

FILED

DEC 3 2013

BUREAU OF REAL ESTATE

By *L. Just*

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95815-7007
4 Telephone: (916) 263-8670
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9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 DICKY & DREW INCORPORATED and) NO. H-5893 SAC
14 DENNIS WILLIAM DICKY,) STIPULATION AND AGREEMENT
15 Respondents.)

16 It is hereby stipulated by and between Respondents DICKY & DREW
17 INCORPORATED and DENNIS WILLIAM DICKY, (collectively "Respondents"), acting by
18 and through Mary E. Work, Esq., Counsel for Respondents, and the Complainant, acting by and
19 through Annette E. Ferrante, Esq., Counsel for the Bureau¹ of Real Estate ("Bureau"), as follows
20 for the purpose of settling and disposing of the Accusation filed on October 22, 2012, in this
21 matter:

22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondents at a formal hearing on the Accusation, which
24 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
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27 ¹ Effective July 1, 2013, the Department of Real Estate has become the Bureau of Real Estate under the Department of Consumer Affairs.

H-5893 SAC

DICKY & DREW INCORPORATED and
DENNIS WILLIAM DICKY

1 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions
2 of this Stipulation and Agreement.

3 2. Respondents have received, read and understand the Statement to Respondent,
4 the Discovery Provisions of the APA and the Accusation filed by the Bureau in this
5 proceeding.

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

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

20 5. This Stipulation and Respondents' decision not to contest the Accusation are
21 made for the purpose of reaching an agreed disposition in this proceeding and are expressly
22 limited to this proceeding and any other proceeding or case in which the Bureau, the state or
23 federal government, an agency of this state, or an agency of another state is involved.

24 6. It is understood by the parties that the Commissioner may adopt the Stipulation
25 and Agreement as his decision in this matter, thereby imposing the penalty and
26 sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"

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11-5893 SAC

DICKEY & DREW INCORPORATED and
DENNIS WILLIAM DICKEY

1 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and
2 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
3 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound
4 by any admission or waiver made herein.

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

9 8. Respondents understand that by agreeing to this Stipulation and Agreement,
10 Respondents agree to pay, pursuant to Section 10148 of the California Business and
11 Professions Code ("the Code"), the costs of the audit which resulted in the determination that
12 Respondents committed the trust fund violation(s) found in the Determination of Issues. The
13 amount of such costs is \$4,443.00.

14 9. Respondents further understand that by agreeing to this Stipulation and
15 Agreement, the findings set forth below in the Determination of Issues become final, and that
16 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant
17 to Section 10148 of the Code to determine if the violations have been corrected. The
18 maximum costs of said audit shall not exceed \$4,443.00.

19 10. Respondents understand that by agreeing to this Stipulation and Agreement,
20 Respondents agree to pay, pursuant to Section 10106 of the Code, the costs of the investigation
21 and enforcement of this case which resulted in the determination that Respondents committed
22 the violation(s) found in the Determination of Issues. The amount of such cost is \$2,783.65.

23 11. In lieu of proceeding in this matter in accordance with the provisions of the
24 APA, Respondent DICKY & DREW INCORPORATED ("DDI") wishes to voluntarily
25 surrender its corporate real estate broker license issued by the Bureau, pursuant to Code
26 Section 10100.2. Respondent DENNIS WILLIAM DICKY ("DICKY") is an officer of
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DICKY & DREW INCORPORATED and
DENNIS WILLIAM DICKY

1 Respondent DDI, and is authorized to sign this declaration on behalf of Respondent DDI.
 2 Respondent DICKEY is represented by attorney Mary E. Work, Esq., and is acting on behalf of
 3 Respondent DDI.

4 12. Respondent DICKEY understands that by so voluntarily surrendering
 5 Respondent DDI's license, Respondent DDI may be relicensed as a broker corporation only by
 6 petitioning for reinstatement pursuant to Section 11522 of the Government Code. Respondent
 7 DICKEY also understands that by so voluntarily surrendering Respondent DDI's license,
 8 Respondents agree to the following:

9 a. The filing of this Stipulation and Agreement shall be deemed as
 10 Respondent DDI's declaration and petition for voluntary surrender.

11 b. It shall also be deemed to be an understanding and agreement by
 12 Respondent DDI that it waives all rights Respondent DDI has to require the Commissioner to
 13 prove the allegations contained in the Accusation filed in this matter at a hearing held in
 14 accordance with the provisions of the APA, and that Respondent DDI also waives other rights
 15 afforded to Respondent DDI in connection with the hearing such as the right to discovery, the
 16 right to present evidence in defense of the allegations in the Accusation and the right to cross-
 17 examine witnesses.

18 13. Respondent DICKEY on behalf of Respondent DDI further agrees that upon
 19 acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all
 20 relevant evidence obtained by the Bureau in this matter prior to the Commissioner's acceptance,
 21 and all allegations contained in the Accusation filed in the Bureau Case No. H-5893 SAC, may
 22 be considered by the Bureau to be true and correct for the purpose of deciding whether to grant
 23 relicensure or reinstatement to Respondent DDI pursuant to Government Code Section 11522.

24 14. Respondent DICKEY on behalf of Respondent DDI freely and voluntarily
 25 surrenders all of Respondent DDI's licenses and license rights under the Real Estate Law.

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H-5893 SAC

DICKEY & DREW INCORPORATED and
DENNIS WILLIAM DICKEY

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DETERMINATION OF ISSUES

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

I.

The acts and omissions of Respondent DDI, as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent DDI under the provisions of Sections 10177(d) and 10177(g) of the Code, in conjunction with Section 10145 of the Code and Sections 2832.1, 2831.2, 2831 and 2834 of Title 10 of the California Code of Regulations ("the Regulations").

II.

The acts and omissions of Respondent DICKEY as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent DICKEY under the provisions of Sections 10177(d), 10177(g) and 10177(h) of the Code, in conjunction with Sections 10145 and 10159.2 of the Code and Sections 2725, 2832.1, 2831.2, 2831 and 2834 of the Regulations.

ORDER

I.

1. All licenses and licensing rights of Respondent DENNIS WILLIAM DICKEY ("Respondent") under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Order; provided, however, that:

a. Sixty (60) days of said suspension shall be stayed for two (2) years upon

the following terms and conditions:

i. 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,

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

7 b. Thirty (30) days of said suspension shall be stayed, upon the condition that
8 Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
9 pursuant to Section 10175.2 of the Code at a rate of \$100.00 for each day of the suspension for a
10 total monetary penalty of \$3,000.00.

11 i. Said payment shall be in the form of a cashier's check or certified
12 check made payable to the Bureau of Real Estate. Said check must be delivered to the Bureau
13 prior to the effective date of the Decision in this matter.

14 ii. No further cause for disciplinary action against the real estate
15 license of Respondent occurs within two (2) years from the effective date of the Decision in this
16 matter.

17 iii. If Respondent fails to pay the monetary penalty in accordance with
18 the terms and conditions of the Decision, the Commissioner may, without a hearing, order the
19 immediate execution of all or any part of the stayed suspension, in which event, Respondent
20 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
21 Bureau under the terms of this Decision.

22 iv. If Respondent pays the monetary penalty, and if no further cause
23 for disciplinary action against the real estate license of Respondent occurs within two (2) years
24 from the effective date of the Decision herein, then the stay hereby granted shall become
25 permanent.

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1 2. Respondent DICKY shall, within six (6) months from the effective date of this
2 Decision, take and pass the Professional Responsibility Examination administered by the Bureau,
3 including the payment of the appropriate examination fee. If Respondent DICKY fails to
4 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
5 rights of Respondent DICKY until he passes the examination.

6 3. Respondent DICKY shall pay the sum of \$4,443.00 for the Commissioner's
7 cost of the audit which led to this disciplinary action. Respondent DICKY shall pay such cost
8 within sixty (60) days of receiving an invoice therefore from the Commissioner. The
9 Commissioner may indefinitely suspend all licenses and licensing right of Respondent
10 DICKY pending a hearing held in accordance with Section 11500, et seq., of the Government
11 Code, if payment is not timely made as provided for herein, or as provided for in a subsequent
12 agreement between Respondent DICKY and the Commissioner. The suspension shall remain
13 in effect until payment is made in full or until Respondent DICKY enters into an agreement
14 satisfactory to the Commissioner to provide for payment, or until a decision providing
15 otherwise is adopted following a hearing held pursuant to this condition.

16 4. Respondent DICKY shall pay the Commissioner's costs, not to exceed
17 \$4,443.00, of any audit conducted pursuant to Section 10148 of the Code to determine if
18 Respondent DICKY has corrected the violations described in the Determination of Issues,
19 above, and any other violations found in the audit which led to this disciplinary action.
20 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
21 the estimated average hourly salary for all persons performing audits of real estate brokers, and
22 shall include an allocation for travel time to and from the auditor's place of work. Respondent
23 DICKY shall pay such cost within sixty (60) days of receiving an invoice therefore from the
24 Commissioner detailing the activities performed during the audit and the amount of time spent
25 performing those activities. If Respondent DICKY fails to pay such cost within the sixty (60)
26 days, the Commissioner may indefinitely suspend all licenses and licensing rights of

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1 Respondent DICKEY under the Real Estate Law until payment is made in full or until
2 Respondent DICKEY enters into an agreement satisfactory to the Commissioner to provide for
3 payment. Upon full payment, the indefinite suspension provided for in this paragraph shall be
4 stayed.

5 5. All licenses and licensing rights of Respondent DICKEY are indefinitely
6 suspended unless or until Respondent DICKEY pays the sum of \$2,783.65 for the
7 Commissioner's reasonable cost of the investigation and enforcement which led to this
8 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
9 made payable to the Bureau of Real Estate.

10 6. Respondent DICKEY shall, prior to the effective date of this Order, submit
11 proof satisfactory to the Commissioner of having cured the shortage alleged in Paragraph 10(a)
12 of the Accusation. If Respondent fails to satisfy this condition, the Commissioner may order
13 the suspension of Respondent's license until Respondent presents proof that Respondent has
14 cured the trust fund shortage.

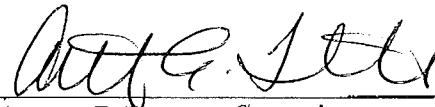
15 II.

16 Respondent DDI's petition for voluntary surrender of its corporate real estate broker
17 license and license rights is accepted as of the effective date of this Decision as set forth below,
18 based upon the understanding and agreement expressed in Respondents' Declaration
19 incorporated herein as part of this Stipulation and Agreement. Respondent DDI's license
20 certificates, pocket cards, and any branch office license certificates shall be sent to the below
21 listed address so that they reach the Bureau on or before the effective date of this Decision:

22 BUREAU OF REAL ESTATE
23 Attn: Licensing Flag Section
24 P. O. Box 137013
25 Sacramento, CA 95813-7013

25 10/03/13

26 DATED

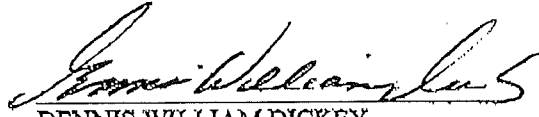


27 Annette E. Ferrante, Counsel
Bureau of Real Estate

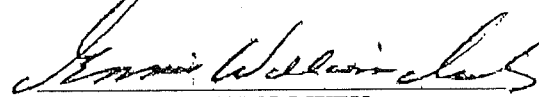
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I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 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. Respondents 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 Respondents, to the Bureau at fax number (916) 263-3767. Respondents agree, acknowledge and understand that by electronically sending to the Bureau a fax copy of Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by the Bureau shall be as binding on Respondents as if the Bureau had received the original signed Stipulation and Agreement.

10/3/2013
DATED

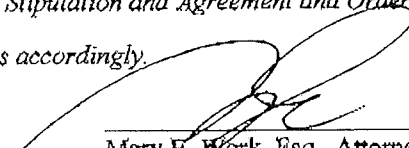

DENNIS WILLIAM DICKEY,
Respondent

10/3/2013
DATED


DENNIS WILLIAM DICKEY,
As Designated Officer of Respondent
DICKEY & DREW INCORPORATED

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

10/3/13
DATED


Mary E. Work, Esq., Attorney for Respondents
DICKEY & DREW INCORPORATED and
DENNIS WILLIAM DICKEY

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The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in
this matter as to Respondents DICKEY & DREW INCORPORATED and DENNIS WILLIAM
DICKEY, and shall become effective at 12 o'clock noon on DEC 30 2013.

IT IS SO ORDERED NOV 07 2013

REAL ESTATE COMMISSIONER



By: **JEFFREY MASON**
Chief Deputy Commissioner