

FILED

AUG 25 2009

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE



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

10 ***

11 In the Matter of the Accusation of
12 MICHAEL WESLEY ROBE,
13 Respondent.

No. H-3915 SD

14 STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between MICHAEL WESLEY ROBE (hereafter
16 "Respondent"), and the Complainant, acting by and through Truly Sughrue, Counsel for the
17 Department of Real Estate, as follows for the purpose of settling and disposing the Accusation
18 filed on February 24, 2009 in this matter:

19
20 1. All issues which were to be contested and all evidence which was to be
21 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing
22 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
23 shall instead and in place thereof be submitted solely on the basis of the provisions of this
24 Stipulation and Agreement.

1 2. Respondent has received, read and understands the Statement to Respondent,
2 and the Discovery Provisions of the APA filed by the Department of Real Estate in this
3 proceeding.

4 3. Respondent filed a Notice of Defense pursuant to Section 11505 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that she understands that by withdrawing said Notice of Defense she will thereby
8 waive her rights to require the Commissioner to prove the allegations in the Accusation at a
9 contested hearing held in accordance with the provisions of the APA, and that she will waive
10 other rights afforded to her in connection with the hearing such as the right to present evidence in
11 defense of the allegations in the Accusation and the right to cross-examine witnesses.
12

13 4. This stipulation is based on the factual allegations contained in the Accusation.
14 In the interest of expediency and economy, Respondent chooses not to contest these factual
15 allegations, but to remain silent and understands that, as a result thereof, these factual statements
16 will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below.
17 The Real Estate Commissioner shall not be required to provide further evidence to prove such
18 allegations.
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20 5. This Stipulation and Respondent's decision not to contest the Accusation are
21 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
22 limited to this proceeding and any other proceeding or case in which the Department of Real
23 Estate (herein "the Department"), the state or federal government, an agency of this state, or an
24 agency of another state is involved.
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6. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as his decision in this matter thereby imposing the penalty and sanctions on the real estate licenses and license rights of Respondent as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

I.
The acts and omissions of Respondent as described in the Accusation are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10177(g) of the Code.

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ORDER

I

All licenses and licensing rights of Respondent under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Order; provided, however, that:

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

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

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

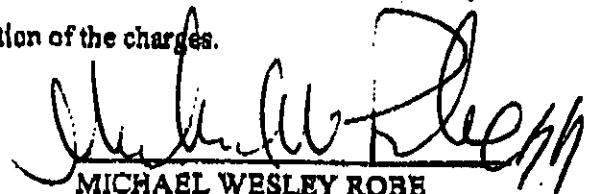
14-July-09
DATED


TRULY SOGHRUE
Counsel for Complainant

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the

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

3
4 07/14/09
5 DATED

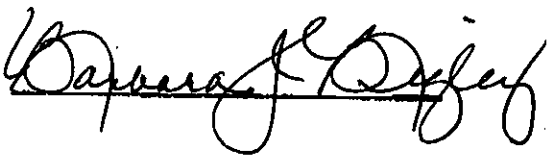

6 MICHAEL WESLEY ROBE
7 Respondent

8 ***

9 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
10 shall become effective at 12 o'clock noon on SEP 15 2009

11 IT IS SO ORDERED 8/17, 2009.

12 JEFF DAVI
13 Real estate Commissioner

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FILED

FEB 24 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of
13 MICHAEL WESLEY ROBE,
14 Respondent.

No. H-3915 SD
ACCUSATION

15
16 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner
17 of the State of California, for cause of Accusation against MICHAEL WESLEY ROBE
18 (hereinafter "Respondent"), is informed and alleges as follows:

19 1

20 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner
21 of the State of California, makes this Accusation in his official capacity.

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23 At all times herein mentioned, Respondent was and now is licensed and/or has
24 license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
25 Code) (hereinafter "the Code").

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

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At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate licensee in the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property.

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On or about, February 4, 2006, Respondent entered into a Residential Listing Agreement with Anna and Robert Bauming (hereinafter "SELLERS") to sell the property located at 00 Muth Valley Road, Lakeside, California, Assessor's Parcel No. 329-132-27-00 (hereinafter "Subject Property").

6

On or about, February 11, 2006, Respondent procured a written offer for the purchase of the Subject Property from Michael and Allison Cooper (hereinafter "BUYERS").

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In early March 2006, Respondent learns Antonious Botter is claiming he has a prescriptive easement over the Subject Property. Respondent failed to notify and/or disclose this claim to BUYERS.

8


On or about March 17, 2006, escrow closes on the Subject Property without the BUYERS having knowledge the claim of prescriptive easement.

///

Respondent's conduct described above constitutes the making of substantial misrepresentation, and fraud or dishonest dealing, and is cause under Sections 10176(a) and 10176(i) of the Code for suspension or revocation of all licenses and license rights of Respondent.

In the alternative, Respondent's conduct described above constitutes negligence or incompetence in performing acts requiring a real estate license, and is cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of Respondent.

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 Respondents, 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 provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 23rd day of February, 2009