

1 ELLIOTT MAC LENNAN, Counsel (SBN 66674)
2 Department of Real Estate
3 320 W. 4th Street, Suite 350
4 Los Angeles, CA 90013-1105

FILED
JUL 24 2001
DEPARTMENT OF REAL ESTATE

5 Telephone: (213) 576-6982 (Office)
6 -or- (213) 576-6911 (Direct)

by K. Niederholt

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-28976 LA
12 CONCEPSION CONNIE G. HERNANDEZ,)	<u>STIPULATION</u>
13 Respondent.)	<u>AND AGREEMENT</u>
14)	

15 It is hereby stipulated by and between Respondent
16 CONCEPSION CONNIE G. HERNANDEZ (sometimes referred to herein as
17 "Respondent") representing herself, and the Complainant, acting
18 by and through Elliott Mac Lennan, Counsel for the Department of
19 Real Estate, as follows for the purpose of settling and disposing
20 of the Accusation filed on February 27, 2001, 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"), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
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1 Stipulation and Agreement ("Stipulation").

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

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

18 4. This Stipulation and Agreement is based on the
19 factual allegations contained in the Accusation filed in this
20 proceeding. In the interest of expedience and economy,
21 Respondent chooses not to contest these factual allegations, but
22 to remain silent and understands that, as a result thereof, these
23 factual statements, without being admitted or denied, will serve
24 as a prima facie basis for the disciplinary action stipulated to
25 herein. This Stipulation and Respondent's decision not to
26 contest the Accusation are hereby expressly limited to this
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1 proceeding and made for the sole purpose of reaching an agreed
2 disposition of this proceeding. Respondent's decision not to
3 contest the factual allegations is made solely for the purpose of
4 effectuating this Stipulation and is intended by Respondent to be
5 non-binding upon Respondent in any actions against Respondent by
6 third parties. The Real Estate Commissioner shall not be
7 required to provide further evidence to prove such allegations.

8 5. This Stipulation and any Order made pursuant to
9 this Stipulation shall have no collateral estoppel or res
10 judicata effect in any proceedings in which the Respondent and
11 the Department (or the Department's representative) are not
12 parties. This Stipulation is made by Respondent and received
13 by the Commissioner and the Department, with the express
14 understanding and agreement that it is for the purpose of
15 settling these proceedings only, and that this Stipulation is
16 not intended as, and shall not be deemed, used, or accepted as
17 an acknowledgment or admission of fact in any other judicial,
18 administrative, or other proceeding to which the Department is
19 not a party.

20 6. It is understood by the parties that the Real
21 Estate Commissioner may adopt the Stipulation as her decision
22 in this matter, thereby imposing the penalty and sanctions on
23 Respondent's real estate license and license rights as set forth
24 in the below "Order." In the event that the Commissioner in her
25 discretion does not adopt the Stipulation, the Stipulation shall
26 be void and of no effect, and Respondent shall retain the right
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1 ORDER

2 WHEREFORE, THE FOLLOWING ORDER is hereby made:

3 The real estate salesperson license and licensing rights of
4 Respondent CONCEPSION CONNIE G. HERNANDEZ, under the Real Estate
5 Law are revoked; provided, however, a restricted real estate
6 salesperson license shall be issued to Respondent CONCEPSION
7 CONNIE G. HERNANDEZ, pursuant to Section 10156.5 of the Business
8 and Professions Code (a) if Respondent makes application
9 therefor and pays to the Department of Real Estate the
10 appropriate fee for the restricted license within ninety (90)
11 days from the effective date of this Decision, and (b)
12 Respondent shall provide evidence satisfactory to the Real
13 Estate Commissioner that she has paid Marcelino Matamoros, One-
14 Thousand Dollars (\$1000.00). The restricted license issued to
15 Respondent shall be subject to all of the provisions of Section
16 10156.7 of the Code and the following limitations, conditions
17 and restrictions imposed under authority of Section 10156.6 of
18 that Code:

19 1. The restricted license issued to Respondent may be
20 suspended prior to hearing by Order of the Real Estate
21 Commissioner in the event of Respondent's conviction or plea of
22 nolo contendere to a crime which is substantially related to
23 Respondent's fitness or capacity as a real estate licensee.

24 2. The restricted license issued to Respondent may
25 be suspended prior to hearing by Order of the Real Estate
26 Commissioner on evidence satisfactory to the Commissioner that
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1 Respondent has violated provisions of the California Real Estate
2 Law, the Subdivided Lands Law, Regulations of the Real Estate
3 Commissioner or conditions attaching to the restricted license.

4 3. Respondent shall not be eligible to apply for the
5 issuance of an unrestricted real estate license nor for the
6 removal of any of the conditions, limitations or restrictions of
7 a restricted license until two (2) years have elapsed from the
8 effective date of this Decision.

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

21 5. Respondent shall within six (6) months from the
22 effective date of the restricted license, take and pass the
23 Professional Responsibility Examination administered by the
24 Department including the payment of the appropriate examination
25 fee. If respondent fails to satisfy this condition, the
26

1 Commissioner may order suspension of the restricted license
2 until respondent passes the examination.

3 6. Respondent shall submit with any application for
4 license under an employing broker, or any application for
5 transfer to a new employing broker, a statement signed by the
6 prospective employing real estate broker on a form approved by
7 the Department of Real Estate which shall certify:

8 (a) That the employing broker has read the
9 Decision of the Commissioner which granted
10 the right to a restricted license; and

11 (b) That the employing broker will exercise
12 close supervision over the performance by
13 the restricted licensee relating to activities
14 for which a real estate license is required.
15

16
17 DATED: 6-19-01

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

18
19 * * *

20 EXECUTION OF THE STIPULATION

21 I have read the Stipulation and Agreement, and have
22 discussed it with my counsel. Its terms are understood by me and
23 are agreeable and acceptable to me. I understand that I am
24 waiving rights given to me by the California Administrative
25 Procedure Act (including but not limited to Sections 11506,
26 11508, 11509 and 11513 of the Government Code), and I willingly,
27 intelligently and voluntarily waive those rights, including the

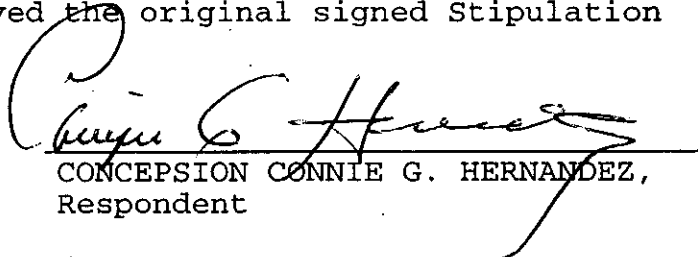
1 right of requiring the Commissioner to prove the allegations in
2 the Accusation at a hearing at which I would have the right to
3 cross-examine witnesses against me and to present evidence in
4 defense and mitigation of the charges.

5 FACSIMILE TRANSMISSION

6 Respondent can signify acceptance and approval of the
7 terms and conditions of this Stipulation and Agreement by faxing
8 a copy of its signature page, as actually signed by Respondent,
9 to the Department at the following telephone/fax number: (213)
10 576-6917, Attention: Elliott Mac Lennan. Respondent agrees,
11 acknowledges and understands that by electronically sending to
12 the Department a fax copy of Respondent's actual signature as it
13 appears on the Stipulation and Agreement, that receipt of the
14 faxed copy by the Department shall be as binding on Respondent as
15 if the Department had received the original signed Stipulation
16 and Agreement.

17 DATED:

6-13-01
6-13-01


CONCEPSION CONNIE G. HERNANDEZ,
Respondent

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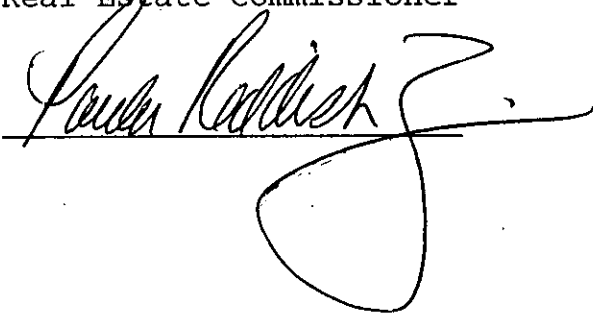
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent CONCEPSION CONNIE G.
HERNANDEZ, and shall become effective at 12 o'clock noon on
August 13, 2001.

IT IS SO ORDERED July 17, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



Handwritten signature/initials

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 10 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

CONCEPSION CONNIE G. HERNANDEZ,

By *[Signature]*

Case No. H-28976 LA

OAH No. L-2001030630

} Respondent

Respondent

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 Office of Administrative Hearings, 320 W. Fourth St., Ste. 630, Los Angeles, CA on June 20, 2001, at the hour of 9:00 a.m., 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: April 10, 2001

By *[Signature]*

Counsel

cc: Concepcion Connie g. Hernandez
American Team Realty Inc.
Sacto OAH RJ

kw

facts plus

1 ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
2 Department of Real Estate
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FILED
FEB 27 2001
DEPARTMENT OF REAL ESTATE

By *K. Friederichs*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

11 In the Matter of the Accusation of) NO. H-28976 LA
12 CONCEPTION CONNIE G. HERNANDEZ,)
13) A C C U S A T I O N
14)
15 Respondent.)

16 The Complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, acting in his official
18 capacity as a Deputy Real Estate Commissioner of the State of
19 California, for cause of accusation against CONCEPTION CONNIE G.
20 HERNANDEZ, is informed and alleges as follows:

21 1.

22 CONCEPTION CONNIE G. HERNANDEZ (HERNANDEZ) aka Connie
23 Hernandez sometimes referred to as Respondent, is presently
24 licensed and/or has license rights under the Real Estate Law
25 (Part 1 of Division 4 of the California Business and Professions
26 Code).

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2.

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.

3.

At all mentioned times, HERNANDEZ was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate salesperson. HERNANDEZ was originally licensed by the Department on April 13, 1978.

4.

At all times herein mentioned, in the City of Huntington Park, Los Angeles County, Respondent HERNANDEZ was employed as a real estate salesperson for real estate broker Carlos Cahaus dba Century 21 Superior Realty and dba International Investments Real Estate. HERNANDEZ engaged in residential resale activities requiring a real estate license.

5.

On or about March 27, 1998, HERNANDEZ prepared an offer to purchase the real property known as 423 E. 118th Street, Los Angeles, California, on behalf of Marcelino Matamoros (Matamoros), the buyer she had solicited. As an earnest money deposit, Matamoros gave HERNANDEZ a check in the amount of \$1,500 on March 27, 1998 made payable to "Connie Hernandez" at her direction. That same day HERNANDEZ cashed the \$1,500 check. At a later date, HERNANDEZ told Matamoros that he failed to qualify for the loan and that the escrow company kept Matamoros'

1 \$1,500. HERNANDEZ however, agreed to repay the \$1,500. During
2 October 1998, HERNANDEZ repaid \$500. To date however Matamoros
3 has not received the remaining \$1,000.

4 6.

5 The conduct of HERNANDEZ in holding herself out as a
6 real estate broker, evidenced by her cashing Matamoros' \$1,500
7 earnest money deposit check, instead of delivering the check to
8 her broker or notifying her broker of the existence of the
9 attempted purchase transaction, when she is not, nor has she
10 ever been so licensed is in violation of Code Section 10130 and
11 is cause to suspend or revoke her license and license rights
12 under Code Section 10177(d).

13 7.

14 The conduct of HERNANDEZ, as described in Paragraph 5
15 in accepting Matamoros's \$1,500 earnest money deposit check for
16 purchase of the 423 E. 118th Street property and cashing it,
17 instead of delivering the check to her broker, placing the check
18 into the hands of the broker's principal, into a neutral escrow
19 depository, or by depositing the check into the broker's trust
20 fund, into an escrow for Matamoros' purchase of the aforesaid
21 property constitutes a violation of Section 10145(c). This
22 conduct and violation are cause to suspend or revoke the real
23 estate license and license rights of Respondent HERNANDEZ
24 pursuant to Code Section 10177(d).

25 8.

26 The overall conduct of Respondent HERNANDEZ, as
27 described in Paragraphs 5 through 7 above, including failing to

1 provide Matamoros with copies of any of the offer, counteroffer,
2 escrow or other pertinent documents, constitutes negligence or
3 incompetence. This conduct and violation are cause for the
4 suspension or revocation of the real estate license and license
5 rights of Respondent HERNANDEZ under Code Section 10177(g).

6 9.

7 The conduct of Respondent HERNANDEZ in cashing
8 Matamoros' \$1,500 earnest money deposit check constitutes
9 conversion and as such is fraud and dishonest dealing. This
10 conduct and violation are cause for the suspension or revocation
11 of the real estate license and license rights of Respondent
12 HERNANDEZ under Code Section 10176(i).

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

21 Dated at Los Angeles, California
22 this 27th day of February, 2001.

23
24 THOMAS MC CRADY

25 Deputy Real Estate Commissioner

26 cc: Concepsion Connie G. Hernandez
27 Sacto
RJ
American Team Realty Inc.