of the existence of a home inspection report and pest
16 inspection report prepared during that transaction which revealed
17 numerous material and substantial defects in the Subject Property
18 which caused Ogle to rescind the transaction. The problems noted
19 included, but were not limited to, drainage and grading problems
20 with the Subject Property.

21 V

22 Respondent failed to reveal to Buyers either the
23 existence of the major problems disclosed in the earlier home
24 inspection and pest inspection reports, or the existence of the
25 reports themselves. Respondent further failed to make any mention
26 of the undisclosed problems in the appropriate portion of the Real
27 Estate Transfer Disclosure Statement mandated by Section 1102 and



1 following of the Civil Code. Had Buyers known the undisclosed
2 facts, they would not have purchased the Subject Property.

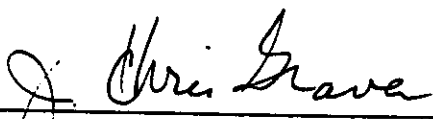
3 VI

4 Respondent's acts and omissions as set forth above are
5 cause under Sections 10176(a), 10176(i), and 10176.5(a) of the
6 Code for suspension or revocation of all licenses and license
7 rights of the Respondent under the Real Estate Law.

8 VII

9 In the alternative, the acts and omissions as set forth
10 above are cause under Sections 10176.5 and 10177(g) of the Code
11 for suspension or revocation of all licenses and license rights of
12 Respondent under the Real Estate Law.

13 WHEREFORE, Complainant prays that a hearing be conducted
14 on the allegations of this Accusation and that upon proof thereof
15 a decision be rendered imposing disciplinary action against all
16 licenses and license rights of Respondent, under the Real Estate
17 Law (Part 1 of Division 4 of the Business and Professions Code)
18 and for such other and further relief as may be proper under other
19 provisions of law.

20
21
22 
23 J. CHRIS GRAVES
24 Deputy Real Estate Commissioner

25
26 Dated at San Diego, California,
27 this 4th day of December, 1997.