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FILED
MAR 12 2004
DEPARTMENT OF REAL ESTATE



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H-30181 LA
M. PIERRE MASSELA,)	OAH NO. L-2003070568
)	
)	
Respondent.)	

STIPULATION AND WAIVER

AND

DECISION AFTER REJECTION

The California Department of Real Estate ("Department") filed a Statement of Issues against M. PIERRE MASSELA ("Respondent") on July 8, 2003.

On October 14, 2003, a hearing was held before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, at Los Angeles, California. Department Counsel, Martha J. Rosett, represented the Complainant. Respondent personally appeared at the hearing and represented

1 himself. Oral and documentary evidence was received, and the
2 matter was submitted.

3 On November 10, 2003, the Proposed Decision of the ALJ
4 was issued, finding that although cause exists for denial of
5 Respondent's application for a real estate salesperson license,
6 Respondent should be granted the right to an unrestricted
7 salesperson license, conditioned upon Business and Professions
8 Code Section 10153.2.

9 On December 12, 2003, the Commissioner rejected the
10 Proposed Decision of November 10, 2003.

11 The parties wish to settle this matter without further
12 proceedings.

13 IT IS HEREBY STIPULATED by and between Respondent and
14 the Department, acting by and through Martha J. Rosett, Counsel
15 for the Department, as follows for the purpose of settling and
16 disposing of the Statement of Issues filed by the Department.
17

18 1. It is understood by the parties that the Real
19 Estate Commissioner may adopt the Stipulation and Waiver
20 ("Stipulation") as his decision in this matter, thereby imposing
21 the penalty and sanctions on Respondent's application for a real
22 estate license as set forth in the below "Decision and Order".

23 In the event the Commissioner in his discretion does not adopt
24 the Stipulation, the Stipulation shall be void and of no effect;
25 the Commissioner will review the evidence in the case, and will
26 issue his Decision after Rejection as his Decision in this
27 matter.

1 2. By reason of the foregoing and solely for the
2 purpose of settlement of the Statement of Issues without further
3 administrative proceedings, it is stipulated and agreed that the
4 following shall be adopted as the Commissioner's Decision:

5 FACTUAL FINDINGS

6 1. On July 24, 2002, Respondent applied to the
7 Department for a real estate salesperson license, subject to the
8 conditions set forth in Business and Professions Code Section
9 10153.4. In his application, he disclosed the criminal
10 convictions set forth below.

11 2. The Statement of Issues was made and filed by
12 Maria Suarez ("Complainant"), in her official capacity as a
13 Deputy Real Estate Commissioner, Department of Real Estate,
14 State of California.

15 3. On February 28, 1996, in the Superior Court of
16 California, San Bernardino County, in Case Number FWV07179,
17 Respondent was convicted of one count each of violating Health
18 and Safety Code Section 11360(a) (sale or transportation of
19 marijuana), Health and Safety Code Section 11359 (possession of
20 marijuana for sale), and Health and Safety Code Section 11350(a)
21 (possession of cocaine), all felonies. Sale or transportation
22 of marijuana for sale and possession of marijuana for sale are
23 crimes of moral turpitude which are substantially related to the
24 qualifications, functions and duties of a real estate licensee.
25 Respondent was sentenced to three years supervised probation,
26 subject to certain terms and conditions, including that he
27

1 violate no law.

2 4. On or about August 27, 1996, in the Superior Court
3 of California, San Bernardino County, in Case No. FWV010570,
4 Respondent was convicted of violating Health and Safety Code
5 Section 11359 (possession of marijuana for sale), a felony and
6 crime of moral turpitude which is substantially related to the
7 qualifications, functions and duties of a real estate licensee.
8 As a result of his conviction, and his violation of probation,
9 Respondent was sentenced to serve 16 months in state prison.
10 Respondent successfully completed his prison term, and on August
11 16, 1998, he was discharged from parole.

12 5. The acts which gave rise to Respondent's
13 convictions occurred in 1994 and 1996. Respondent testified at
14 hearing that during this two year period, he was engaged in
15 selling marijuana to supplement his income. He testified that
16 he did not personally use drugs but rather he saw the sale of
17 marijuana as a way to make big money fast. Respondent says that
18 serving time in prison sent a clear message to him that acts
19 have consequences and that he needed to assess the consequences
20 before engaging in certain activities.
21

22 6. There is no record that Respondent has been
23 convicted of any crimes since 1996.

24 7. Since his discharge from parole, Respondent has
25 maintained gainful employment and enrolled in an educational
26 program to obtain a Certified Financial Planner certificate from
27 the University of California at Riverside. As of the date of

1 hearing, Respondent had maintained an "A" average in the program
2 and had one course to complete before receiving his certificate.

3 8. Respondent provided several letters of support
4 from friends, a relative, and employers. A review of these
5 letters reveals that Respondent is well regarded by those who
6 know him.

7 9. In his Proposed Decision, the ALJ said he was
8 favorably impressed by Respondent's demeanor while testifying at
9 the hearing, and opined that he believes Respondent's criminal
10 behavior represents an isolated series of incidents which are
11 not likely to reoccur.

12 LEGAL CONCLUSIONS

13 1. Cause for denial of Respondent's application for a
14 real estate salesperson license exists pursuant to Business and
15 Professions Code Sections 480(a) and 10177(b) due to the
16 convictions set forth above in Factual Findings 3 and 4 for
17 crimes of moral turpitude which are substantially related to the
18 qualifications, functions and duties of a real estate licensee.
19

20 2. Application of the Criteria for Rehabilitation
21 set forth in Title 10, Chapter 6 of the California Code of
22 Regulations, Regulation 2911 reveals that Respondent has met
23 most of the Criteria for Rehabilitation. However, Respondent
24 was convicted of two sets of felonies, the second set of which
25 involved conduct while on probation. Indeed, Respondent
26 testified that he was actively in the business of selling
27 marijuana over at least a two year period. This propensity to

1 resort to unlawful means of earning a living is troubling.
2 Although he has demonstrated much steps towards rehabilitation,
3 sufficient to warrant licensure, a period of time operating
4 under the additional supervision of a restricted license is
5 warranted.

6 3. The Administrative Law Judge found that the
7 Complainant met its burden in establishing that grounds exist to
8 deny Respondent's real estate license. That having been met,
9 the degree of discipline rests solely with the Commissioner.
10 (Golde v. Fox (1979) 98 Cal.App.3d 167, 178). Respondent's
11 convictions, and the totality of the circumstances surrounding
12 them, call into question the prudence of allowing him to have an
13 unrestricted license. The public interest would be adequately
14 protected by granting Respondent the right to hold a properly
15 restricted salesperson license, whereby he would be working more
16 closely under the supervision of his employing broker.

17
18 ORDER

19 Respondent's application for a real estate salesperson
20 license is denied; provided, however, a restricted real estate
21 salesperson license shall be issued to Respondent pursuant to
22 Section 10156.5 of the Business and Professions Code. The
23 restricted license issued to the Respondent shall be subject to
24 all of the provisions of Section 10156.7 of the Business and
25 Professions Code and to the following limitations, conditions
26 and restrictions imposed under authority of Section 10156.6 of
27 said Code:

1 1. The license shall not confer any property right in
2 the privileges to be exercised, and the Real Estate Commissioner
3 may by appropriate order suspend the right to exercise any
4 privileges granted under this restricted license in the event
5 of:

6 (a) The conviction of Respondent (including a plea of
7 nolo contendere) of a crime which is substantially related to
8 Respondent's fitness or capacity as a real estate licensee; or

9 (b) The receipt of evidence that Respondent has
10 violated provisions of the California Real Estate Law, the
11 Subdivided Lands Law, Regulations of the Real Estate
12 Commissioner or conditions attaching to this restricted license.

13 2. Respondent shall not be eligible to apply for the
14 issuance of an unrestricted real estate license nor the removal
15 of any of the conditions, limitations or restrictions attaching
16 to the restricted license until four (4) years have elapsed from
17 the effective date of this Decision.

18 3. With the application for license, or with the
19 application for transfer to a new employing broker, Respondent
20 shall submit a statement signed by the prospective employing
21 real estate broker on a form RE 552 approved by the Department
22 of Real Estate which shall certify as follows:

23 (a) That the employing broker has read the Decision
24 which is the basis for the issuance of the restricted license;
25 and

26 (b) That the employing broker will carefully review
27 all transaction documents prepared by the restricted licensee


1 and otherwise exercise close supervision over the licensee's
2 performance of acts for which a license is required.

3 4. Respondent's restricted real estate salesperson
4 license is issued subject to the requirements of Section 10153.4
5 of the Business and Professions Code, to wit: Respondent shall,
6 within eighteen (18) months of the issuance of the restricted
7 license, submit evidence satisfactory to the Commissioner of
8 successful completion, at an accredited institution, of two of
9 the courses listed in Section 10153.2, other than real estate
10 principles, advanced legal aspects of real estate, advanced real
11 estate finance or advanced real estate appraisal. If Respondent
12 fails to timely present to the Department satisfactory evidence
13 of successful completion of the two required courses, the
14 restricted license shall be automatically suspended effective
15 eighteen (18) months after the date of its issuance. Said
16 suspension shall not be lifted unless, prior to the expiration
17 of the restricted license, Respondent has submitted the required
18 evidence of course completion and the Commissioner has given
19 written notice to Respondent of lifting of the suspension.

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1 5. Pursuant to Section 10154, if Respondent has not
2 satisfied the requirements for an unqualified license under
3 Section 10153.4, Respondent shall not be entitled to renew the
4 restricted license, and shall not be entitled to the issuance of
5 another license which is subject to Section 10153.4 until four
6 (4) years after the date of the issuance of the preceding
7 restricted license.

8
9 March 2, 2004
10 DATED

10 *for* 
11 MARTHA J. ROSETT, Counsel
12 Department of Real Estate

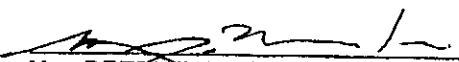
11 * * *

12 I have read the Stipulation and its terms are
13 understood by me and are agreeable and acceptable to me. I
14 willingly and voluntarily agree to enter into this Stipulation.

15 Respondent can signify acceptance and approval of the
16 terms and conditions of this Stipulation by faxing a copy of
17 the signature page, as actually signed by Respondent, to the
18 Department at the following fax number: (213) 576-6917.

19 Respondent agrees, acknowledges and understands that by
20 electronically sending to the Department a fax copy of his
21 actual signature as it appears on the Stipulation, that receipt
22 of the fax copy by the Department shall be as binding on him as
23 if the Department had received the original signed Stipulation.

24
25 27 FEBRUARY 2004
26 DATED

25 
26 M. PIERRE MASSELA
27 Respondent

1 5. Pursuant to Section 10154, if Respondent has not
2 satisfied the requirements for an unqualified license under
3 Section 10153.4, Respondent shall not be entitled to renew the
4 restricted license, and shall not be entitled to the issuance of
5 another license which is subject to Section 10153.4 until four
6 (4) years after the date of the issuance of the preceding
7 restricted license.

8
9
10 DATED _____

MARTHA J. ROSETT, Counsel
Department of Real Estate

11 * * *

12 I have read the Stipulation and its terms are
13 understood by me and are agreeable and acceptable to me. I
14 willingly and voluntarily agree to enter into this Stipulation.

15 Respondent can signify acceptance and approval of the
16 terms and conditions of this Stipulation by faxing a copy of
17 the signature page, as actually signed by Respondent, to the
18 Department at the following fax number: (213) 576-6917.

19 Respondent agrees, acknowledges and understands that by
20 electronically sending to the Department a fax copy of his
21 actual signature as it appears on the Stipulation, that receipt
22 of the fax copy by the Department shall be as binding on him as
23 if the Department had received the original signed Stipulation.

24
25 DATED _____

M. PIERRE MASSELA
Respondent

* * *

DECISION AND ORDER

The foregoing Stipulation and Waiver and Decision
After Rejection is hereby adopted as my Decision in this matter.

This Decision shall become effective at 12 o'clock
noon on April 1, 2004.

IT IS SO ORDERED March 9, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

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FILED
DEC 18 2003
DEPARTMENT OF REAL ESTATE



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
M. PIERRE MASSELA,)	No. H-30181 LA
Respondent.)	L-2003070568

NOTICE

TO: M. PIERRE MASSELA Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 10, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 10, 2003, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on October 14, 2003, and any written argument hereafter submitted on behalf of Respondent and Complainant.

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Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of October 14, 2003, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: December 12, 2003

JOHN R. LIBERATOR
Chief Deputy Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 12 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Application/Statement of
Issues Against:

M. PIERRE MASSELA,

Respondent.

OAH NO. L-2003070568

CASE NO. H-30181 LA

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on October 14, 2003.

Department of Real Estate Staff Counsel Martha J. Rosett represented complainant.

Respondent, Joseph H. Paul, Jr., personally appeared and represented himself.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Statement of Issues was filed by Maria Suarez ("complainant") while acting in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate ("DRE"), State of California.
2. On July 24, 2002, respondent filed an application, with the DRE, for a real estate salesperson's license knowing that any license issued to him would be subject to the conditions set forth in California Business and Professions Code ("Code") section 10153.3.
3. Respondent's application was denied based on respondent's 1996 criminal convictions. The natures of respondent's convictions are described in Findings 4 and 5, below.

4. On February 28, 1996, respondent was convicted in San Bernardino County Superior Court, after entry of his *nolo contendere* plea, of one count of violating California Health and Safety Code section 11360(a) (Sale or transportation of marijuana), one count of violating Health and Safety Code section 11359 (possession of marijuana for sale), and one count of violating Code section 11350(a) (Possession of marijuana). Sale or transportation of marijuana and possession of marijuana for sale are Felony crimes of moral turpitude, which are substantially related to the qualifications, functions and duties of a licentiate.

As a result of these convictions respondent was placed on three years of formal probation on certain terms and conditions, including the condition that he "violate no laws".

5. On August 27, 1996, respondent was convicted in San Bernardino County Superior Court, after entry of his guilty plea, of one count of violating California Health and Safety Code section 11359 (Possession of Marijuana for sale), a felony crime of moral turpitude, which, is substantially related to the qualifications, functions and duties of a licentiate. This conviction also served as the basis for the revocation of respondent's probation (See Finding 4, above.)

As a result of respondent's conviction and his violation of probation, respondent was sentenced to serve 16 months in state prison.

Respondent successfully completed his prison term and, on August 16, 1998, respondent was discharged from parole.

6. The acts which gave rise to respondent's convictions occurred in 1994 and 1996. During this two year period respondent was engaged in selling marijuana to "supplement" his income. He did not personally use drugs but he saw the sale of Marijuana as a way to make big money, fast. Respondent reports that serving time in State prison sent a clear message to him that acts have consequences and that he needed to assess the consequences before engaging in certain activities. In other words, respondent says he has learned his lesson and he is embarrassed about the naïveté, which led him to engage in conduct leading to his convictions.

Respondent's claim that he has learned his lesson seems to be borne out by the record. A review of respondent's criminal record reveals that he has no record of problems with law enforcement since his 1996 convictions. Since respondent's release from custody and discharge from parole, respondent has maintained gainful employment and enrolled in an educational program to obtain a Certified Financial Planner certificate from the University of California, Riverside. To date, respondent has maintained an "A" average in the program and he only has one course left to complete before he is awarded his certificate.

Respondent provided several letters of support from friends, a relative, and employers. A review of these letters reveals that respondent is well regarded by those who know him and his two-year involvement with marijuana sale appears to be out of character for respondent.

The ALJ was favorably impressed by respondent's demeanor while testifying at the hearing. Respondent seemed sincere and the ALJ believes that respondent's past, brief, history of criminal behavior represents an isolated series of incidents, which, given respondent's positive attitudinal changes are not likely to reoccur.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. The crimes for which respondent was convicted, as described in paragraphs 4 and 5, constitute grounds for denial of respondent's application for a real estate salesperson's license pursuant to Business and Professions Code sections 480(a) and 10177(b), however, as set forth in Conclusion 2, below, the ALJ concludes that it would not be against the public interests to accept respondent's application and, provided he has completed all of the training/course requirements, to issue him a salesperson's license.

2. The most recent conduct, which led to respondent's convictions, occurred in 1996, over seven years ago. Respondent has no subsequent record of criminal violations. As set forth in Finding 6, respondent has learned his lesson. As he puts it, "my moral compass is now pointed in the right direction." Accordingly, the ALJ concludes that respondent's criminal conduct was entirely out of character for him and there is no likelihood of reoccurrence. In other words, respondent has been completely rehabilitated.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The DRE's denial of respondent's application and its refusal to license him are reversed. Respondent's application shall be accepted; and, provided he meets all requirements for licensure he shall be issued a salesperson's license.

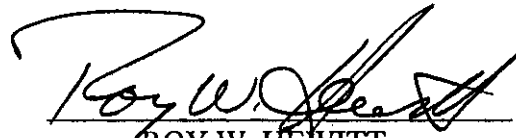
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NOT
ADOPTED

IT IS FURTHER ORDERED, that:

If respondent fails to submit evidence satisfactory to the Commissioner of successful completion, at an accredited or pre-approved institution, of two courses listed in Code section 10153.2, other than Real Estate Principles, Advanced Legal Aspects of Real Estate, Advanced Real Estate Finance, or Advanced Real Estate Appraisal, respondent's license shall be automatically suspended effective 18 months from the date of issuance.

Dated: November 10, 2003.


ROY W. HEWITT

Administrative Law Judge
Office of Administrative Hearings

NOT ADAPTED

PTZ

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-30181 LA
M. PIERRE MASSELA,) OAH No. L-2003070568
_____))
Respondent(s)

FILED
AUG 21 2003
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

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, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on TUESDAY, OCTOBER 14, 2003, at the hour of 1:30 P.M., or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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: August 21, 2003

By 
MARTHA J. ROSETT, Counsel

cc: M. Pierre Massela
Sacto.
OAH

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013

4 (213) 576-6982
5 (213) 576-6914

FILED
JUL - 8 2003
DEPARTMENT OF REAL ESTATE

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Application of) No. H-30181 LA
12)
13 M. PIERRE MASSELA,) STATEMENT OF ISSUES
14)
15 Respondent.)

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against M. PIERRE MASSELA (hereinafter "Respondent"), alleges in
19 her official capacity as follows:

20 1.

21 On or about July 24, 2002, Respondent made application
22 to the Department of Real Estate of the State of California for a
23 real estate salesperson license with the knowledge and
24 understanding that any license issued as a result of said
25 application would be subject to the conditions of Section 10153.4
26 of the Business and Professions Code (hereinafter "Code").

27 //

1 2.

2 On or about February 28, 1996, in the Superior Court of
3 California, San Bernardino County, State of California, in Case
4 No. FWV07179, Respondent was convicted of one count each of
5 violating Health and Safety Code Section 11360(a) (sale or
6 transportation of marijuana), Health and Safety Code Section
7 11359 (possession of marijuana for sale), and Health and Safety
8 Code Section 11350(a) (possession of cocaine), all felonies.
9 Sale or transportation of marijuana, and possession of marijuana
10 for sale are crimes of moral turpitude which are substantially
11 related to the qualifications, functions and duties of a real
12 estate licensee pursuant to Title 10, Chapter 6 of the California
13 Code of Regulations, Regulation 2910. Respondent was sentenced
14 to three years supervised probation, the terms and conditions of
15 which included one year in jail. On or about August 27, 1996,
16 Respondent's probation was revoked due to the circumstances set
17 forth in Paragraph 3 below, and Respondent was committed to State
18 Prison for two years, less credit for time served.

19 3.

20 On or about August 27, 1996, in the Superior Court of
21 California, San Bernardino County, West Valley Division, State of
22 California, in Case No. FWV010570, Respondent was convicted of
23 one count of violating Health and Safety Code Section 11359
24 (possession of marijuana for sale), a felony and crime of moral
25 turpitude which is substantially related to the qualifications,
26 functions and duties of a real estate licensee. Respondent was
27 sentenced to serve 16 months in prison.

4.

Respondent's convictions, as set forth in Paragraphs 2 and 3 above, constitute grounds for denial of Respondent's application for a real estate license pursuant to Code Sections 480(a) and 10177(b).

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the Government Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent M. PIERRE MASSELA and for such other and further relief as may be proper under the law.

Dated at Los Angeles, California

this 31st day of July, 2003.


Deputy Real Estate Commissioner

cc: M. Pierre Massela
Sacto.
Maria Suarez
ST