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FILED

JUL 18 2018
DEPARTMENT OF REAL ESTATE

By p dew

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670
5 Fax: (916) 263-3767
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8

9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) BRE No. H-3119 FR
13)
14 EUGENE BURGER MANAGEMENT)
15 CORPORATION And)
16 EUGENE JAMES BURGER,)
17 Respondents.) STIPULATION AND AGREEMENT
18) IN SETTLEMENT AND ORDER

19 It is hereby stipulated by and between EUGENE BURGER MANAGEMENT
20 CORPORATION (EBMC), EUGENE JAMES BURGER (BURGER), collectively Respondents,
21 their counsel, Frank Buda, and the Complainant, acting by and through Richard K. Uno, Counsel
22 for the Bureau of Real Estate (Bureau); as follows for the purpose of settling and disposing of the
23 Accusation filed on June 29, 2017, in this matter:

- 24 1. All issues which were to be contested and all evidence which was to be
25 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
26 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
27 shall instead and in place thereof be submitted solely on the basis of the provisions of this
Stipulation and Agreement In Settlement and Order (Stipulation).
2. Respondents have received, read, and understands the Statement to

1 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real
2 Estate in this proceeding.

3 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
4 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
5 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
6 acknowledge that they understand that by withdrawing said Notice of Defense they will thereby
7 waive their right to require the Real Estate Commissioner (Commissioner) to prove the
8 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
9 APA and that they will waive other rights afforded to them in connection with the hearing such
10 as the right to present evidence in defense of the allegations in the Accusation and the right to
11 cross-examine witnesses.

12 4. This Stipulation is based on the factual allegations contained in the
13 Accusation. In the interest of expediency and economy, Respondents chose not to contest these
14 factual allegations, but to remain silent and understands that, as a result thereof, these factual
15 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
16 forth below. The Commissioner shall not be required to provide further evidence to prove such
17 allegations.

18 5. It is understood by the parties that the Commissioner may adopt the
19 Stipulation as his Decision and Order in this matter, thereby imposing the penalty and sanctions
20 on Respondents' real estate licenses and license rights as set forth in the below "Order". In the
21 event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and
22 of no effect, and Respondents shall retain the rights to a hearing and proceeding on the
23 Accusation under all the provisions of the APA and shall not be bound by any admission or
24 waiver made herein.

25 6. The Order or any subsequent Order of the Commissioner made pursuant to
26 this Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or
27 civil proceedings by the Bureau of Real Estate with respect to any matters which were not

1 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty
2 of \$3,000.

3 a) Said payment shall be in the form of a cashier's check made payable to the
4 Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag Section
5 at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

6 b) No further cause for disciplinary action against the Real Estate license of EBMC
7 occurs within two (2) years from the effective date of the decision in this matter.

8 c) If EBMC fails to pay the monetary penalty as provided above prior to the effective
9 date of this Order, the stay of the suspension shall be vacated as to that EBMC and the order of
10 suspension shall be immediately executed, under this Order, in which event the said EBMC shall
11 not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the
12 Bureau under the terms of this Order.

13 d) If EBMC pays the monetary penalty and any other moneys due under this
14 Stipulation and Agreement and if no further cause for disciplinary action against the real estate
15 license of said EBMC occurs within two (2) years from the effective date of this Order, the entire
16 stay hereby granted this Order, as to said EBMC only, shall become permanent.

17 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the
18 following terms and conditions:

19 a) EBMC shall obey all laws, rules and regulations governing the rights, duties and
20 responsibilities of a real estate licensee in the State of California; and,

21 b) That no final subsequent determination be made, after hearing or upon stipulation,
22 that cause for disciplinary action occurred within two (2) years from the effective date of this
23 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
24 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
25 such determination be made, the stay imposed herein shall become permanent.

1 EUGENE JAMES BURGER

2 All licenses and licensing rights of BURGER under the Real Estate Law are
3 suspended for a period of sixty (60) days from the effective date of this Order; provided,
4 however, that:

5 1) Thirty (30) days of said suspension shall be stayed, upon the condition that
6 BURGER petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
7 pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a
8 total monetary penalty of \$3,000.

9 a) Said payment shall be in the form of a cashier's check made payable to the
10 Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag Section
11 at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

12 b) No further cause for disciplinary action against the Real Estate licenses of
13 BURGER occurs within two (2) years from the effective date of the decision in this matter.

14 c) If BURGER fails to pay the monetary penalty as provided above prior to the
15 effective date of this Order, the stay of the suspension shall be vacated as to that BURGER and
16 the order of suspension shall be immediately executed, under this Order, in which event the said
17 BURGER shall not be entitled to any repayment nor credit, prorated or otherwise, for the money
18 paid to the Bureau under the terms of this Order.

19 d) If BURGER pays the monetary penalty and any other moneys due under this
20 Stipulation and Agreement and if no further cause for disciplinary action against the real estate
21 license of said BURGER occurs within two (2) years from the effective date of this Order, the
22 entire stay hereby granted this Order, as to said BURGER only, shall become permanent.

23 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the
24 following terms and conditions:

25 a) BURGER shall obey all laws, rules and regulations governing the rights, duties
26 and responsibilities of a real estate licensee in the State of California; and,

27 b) That no final subsequent determination be made, after hearing or upon stipulation,

1 that cause for disciplinary action occurred within two (2) years from the effective date of this
2 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
3 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
4 such determination be made, the stay imposed herein shall become permanent.

5 3) All licenses and licensing rights of BURGER are indefinitely suspended unless or
6 until BURGER provides proof satisfactory to the Commissioner, of having taken and
7 successfully completed the continuing education course on trust fund accounting and handling
8 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
9 satisfaction of these requirements includes evidence that BURGER has successfully completed
10 the trust fund account and handling continuing education courses, no earlier than 120 days prior
11 to the effective date of the Decision and Order in this matter. Proof of completion of the trust
12 fund accounting and handling course must be delivered to the Bureau of Real Estate, Flag
13 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the
14 effective date of this Decision and Order.

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16 EUGENE JAMES BURGER and EUGENE BURGER MANAGEMENT CORPORATION
17 (Respondents)

18 1) Pursuant to Section 10148 of the Code, Respondents shall, jointly and severally,
19 pay the sum of \$12,222.20 for the Commissioner's cost of the audit which led to this disciplinary
20 action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore
21 from the Commissioner. Payment of audit costs should not be made until Respondents receives
22 the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for
23 herein, Respondents' real estate licenses shall automatically be suspended until payment is made
24 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to
25 this condition.

26 2) Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's
27 reasonable cost, not to exceed \$15,277.75 for an audit to determine if Respondents have
corrected the violation(s) found in the "Determination of Issues". In calculating the amount of

1 the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
2 salary for all persons performing audits of real estate brokers, and shall include an allocation for
3 travel time to and from the auditor's place of work. Respondents shall pay such cost within sixty
4 (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs
5 should not be made until Respondent receives the invoice. If Respondents fail to satisfy this
6 condition in a timely manner as provided for herein, Respondents' real estate licenses shall
7 automatically be suspended until payment is made in full, or until a decision providing otherwise
8 is adopted following a hearing held pursuant to this condition.

9 3) All licenses and licensing rights of Respondents are indefinitely suspended unless
10 or until Respondents pay the sum of \$1,280.20 for the Commissioner's reasonable cost of the
11 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
12 form of a cashier's check made payable to the Bureau of Real Estate. The investigative and
13 enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
14 137013, Sacramento, CA 95813-7013, prior to the effective date of this Stipulation.

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16 6/8/08

DATED

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RICHARD K. UNO, Counsel III
BUREAU OF REAL ESTATE

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18 * * *

19 I have read the Stipulation and Agreement in Settlement and Order and its terms
20 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
21 rights given to me by the California Administrative Procedure Act (including but not limited
22 to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
23 intelligently, and voluntarily waive those rights, including the right of requiring the
24 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
25 right to cross-examine witnesses against me and to present evidence in defense and mitigation
26 of the charges. I understand that I must sign and return this Stipulation by fax to (916) 263-
27 3767 or by email to Richard.Uno@dre.ca.gov. I further agree to mail the original Stipulation

1 no later than five days after signing it to: Bureau of Real Estate, Legal Section, P.O. Box
2 137007, Sacramento, California 95813-7007. I understand that failure to mail the original back
3 may result in this matter going to hearing.
4

5 5-28-18
6 DATED

Eugene J. Burger
EUGENE JAMES BURGER
EUGENE BURGER MANAGEMENT
CORPORATION

8 5-28-18
9 DATED

Eugene J. Burger
BY: EUGENE BURGER

10 ***

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12 *I have reviewed this Stipulation and Agreement as to form and content and have advised my*
13 *clients accordingly.*

14 6-5-18
15 DATED

Frank M. Buda
FRANK BUDA

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17 The foregoing Stipulation and Agreement In Settlement and Order is hereby
18 adopted by the Real Estate Commissioner as his Decision and Order and shall become effective
19 at 12 o'clock noon on JUL 31 2018

20 IT IS SO ORDERED July 10, 2018

21 DANIEL J. SANDRI
22 ACTING REAL ESTATE COMMISSIONER

23 Daniel J. Sandri
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