

1 Department of Real Estate
2 107 South Broadway, Room 8107
3 Los Angeles, California 90012
4
5 Telephone: (213) 897-3937
6
7

FILED
JUL 22 1997
DEPARTMENT OF REAL ESTATE

By CS

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)
12 MARIO EMILIANO GARCIA,) NO. H-26839 LA
13 individually and dba Superior) L-9611025
14 Real Estate Services,)
15 Respondent.)

16 STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

17 It is hereby stipulated by and between Respondent,
18 MARIO EMILIANO GARCIA, individually and dba Superior Real Estate
19 Services, representing himself, and the Complainant, acting by
20 and through Chris Leong, Counsel for the Department of Real
21 Estate, as follows for the purpose of settling and disposing of
22 the Accusation filed on October 3, 1996, in this matter
23 (hereinafter "the Accusation").

24 A. 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
27 held in accordance with the provisions of the Administrative
Procedure Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation.

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

7 C. On October 25, 1996, Respondent filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that he
12 understands that by withdrawing said Notice of Defense he will
13 thereby waive his right to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that Respondent
16 will waive other rights afforded to him in connection with the
17 hearing, such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 D. In the interest of expedience and economy,
21 Respondent chooses not to contest the factual allegations in
22 Paragraphs 1 through 9 of the Accusation, but to remain silent
23 and understands that, as a result thereof, these factual
24 statements, 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 such allegations.



1 E. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement in
3 Settlement and Order as his Order in this matter thereby
4 imposing the penalty and sanctions on Respondent's real estate
5 license and license rights, as set forth in the "Order" below.
6 In the event that the Commissioner in his discretion does not
7 adopt the Stipulation and Agreement in Settlement and Order, the
8 Stipulation and Agreement in Settlement and Order shall be void
9 and of no effect, and Respondent shall retain the right to a
10 hearing and proceeding on the Accusation under all the
11 provisions of the APA and shall not be bound by any admission or
12 waiver made herein.

13 DETERMINATION OF ISSUES

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

18 The acts and omissions of Respondent, described in the
19 Accusation, are cause for the suspension or revocation of all
20 real estate licenses and license rights of Respondent under the
21 provisions of Sections 10145, 10177(d), 10160, 10162 and 10240
22 of the Business and Professions Code and Sections 2831 and
23 2832.1 of Title 10, Chapter 6, California Code of Regulations.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The license and license rights of Respondent, under the provisions of Part 1 of Division 4 of the Business and Professions Code, are hereby revoked, commencing on the effective date of this Order. However, Respondent shall be entitled to apply for and be issued a restricted real estate broker license pursuant to Section 10156.5 of the Code, if Respondent:

1. Makes application therefore and pays to the Department the appropriate fee for said license within one year from the effective date of this Order.

2. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of the Code.

3. The restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which bears a significant relationship to Respondent's fitness or capacity as a real estate licensee.

4. The restricted license may be suspended, prior to and pending final determination after formal hearing by Order of the Real Estate Commissioner based upon evidence satisfactory to the Commissioner that Respondent has, subsequent to the date hereof, violated provisions of the California Real Estate Law,

1 the Subdivided Lands Law, Regulations of the Real Estate
2 Commissioner or conditions attaching to the restricted license.

3 5. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor the removal
5 of any of the conditions, limitations or restrictions of the
6 restricted license until at least one year has elapsed from the
7 date of this Order.

8 6. Respondent shall obey all laws of the United
9 States, the State of California and all its political
10 subdivisions and all the rules and regulations of the Real
11 Estate Commissioner.

12 7. Respondent shall pay, pursuant to Section 10148 of
13 the Business and Professions Code, the Commissioner's reasonable
14 costs for an audit to determine if Respondent has corrected the
15 trust fund violations found in the Determination of Issues. In
16 calculating the amount of the Commissioner's reasonable costs,
17 the Commissioner may use the estimated average hourly salary for
18 all persons performing audits of real estate brokers, and shall
19 include an allocation for travel costs, including mileage, time
20 to and from the auditor's place of work, and per diem. The
21 Commissioner's reasonable costs shall in no event exceed
22 \$4,400.00.

23 (1) Respondent shall pay such costs within 45 days of
24 receipt of an invoice from the Commissioner detailing the
25 activities performed during the audit and the amount of time
26 spent performing those activities;

27

1 (2) Notwithstanding the provisions of any other
2 paragraph herein, if Respondent fails to pay, within 45 days
3 from receipt of the invoice specified above, the Commissioner's
4 reasonable costs for an audit to determine if Respondent has
5 corrected the violations found in the Determination of Issues,
6 the Commissioner may order the indefinite suspension of
7 Respondent's real estate license and license rights. The
8 suspension shall remain in effect until payment is made in full,
9 or until Respondent enters into an agreement satisfactory to the
10 Commissioner to provide for such payment. The Commissioner may
11 impose further reasonable disciplinary terms and conditions upon
12 Respondent's real estate license and license rights as part of
13 any such agreement.

14 8. Respondent must cure the trust fund shortage
15 stated in the Accusation, and provide proof of such cure to the
16 Department before the effective date of this Order, together
17 with the source of any funds used, before any restricted real
18 estate broker license is issued.

19 9. Respondent shall, within one year from the
20 effective date of this Order, take and pass the Professional
21 Responsibility Examination administered by the Department,
22 including the payment of the appropriate examination fee. If
23 Respondent fails to satisfy this condition, the Commissioner may
24 order suspension of the license until Respondent passes the
25 examination.

26 10. Respondent shall, within one year from the
27 effective date of this Order, present evidence satisfactory to



1 the Real Estate Commissioner that he has, since the most recent
2 issuance of an original or renewal real estate license, taken
3 and successfully completed the continuing education requirements
4 of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
5 of a real estate license. If Respondent fails to satisfy this
6 condition, the Real Estate Commissioner shall afford Respondent
7 the opportunity for a hearing pursuant to the Administrative
8 Procedure Act to present such evidence.

9 11. Respondent shall refund \$2,242.50 to Elsie Basye,
10 before any restricted real estate broker license is issued.

11 EXECUTION OF STIPULATION

12 I have read the Stipulation and Agreement in
13 Settlement and Order and its terms are understood by me and are
14 agreeable and acceptable to me. I understand that I am waiving
15 rights given to me by the California Administrative Procedure
16 Act (including but not limited to Sections 11506, 11508, 11509
17 and 11513 of the Government Code), and I willingly,
18 intelligently and voluntarily waive those rights, including the
19 right of requiring the Commissioner to prove the allegations in
20 the Accusation at a hearing at which I would have the right to
21 cross-examine witnesses against me and to present evidence in
22 defense and mitigation of the charges.

23
24 DATED: June 7/97

Mario E Garcia

MARIO EMILIANO GARCIA,
individually and dba Superior
Real Estate Services
Respondent

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DATED: 6/10/97

CHRIS LEONG
CHRIS LEONG, ESQ.
Counsel for Complainant

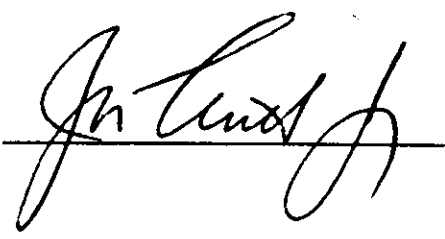
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The foregoing Stipulation and Agreement in Settlement
is hereby adopted as the Order of the Real Estate Commissioner
in the above-entitled matter with respect to Respondent, MARIO
EMILIANO GARCIA, individually and dba Superior Real Estate
Services.

This Order shall become effective at 12 o'clock
noon on August 12, 1997.

IT IS SO ORDERED 7/17/97

JIM ANTT, JR.
Real Estate Commissioner



SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
MARIO EMILIANO GARCIA,)
individually and dba)
Superior Real Estate Services,)
_____)
Respondent(s)

Case No. H-26839 LA

OAH No. L-9611025

FILED
NOV 21 1996
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

By C. By

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 W. First Street, Los Angeles, CA 90012 on THURSDAY, JUNE 19, 1997, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: November 21, 1996

By Chris Leong
CHRIS LEONG, Counsel

cc: Mario Emiliano Garcia
✓Sacto.
OAH

CEB

RE 501 (La Mac 11/92)

SAC
1 CHRIS LEONG, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, CA 90012

(213) 897-3937

FILED
OCT - 3 1996
DEPARTMENT OF REAL ESTATE

By C. Bay

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

11 In the Matter of the Accusation of) No. H-26839 LA
12)
12 MARIO EMILIANO GARCIA, individually) A C C U S A T I O N
13 and dba Superior Real)
13 Estate Services,)
14)
14 Respondent.)
15 _____)

16 The Complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against MARIO EMILIANO GARCIA, individually and dba Superior
19 Real Estate Services (hereinafter "Respondent"), is informed and
20 alleges as follows:

21 1.

22 The Complainant, Thomas McCrady, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 against Respondent in his official capacity.

25 2.

26 All Sections of Title 10, Chapter 6, California Code
27 of Regulations, are hereinafter referred to as "Regulations".

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3.

At all times herein mentioned, Respondent was and still is licensed by the Department of Real Estate of the State of California (hereinafter "Department"), as a real estate broker.

4.

At all times mentioned herein, in Los Angeles County, California, 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 Section 10131(d) of the Code, wherein he arranged, negotiated, processed, and consummated on behalf of others, loans secured by interests in real property for compensation or in expectation of compensation.

AUDIT

5.

On or about April 27, 1995, the Department completed an audit of the activities of Respondent, audit numbers LA 940307 and LA 940197, regarding the real estate activities of Respondent, for the period from January 1, 1992 through December 30, 1994. The results of that audit are set forth in Paragraphs 6 through 8.

6.

During the last three years, in connection with his real estate business activities, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of borrowers and thereafter made disbursements of such funds.

1 These trust funds were maintained by Respondent at Bank of
2 America, 160 E. Main St., Alhambra, CA 91801-3515, Account No.
3 01602-01255, known as Mario E. Garcia, dba Real Estate Services
4 Escrow Trust Account (hereinafter "TA#1").

5 7.

6 In connection with those funds described in
7 Paragraph 6, Respondent:

8 (a) violated Section 10145 of the Code and Regulation
9 2832.1 by disbursing or allowing the disbursement of funds from
10 TA#1, without prior written consent of every principal who then
11 was an owner of trust funds in said account wherein the
12 disbursement reduced the balance of funds in the combined
13 account, as of December 30, 1994, to amounts which were
14 approximately \$2,687.41, less than the existing aggregate trust
15 fund liability to all owners of said trust funds;

16 (b) In late 1993, Elsie Basye (hereinafter "Basye")
17 employed Respondent as her agent to obtain a loan. On or about
18 January 6, 1994, First American Title issued a check to Superior
19 Real Estate Services in the Amount of \$8,333.00. These proceeds
20 were for disbursement to a borrower, Basye. However, Respondent
21 only deposited \$4,333.00 and failed to deposit the difference of
22 \$4,000.00 into the trust account. The commission and fees
23 earned by Respondent totaled \$2,540.00. However, Respondent
24 disbursed \$4,792.50 to himself and converted \$2,252.50.

25 (c) commingled his fees in TA#1 with trust funds for
26 over 25 days, with at least \$798.77, including escrow number 60
27 Manzanaries for \$334.77 and escrow number 76 Martinez, for

1 \$464.00, within the last three years, in violation of Section
2 10176(e) of the Code; and

3 (d) moved his main office location from 313 S.
4 Mission Dr., San Gabriel, CA, but failed to notify the
5 Department, in violation of Section 10162 of the Code and
6 Section 2715 of the Regulations.

7 (e) failed to notify the Department of the
8 termination of Fred D. Garduno, in violation of Section 2752 of
9 the Regulations;

10 (f) failed to provide his original broker license for
11 inspection, in violation of Section 10160 of the Code;

12 (g) failed to maintain complete or accurate columnar
13 records for TA#1, including date of checks disbursed, in
14 violation of Section 2831 of the Regulations;

15 (h) failed to maintain complete separate records for
16 TA#1, including dates of checks, in violation of Section 2831.1
17 of the Regulations;

18 (i) failed to maintain monthly reconciliation of
19 columnar records to the separate records, in violation of
20 Section 2831.2 of the Regulations;

21 (j) failed to maintain copies of approved mortgage
22 loan disclosure statements and failed to provide copies to
23 borrowers including: J. & M. Lozano, escrow number 77; Basye,
24 escrow number 78 and A. & M. Vargas, escrow number 79, in
25 violation of Section 10240 of the Code and Section 2840 of the
26 Regulations; and

27 (k) performed third party escrows outside of the

1 exemptions provided in Section 17006 of the Financial Code, for
2 third parties, in violation of Section 10177(j) of the Code.

3 FIRST CAUSE OF ACCUSATION

4 (Violation by Respondent of Sections 10145, 10160, 10162,
5 10176(e), 10177(d), 10177(j) and 10240 of the Code and Sections
6 2715, 2752, 2831, 2831.1, 2831.2, 2832.1 and 2840 of the
7 Regulations)

8 8.

9 As a First Cause of Accusation, Complainant
10 incorporates herein by this reference the Preamble and each of
11 the allegations in Paragraphs 1 through 7, herein above.

12 9.

13 The conduct of Respondent in handling trust funds, as
14 alleged in Paragraphs 1 through 8, constitutes violations under
15 Sections 10145, 10160, 10162, 10176(e), 10177(j) and 10240 of
16 the Code and Sections 2715, 2752, 2831, 2831.1, 2831.2, 2832.1
17 and 2840 of the Regulations. Said conduct is cause pursuant to
18 Section 10177(d) of the Code for the suspension or revocation of
19 all licenses and license rights of Respondent under Real Estate
20 Law.

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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 all licenses and license rights of Respondent, MARIO EMILIANO GARCIA, individually and dba Superior Real Estate Services, 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 3rd day of October, 1996.

THOMAS McCRADY
Deputy Real Estate Commissioner

cc: Mario Emiliano Garcia
Sacto.
MGS
Audit Section