

FILED
SEP - 9 2004
DEPARTMENT OF REAL ESTATE

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)

By K. Kiederholtz

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

DRE No. H-30585 LA

12 CARL WILLIAM MCHENRY,)

13 Respondent.)

14 STIPULATION
15 AND
AGREEMENT

16 It is hereby stipulated by and between CARL WILLIAM
17 MCHENRY (sometimes referred to as "Respondent"), represented by
18 Frank M. Buda, Esq., and the Complainant, acting by and through
19 Elliott Mac Lennan, Counsel for the Department of Real Estate, as
20 follows for the purpose of settling and disposing of the
21 Accusation filed on December 19, 2003, in this matter:

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

3 2. 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 3. Respondent filed a Notice of Defense pursuant to
8 Section 11506 of the Government Code for the purpose of
9 requesting a hearing on the allegations in the Accusation.
10 Respondent hereby freely and voluntarily withdraws said Notice of
11 Defense. Respondent acknowledges that he understands that by
12 withdrawing said Notice of Defense he thereby waives his right to
13 require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that he will waive other rights
16 afforded to him in connection with the hearing such as the right
17 to present evidence in his defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.

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

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1 5. This Stipulation and Respondent's decision not to
2 contest the Accusation is made for the purpose of reaching an
3 agreed disposition of this proceeding and is expressly limited to
4 this proceeding and any other proceeding or case in which the
5 Department of Real Estate ("Department"), the state or federal
6 government, or any agency of this state, another state or federal
7 government is involved.

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

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

1 8. Respondent understands that by agreeing to this
2 Stipulation, Respondent agrees to pay, pursuant to Business and
3 Professions Code Section 10148, the cost of the audit of Home
4 Services Unlimited, Inc. which led to this disciplinary action.
5 The amount of said cost is \$15,531.69.

6 9. Respondent has received, read, and understands the
7 "Notice Concerning Costs of Subsequent Audit". Respondent
8 further understands that by agreeing to this Stipulation, the
9 findings set forth below in the Determination of Issues become
10 final, and the Commissioner may charge Respondent for the cost of
11 any subsequent audit conducted pursuant to Business and
12 Professions Code Section 10148 to determine if the violations
13 have been corrected. The maximum cost of the subsequent audit
14 will not exceed \$15,531.69.

15 DETERMINATION OF ISSUES

16
17 By reason of the foregoing, it is stipulated and agreed
18 that the following determination of issues shall be made:

19 The conduct of CARL WILLIAM MCHENRY, as described in
20 Paragraph 4, above, constitutes a violation of Business and
21 Professions Code ("Code") Section 10145 and violations of Title
22 10, Chapter 6, California Code of Regulations Sections 2725,
23 2832.1, 2832, 2831.2 and 2834. This conduct is a basis for the
24 suspension or revocation of Respondent's license pursuant to
25 Section 10177(d) of the Business and Professions Code.
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1 otherwise, for money paid to the Department under the terms of
2 this Decision.

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

8 6. The remaining ninety (90) days of the one-hundred
9 eighty (180) day suspension shall be stayed for two (2) years
10 upon the following terms and conditions:

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

14 (b) That no final subsequent determination be made
15 after hearing or upon stipulation, that cause for disciplinary
16 action occurred within two (2) years of the effective date of
17 this Decision. Should such a determination be made, the
18 Commissioner may, in her discretion, vacate and set aside the
19 stay order and reimpose all or a portion of the stayed
20 suspension. Should no such determination be made, the stay
21 imposed herein shall become permanent.

22 7. All licenses and licensing rights of Respondent
23 CARL WILLIAM MCHENRY are indefinitely suspended unless or until
24 Respondent provides proof satisfactory to the Commissioner, of
25 having taken and successfully completed the continuing education
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1 course on trust fund accounting and handling specified in
2 paragraph (3) of subdivision (a) of Section 10170.5 of the
3 Business and Professions Code. Proof of satisfaction of this
4 requirement includes evidence that respondent has successfully
5 completed the trust fund account and handling continuing
6 education course within 120 days prior to the effective date of
7 the Decision in this matter.

8 8. Pursuant to Section 10148 of the Business and
9 Professions Code, Respondent shall pay the Commissioner's
10 reasonable cost for (a) the audit which led to this disciplinary
11 action and (b) a subsequent audits to determine if Respondent
12 CARL WILLIAM MCHENRY are now in compliance with the Real Estate
13 Law. The cost of the audit which led to this disciplinary action
14 is \$15,531.69. In calculating the amount of the Commissioner's
15 reasonable cost, the Commissioner may use the estimated average
16 hourly salary for all persons performing audits of real estate
17 brokers, and shall include an allocation for travel time to and
18 from the auditor's place of work. Said amount for the prior and
19 subsequent audits shall not exceed \$31,063.38.

21 Respondent shall pay such cost within 60 days of
22 receiving an invoice from the Commissioner detailing the
23 activities performed during the audit and the amount of time
24 spent performing those activities.

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1 The Commissioner may suspend the license of Respondent
2 pending a hearing held in accordance with Section 11500, et seq.,
3 of the Government Code, if payment is not timely made as provided
4 for herein, or as provided for in a subsequent agreement between
5 the Respondent and the Commissioner. The suspension shall remain
6 in effect until payment is made in full or until Respondent
7 enters into an agreement satisfactory to the Commissioner to
8 provide for payment, or until a decision providing otherwise is
9 adopted following a hearing held pursuant to this condition.
10
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12 DATED: 8-20-04

ELI
13 ELLIOTT MAC LENNAN, Counsel for
14 the Department of Real Estate

15 * * *

16 I have read the Stipulation and Agreement, have
17 discussed it with my counsel, and its terms are understood by me
18 and are agreeable and acceptable to me. I understand that I am
19 waiving rights given to me by the California Administrative
20 Procedure Act (including but not limited to Sections 11506,
21 11508, 11509 and 11513 of the Government Code), and I willingly,
22 intelligently and voluntarily waive those rights, including the
23 right of requiring the Commissioner to prove the allegations in
24 the Accusation at a hearing at which I would have the right to
25 cross-examine witnesses against me and to present evidence in
26 defense and mitigation of the charges.
27

Respondent CARL WILLIAM MCHENRY can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott MacLennan. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

13 DATED: 8-23-04

Carl William McHenry
 CARL WILLIAM MCHENRY, Respondent

15 DATED: 8-23-04

Frank M. Buda
 FRANK M. BUDA,
 Attorney for Respondent
 Approved as to form

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on _____, 2004.

IT IS SO ORDERED _____

JOHN R. LIBERATOR
 Acting Real Estate Commissioner

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

13 DATED: _____
14 CARL WILLIAM MCHENRY, Respondent

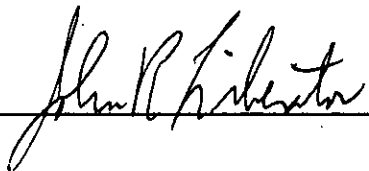
15 DATED: _____
16 FRANK M. BUDA,
17 Attorney for Respondent
18 Approved as to form

19 * * *

20 The foregoing Stipulation and Agreement is hereby
21 adopted as my Decision and shall become effective at
22 12 o'clock noon on SEP 29, 2004.

23 IT IS SO ORDERED Sept. 2, 2004.

24 JOHN R. LIBERATOR
25 Acting Real Estate Commissioner

26 
27 _____

*Sacto
File*

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
MAR 11 2004
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

CARL WILLIAM MC HENRY,

By *K. Knecht*

Case No. H-30585 LA

OAH No. L-2004010599

}

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 320 W. Fourth Street, Ste. 630, Los Angeles, CA on August 25 & 26, 2004, 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: MAR 11 2004

By

EL
ELLIOTT MAC LENNAN, Counsel

cc: Carl William McHenry
Frank M. Buda, Esq.
Sacto/OAH/RJ

Handwritten initials

FILED
DEC 19 2003
DEPARTMENT OF REAL ESTATE

1 ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
2 320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105
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4 Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

By *R. Mederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Accusation of)	No. H-30585 LA
12	CARL WILLIAM MCHENRY dba)	<u>A C C U S A T I O N</u>
13	Best Management Co., Best)	
14	Property Management,)	
15	East Valley Property Management,)	
16	National Homesellers, Southland)	
17	Property Management and Thompson)	
18	Real Estate,)	
19)	
20	Respondent.)	

18
19 The Complainant, Maria Suarez, a Deputy Real Estate
20 Commissioner of the State of California, acting in her official
21 capacity, for cause of Accusation against CARL WILLIAM MCHENRY
22 dba Best Management Co., Best Property Management, East Valley
23 Property Management, National Homesellers, Southland Property
24 Management and Thompson Real Estate, is informed and alleges as
25 follows:

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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.

2.

At all times mentioned, CARL WILLIAM MCHENRY ("MCHENRY"), was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On February 8, 1982, MCHENRY was originally licensed as a real estate broker.

3.

At all times mentioned, in the City of Loma Linda, County of San Bernardino, MCHENRY acted as real estate broker and conducted licensed activities within the meaning of:

A. Code Section 10131(a) in that MCHENRY operated a residential resale brokerage dba National Homesellers and Thompson Real Estate; and,

B. Code Section 10131(b) in that MCHENRY operated a property management brokerage dba Best Management Co., Best Property Management, East Valley Property Management and Southland Property Management.

4.

On July 31, 2003, the Department completed an audit examination of the books and records of MCHENRY, pertaining to the resale and property management activities described in Paragraph 3 that require a real estate license. The audit

1 examination covered a period of time beginning on January 1, 2001
2 through March 31, 2003. The audit examination revealed
3 violations of the Code and the Regulations as set forth below,
4 and more fully discussed in Audit Reports LA 020303 and 020425
5 and the exhibits and workpapers attached to said audit report.

6 5.

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

13 "McHenry Corporation dba Best Management Company (T/A #1)
14 Account No. 21821845"
15 Community Bank
16 Redlands, California

17 "McHenry Corporation Trust #3 (T/A #2)
18 Account No. 40004130"
19 Business Bank of California
20 Redlands, California

21 "McHenry Corporation Security Deposit Account (T/A #3)
22 Account No. 40004181"
23 Business Bank of California
24 Redlands, California

25 "McHenry, Carl W. dba East Valley Property Management (T/A #4)
26 Account No. 21821829"
27 Community Bank
Redlands, California

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1 "McHenry, Carl W. dba East Valley Property Management Trust
Account (T/A #5)
2 Account No. 40004742"
3 Business Bank of California
Redlands, California

4
5 "McHenry, Carl W. dba East Valley Property Management Security
Deposit Account (T/A #6)
6 Account No. 40004750"
7 Business Bank of California
Redlands, California

8 6.

9 With respect to the licensed property management
10 activities referred to in Paragraphs 3 and 5, and the audit
11 examination including the exhibits and workpapers referred to in
12 Paragraph 4, it is alleged that MCHENRY:

13 (a) (1) Permitted, allowed or caused the disbursement of
14 trust funds from the property management trust accounts
15 pertaining to Best Management Company (T/A #1 - T/A #3) where the
16 disbursement of said funds reduced the total of aggregate funds,
17 to an amount which, on March 31, 2002, was \$96,643.14, less than
18 the existing aggregate trust fund liability of MCHENRY to every
19 principal who was an owner of said funds, without first obtaining
20 the prior written consent of the owners of said funds, as
21 required by Code Section 10145 and Regulation 2832.1.
22

23 (a) (2) Permitted, allowed or caused the disbursement of
24 trust funds from the property management trust accounts
25 pertaining to East Valley Property Management (T/A #4 - T/A #6)
26 where the disbursement of said funds reduced the total of
27

1 aggregate funds, to an amount which, on March 31, 2002, was
2 \$25,094.08, less than the existing aggregate trust fund liability
3 of MCHENRY to every principal who was an owner of said funds,
4 without first obtaining the prior written consent of the owners
5 of said funds, as required by Code Section 10145 and Regulation
6 2832.1.

7 (b) Failed to maintain an accurate and complete control
8 record in the form of a columnar record in chronological order of
9 all trust funds received for the trust accounts T/A #3 - T/A# 6,
10 as required by Code Section 10145 and Regulations 2831.

11 (c) Failed to maintain an accurate and complete
12 separate record for each beneficiary or transaction, thereby
13 failing to account for all trust funds received, deposited into,
14 and disbursed from all trust accounts T/A #1 - T/A #6, as
15 required by Code Section 10145 and Regulation 2831.1.

16 (d) Failed to perform a monthly reconciliation of the
17 balance of all separate beneficiary or transaction records
18 maintained pursuant to Regulation 2831.1 with the record of all
19 trust funds received and disbursed by all trust accounts T/A #1 -
20 T/A #6, as required by Regulation 2831.2.

21 (e) Failed to place trust funds for trust accounts
22 T/A #1 and T/A #4 - T/A #6, accepted on behalf of another into a
23 trust fund account in the name of the broker as trustee, as
24 required by Code Section 10145 and Regulation 2832.

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1 (f) Permitted Susan McHenry, an unbonded real estate
2 salesperson not licensed to MCHENRY, to be an authorized
3 signatory on all trust accounts T/A #1 - T/A #6, without specific
4 written authorization from MCHENRY, in violation of Code Section
5 10145 and Regulation 2834.

6 (g) Failed to reasonably supervise broker-associate
7 Victoria Allen. MCHENRY had no system in place, including
8 established policies, rule3s and procedures to monitor, oversee,
9 inspect, manage and review the activities of Victoria Allen
10 during the time she handled the property management trust
11 accounts, as required by Regulation 2725.

12 (h) Failed to notify the Department of the employment
13 of Victoria Allen, broker-associate, as required by Code Section
14 10161.8 and Regulation 2752.

15 7.

16
17 The conduct of Respondent MCHENRY, described in
18 Paragraph 6, above, violated the Code and the Regulations as set
19 forth below:

20 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
21 6(a)	Code Section 10145 and Regulation 2832.1
22 6(b)	Code Section 10145 and Regulation 2831
23 6(c)	Code Section 10145 and Regulation 2831.1
24 6(d)	Code Section 10145 and Regulation 2831.2

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 CARL
5 WILLIAM MCHENRY, 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 *18th day of December 2003*

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13 
14 Deputy Real Estate Commissioner

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23 cc: Carl William McHenry
24 Maria Suarez
25 Sacto
26 RLJ
27 Audits