

FILED

DEC 10 2009

DEPARTMENT OF REAL ESTATE

By K. Long

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
ROBERT JOSEPH BRAGER,
Respondent.

No. H-2373 FR

DISMISSAL

The Accusation filed in this action on April 22, 2009, against Respondent
ROBERT JOSEPH BRAGER is DISMISSED.

IT IS SO ORDERED this 9th day of December, 2009.

JEFF DAVIS
Real Estate Commissioner

[Signature]

FILED

JUN 26 2009

DEPARTMENT OF REAL ESTATE

By *K. Henry*

DEPARTMENT OF REAL ESTATE

P. O. Box 187000

Sacramento, CA 95818-7000

Telephone: (916) 227-0789

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

ROBERT JOSEPH BRAGER,

Respondent.

) DRE No. H-2373 FR
) STIPULATION AND
) AGREEMENT IN
) SETTLEMENT AND ORDER

It is hereby stipulated by and between ROBERT JOSEPH BRAGER (hereinafter "Respondent"), and the Complainant, acting by and through Kenneth C. Espell, Counsel for the Department of Real Estate, as follows, for the purpose of settling and disposing of the Accusation filed on April 22, 2009, in this matter:

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

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate (the "Department") in this proceeding.

1 3. Respondent, pursuant to the limitations set forth below, hereby admits that
2 the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
3 true and correct and the Real Estate Commissioner shall not be required to provide further
4 evidence of such allegations.

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

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

16 6. In lieu of a suspension or revocation of Respondent's restricted real estate
17 license, Respondent requests that this matter be settled for the payment of \$4,211.64 in
18 exchange for a dismissal of the accusation in Department's Case Number H- 2373 FR.

19 7. Within 120 days of the date of the Order below, and in exchange for the
20 full payment of the sum of \$4,211.64, the Department will dismiss Case Number H- 2373 FR.
21 However, should Respondent fail to make the aforementioned full payment within 120 days of
22 the Order below, Respondent authorizes the Department to enter a Default and Default
23 Judgment against Respondent in Case Number H-2373 FR, thereby revoking Respondent's
24 restricted salesperson license outright.

25 8. Respondent further agrees that the payment of the above referenced sum is not
26 an attempt by the Department to collect a debt that was discharged in Respondent's Chapter 7
27 Bankruptcy filed in the United States District Court for the Central District of California,

1 Modesto Facility, case number 2007-0346, or any other bankruptcy action, but, the payment of
2 the aforementioned sum is solely offered by Respondent and accepted by the Department to
3 settle this matter in lieu of a suspension or revocation of Respondent's restricted salesperson
4 license.

5 9. Respondent further agrees not to petition the Department for a plenary real
6 estate salesperson license and/or file an application for a real estate broker license during the
7 120 day period agreed upon for the full payment of the aforementioned sum. In addition, should
8 Respondent attempt to surrender his restricted real estate salesperson license before Respondent
9 has made full payment of the aforementioned sum, Respondent authorizes the Department to
10 enter a Default and Default Judgment against Respondent in Case Number H-2373 FR, thereby
11 revoking Respondent's restricted real estate salesperson license.

12 10. Respondent expressly agrees that for purposes of any subsequent proceedings
13 in bankruptcy, the payment(s) made pursuant to this agreement are penalties and fines pursuant to
14 Statute and that such penalties and fines are not compensation for an actual pecuniary loss
15 suffered by the Department. Respondent therefore agrees that his liability under this Stipulation
16 and Agreement in Settlement is non-dischargeable in a bankruptcy pursuant to 11 U.S.C. §
17 523(a) (7). The parties agree that the Department's claim in any bankruptcy proceeding shall be
18 for the full amount of the Department's claim. In the event of any filing for protection under
19 bankruptcy, liquidation, receivership or other insolvency law, Respondent agrees not to contest
20 or oppose any motion filed by or on behalf of the Department seeking relief from the automatic
21 stay imposed by 11 U.S.C. § 362(a), or to seek relief under 11 U.S.C. § 105 to enjoin or restrain
22 the Department from recovering monies owed arising out of this Stipulation and Agreement in
23 Settlement or through offset. Respondent recognizes that this express waiver is in consideration
24 for the final settlement of the accusation in this proceeding. The parties further agree that, in the
25 event of default or bankruptcy, the Department in its sole discretion is entitled to declare this
26 Stipulation and Agreement in Settlement void and to enter a Default and Default Judgment
27 against Respondent revoking outright Respondent's restricted real estate salesperson license.

1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions and waivers, and solely for the
3 purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
4 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds
5 for the suspension or revocation of the licenses and license rights of Respondent under Section
6 10177 of the Business of Professions Code (the "Code").

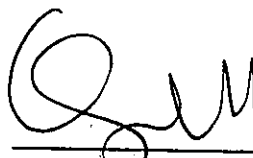
7 ORDER

8 IT IS HEREBY ORDERED that in exchange for Respondent's full payment of the
9 sum of \$4,211.64 within 120 days of the date of this Order, the Department will dismiss
10 Department of Real Estate Case Number H-2373 FR. However, if Respondent fails to make full
11 payment of \$4,211.64 within 120 days of this Order, the Department shall enter a Default and
12 Default Judgment in Department of Real Estate Case Number H-2373 FR, thereby revoking
13 Respondent's restricted salesperson license.

14 IN ADDITION, should Respondent attempt to surrender his restricted real estate
15 salesperson license before Respondent has made full payment of \$4,211.64, the Department may
16 enter a Default and Default Judgment against Respondent in Case Number H-2373 FR, thereby
17 revoking Respondent's restricted real estate salesperson license and all license rights Respondent
18 may hold at the time of the attempted surrender.

19 FURTHER, Respondent may not petition the Department for reinstatement of a
20 plenary real estate salesperson license and/or file an application for a real estate broker license
21 during the 120 day period agreed upon for the full payment of the aforementioned sum.

22 DATED: 6/5, 2009

23 

24 KENNETH C. ESPELL, Counsel
25 DEPARTMENT OF REAL ESTATE

26 * * *

1 I willingly and voluntarily agree to enter into this Stipulation and Agreement.
2 I have been afforded the opportunity to review this Stipulation and Agreement with an attorney
3 of my choosing and have chosen not to consult with an attorney concerning this Stipulation and
4 Agreement. I have read this Stipulation and Agreement, and its terms are understood by me
5 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
6 the California Administrative Procedure Act (including, but not limited to, Sections 11506,
7 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, voluntarily
8 and without threat or coercion, freely agree to waive those rights, including the right of
9 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I
10 would have the right to cross-examine witnesses against me and to present evidence in defense
11 and mitigation of the charges.

12
13 DATED: 5/28, 2009

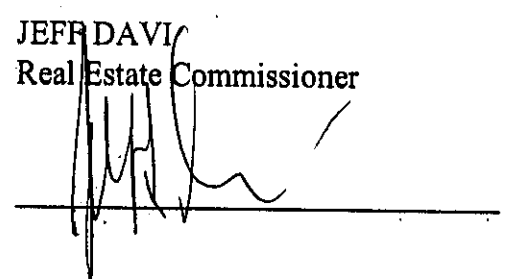
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15 
16 ROBERT JOSEPH BRAGER
17 Respondent

18 * * *

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

21 JUL 16 2009

22 IT IS SO ORDERED 6-23, 2009.

23 JEFF DAVIS
24 Real Estate Commissioner
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APR 22 2009

DEPARTMENT OF REAL ESTATE

[Signature]

KENNETH C. ESPELL, Counsel (SBN 178757)
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	H-2373 FRESNO
ROBERT JOSEPH BRAGER,	)	
	)	<u>ACCUSATION</u>
	)	
Respondent.	)	

The Complainant, JOHN SWEENEY, in his Official Capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ROBERT JOSEPH BRAGER is informed and alleges as follows:

1

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code") as a restricted real estate broker.

2

Beginning in the year 2003 and continuing through March 2006, the Department of Real Estate (hereinafter the "Department"), exercising its delegated powers to protect the welfare and safety of the public, investigated the operations of Brager and Assoc., Inc., wherein it was determined, among other violations of real estate law, that Respondent, as the designated

1 officer/broker of Brager and Associates, Inc., failed to properly supervise the activities of Brager
2 and Assoc., Inc., and its employees. As a result, the Department brought an accusation against
3 Respondent and Brager and Assoc., Inc., in the Department cases, H-1707 FR and H-1990 FR.
4

5 3

6 Between February 24, 2007 and February 28, 2007, to settle Case Number
7 H-1990 FR, Stipulations and Agreements were signed by the Respondent, individually, and
8 Brager and Assoc., Inc., on the one hand and the Department on the other hand. These
9 Agreements provided that the corporate license of Brager and Assoc., Inc. would be revoked
10 outright and Respondent's personal broker license would be revoked with the right to apply for
11 a restricted real estate broker license conditioned upon the requirements set forth in the
12 Agreements. Jeff Davi, the Commissioner of the Department of Real Estate, signed the Order
13 approving the Agreements on February 27, 2007, setting the effective date of the Order as
14 12 o'clock noon on April 18, 2007.

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16 Among other provisions set forth in the Agreements, and as a condition
17 precedent to the Department's issuance of a restricted real estate broker license to Respondent,
18 Respondent was to reimburse the Department for an audit conducted by the Department in
19 connection with its investigation into the activities of Respondent and Brager and Assoc., Inc.
20 Respondent was required to make this reimbursement within 180 days of the effective date of
21 the Order in case number H-1990 FR.

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23 On or about April 9, 2007, Respondent filed a Chapter 7 Bankruptcy Petition in
24 the United States District Court for the Central District of California, Modesto Facility, case
25 number 2007-0346, naming the Department in combination with the Modesto Bee Newspaper
26 and Michael Halley, Esq., as a single unsecured creditor account (9503) for "past services" and
27 stating that the amount due was \$24,827.02. On or about July 20, 2007, the Bankruptcy Court

1 issued its discharge order purportedly discharging Respondent's debt owed to the Department.
2 By filing for bankruptcy protection and obtaining a discharge of the agreed upon reimbursement
3 and by failing to pay such reimbursement, Respondent breached a condition precedent to the
4 issuance of Respondent's restricted real estate broker license, thereby permitting the Department
5 to seek revocation of Respondent's real estate brokers license.

6 6

7 Respondent's failure to reimburse the Department for the audit is grounds for
8 discipline under Section 10177(k) of the Code.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
10 of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary
11 action against all licenses and license rights of Respondents under the Code, and for such other
12 and further relief as may be proper under provisions of law.

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14 
15 JOHN SWEENEY
16 Deputy Real Estate Commissioner

17 Dated at Fresno, California
18 this 17th day of April, 2009.
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