

FILED

FEB - 1 2011

DEPARTMENT OF REAL ESTATE

By K. Mat

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DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007
Telephone: (916) 227-2380

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H-5430 SAC
)	
CODE 3 REALTY & MORTGAGE, INC.)	
and JONATHAN GREGG BURGESS,)	<u>STIPULATION AND AGREEMENT</u>
)	<u>IN SETTLEMENT AND ORDER</u>
Respondents.)	
)	

It is hereby stipulated by and between CODE 3 REALTY, INC., (CODE 3), and JONATHAN GREGG BURGESS, (BURGESS) and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on July 20, 2010, in this matter:

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

2. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate in this proceeding.

1 3. On July 23, 2010, Respondents CODE 3 and BURGESS, filed a Notice of
2 Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a
3 hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily
4 withdraw said Notices of Defense. Respondents acknowledge that they understand that by
5 withdrawing said Notices of Defense they will thereby waive their right to require the
6 Commissioner to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA and that they will waive other rights afforded to
8 them in connection with the hearing such as the right to present evidence in defense of the
9 allegations in the Accusation and the right to cross-examine witnesses.

10 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
11 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
12 true and correct and the Real Estate Commissioner shall not be required to provide further
13 evidence of such allegations.

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

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

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1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions and waivers, and solely for
3 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
4 agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute
5 grounds for the suspension or revocation of the licenses and license rights of CODE 3 REALTY
6 & MORTGAGE, INC. under the provisions of Section 10137 of the Business and Professions
7 Code (the Code), and constitute grounds for the suspension or revocation of the licenses and
8 license rights of JONATHAN GREGG BURGESS under the provisions of Section 2725 of Title
9 10 of the California Code of Regulations (Regulations) and Sections 10159.2, 10177(d) and
10 10177(h) of the Code.

11 ORDER

12 A. CODE 3 REALTY & MORTGAGE, INC.

13 1. The corporate real estate broker license and license rights of Respondent
14 CODE 3 REALTY & MORTGAGE, INC. (CODE 3), under the Real Estate Law are
15 suspended for a period of sixty (60) days from the effective date of this Order; provided,
16 however, that if CODE 3 petitions, thirty (30) days of said suspension shall be stayed upon
17 condition that:

18 a. CODE 3 pays a monetary penalty pursuant to Section 10175.2 of the Business
19 and Professions Code at the rate of \$100.00 per day for thirty (30) days of the suspension for a
20 total monetary penalty of \$3,000.00.

21 b. Said payment shall be in the form of a cashier's check or certified check made
22 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
23 Department prior to the effective date of the Decision in this matter.

24 c. No further cause for disciplinary action against the real estate license of
25 CODE 3 occurs within one year from the effective date of the Decision in this matter.

26 d. If CODE 3 fails to pay the monetary penalty in accordance with the terms and
27 conditions of the Decision, the Commissioner may, without a hearing, order the immediate

1 execution of all or any part of the stayed suspension in which event the CODE 3 shall not be
2 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
3 under the terms of this Decision.

4 e. If CODE 3 pays the monetary penalty, and if no further cause for disciplinary
5 action against the real estate license of CODE 3 occurs within one (1) year from the effective
6 date of the Decision, the stay hereby granted shall become permanent.

7 2. The remaining thirty (30) days of said suspension shall be stayed for one (1)
8 year upon the following terms and conditions:

9 a. CODE 3 shall obey all laws, rules and regulations governing the rights,
10 duties and responsibilities of a real estate licensee in the State of California; and;

11 b. That no final subsequent determination be made, after hearing or upon
12 stipulation, that cause for disciplinary action occurred within one (1) year from the effective date
13 of this Order. Should such a determination be made, the Commissioner may, in his discretion,
14 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.

15 B. JONATHAN GREGG BURGESS

16 1. The real estate broker license and license rights of Respondent JONATHAN
17 GREGG BURGESS (BURGESS), under the Real Estate Law are suspended for a period of
18 sixty (60) days from the effective date of this Order; provided, however, that if BURGESS
19 petitions, thirty (30) days of said suspension shall be stayed upon condition that:

20 a. BURGESS pays a monetary penalty pursuant to Section 10175.2 of the
21 Business and Professions Code at the rate of \$100.00 per day for thirty (30) days of the
22 suspension for a total monetary penalty of \$3,000.00 before the effective date of the Stipulation
23 and Agreement.

24 b. Said payment shall be in the form of a cashier's check or certified check made
25 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
26 Department prior to the effective date of the Decision in this matter.

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c. No further cause for disciplinary action against the real estate license of

BURGESS occurs within one year from the effective date of the Decision in this matter.

d. If BURGESS fails to pay the monetary penalty in accordance with the terms

and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event BURGESS shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

e. If BURGESS pays the monetary penalty; and if no further cause for

disciplinary action against the real estate license of Respondent occurs within one (1) year from the effective date of the Decision, the stay hereby granted shall become permanent.

2. The remaining thirty (30) days of said suspension shall be stayed for one (1)

year upon the following terms and conditions:

a. BURGESS 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 one (1) year 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.

3. BURGESS shall, within six (6) months from the effective date of this

Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If BURGESS fails to satisfy this condition, the Commissioner may order suspension of BURGESS's license until BURGESS passes the examination.

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1-3-11

DATED



RICHARD K. UNO, Counsel
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement in Settlement and Order 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 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

12-29-10

DATED



CODE & REALTY & MORTGAGE, INC.
Respondent
By JONATHAN GREGG BURGESS
Designated Officer

12-29-10

DATED



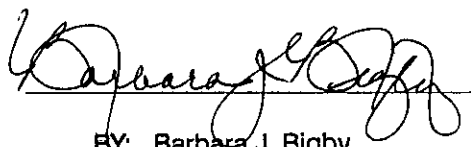
JONATHAN GREGG BURGESS
Respondent

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The foregoing Stipulation and Agreement In Settlement and Order is hereby
adopted by the Real Estate Commissioner as his Decision and Order and shall become effective
at 12 o'clock noon on FEB 22 2011

IT IS SO ORDERED 1/14/11

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED

JUL 20 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

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

10 * * *

11 In the Matter of the Accusation of)
12)
13 CODE 3 (THREE) REALTY & MORTGAGE,) NO. H-5430 SAC
14 INC. and JONATHAN GREGG BURGESS,) ACCUSATION
15 Respondents.)

16 The Complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner of the
17 State of California, for Accusation against Respondents CODE 3 (THREE) REALTY &
18 MORTGAGE, INC. (CODE 3) and JONATHAN GREGG BURGESS (BURGESS), is
19 informed and alleges as follows:

20 1

21 The Complainant makes this Accusation against Respondents in her official
22 capacity.

23 2

24 CODE 3 is presently licensed by the Department of Real Estate (the Department)
25 as a corporate real estate broker.

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1 3

2 BURGESS is presently licensed and/or has license rights under the Real Estate
3 Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real
4 estate broker.

5 4

6 At all times herein mentioned, BURGESS was licensed by the Department as the
7 designated broker/officer of CODE 3. As the designated broker/officer, BURGESS was
8 responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the
9 officers, agents, real estate licensees and employees of CODE 3 for which a real estate license is
10 required.

11 5

12 At all times herein mentioned, Respondents engaged in the business of, acted in
13 the capacity of, advertised, or assumed to act as a real estate broker within the State of
14 California within the meaning of Section 10131(d) of the Code, including the operation and
15 conduct of a property management business with the public wherein, on behalf of others,
16 Respondents managed property for various property owners, all for or in expectation of
17 compensation.

18 6

19 Whenever reference is made in an allegation in this Accusation to an act or
20 omission of CODE 3, such allegation shall be deemed to mean that the officers, directors,
21 employees, agents and real estate licensees employed by or associated with CODE 3 committed
22 such act or omission while engaged in furtherance of the business or operations of CODE 3 and
23 while acting within the course and scope of their corporate authority and employment.

24 FIRST CAUSE OF ACTION

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26 Complainant refers to Paragraphs 1 through 6, above, and incorporates them
27 herein by reference.

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At no time within the last three years did the Department license Jay Ceccato (CECCATO), either as a real estate broker or as a real estate salesperson.

9

Within the three year period prior to the filing of this Accusation, Respondent CODE 3 employed and compensated CECCATO to perform the activities requiring a real estate license as alleged in Paragraph 5, above.

10

Within the last three years before the filing of this accusation, CECCATO engaged in property management activities including leasing or renting, soliciting places for rent, soliciting prospective tenants, collecting rents from tenants on properties owned by landlords on behalf of CODE 3, including, but not limited to that certain real property known as 6306 Surfside, Sacramento, California.

11

The facts alleged above constitute cause for the suspension or revocation of the licenses and license rights of Respondent CODE 3 under Section 10137 (Unlawful Employment) of the Code.

SECOND CAUSE OF ACTION

12

Complainant refers to Paragraphs 1 through 11, above, and incorporates them herein by reference.

13

At all times herein above mentioned, BURGESS, was responsible as the supervising broker for CODE 3, for the supervision and control of the activities conducted on behalf of CODE 3'S business by its employees. BURGESS failed to exercise reasonable supervision and control over the property management activities of CODE 3. In particular, BURGESS permitted, ratified and/or caused the conduct described above, to occur, and failed to

1 take reasonable steps, including but not limited to handling of trust funds, supervision of
2 employees, and the implementation of policies, rules, and systems to ensure the compliance of
3 the business with the Real Estate Law and the Regulations.

4 14

5 The above acts and/or omission of BURGESS violate Section 10159.2
6 (Responsibility/Directing Officer) of the Code and Section 2725 (Broker Supervision) of the
7 Regulations and constituted grounds for disciplinary action under the provisions of Section
8 10177(d) (Willful Disregard/Violation of Real Estate Law) and (h) (Broker Supervision) of the
9 Code.

10 WHEREFORE, Complainant prays that a hearing be conducted on the
11 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
12 disciplinary action against all licenses and license rights of Respondents under the Real Estate
13 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
14 relief as may be proper under other provisions of law.

15
16 
17 TRICIA D. SOMMERS
18 Deputy Real Estate Commissioner

18 Dated at Sacramento, California,
19 this 25th day of June, 2010.