

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

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ORIGINAL

FILED
MAR 30 2004

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-1626 FR
)	
)	
BRYAN MICHAEL CORPORATION)	<u>STIPULATION AND AGREEMENT</u>
and PHILLIP JAMES CHEATHAM,)	<u>IN SETTLEMENT</u>
)	<u>AND ORDER</u>
Respondents.)	
)	

16
17 It is hereby stipulated by and between BRYAN MICHAEL
18 CORPORATION and PHILLIP JAMES CHEATHAM (hereinafter
19 "Respondents") and their attorney of record, David R. McNamara,
20 of McCormick, Barstow, Sheppard, Wayte & Carruth, and the
21 Complainant, acting by and through David B. Seals, Counsel for
22 the Department of Real Estate, as follows for the purpose of
23 settling and disposing of the Accusation filed on September 19,
24 2003, in this matter:

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondents
27 at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement in Settlement.

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

9 3. A Notice of Defense was filed on or about September
10 24, 2003 by Respondents, pursuant to Section 11505 of the
11 Government Code for the purpose of requesting a hearing on the
12 allegations in the Accusation. Respondents hereby freely and
13 voluntarily withdraw said Notice of Defense. Respondents
14 acknowledge that they understand that by withdrawing said Notice
15 of Defense they will thereby waive their right to require the
16 Commissioner to prove the allegations in the Accusation at a
17 contested hearing held in accordance with the provisions of the
18 APA and that they will waive other rights afforded to them in
19 connection with the hearing such as the right to present evidence
20 in defense of the allegations in the Accusation and the right to
21 cross-examine witnesses.

22 4. This Stipulation is based on the factual allegations
23 contained in the Accusation. In the interests of expedience and
24 economy, Respondents choose not to contest these allegations, but
25 to remain silent and understand that, as a result thereof, these
26 factual allegations, without being admitted or denied, will serve
27 as a prima facie basis for the disciplinary action stipulated to

1 herein. The Real Estate Commissioner shall not be required to
2 provide further evidence to prove said factual allegations.

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

14 6. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement in Settlement shall not constitute an estoppel, merger
17 or bar to any further administrative or civil proceedings by the
18 Department of Real Estate with respect to any matters which were
19 not specifically alleged to be causes for accusation in this
20 proceeding.

21 DETERMINATION OF ISSUES

22 I

23
24 By reason of the foregoing stipulations, admissions
25 and waivers and solely for the purpose of settlement of the
26 pending Accusation without a hearing, it is stipulated and agreed
27 that the facts alleged above are grounds for the suspension or

1 revocation of the licenses and license rights of Respondent
2 PHILLIP JAMES CHEATHAM under Section 10177(h) of the Code and, as
3 to Respondent BRYAN MICHAEL CORPORATION under Section 10137 of
4 the Code.

5 ORDER

6 I

7 All licenses and licensing rights of Respondents BRYAN
8 MICHAEL CORPORATION and PHILLIP JAMES CHEATHAM under the Real
9 Estate Law are suspended for a period of sixty (60) days from the
10 effective date of this Order; provided, however, that:

11 1. Twenty (20) days of said suspension shall be stayed
12 for two (2) years upon the following terms and conditions:

13 A. Respondents shall obey all laws, rules and
14 regulations governing the rights, duties and
15 responsibilities of a real estate licensee in the
16 State of California; and,

17 B. That no final subsequent determination be
18 made, after hearing or upon stipulation, that cause
19 for disciplinary action occurred within two (2) years
20 from the effective date of this Order. Should such a
21 determination be made, the Commissioner may, in his
22 discretion, vacate and set aside the stay order and
23 reimpose all or a portion of the stayed suspension.
24 Should no such determination be made, the stay imposed
25 herein shall become permanent.

26 2. The remaining forty (40) days of said 60-day
27 suspension shall be stayed, as to each Respondent individually,

1 upon the condition that each Respondent petition pursuant to
2 Section 10175.2 of the Business and Professions Code and each
3 pays a monetary penalty pursuant to Section 10175.2 of the
4 Business and Professions Code at a rate of \$50 for each day of
5 the suspension for a total monetary penalty of \$2,000 for each
6 Respondent:

7 A. Said payment shall be in the form of a
8 cashier's check or certified check made payable to the
9 Recovery Account of the Real Estate Fund. Said check
10 must be delivered to the Department prior to the
11 effective date of the Order in this matter.

12 B. No further cause for disciplinary action
13 against the Real Estate licenses of said Respondent
14 occurs within two (2) years from the effective date of
15 the decision in this matter.

16 C. If any Respondent fails to pay the
17 monetary penalty as provided above prior to the
18 effective date of this Order, the stay of the
19 suspension shall be vacated as to that Respondent and
20 the order of suspension shall be immediately executed,
21 under this Paragraph 2 of this Order, in which event
22 the said Respondent shall not be entitled to any
23 repayment nor credit, prorated or otherwise, for the
24 money paid to the Department under the terms of this
25 Order.

26 D. If said Respondents pay the monetary
27 penalty and any other moneys due under this Stipulation

1 and Agreement and if no further cause for disciplinary
2 action against the real estate licenses of said
3 Respondents occurs within two (2) years from the
4 effective date of this Order, the entire stay hereby
5 granted under Paragraphs 1 and 2 of this Order, as to
6 said Respondent only, shall become permanent.

7
8 DATED:

3/18/2004



DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

9
10 * * *

11 I have read the Stipulation and Agreement, have
12 discussed it with my counsel, and its terms are understood by me
13 and are agreeable and acceptable to me. I understand that I am
14 waiving rights given to me by the California Administrative
15 Procedure Act (including but not limited to Sections 11506,
16 11508, 11509, and 11513 of the Government Code), and I willingly,
17 intelligently, and voluntarily waive those rights, including the
18 right of requiring the Commissioner to prove the allegations in
19 the Accusation at a hearing at which I would have the right to
20 cross-examine witnesses against me and to present evidence in
21 defense and mitigation of the charges.

22
23 DATED:

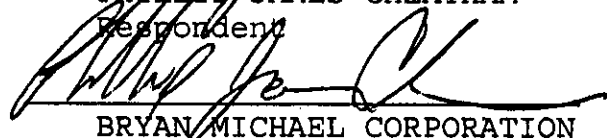
3/6/04



PHILLIP JAMES CHEATHAM
Respondent

24
25 DATED:

3/6/04



BRYAN MICHAEL CORPORATION

Respondent

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* * *

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

DATED: 3/16/04 David R. McNamara
David R. McNamara
Attorney for Respondents

* * *

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

April 19, , 2004.
IT IS SO ORDERED March 19, 2004.

John R. Liberator
JOHN R. LIBERATOR
Acting Real Estate Commissioner

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
FEB 03 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BRYAN MICHAEL CORPORATION and
PHILLIP JAMES CHEATHAM

Case No. H-1626 FR

OAH No. N2004010068

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE DEPARTMENT OF WATER RESOURCES BUILDING, CONFERENCE ROOM, 3374 E. SHIELDS, FRESNO, CALIFORNIA 93726** on **MONDAY--MARCH 8, 2004**, at the hour of **1:30 PM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JANUARY 3, 2004

By David B. Seals
DAVID B. SEALS, Counsel S.E.

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED

SEP 19 2003

DEPARTMENT OF REAL ESTATE

By Jean Dumond

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 1626 FR

12 BRYAN MICHAEL CORPORATION)
13 and PHILLIP JAMES CHEATHAM,)

ACCUSATION

14 Respondents.)

15 The Complainant, John Sweeney, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against BRYAN MICHAEL CORPORATION (hereinafter "Respondent BMC")
18 and PHILLIP JAMES CHEATHAM (hereinafter "Respondent CHEATHAM "),
19 is informed and alleges as follows:

20 I

21 Respondents are licensed and/or have license rights
22 under the Real Estate Law, Part 1 of Division 4 of the California
23 Business and Professions Code (hereinafter "Code") as follows:

24 (a) Respondent BMC as a corporate real estate broker
25 dba American Bankers Mortgage and American
26 Bankers Real Estate.

27 ///

1 (b) Respondent CHEATHAM as a real estate broker at all
2 times herein mentioned and as the designated
3 officer of Respondent BMC.

4 II

5 The Complainant, John Sweeney, a Deputy Real Estate
6 Commissioner of the State of California, makes this Accusation
7 against Respondents in his official capacity.

8 III

9 Whenever reference is made in an allegation in this
10 Accusation to an act or omission of Respondent BMC, such
11 allegation shall be deemed to mean that the officers, directors,
12 employees, agents and real estate licensees employed by or
13 associated with Respondent BMC committed such act or omissions
14 while engaged in furtherance of the business or operation of
15 Respondent BMC and while acting within the course and scope of
16 their corporate authority and employment.

17 IV

18 On or about August 14, 2000 Respondent CHEATHAM was
19 notified by the Department that Joey Rios' conditional real
20 estate salesperson license would be suspended effective December
21 2, 2000 if Mr. Rio did not provide satisfactory evidence that the
22 two statutory courses necessary to remove the condition from his
23 license had been completed. At this time, Mr. Rios was licensed
24 by the Department under Respondent CHEATHAM.

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1 V

2 On or about August 21, 2000 Joey Rios became licensed
3 under Respondent BMC with Respondent CHEATHAM as the designated
4 officer.

5 VI

6 On or about December 3, 2000 Joey Rios' conditional
7 real estate salesperson license was suspended.

8 VII

9 On or about January 11, 2001 Respondent CHEATHAM was
10 notified that Joey Rios' conditional real estate salesperson
11 license was suspended effective December 3, 2000.

12 VIII

13 On or about February 7, 2001 Joey Rios was assisting
14 Derrick Lamont Jinks and Kimberly Ann Jinks (hereinafter the
15 "Jinks") in negotiating the purchase of the real property known
16 as 965 W. National, Clovis (hereinafter the "Property"). At the
17 time Joey Rios was in the employ of Respondent BMC dba American
18 Bankers Real Estate. The acts performed by Joey Rios herein are
19 acts for which a real estate license is required. Joey Rios did
20 not possess such a license at the time these acts were performed.
21 Joey Rios was compensated for such acts as discussed below.

22 IX

23 On or about April 1, 2001 escrow closed on the
24 Property.

25 X

26 On or about April 10, 2001 Respondent BMC dba American
27 Bankers Real Estate received a commission of \$1,905.62 on the

1 sale of the Property and Joey Rios received a commission of
2 \$916.81 on the sale of the Property.

3 XI

4 At all times mentioned herein, Respondent CHEATHAM
5 failed to exercise reasonable supervision over the activities of
6 Respondent BMC, and permitted, ratified and/or caused the conduct
7 described above. Respondent CHEATHAM failed to reasonably or
8 adequately review, oversee, inspect and manage the personnel and
9 activities of Respondent BMC, and/or to establish reasonable
10 policies, rules, procedures and systems for such review,
11 oversight, inspection and management.

12 XII

13 The acts and/or omissions of Respondents BMC and
14 CHEATHAM described above are grounds for the revocation or
15 suspension of Respondents' licenses under the following sections
16 of the Business and Professions Code and the Regulations:

- 17 (a) As to Respondent BMC under Section 10137 of the Code; and
18 (b) As to Respondent CHEATHAM only, under Section 10177(g)
19 and/or (h) of the Code and Section 2725 of the Regulations
20 in conjunction with Section 10177(d) of the Code.

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22 ///

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary action
4 against all licenses and license rights of Respondents, under the
5 Real Estate Law and for such other and further relief as may be
6 proper under other provisions of law.

7 
8 JOHN SWEENEY
Deputy Real Estate Commissioner

9 Dated at Fresno, California,
10 this 28th day of May, 2003.