

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
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5
6

FILED
MAR 29 2007

DEPARTMENT OF REAL ESTATE

By Anne Shawver

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)
11)

No. H-1990 FR

12 BRAGER & ASSOC., INC., a)
13 California Corporation, and)
14 ROBERT JOSEPH BRAGER)

STIPULATION AND
AGREEMENT

Respondents.

15 It is hereby stipulated by and between BRAGER &
16 ASSOC., INC., a California Corporation, and ROBERT JOSEPH
17 BRAGER (hereinafter "Respondents"), and the Complainant, acting
18 by and through Truly Sughrue, Counsel for the Department of
19 Real Estate, as follows for the purpose of settling and
20 disposing the Accusation filed on November 27, 2006 in this
21 matter:

22
23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondents
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27 Procedure Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

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

6 3. On December 8, 2006, Respondents filed a Notice of
7 Defense pursuant to Section 11505 of the Government Code for the
8 purpose of requesting a hearing on the allegations in the
9 Accusation. Respondents hereby freely and voluntarily withdraw
10 said Notice of Defense. Respondents acknowledge that they
11 understand that by withdrawing said Notice of Defense they will
12 thereby waive their rights to require the Commissioner to prove
13 the allegations in the Accusation at a contested hearing held in
14 accordance with the provisions of the APA, and that they will
15 waive other rights afforded to them in connection with the
16 hearing such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.
19

20 4. This stipulation is based on the factual
21 allegations contained in the Accusation. In the interest of
22 expediency and economy, Respondents choose not to contest these
23 factual allegations, but to remain silent and understands that,
24 as a result thereof, these factual statements will serve as a
25 prima facie basis for the "Determination of Issues" and "Order"
26 set forth below. The Real Estate Commissioner shall not be
27 required to provide further evidence to prove such allegations.

1 5. This Stipulation and Respondents decision not to
2 contest the Accusation are made for the purpose of reaching an
3 agreed disposition of this proceeding and are expressly limited
4 to this proceeding and any other proceeding or case in which the
5 Department of Real Estate (hereinafter "the Department"), the
6 state or federal government, an agency of this state, or an
7 agency of another state is involved.

8 6. Respondents understand that by agreeing to this
9 Stipulation and Agreement, Respondents agree to pay, pursuant to
10 Section 10148 of the California Business and Professions Code,
11 the cost of the audit which resulted in the determination that
12 Respondent committed the trust fund violation(s) found in
13 Paragraph I, below, of the Determination of Issues. The amount
14 of said costs is \$4,211.64.

15 7. Respondents further understands that by agreeing
16 to this Stipulation and Agreement in Settlement, the findings
17 set forth below in the Determination Of Issues become final, and
18 that the Commissioner may charge said Respondents for the
19 costs of any audit conducted pursuant to Section 10148 of
20 the California Business and Professions Code to determine if
21 the violations have been corrected. The maximum costs of
22 said audit shall not exceed \$4,211.64.

23 8. It is understood by the parties that the Real
24 Estate Commissioner may adopt the Stipulation and Agreement as
25 his decision in this matter thereby imposing the penalty and
26 sanctions on the real estate licenses and license rights of
27

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

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

14 * * *

15 DETERMINATION OF ISSUES

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

21 I

22 The acts and omissions of Respondents as described in
23 the Accusation are grounds for the suspension or revocation of
24 Respondents licenses and license rights under the following
25 sections of the Code and Regulations:

26 (a) As to Paragraph IX(a), under Section 10145 of the
27 Code in conjunction with Section 10177(d) of the Code;

1 (b) As to Paragraph IX(b), under Section 2832.1 of
2 the Regulations in conjunction with Section 10177(d) of the
3 Code; and

4 (c) As to Paragraph IX(c), under Sections 2831.2 of the
5 Regulations in conjunction with Section 10177(d) of the Code.

6 II

7 The acts and/or omissions of Respondent ROBERT JOSEPH
8 BRAGER (hereinafter "BRAGER") described in the Accusation,
9 constitute failure on the part of BRAGER, as designated broker-
10 officer for BRAGER & ASSOC., INC. (hereinafter "BAI"), to
11 exercise reasonable supervision and control over the licensed
12 activities of BAI required by Section 10159.2 of the Code, and
13 is cause for the suspension or revocation of BRAGER's license
14 and/or license rights under Section 10177(h) of the Code.

15 * * *

16 ORDER

17 I

18 All real estate license(s) and license rights of
19 Respondent BAI are revoked.

20 II

21 A. All real estate license(s) and license rights of Respondent
22 BRAGER are revoked.

23 B. A restricted real estate broker license shall be issued to
24 Respondent BRAGER pursuant to Section 10156.6 of the Code if
25 BRAGER makes application therefor and pays to the Department
26
27

1 the appropriate fee for said license within ninety (90) days
2 of the effective date of the Order.

3 C. The restricted license issued to Respondent BRAGER shall be
4 subject to all of the provisions of Section 10156.7 of the
5 Business and Professions Code and to the following conditions
6 and limitations imposed under authority of Section 10156.6 of
7 said Code:

8 1) The restricted license issued to BRAGER may be suspended
9 prior to hearing by order of the Real Estate Commissioner
10 in the event of Respondent's conviction or plea of nolo
11 contendere to a crime which bears a substantial
12 relationship to Respondent's fitness or capacity as a
13 real estate licensee.

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

21 3) BRAGER shall not be eligible to apply for the issuance of
22 an unrestricted real estate license, nor the removal of
23 any of the conditions of the restricted license, until
24 two (2) years have elapsed from the effective date of
25 this Order.
26
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1 4) BRAGER shall, prior to and as a condition of the issuance
2 of said restricted license, submit proof satisfactory to
3 the Commissioner of having taken and completed the
4 continuing education course on trust fund accounting and
5 handling specified in paragraph (3) of subdivision (a) of
6 Section 10170.5 of the Business and Professions Code from
7 an approved continuing education course provider. Said
8 course may have been completed within one hundred and
9 eighty (120) days prior to the effective date of the
10 order herein.

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

24 E. BRAGER shall, within six (6) months from the effective date
25 of this Decision, take and pass the Professional
26 Responsibility Examination administered by the Department
27

1 including the payment of the appropriate examination fee. If
2 BRAGER fails to satisfy this condition, the Commissioner may
3 order suspension of the restricted license until Respondent
4 BRAGER passes the examination.

5 F. Pursuant to Section 10148 of the Business and Professions
6 Code, Respondent shall pay the sum of \$4,211.64 for the
7 Commissioner's cost of the audit which led to this
8 disciplinary action. Respondent shall pay such cost within
9 180 days after the effective date of the Decision herein.
10 If Respondent fails to pay such cost within the 180 days,
11 the Commissioner may in his discretion indefinitely suspend
12 all license and licensing rights of Respondent under the
13 Real Estate Law until payment is made in full.

14 G. Pursuant to Section 10148 of the Business and Professions
15 Code, Respondent shall pay the Commissioner's reasonable
16 cost, not to exceed \$4,211.64, for an audit to determine if
17 Respondent has corrected the trust fund violation(s) found
18 in Paragraph I of the Determination of Issues. In
19 calculating the amount of the Commissioner's reasonable
20 cost, the Commissioner may use the estimated average hourly
21 salary for all persons performing audits of real estate
22 brokers, and shall include an allocation for travel time to
23 and from the auditor's place of work. Respondent shall pay
24 such cost within forty-five (45) days of receiving an
25 invoice therefor from the Commissioner detailing the
26 activities performed during the audit and the amount of time
27

1 spent performing those activities. The Commissioner may
2 suspend the restricted license issued to Respondent pending
3 a hearing held in accordance with Section 11500, et seq., of
4 the Government Code, if payment is not timely made as
5 provided for herein, or as provided for in a subsequent
6 agreement between Respondent and the Commissioner. The
7 suspension shall remain in effect until payment is made in
8 full or until Respondent enters into an agreement
9 satisfactory to the Commissioner to provide for payment, or
10 until a decision providing otherwise is adopted following a
11 hearing held pursuant to this condition.

12
13 28-Feb-07
DATED

14 
TRULY SUGHRUE
Counsel for Complainant

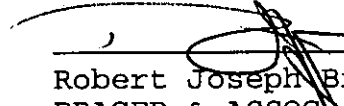
15 * * *

16 I have read the Stipulation and Agreement, discussed it
17 with my counsel, and its terms are understood by me and are
18 agreeable and acceptable to me. I understand that I am waiving
19 rights given to me by the California Administrative Procedure
20 Act, and I willingly, intelligently and voluntarily waive those
21 rights, including the right of requiring the Commissioner to
22 prove the allegations in the Accusation at a hearing at which I
23 would have the right to cross-examine witnesses against me and to
24 present evidence in defense and mitigation of the charges.

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2/24/07

DATED


Robert Joseph Brager for
BRAGER & ASSOC, INC.
Respondent

2/24/07

DATED


ROBERT JOSEPH BRAGER
Respondent

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on APR 18 2007

IT IS SO ORDERED 3/27/, 2007.

JEFF DAVIS
Real estate Commissioner



1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781

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NOV 27 2006

DEPARTMENT OF REAL ESTATE

By Anne Shaver

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-1990 FR

12 BRAGER & ASSOC., INC., a)
13 California Corporation, and)
14 ROBERT JOSEPH BRAGER)

ACCUSATION

Respondents.)

15
16 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against BRAGER & ASSOC., INC. a California Corporation, and
19 ROBERT JOSEPH BRAGER (hereinafter "Respondents"), are informed
20 and alleges as follows:

21 I

22 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

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2 II

3 Respondents are presently licensed and/or have license
4 rights under the Real Estate Law (Part 1 of Division 4 of the
5 Business and Professions Code) (hereinafter "the Code").

6 III

7 At all times herein mentioned, Respondent ROBERT JOSEPH
8 BRAGER (hereinafter "BRAGER") was and is licensed by the State of
9 California Department of Real Estate (hereinafter "Department")
10 as a real estate broker.

11 IV

12 At all times herein mentioned, Respondent BRAGER &
13 ASSOC., INC. (hereinafter "BAI") was and is licensed by the
14 Department as a corporate real estate broker by and through
15 BRAGER as designated officer-broker of BAI to qualify said
16 corporation and to act for said corporation as a real estate
17 broker.
18

19 V

20 As said designated officer-broker, BRAGER was and now
21 is responsible pursuant to Section 10159.2 of the Code for the
22 supervision of the activities of the officers, agents, real
23 estate licensees and employees of BAI for which a license is
24 required.

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3 VI

4 At all times herein mentioned BAI engaged in the
5 business of, acted in the capacity of, advertised and assumed to
6 act as a real estate broker in the State of California within the
7 meaning of:

8 (a) Section 10131(a) of the Code, including the
9 operation and conduct of a real estate resale brokerage with the
10 public wherein, on behalf of others, for compensation or in
11 expectation of compensation, Respondent BAI sold and offered to
12 sell, bought and offered to buy, solicited prospective sellers
13 and purchasers of, solicited and obtained listings of, and
14 negotiated the purchase and sale of real property;
15

16 (b) Section 10131(b) of the Code, including the
17 operation and conduct of a property management business with the
18 public wherein, on behalf of others, for compensation or in
19 expectation of compensation, Respondent BAI leased or rented and
20 offered to lease or rent, and placed for rent, and solicited
21 listings of places for rent, and solicited for prospective
22 tenants of real property or improvements thereon, and collected
23 rents from real property or improvements thereon; and

24 (c) Section 10131(d) of the Code, including the
25 operation and conduct of a mortgage loan brokerage with the
26 public wherein, on behalf of others, for compensation or in
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1 expectation of compensation, Respondent BAI solicited lenders and
2 borrowers for loans secured directly or collaterally by liens on
3 real property, and wherein Respondent BAI arranged, negotiated,
4 processed, and consummated such loans.

5 VII

6 In acting as real estate broker, as described in
7 Paragraph VI, Respondents accepted or received funds in trust
8 (hereinafter "trust funds") from buyers, sellers, owners,
9 tenants, borrowers, lenders and others in connection with the
10 purchase and sale of real property, the leasing and renting of
11 real property, and the negotiation of loans secured by real
12 property, as alleged herein, and thereafter from time to time
13 made, or caused to be made, disbursements of said funds.

14 VIII

15 The aforesaid trust funds accepted or received by
16 Respondents were deposited or caused to be deposited by
17 Respondents into one or more bank accounts (hereinafter "trust
18 funds accounts") maintained by Respondent for the handling of
19 trust funds, including but not limited to the following:
20

21 <u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
22 Brager & Assoc Inc, DBA Real Property	Wells Fargo Bank
23 Management Brokers Trust Account	P.O. Box 6995
24 Account No. 586-5184591	Portland, OR 97228-
(Trust #1)	6995

25 IX

1 Between on or about January 1, 2005 through November
2 30, 2005, in connection with the collection and disbursement of
3 said trust funds Respondents:

4 (a) Failed to deposit and maintain trust funds in
5 Trust #1 in such manner that as of November 30, 2005, there was
6 a shortage of \$2,125.19 of trust funds;

7 (b) Failed to obtain prior written consent from each
8 of the principals for the reduction of the aggregate balance of
9 trust funds in Trust #1 to an amount less than the existing
10 aggregate trust fund liability to the owners of said funds in
11 violation of Section 2832.1 of the Regulations; and

12 (c) Failed to reconcile, at least once a month, the
13 balance of all separate beneficiary or transaction records with
14 the record of all trust funds received into and disbursed from
15 Trust #1 in violation of Section 2831.2 of the Regulations.
16

17 X

18 BRAGER failed to exercise reasonable supervision over
19 the acts of BAI in such a manner as to allow the acts and events
20 described above to occur.

21 XI

22 The acts and/or omissions of BRAGER described in
23 Paragraph X, constitutes failure on the part of BRAGER, as
24 designated broker-officer for BAI, to exercise reasonable
25 supervision and control over the licensed activities of BAI
26 required by Section 10159.2 of the Code.
27

PRIOR DISCIPLINE

XII

Effective April 1, 2005, in Case No. H-1707 FR, the Real Estate Commissioner disciplined the real estate licenses of Respondents BRAGER and BAI for violation of Sections 10145, and 10177(d) of the Code, and Section 2831, 2831.1, 2831.2, and 2832.1 of the Regulations. In addition, Respondent BRAGER was disciplined for a violation of Section 10177(g), 10177(h) and 10159.2 of the Code. The discipline imposed upon Respondents was a 60-day suspension stayed upon terms and conditions.

XIII

The facts alleged above are grounds for the suspension or revocation of Respondents licenses and license rights under the following sections of the Code and Regulations:

(a) As to Paragraph IX(a), under Section 10145 of the Code in conjunction with Section 10177(d) of the Code;

(b) As to Paragraph IX(b), under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code; and

(c) As to Paragraph IX(c), under Sections 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code.

XIV

The facts alleged in Paragraphs X and XI, are grounds from the suspension or revocation of the licenses and license rights of Respondent BRAGER under Sections 10177(g) and/or

1 10177(h) of the Code, and Section 10177(d) of the Code in
2 conjunction with Section 10159.2 of the Code.

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

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11
12 
13 JOHN W. SWEENEY
14 Deputy Real Estate Commissioner

15 Dated at Fresno, California,
16 this 22nd day of November 2006
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