

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

4 Telephone: (916) 576-8700

**FILED**

APR 16 2019

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

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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 DONNA J. SCHWARZBACH, )

13 Respondent. )

No. H-12254 SF

STIPULATION AND  
AGREEMENT

14 It is hereby stipulated by and between DONNA J. SCHWARZBACH  
15 (Respondent), and the Complainant, acting by and through Truly Sughrue, Counsel for the  
16 Department of Real Estate (Department), as follows for the purpose of settling and disposing  
17 the Accusation filed on July 17, 2018, in this matter:

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

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

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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 rights 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 afforded  
8 to Respondent in connection with the hearing such as the right to present evidence in defense of  
9 the allegations in the Accusation and the right to cross-examine witnesses.

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

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

21                   6.       Respondent understands that by agreeing to this Stipulation and  
22 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and  
23 Professions Code (Code), the cost of the audit, which resulted in the determination that  
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.  
25 The amount of said costs is \$6,447.25.

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1                   7.     Respondent further understands that by agreeing to this Stipulation and  
2 Agreement, the findings set forth below in the Determination of Issues become final, and that  
3 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to  
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum  
5 costs of said audit shall not exceed \$8,059.06.

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

13                   9.     The Order or any subsequent Order of the Commissioner made pursuant to  
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further  
15 administrative or civil proceedings by the Department with respect to any matters which were not  
16 specifically alleged to be causes for action in Accusation H-12254 SF.

17   \* \* \*

18   DETERMINATION OF ISSUES

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

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23                   The acts and omissions of Respondent as described in the Accusation are  
24 grounds for the suspension or revocation of Respondent's licenses and license rights under the  
25 following sections of the Code and Title 10 of the California Code of:

26                   As to Paragraphs 8(a) and 8(b), under Section 10177(d) of the Code in  
27 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

1 As to Paragraph 8(c), under Section 10177(d) of the Code in conjunction with  
2 Section 2831 of the Regulations;

3 As to Paragraph 8(d), under Section 10177(d) of the Code in conjunction with  
4 Section 10145 of the Code and Section 2832 of the Regulations;

5 As to Paragraph 8(e), under Section 10177(d) of the Code in conjunction with  
6 Section 10145 of the Code and Section 2834 of the Regulations;

7 As to Paragraph 8(f), under Section 10177(d) of the Code in conjunction with  
8 Section 10140.6(b) of the Code and Section 2773 of the Regulations.

9 \* \* \*

10 ORDER

11 I

12 All licenses and licensing rights of Respondent under the Real Estate Law are  
13 suspended for a period of sixty (60) days from the effective date of this Order; provided,  
14 however, that:

15 1) Thirty (30) days of said suspension shall be stayed, upon the condition that  
16 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty  
17 pursuant to Section 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total  
18 monetary penalty of \$1,500.

19 a) Said payment shall be in the form of a cashier's check made payable to the  
20 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag  
21 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this  
22 Order.

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

25 c) If Respondent fails to pay the monetary penalty as provided above prior to the  
26 effective date of this Order, the stay of the suspension shall be vacated as to that Respondent and  
27 the order of suspension shall be immediately executed, under this Order, in which event the said

1 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the  
2 money paid to the Department under the terms of this Order.

3 d) If Respondent pays the monetary penalty and any other moneys due under this  
4 Stipulation and Agreement and if no further cause for disciplinary action against the real estate  
5 license of said Respondent occurs within two (2) years from the effective date of this Order, the  
6 entire stay hereby granted this Order, as to said Respondent only, shall become permanent.

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

9 a) Respondent shall obey all laws, rules and regulations governing the rights, duties  
10 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 stipulation,  
12 that cause for disciplinary action occurred within two (2) years from the effective date of this  
13 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate  
14 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no  
15 such determination be made, the stay imposed herein shall become permanent.

16 3) All licenses and licensing rights of Respondent are indefinitely suspended unless  
17 or until Respondent provides proof satisfactory to the Commissioner, of having taken and  
18 successfully completed the continuing education course on trust fund accounting and handling  
19 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of  
20 satisfaction of these requirements includes evidence that Respondent has successfully completed  
21 the trust fund account and handling continuing education courses, no earlier than 120 days prior  
22 to the effective date of the Decision and Order in this matter. Proof of completion of the trust  
23 fund accounting and handling course must be delivered to the Department of Real Estate, Flag  
24 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the  
25 effective date of this Decision and Order.

26 4) Pursuant to Section 10148 of the Code, Respondent shall pay the sum of  
27 \$6,447.25 for the Commissioner's cost of the audit which led to this disciplinary action.

1 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the  
2 Commissioner. Payment of audit costs should not be made until Respondent receives the  
3 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,  
4 Respondent's real estate license shall automatically be suspended until payment is made in full,  
5 or until a decision providing otherwise is adopted following a hearing held pursuant to this  
6 condition.

7 5) Pursuant to Section 10148 of the Code, Respondent shall pay the Commissioner's  
8 reasonable cost, not to exceed \$8,059.06, for an audit to determine if Respondent has corrected  
9 the violation(s) found in the Determination of Issues. In calculating the amount of the  
10 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary  
11 for all persons performing audits of real estate brokers, and shall include an allocation for travel  
12 time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60)  
13 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should  
14 not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition  
15 in a timely manner as provided for herein, Respondent's real estate license shall automatically be  
16 suspended until payment is made in full, or until a decision providing otherwise is adopted  
17 following a hearing held pursuant to this condition.

18  
19 13 - March - 19  
20 \_\_\_\_\_  
21 DATED

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21 TRULY SUGHRUE  
22 Counsel for Complainant

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23 I have read the Stipulation and Agreement, and its terms are understood by me  
24 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the  
25 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive  
26 those rights, including the right of requiring the Commissioner to prove the allegations in the  
27

1 Accusations 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 Respondent further agrees to send the original signed Stipulation and Agreement  
4 by mail to the following address no later than one (1) week from the date the Stipulation and  
5 Agreement is signed by Respondent: *Department of Real Estate, Legal Section, P.O. Box*  
6 *137007, Sacramento, California 95813-7007*. Respondent understands and agreea that if he fails  
7 to return the original signed Stipulation and Agreement by the due date, Complainant retains the  
8 right to set this matter for hearing.

9  
10 January 28, 2019  
11 DATED

  
12 DONNA J. SCHWARZBACH  
13 Respondent

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15 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
16 Order and shall become effective at 12 o'clock noon on **MAY 07 2019**.

17 IT IS SO ORDERED April 10, 2019.

18 DANIEL J. SANDRI  
19 ACTING REAL ESTATE COMMISSIONER

