

FILED

JUN 23 2010

DEPARTMENT OF REAL ESTATE

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Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007
Telephone: (916) 227-0789

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
)
CATHERINE CHRISTINE MARPLES and)
MARPLES & ASSOCIATES, INC.)
)
)
Respondents.)

Case No. H-10722 SF
OAH No. 2009080983

STIPULATION AND AGREEMENT
IN SETTLEMENT AND
ORDER

It is hereby stipulated by and between Respondents CATHERINE CHRISTINE MARPLES (herein "MARPLES"), and MARPLES & ASSOCIATES, INC. (herein "MA"), (herein jointly "Respondents"), individually and jointly, and the Complainant, acting by and through Kenneth C. Espell, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on or about July 15, 2009 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 (herein APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement in Settlement.

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

4 3. A Notice of Defense was filed on July 29, 2009 by Respondents, pursuant to
5 Section 11505 of the Government Code, for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice
7 of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of
8 Defense they will thereby waive their right to require the Commissioner to prove the allegations
9 in the Accusation at a contested hearing held in accordance with the provisions of the APA and
10 that they will waive other rights afforded to them in connection with the hearing such as the right
11 to present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. This Stipulation is based on the factual allegations contained in the
14 Accusation. In the interest of expedience and economy, Respondents choose not to contest these
15 allegations, but to remain silent and understand that, as a result thereof, these allegations, without
16 being admitted or denied, will serve as a prima facial basis for the disciplinary action stipulated
17 to herein. The Real Estate Commissioner shall not be required to provide further evidence to
18 prove said factual allegations.

19 5. This Stipulation is made for the purpose of reaching an agreed disposition of
20 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
21 which the Department, the state or federal government, or any agency of this state, another state
22 or federal government is involved.

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

27

1 and the order of suspension shall be immediately executed, under this Paragraph I of this Order,
2 in which event Respondents shall not be entitled to any repayment nor credit, prorated or
3 otherwise, for the money paid to the Department under the terms of this Order.

4 (d) If Respondents pay the monetary penalty and any other monies due
5 under this Stipulation and Agreement in Settlement and if no further cause for disciplinary
6 action against the real estate licenses of Respondents occur within two (2) years from the
7 effective date of this Order, the entire stay hereby granted under Paragraph 1 of this Order as to
8 Respondents shall become permanent.

9 3. Pursuant to Section 10148 of the Code, MARPLES and MA, jointly and
10 severally, shall pay the sum of \$6,100.50 for the Commissioner's cost of the audit which led to
11 this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
12 invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all
13 licenses and licensing rights of Respondents pending a hearing held in accordance with Section
14 11500, et seq., of the Government Code, if payment is not timely made as provided for herein,
15 or as provided for in a subsequent agreement between Respondents and the Commissioner.
16 The suspension shall remain in effect until payment is made in full or until Respondents enter
17 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision
18 providing otherwise is adopted following a hearing held pursuant to this condition.

19 4. Respondents MARPLES and MA, jointly and severally, shall pay the
20 Commissioner's costs, not to exceed \$6,100.50, of any audit conducted pursuant to Section
21 10148 of the Code to determine if Respondents have corrected the violations described in
22 Paragraph I of the Determination of Issues, above. In calculating the amount of the
23 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
24 salary for all persons performing audits of real estate brokers, and shall include an allocation for
25 travel time to and from the auditor's place of work. Respondents shall pay such cost within
26 sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities
27 performed during the audit and the amount of time spent performing those activities.

1 If Respondents fail to pay such cost within the sixty (60) days, the Commissioner may
2 indefinitely suspend all licenses and licensing rights of Respondents under the Real Estate Law
3 until payment is made in full or until Respondents enter into an agreement satisfactory to the
4 Commissioner to provide for payment. Upon payment in full, the indefinite suspension
5 provided in this paragraph shall be stayed.

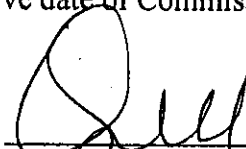
6 II

7 1. Respondent MARPLES shall, within six (6) months from the effective date
8 of the decision, take and pass the Professional Responsibility Examination administered by the
9 Department, including the payment of the appropriate examination fee. If Respondent
10 MARPLES fails to satisfy this condition, the Commissioner may order the suspension of all
11 licenses and licensing rights until Respondent MARPLES passes the examination.

12 2. Notwithstanding any other provision of this Order, all licenses and license
13 rights of Respondent MARPLES are indefinitely suspended unless or until she provides proof
14 satisfactory to the Commissioner that she has taken and successfully completed the continuing
15 education course on trust fund accounting and handling specified in Section 10170.5(a)(3) of
16 the Code. Proof of satisfaction of this requirement includes evidence that Respondent
17 MARPLES has successfully completed the trust fund accounting and handling continuing
18 education course within 120 days prior to the effective date of Commissioner's Order.

19
20 4/22/2010

21 DATED

20 

21 KENNETH C. ESPELL, Counsel
22 DEPARTMENT OF REAL ESTATE

23 ***

24 FACSIMILE TRANSMISSION

25 Respondents can signify acceptance and approval of the terms and conditions of
26 this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by
27 Respondents, to the Department at the following telephone/fax number: Attention: Kenneth C.
Espell at (916) 227-9458. Respondents agree, acknowledge and understand that by

1 electronically sending to the Department a fax copy of Respondents' actual signature as they
2 appear on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall
3 be as binding on Respondents as if the Department had received the original signed Stipulation
4 and Agreement.

5 * * *

6 I have read the Stipulation and Agreement in Settlement and its terms are
7 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights
8 given to me by the California APA (including but not limited to Sections 11506, 11508, 11509,
9 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those
10 rights, including the right of requiring the Commissioner to prove the allegations in the
11 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
12 and to present evidence in defense and mitigation of the charges.

13 4/10/10
14 DATED

Catherine Christine Marples
15 CATHERINE CHRISTINE MARPLES,
Respondent

16 4/10/10
17 DATED

Marples & Associates, Inc
18 MARPLES & ASSOCIATES, INC.
Respondent

19 I have reviewed the Stipulation and Agreement as to form and content and have
20 advised my client accordingly.

21 4-16-10
22 DATED

Frank M. Buda
23 FRANK M. BUDA
Attorney for Respondents

24 ////

25 ////

26 ////

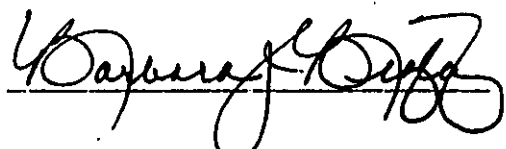
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The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter and shall become effective at 12 o'clock noon on JUL 13 2010

IT IS SO ORDERED 6/3/10

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED

JUL 15 2009

DEPARTMENT OF REAL ESTATE

By L. Henry

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0868 (Direct)

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

12 * * *

13 In the Matter of the Accusation of)
14) H- 10722 SF
15 CATHERINE CHRISTINE MARPLES and)
16 MARPLES & ASSOCIATES, INC.,)
17) ACCUSATION
18 Respondents.)

19 The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real
20 Estate Commissioner of the State of California, for cause of Accusation against CATHERINE
21 CHRISTINE MARPLES (herein "Respondent MARPLES") and MARPLES & ASSOCIATES,
22 INC., (hereinafter "Respondent "MA"), is informed and alleges as follows:

23 THE RESPONDENTS

24 1

25 At all times herein mentioned, Respondent MARPLES was and now is licensed
26 and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and
27 Professions Code) (herein "the Code") as a real estate broker.

2

Respondent MA is presently licensed and/or has license rights under the Code

1 and is licensed by the Department of Real Estate (hereafter "the Department") as a corporate
2 real estate broker.

3 3

4 Whenever reference is made in an allegation in this Accusation to an act or
5 omission of Respondent MA, such allegation shall be deemed to mean that the officers, directors,
6 employees, agents and real estate licensees employed by or associated with Respondent MA
7 committed such act or omission while engaged in the furtherance of the business or operations of
8 Respondent MA and while acting within the course and scope of their corporate authority and
9 employment.

10 4

11 At all times herein mentioned, Respondent MARPLES was and is the designated
12 officer/broker of Respondent MA. Pursuant to Sections 10159.2 and 10177(h) of the Code, as
13 the designated officer/broker of Respondent MA, Respondent MARPLES was at all times
14 mentioned herein responsible for the supervision of the activities of the officers, agents, real
15 estate licensees and employees of Respondent MA.

16 5

17 At all times herein mentioned, Respondent engaged in the business of, acted in
18 the capacity of, advertised, or assumed to act as a real estate broker within the State of California
19 within the meaning of Sections 10131(a) and 10131(b) of the Code, including the operation and
20 conduct of a property management business with the public wherein, on behalf of others, for
21 compensation or in expectation of compensation, Respondent leased or rented and offered to
22 lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for
23 prospective tenants of real property or improvements thereon, and collected rents from real
24 property or improvements thereon. In addition, Respondent MA was engaged in residential
25 resale activities.

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27 ///

In so acting as a real estate property management company, as described in Paragraph 2 above, Respondents MARPLES and MA accepted or received funds in trust (herein "trust funds") from or on behalf of borrowers, lenders, owners, tenants and others in connection with the leasing, renting, and collection of rents on real property or improvements thereon, and in connection with negotiating loans secured by real property, as alleged herein, and thereafter from time to time made disbursements of said funds.

THE TRUST ACCOUNTS

The aforesaid trust funds accepted or received by Respondents MARPLES and MA were deposited or caused to be deposited by Respondents MARPLES and/or MA into one or more bank accounts (herein "trust fund accounts") maintained by Respondents MARPLES and/or MA for the handling of trust funds, including, but not necessarily limited to, the following account maintained by Respondents MARPLES and/or MA at the San Francisco, California Branch of Bank of America, account number 04634-06166 (herein "Trust Account #1") which remained open until December 31, 2008, when it was replaced by the bank account identified in Paragraph 8, below.

On or after December 31, 2008, the aforesaid trust funds accepted or received by Respondents MARPLES and/or MA were deposited or caused to be deposited into an account maintained by Respondents MARPLES and/or MA at the Portland, Oregon Branch of Wells Fargo Bank, account number 986-527019 (herein "Bank Account #1") which was used to replace Trust Account #1, the Bank of America Bank Account, identified in Paragraph 7, above.

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2 For the audit period January 1, 2008 through December 31, 2008, Respondents
3 MARPLES and/or MA failed to perform monthly reconciliations comparing the balance of the
4 control records to the total balance of the beneficiary records for Bank Account #1 all in violation
5 of Section 2831.2 of the Regulations which constitutes cause for suspension or revocation of all
6 licenses and license rights of Respondents MARPLES and MA under Section 10177(d) of the
7 Code.

8
9 For the audit period January 1, 2008 through December 31, 2008, Respondents
10 MARPLES and/or MA failed maintain copies of the front and back of each canceled check for
11 Bank Account #1 all in violation of Section 10148 of the Code which constitutes cause for
12 suspension or revocation of all licenses and license rights of Respondents MARPLES and MA
13 under Section 10177(d) of the Code.

14
15 Bank reconciliations were prepared as of December 21, 2001 for Bank Account
16 #1 and Trust Account #1. The adjusted bank balances were then compared to the total balances
17 of the beneficiary records. The reconciliation of Bank Account #1 indicated that there was a
18 shortage of \$12, 171.21 in Bank Account #1 of which \$2,016, 84 could be traced and the
19 remaining shortage of \$10,154.37 unidentified and untraceable, all in violation of Section 10145
20 of the Code and Section 2832.1 of the Regulations which constitutes cause for suspension or
21 revocation of all license and license rights of Respondents MARPLES and MA under Section
22 10177(d) of the Code.

23
24 In addition and in violation of Section 2832.1 of the Regulations, Respondents
25 MARPLES and MA did not present evidence that the owners of the trust funds had given their
26 written consent to allow Respondents MARPLES and/or MA to reduce the funds in the trust
27 account to an amount less than the existing trust fund liability which is cause for suspension or

1 revocation of all license and license rights of Respondents MARPLES and MA under Section
2 10177(d) of the Code.

3 FAILURE TO SUPERVISE

4 17

5 Each and every allegation in Paragraphs 1 through 16, inclusive, above, is
6 incorporated by this reference as if fully set forth herein.

7 18

8 Respondent MARPLES, as the designated officer/broker of Respondent MA was
9 required to exercise reasonable supervision and control over the activities of Respondent MA.
10 Respondent MARPLES failed to exercise reasonable supervision and control over the activities
11 of Respondent MA by failing to insure Respondent MA complied with the trust handling
12 requirements of a Department licensed real estate property management company as witnessed
13 by the violations enumerated in Paragraphs 11 through 16, above all in violation of Section
14 10159.2 of the Code which constitutes cause for suspension or revocation of all licenses and
15 license rights of Respondents MARPLES and MA under Section 10177(d) of the Code.

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

21
22 
23 E. J. HABERER II
24 Deputy Real Estate Commissioner

25 Dated at Oakland, California
26 this 6th day of July, 2009.