

**FILED**

**June 5, 2013**

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By 

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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) NO. H-5856 SAC  
12 RUTHERFORD BERNARD BROWNING III, ) STIPULATION AND AGREEMENT  
13 Respondent. )  
14 )

15 It is hereby stipulated by and between Respondent RUTHERFORD BERNARD  
16 BROWNING III, ("Respondent"), acting by and through Joshua A. Rosenthal, Esq., Counsel for  
17 Respondent, and the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for  
18 the Department of Real Estate ("Department"), as follows for the purpose of settling and  
19 disposing of the First Amended Accusation filed on October 3, 2012, in this matter:

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  
22 hearing was to be held in accordance with the provisions of the Administrative Procedure Act  
23 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions  
24 of this Stipulation and Agreement.

25 2. Respondent has received, read and understands the Statement to  
26 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department  
27 in this proceeding.

1           3.       Respondent filed a Notice of Defense pursuant to Section 11505 of the  
2 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
3 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent  
4 acknowledges that Respondent understands that by withdrawing said Notice of Defense,  
5 Respondent will thereby waive Respondent's right to require the Real Estate Commissioner  
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 Respondent will waive other rights  
8 afforded to Respondent in connection with the hearing, such as the right to present evidence in  
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

16           5.       This Stipulation and Respondent's decision not to contest the Accusation  
17 are made for the purpose of reaching an agreed disposition in this proceeding and are expressly  
18 limited to this proceeding and any other proceeding or case in which the Department, the state or  
19 federal government, an agency of this state, or an agency of another state is involved.

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

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

5           8.       Respondent understands that by agreeing to this Stipulation and  
6 Agreement, Respondent agrees to pay, pursuant to Section 10106 of the California Business  
7 and Professions Code (“the Code”), the costs of the investigation and enforcement of this case  
8 which resulted in the determination that Respondent committed the violation(s) found in the  
9 Determination of Issues. The amount of such cost is \$2,497.55.

10           9.       It is understood by the parties that this Stipulation and Agreement is  
11 conditioned upon Respondent withdrawing his application for a real estate broker license and  
12 his application for a corporate real estate broker license for Acclaim Properties & Investments,  
13 Inc. (collectively “his applications”), which are the subject of Statement of Issues, DRE Case  
14 No. H-5857 SAC. Respondent understands that by agreeing to this Stipulation and Agreement,  
15 Respondent agrees to submit in writing to the Department no later than March 19, 2013, a  
16 letter immediately withdrawing his applications. In the event that Respondent fails to  
17 withdraw his applications as agreed, the Department shall retain the right to a hearing and  
18 proceeding on the Statement of Issues in Case No. H-5857 SAC under all of the provisions of  
19 the APA.

20   DETERMINATION OF ISSUES

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

24   I.

25           The acts and omissions of Respondent RUTHERFORD BERNARD  
26 BROWNING III (“Respondent”) as described in the Accusation are grounds for the suspension

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1 or revocation of the licenses and license rights of Respondent under the provisions of Sections  
2 490, 10177(a) and 10177(b) of the Code.

3 ORDER

4 1. All licenses and licensing rights of Respondent RUTHERFORD  
5 BERNARD BROWNING III ("Respondent") under the Real Estate Law are hereby revoked;  
6 provided, however, a restricted real estate salesperson license shall be issued to Respondent  
7 pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes  
8 application therefor and pays to the Department of Real Estate the appropriate fee for said  
9 license within ninety (90) days from the effective date of this Decision. The restricted license  
10 issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business  
11 and Professions Code and to the following limitations, conditions and restrictions imposed under  
12 authority of Section 10156.6 of that Code:

13 a. The restricted license issued to Respondent may be suspended  
14 prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's  
15 conviction or plea of nolo contendere to a crime which is substantially related to Respondent's  
16 fitness or capacity as a real estate licensee.

17 b. The restricted license may be suspended prior to hearing by Order  
18 of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent  
19 has violated provisions of the California Real Estate Law, the Subdivided Lands Law,  
20 Regulations of the Real Estate Commissioner or conditions attaching to said restricted license.

21 2. Respondent shall not be eligible for the issuance of an unrestricted real  
22 estate license nor for the removal of any of the conditions, limitations or restrictions of the  
23 restricted license until at least four (4) years have elapsed from the effective date of this  
24 Decision.

25 3. Respondent shall submit with any application for license under an  
26 employing broker, or any application for transfer to a new employing broker, a statement signed

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1 by the prospective employing real estate broker on a form approved by the Department of Real  
2 Estate which shall certify:

3 a. That the employing broker has read the Decision of the  
4 Commissioner which granted the right to a restricted license; and

5 b. That the employing broker will exercise close supervision over the  
6 performance by the restricted licensee relating to activities for which a real estate license is  
7 required.

8 4. Any restricted license issued to Respondent pursuant to this Decision  
9 shall be suspended for a period of thirty (30) days from the issuance of the restricted license;  
10 provided, however, that said suspension shall be stayed, upon the condition that Respondent  
11 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to  
12 Section 10175.2 of the Code at a rate of \$25.00 for each day of the suspension for a total  
13 monetary penalty of \$750.00.

14 a. Said payment shall be in the form of a cashier's check or certified  
15 check made payable to the Department of Real Estate. Said check must be delivered to the  
16 Department prior to the effective date of the Order in this matter.

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

20 c. If Respondent fails to pay the monetary penalty as provided above  
21 prior to the effective date of this Order, the stay of the suspension shall be vacated as to that  
22 Respondent and the order of suspension shall be immediately executed, under this Order, in  
23 which event the said Respondent shall not be entitled to any repayment nor credit, prorated or  
24 otherwise, for the money paid to the Department under the terms of this Order.

25 d. If Respondent pays the monetary penalty and any other moneys  
26 due under this Stipulation and Agreement and if no further cause for disciplinary action

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1 against the real estate license of said Respondent occurs within two (2) years from the effective  
2 date of this Order, the entire stay hereby granted by this Order shall become permanent.

3 5. Respondent shall notify the Commissioner in writing within 72 hours of  
4 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,  
5 Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of  
6 Respondent's arrest, the crime for which Respondent was arrested and the name and address of  
7 the arresting law enforcement agency. Respondent's failure to timely file written notice shall  
8 constitute an independent violation of the terms of the restricted license and shall be grounds for  
9 the suspension or revocation of that license.

10 6. Respondent shall, within nine (9) months from the effective date of this  
11 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,  
12 since the most recent issuance of an original or renewal real estate license, taken and successfully  
13 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate  
14 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the  
15 Commissioner may order the suspension of the restricted license until the Respondent presents  
16 such evidence. The Commissioner shall afford Respondent the opportunity for a hearing  
17 pursuant to the APA to present such evidence.

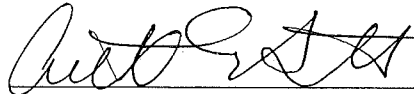
18 7. Respondent shall within six (6) months from the effective date of this  
19 Decision, take and pass the Professional Responsibility Examination administered by the  
20 Department including the payment of the appropriate examination fee. If Respondent fails to  
21 satisfy this condition, the Commissioner may order suspension of Respondent's license until  
22 Respondent passes the examination.

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1                    8.        All licenses and licensing rights of Respondent are indefinitely suspended  
2 unless or until Respondent pays the sum of \$2,497.55 for the Commissioner's reasonable cost of  
3 the investigation and enforcement which led to this disciplinary action. Said payment shall be in  
4 the form of a cashier's check or certified check made payable to the Department of Real Estate.  
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7                    3-19-13

8                    DATED

9                    

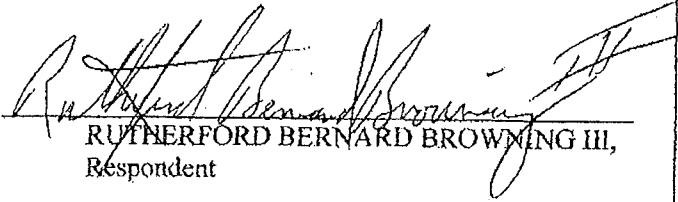
10                   Annette E. Ferrante, Esq.

11                   Counsel for Department of Real Estate  
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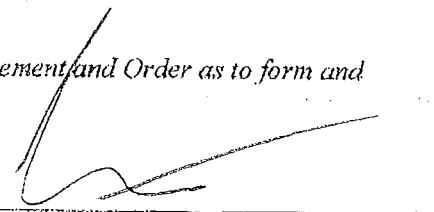
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I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 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. Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondent, to the Department at fax number (916) 227-9458. 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.

March 18, 2013                        
DATED                                      RUTHERFORD BERNARD BROWNING III,  
Respondent

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

3-19-13                                        
DATED                                      Joshua A. Rosenthal, Esq., Attorney for  
Respondent RUTHERFORD BERNARD  
BROWNING III



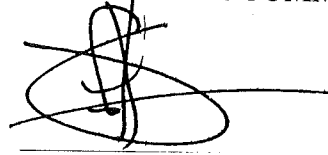
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The foregoing Stipulation and Agreement is hereby adopted by me as my  
Decision in this matter as to Respondent RUTHERFORD BERNARD BROWNING III, and  
shall become effective at 12 o'clock noon on JUN 26 2013.

IT IS SO ORDERED April 30, 2013.

REAL ESTATE COMMISSIONER



By: Jeffrey Mason  
Chief Deputy Commissioner