

1 Department of Real Estate
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3 Sacramento, CA 95818-7000
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FILED
APR 19 1999

DEPARTMENT OF REAL ESTATE

By *Laurie A. Ziser*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-2475 SD

12 TIMOTHY MICHAEL McDONALD,)

STIPULATION AND AGREEMENT

13 Respondent.)
14

15 It is hereby stipulated by and between Respondent
16 TIMOTHY MICHAEL McDONALD ("Respondent"), and the Complainant,
17 acting by and through James L. Beaver, Counsel for the Department
18 of Real Estate, as follows for the purpose of settling and
19 disposing of the Accusation filed on February 11, 1999, in this
20 matter ("the Accusation");

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

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STIPULATION OF
TIMOTHY MICHAEL McDONALD

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

5 3. On February 23, 1999, Respondent filed a Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that Respondent
10 understands that by withdrawing said Notice of Defense Respondent
11 will thereby waive Respondent's right to require the Commissioner
12 to prove the allegations in the Accusation at a contested hearing
13 held in accordance with the provisions of the APA and that
14 Respondent will waive other rights afforded to Respondent in
15 connection with the hearing such as the right to present evidence
16 in defense of the allegations in the Accusation and the right to
17 cross-examine witnesses.

18 4. Respondent, pursuant to the limitations set forth
19 below, hereby admits that the factual allegations in the
20 Accusation are true and correct and the Real Estate Commissioner
21 shall not be required to provide further evidence of such
22 allegations.

23 5. 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 Respondent's real estate license and license rights
27 as set forth in the "Order" set forth below. In the event that

1 the Commissioner in his discretion does not adopt the Stipulation
2 and Agreement in Settlement, it shall be void and of no effect,
3 and Respondent shall retain the right to a hearing and proceeding
4 on the Accusation under all the provisions of the APA and shall
5 not be bound by any admission or waiver made herein.

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

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and
15 waivers and solely for the purpose of settlement of the pending
16 Accusation without hearing, it is stipulated and agreed that the
17 following Determination of Issues shall be made:

18 I

19 The acts and omissions of Respondent TIMOTHY MICHAEL
20 McDONALD described in the Accusation are grounds for the
21 suspension or revocation of the licenses and license rights of
22 Respondent under the following provisions of the California
23 Business and Professions Code ("Code") and/or Chapter 6, title 10,
24 California Code of Regulations ("Regulations");

25 (a) As to Paragraphs V through VII, inclusive, under
26 Section 10176(f) of the Code;

27 ///

1 (b) As to Paragraph IX, under Section 10085 of the Code
2 and Section 2970 of the Regulations in conjunction with Section
3 10177(d) of the Code;

4 (c) As to Paragraph X, under Section 10146 of the Code
5 in conjunction with Section 10177(d) of the Code; and

6 (d) As to Paragraph XI, under Section 10146 of the Code
7 and Section 2972 of the Regulations in conjunction with Section
8 10177(d) of the Code.

9 ORDER

10 I

11 All licenses and licensing rights of Respondent TIMOTHY
12 MICHAEL McDONALD under the Real Estate Law are suspended for sixty
13 (60) days from the effective date of this Decision; provided,
14 however, that the suspension shall be stayed for a term of two
15 years upon the following terms and conditions:

16 1. Respondent's license and license rights shall be
17 actually suspended for a period of fifteen (15) days. If
18 Respondent petitions, said fifteen (15) day suspension (or a
19 portion thereof) shall be stayed upon condition that Respondent
20 pays a monetary penalty pursuant to Section 10175.2 of the Code at
21 the rate of \$100.00 for each day of the suspension for a total
22 monetary penalty of \$1,500.00. Said payment shall be in the form
23 of a cashier's check or certified check made payable to the
24 Recovery Account of the Real Estate Fund. Said check must be
25 delivered to the Department prior to the effective date of the
26 Decision in this matter.

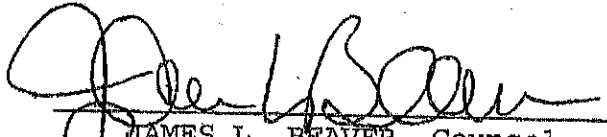
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1 2. Respondent shall obey all laws, rules and
2 regulations governing the rights, duties and responsibilities of a
3 real estate licensee in the State of California.

4 3. The Commissioner may vacate and set aside the stay
5 order, including any further stay imposed pursuant to Section
6 10175.2, if a final subsequent determination is made, after
7 hearing or upon stipulation, that cause for disciplinary action
8 occurred during the term of two (2) years of the stay provided for
9 above. Should no order vacating the stay be made pursuant to this
10 condition, the stay imposed herein shall become permanent.

11 March 18, 1999

12 DATED

13 
14 JAMES L. BEAVER, Counsel
15 DEPARTMENT OF REAL ESTATE

16 * * *

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

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32 STIPULATION OF
33 TIMOTHY MICHAEL McDONALD

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3.11.99

DATED

Timothy Michael McDonald
TIMOTHY MICHAEL McDONALD
Respondent

* * *

The foregoing Stipulation and Agreement for Settlement
is hereby adopted by the Real Estate Commissioner as his Decision
and Order and shall become effective at 12 o'clock noon on
May 10, 1999.

IT IS SO ORDERED April 5, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
FEB 11 1999

DEPARTMENT OF REAL ESTATE

By *Laurie L. Zin*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 TIMOTHY MICHAEL McDONALD,)
13 Respondent.)

No. H-2475 SD
ACCUSATION

14
15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against TIMOTHY MICHAEL McDONALD (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

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

23 II

24 At all times herein mentioned, Respondent was and now is
25 presently licensed and/or has license rights under the Real Estate
26 Law (Part 1 of Division 4 of the Business and Professions Code);
27 (hereinafter "the Code").

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III

At all times herein mentioned, Respondent was licensed by the Department as a real estate broker.

IV

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and sale of real property or a business opportunity.

V

On or about July 28, 1998, in the course of the activities described in Paragraph IV, above, Respondent entered into a written agreement (hereinafter "the agreement") with James Heiser (hereinafter "Heiser") whereby Heiser granted Respondent exclusive employment and authorization to sell and offer to sell, solicit prospective purchasers of, and negotiate the purchase and sale of a business opportunity owned by Heiser identified as "Hill Street Blues Retail & Wholesale Store".

VI

The agreement did not contain a definite, specified date of final and complete termination.

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1 VII

2 On or about July 28, 1998, Respondent claimed, demanded
3 and received a \$500.00 fee (hereinafter "the fee") from Heiser to
4 compensate Respondent, in advance of services, for promoting the
5 sale of the business opportunity.

6 VIII

7 The fee was an "advance fee" within the meaning of
8 Section 10026 of the Code. The agreement called for Heiser to pay
9 Respondent the fee.

10 IX

11 Respondent used the agreement without first submitting
12 the agreement to the Real Estate Commissioner in compliance with
13 Section 2970 of Chapter 6, Title 10, California Code of
14 Regulations ("the Regulations").

15 X

16 Respondent failed to deposit the fee in a trust account
17 with a bank or other recognized depository.

18 XI

19 At all times mentioned herein from and after July 28,
20 1998, Respondent has failed and refused to account to Heiser for
21 the fee in compliance with Section 10146 of the Code.

22 XII

23 The facts alleged above are grounds for the suspension
24 or revocation of the licenses and license rights of Respondent
25 under the following provisions of the Code and/or the Regulations:

26 (a) As to Paragraphs V through VII, inclusive, under
27 Section 10176(f) of the Code;

1 (b) As to Paragraph IX, under Section 10085 of the Code
2 and Section 2970 of the Regulations in conjunction with Section
3 10177(d) of the Code;

4 (c) As to Paragraph X, under Section 10146 of the Code
5 in conjunction with Section 10177(d) of the Code; and

6 (d) As to Paragraph XI, under Section 10146 of the Code
7 and Section 2972 of the Regulations in conjunction with Section
8 10177(d) of the Code.

9 WHEREFORE, Complainant prays that a hearing be conducted
10 on the allegations of this Accusation and that upon proof thereof
11 a decision be rendered imposing disciplinary action against all
12 licenses and license rights of Respondent under the Real Estate
13 Law (Part 1 of Division 4 of the Business and Professions Code)
14 and for such other and further relief as may be proper under other
15 applicable provisions of law.

16
17 
18 J. CHRIS GRAVES
19 Deputy Real Estate Commissioner

20 Dated at San Diego, California,
21 this 29th day of January, 1999.
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