

1 Department of Real Estate
2 107 So. Broadway, Room 8107
3 Los Angeles, CA 90012
4 (213) 897-3937

FILED
AUG - 6 1997
DEPARTMENT OF REAL ESTATE

By K. Mederholt

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8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-2283 SD
12 JAY RAY BAKER COMPANY,)
13 a corporation; and JAY BARRY BAKER,) STIPULATION AND AGREEMENT:
14 individually and as) IN
15 designated officer of) SETTLEMENT AND ORDER
16 J. Ray Baker Company,)
Respondents)

17 It is hereby stipulated by and between JAY RAY BAKER
18 COMPANY and JAY BARRY BAKER, individually and now as designated
19 officer of J. Ray Baker Company (sometimes referred to as
20 respondents) and, the Complainant, acting by and through Marjorie
21 P. Mersel, Counsel for the Department of Real Estate, as follows
22 for the purpose of settling and disposing of the Accusation filed
23 on December 3, 1996, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and respondents
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

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

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

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

20 4. This Stipulation is based on the factual allegations
21 contained in the Accusation. In the interest of expedience and
22 economy, respondents choose not to contest these allegations, but
23 to remain silent and understand that, as a result thereof, these
24 factual allegations, without being admitted or denied, will serve
25 as a prima facie basis for the disciplinary action stipulated to
26 herein. The Real Estate Commissioner shall not be required to
27 provide further evidence to prove said factual allegations.



1 5. This Stipulation is based on respondents' decision
2 not to contest the allegations set forth in the Accusation as a
3 result of the agreement negotiated between the parties. It is
4 expressly limited to this proceeding and any further proceeding
5 initiated by or brought before the Department of Real Estate based
6 upon the facts and circumstances alleged in the Accusation, and
7 made for the sole purpose of reaching an agreed disposition of
8 this proceeding. The decision of respondents not to contest the
9 factual statements alleged, and as contained in the stipulated
10 Order, is made solely for the purpose of effectuating this
11 Stipulation. It is the intent and understanding of the parties
12 that this Stipulation and Order shall not be binding or admissible
13 against respondents in any actions against respondents by third
14 parties.

15 6. It is understood by the parties that the Real Estate
16 Commissioner may adopt the Stipulation as his decision in this
17 matter thereby imposing the penalty and sanctions on respondents'
18 real estate licenses and license rights as set forth in the
19 "Order" hereinbelow. In the event that the Commissioner in his
20 discretion does not adopt the Stipulation, it shall be void and of
21 no effect, and respondents shall retain the right to a hearing and
22 proceeding on the Accusation under the provisions of the APA and
23 shall not be bound by any admission or waiver made herein.

24 7. The Order or any subsequent Order of the Real Estate
25 Commissioner made pursuant to this Stipulation shall not
26 constitute an estoppel, merger or bar to any further
27 administrative or civil proceedings by the Department of Real



1 Estate with respect to any matters which were not specifically
2 alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

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

8
9 The acts or omissions of respondents J. RAY BAKER
10 COMPANY and JAY BARRY BAKER as described in Paragraph 4, above,
11 are in violation of Section 10145 of the California Business and
12 Professions Code (Code) and Sections 2830, 2832.1 and 2834 of
13 Title 10, Chapter 6 of the California Code of Regulations, and are
14 a basis for the suspension or revocation of said respondents'
15 license and license rights pursuant to Section 10177(d) of the
16 Code.

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ORDER

WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE
WRITTEN STIPULATION OF THE PARTIES:

I

The real estate broker license and license rights of
respondent J. RAY BAKER COMPANY under the Real Estate Law (Part 1
of Division 4 of the Code) are hereby revoked.

However, respondent J. RAY BAKER COMPANY shall be
entitled to apply for and be issued a restricted real estate
broker license if it makes application therefor and pays to the
Department of Real Estate the appropriate fee for said license
within ninety (90) days of the effective date of the Decision
herein.

The restricted real estate broker license issued to
respondent shall be subject to all of the provisions of Section
10156.7 of the Code and the following limitations, conditions and
restrictions imposed under authority of Section 10156.6 of the
Code:

A. The restricted license may be suspended prior to
hearing by Order of the Real Estate Commissioner in the event of
respondent's conviction (including conviction of a plea of nolo
contendere) to a crime which bears a significant relationship to
respondent's fitness or capacity as a real estate licensee.

B. The restricted license may be suspended after
hearing by Order of the Real Estate Commissioner on evidence
satisfactory to the Commissioner that respondent has, after the
effective date of the Order herein, violated provisions of the



1 California Real Estate Law, the Subdivided Lands Law, Regulations
2 of the Real Estate Commissioner or conditions attaching to said
3 restricted license.

4 C. Respondent shall obey all laws of the United States,
5 the State of California and its political subdivisions, and shall
6 further obey and comply with all rules and regulations of the Real
7 Estate Commissioner.

8 D. Respondent shall not be eligible for the issuance of
9 unrestricted real estate license nor the removal of any of the
10 conditions, limitations or restrictions of the restricted license
11 until at least two (2) years has elapsed from the effective date
12 of the Decision.

13 II

14 The real estate broker license and license rights of
15 respondent JAY BARRY BAKER under the Real Estate Law (Part 1 of
16 Division 4 of the Business and Professions Code hereinafter
17 "Code") are hereby revoked.

18 However, respondent shall be entitled to apply for and
19 be issued a restricted real estate broker license if respondent
20 makes application therefor and pays to the Department of Real
21 Estate the appropriate fee for said license within ninety (90)
22 days of the effective date of the Decision herein.

23 The restricted real estate broker license issued to
24 respondent shall be subject to all of the provisions of Section
25 10156.7 of the Business and Professions Code and the following
26 limitations, conditions and restrictions imposed under authority
27 of Section 10156.6 of the Code:

1 A. The restricted license may be suspended prior to
2 hearing by Order of the Real Estate Commissioner in the event of
3 respondent's conviction (including conviction of a plea of nolo
4 contendere) to a crime which bears a significant relationship to
5 respondent's fitness or capacity as a real estate licensee.

6 B. The restricted license may be suspended prior to
7 hearing by Order of the Real Estate Commissioner on evidence
8 satisfactory to the Commissioner that respondent has, after the
9 effective date of the Order herein, violated provisions of the
10 California Real Estate Law, the Subdivided Lands Law, Regulations
11 of the Real Estate Commissioner or conditions attaching to said
12 restricted license.

13 C. Respondent shall obey all laws of the United States;
14 the State of California and its political subdivisions, and shall
15 further obey and comply with all rules and regulations of the Real
16 Estate Commissioner.

17 D. Respondent shall, within twelve (12) months from the
18 effective date of this Decision, present evidence satisfactory to
19 the Real Estate Commissioner that respondent has, since the most
20 recent issuance of an original or renewal real estate license,
21 taken and successfully completed the continuing education
22 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
23 for renewal of a real estate license. If respondent fails to
24 satisfy this condition, the Commissioner may order the suspension
25 of the restricted license until the respondent presents such
26 evidence. The Commissioner shall afford respondent the
27



1 opportunity for a hearing pursuant to the Administrative Procedure
2 Act to present such evidence.

3 E. Respondent shall within six months from the effective
4 date of the restricted license, take and pass the Professional
5 Responsibility Examination administered by the Department
6 including the payment of the appropriate examination fee. If
7 respondent fails to satisfy this condition, the Commissioner may
8 order suspension of the restricted license until respondent passes
9 the examination.

10 F. Respondent shall not be eligible for the issuance of
11 unrestricted real estate license nor the removal of any of the
12 conditions, limitations or restrictions of the restricted license
13 until at least two (2) years has elapsed from the effective date
14 of the Decision.

15 III

16 A. Pursuant to Section 10148 of the Business and
17 Professions Code, respondents J. RAY BAKER COMPANY and JAY BARRY
18 BAKER, or either of them, shall pay the Commissioner's reasonable
19 cost for an audit to determine if respondent has corrected the
20 trust fund violation(s) found in paragraph I of the Determination
21 of Issues. In calculating the amount of the Commissioner's
22 reasonable cost, the Commissioner may use the estimated average
23 hourly salary for all persons performing audits of real estate
24 brokers, and shall include an allocation for travel time to and
25 from the auditor's place of work. Respondent shall pay such cost,
26 not to exceed \$1,800, within 45 days of receiving an invoice from
27 the Commissioner detailing the activities performed during the



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

11 B. As a further condition of any restricted license
12 being issued respondents, they, or either of them, shall first
13 provide evidence satisfactory to the Commissioner that the deficit
14 in the amount of \$16,195.24 has been cured including the identity
15 of the source of funds used to cure the deficit.

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18 DATED:

July 9, 1997

Marjorie P. Merse
MARJORIE P. MERSEL
Counsel for Complainant

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We have read the Stipulation In Settlement and Order and its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we 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 we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

DATED:

July 2, 1997

J. RAY BAKER COMPANY,
Respondent

BY: JAY BARRY BAKER, D.O.

DATED:

July 2, 1997

JAY BARRY BAKER, D.O.,
individually and as designated
officer of J. Ray Baker Company,
Respondent

DATED:

7-8-97

JAMES E. LUND,
BY: JAMES E. LUND,
Attorney for Respondents

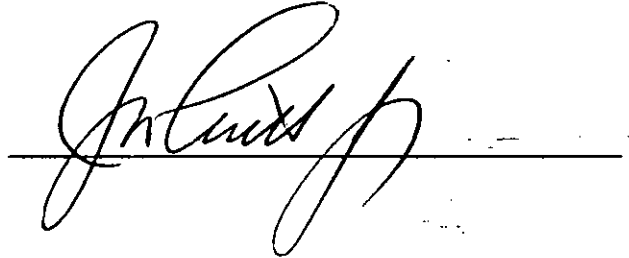
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The foregoing Stipulation and Agreement for Settlement
is hereby adopted as my Decision and Order and shall become
effective at 12 o' clock at noon on August 26, 1997.

DATED: 7/21, 1997.

JIM ANTT, JR.
Real Estate Commissioner



Sacto JCG

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 19 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

J. RAY BAKER COMPANY, et al.,

By *K. Mederbolt*

Case No. H-2283 SD

OAH No. L-9704252

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
Office of Administrative Hearings, 1350 Front Street, Room 6022
San Diego, CA 92101

on July 23, 24 & 25, 1997 at the hour of 9:00 a.m.
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: May 19, 1997

cc: J. Ray Baker Company
Jay Barry Baker
James E. Lund, Esq.
Sacto OAH/SD DB JCG

DEPARTMENT OF REAL ESTATE

By *Margorie P. Messel*
Counsel

*Index
2/10/96*

MARJORIE P. MERSEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012

(213) 897-3937

FILED
DEC - 3 1996
DEPARTMENT OF REAL ESTATE

By K. Kuderholt

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	No. H-2283 SD
	)	
J. RAY BAKER COMPANY	)	<u>A C C U S A T I O N</u>
a California corporation, and	)	
JAY BARRY BAKER, individually	)	
and as the designated broker	)	
of J. Ray Baker Company,	)	
	)	
Respondents.	)	

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California. for cause of accusation against J. RAY BAKER COMPANY (JRBC) and JAY BARRY BAKER (BAKER) individually and as the designated officer of J. RAY BAKER COMPANY, alleges as follows:

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The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

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II

At all times mentioned herein, BAKER was and still is licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker, both individually and as the designated broker of JRBC. At all times mentioned herein, JRBC, was and still is licensed by the Department as a corporate real estate broker.

III

At all times mentioned herein, for or in expectation of compensation, JRBC and BAKER (sometimes referred to as Respondents) were licensed to act as real estate brokers in the State of California within the meaning of Section 10131 (b) of the California Business Professions Code (Code) wherein they solicited for and thereafter negotiated leases on, or rentals of, real property as the agent of others and collected rent from tenants residing on said real property. As the designated broker officer of the corporation, BAKER had responsibilities set forth in Section 10159.2 of the Business and Professions Code (Code).

IV

On or about December 19, 1995, a representative of the Department of Real Estate completed her examination of the books and records of Respondents with respect to activities requiring a real estate license for period of January 1, 1995, to October 31, 1995. The audit included, but was not limited to, an examination of four trust accounts maintained by Respondents for the deposit of trust funds received and deposited with North County Bank and the Bank of America, both in Escondido, California. These accounts



1 are as follows:

- 2 1. Account No. 510165353 (TA#1)
3 J Barry Baker dba Exclusive Property Management
- 4 2. Account No. 510142981 (TA#2)
5 J. Ray Baker Real Estate Trust
- 6 3. Account No. 0169003614 (TA#3)
7 Barry Baker dba Poway Palms Apts.
- 8 4. Account No. 510152130 (TA#4)
9 Ray Baker Trust West Valley Plaza

10 Said examination determined that Respondents were
11 operating in violation of several Sections of the Code and Chapter
12 6, Title 10, California Code of Regulations (Regulations) as set
13 forth in the following paragraphs.

14 V

15 With particular reference to the trust accounts named
16 above, Respondents:

17 A. Failed to maintain trust funds received and disbursed
18 from all four trust accounts in the broker's name as trustee as
19 required by Section 2830 of the Regulations and Section 10145 of
20 the Code.

21 B. Disbursed trust funds from TA#1 and TA#2 without the
22 prior written consent of every principal who was an owner of the
23 funds in the account, thereby reducing the balance of funds in the
24 account to an amount which was, on October 31, 1995, \$16,195.24
25 less than the existing aggregate trust fund liability of
26 Respondents to all owners of said funds in violation of Section
27 2832.1 of the Regulations.

C. Failed to reconcile the balance of all the separate
records maintained pursuant to Section 2831.1 of the Regulations



1 with the balance of the total trust funds received and disbursed
2 per the Regulation 2831 records in violation of Section 2831.2 of
3 the Regulations.

4 D. Permitted an unlicensed, unbonded person named
5 Carolyn Pollock to be the signatory on TA#2 in violation of
6 Section 2834 of the Regulations.

7 E. Used the unlicensed fictitious name of "Exclusive
8 Property Management" to conduct activities requiring a real estate
9 license in violation of Section 2731 of the Regulations.

10 F. Changed their main office address from 501 S.
11 Escondido Blvd., Escondido, California, to 405 W. 9th Avenue in
12 Escondido without notifying the Department in a timely manner in
13 violation of Section 2715 of the Regulations.

14 VI

15 The acts and omissions of BAKER, in failing to properly
16 supervise the conduct of JRBC, and to take steps to keep JRBC in
17 compliance with Real Estate Law, and the omissions set forth in
18 Paragraph V, is cause to suspend or revoke his license rights
19 pursuant to Sections 10177(d) and 10177(h) of the Code.

20 VII

21 Further, the acts and omissions of JRBC, as set forth in
22 Paragraph V is in violation of Section 10145 of the Code and the
23 cited Regulations and is cause to suspend or revoke the licenses
24 and license rights of JRBC pursuant to Section 10177(d) of the
25 Code.

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

8 Dated at San Diego, California
9 this 3rd day of December, 1996.

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11 J. CHRIS GRAVES
12 Deputy Real Estate Commissioner
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26 cc: J. Ray Baker Company
27 Jay Berry Baker
 Sacto.
 DB

