

FILED

MAR 22 2013

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By *P. Jura*

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

* * *

10
11 In the Matter of the Accusation of12 JOHN FILIGHERA & ASSOCIATES, INC.,
13 A Corporation, and JOHN FILIGHERA,

14 Respondents.

No. H-2588 FR

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between JOHN FILIGHERA & ASSOCIATES,
16 INC., and JOHN FILIGHERA (Respondents), represented by Frank M. Buda, and the
17 Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real
18 Estate (Department), as follows for the purpose of settling and disposing the Second Amended
19 Accusation (Accusation) filed on January 9, 2013 in this matter:

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

25 2. Respondents have received, read, and understand the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Department in this
27 proceeding.

1 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
2 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
3 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
4 acknowledge that they understand that by withdrawing said Notice of Defense they will thereby
5 waive their rights to require the Real Estate Commissioner (Commissioner) to prove the
6 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
7 APA, and that they will waive other rights afforded to them in connection with the hearing such
8 as the right to present evidence in defense of the allegations in the Accusation and the right to
9 cross-examine witnesses.

10 4. This stipulation is based on the factual allegations contained in the Accusation.
11 In the interest of expediency and economy, Respondents choose not to contest these factual
12 allegations, but to remain silent and understands that, as a result thereof, these factual statements
13 will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below.
14 The Commissioner shall not be required to provide further evidence to prove such allegations.

15 5. This Stipulation and Respondents' decision not to contest the Accusation are
16 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
17 limited to this proceeding and any other proceeding or case in which the Department, the state or
18 federal government, an agency of this state, or an agency of another state is involved.

19 5. Respondents understand that by agreeing to this Stipulation and
20 Agreement, Respondents agrees to pay, pursuant to Section 10148 of the California Business
21 and Professions Code (Code), the cost of the audit, which resulted in the determination that
22 Respondents committed the trust fund violation(s) found in Paragraph I of the Determination of
23 Issues. The amount of said costs is \$8,211.83.

24 6. Respondents further understand that by agreeing to this Stipulation and
25 Agreement, the findings set forth below in the Determination of Issues become final, and that
26 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to
27 Section 10148 of the Code to determine if the violations have been corrected. The maximum

1 costs of said audit shall not exceed \$8,211.83.

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

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

13 * * *

14 DETERMINATION OF ISSUES

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

18 I

19 The acts and omissions of JOHN FILIGHERA & ASSOCIATES, INC (JFAI) as
20 described in the First Cause of Action of the Accusation are grounds for the suspension or
21 revocation of JFAI licenses and license rights under the following sections of the Code and Title
22 10 of the California Code of Regulations (Regulations):

23 (1) As to Paragraphs 11(a) under Section 10177(d) of the Code in
24 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

25 (2) As to Paragraph 11(b), under Section 10177(d) of the Code in
26 conjunction with Section 2831 of the Regulations;

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1 (3) As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction
2 with Section 2831.1 of the Regulations;

3 (4) As to Paragraphs 11(d) under Section 10177(d) of the Code in
4 conjunction with Section 10160 of the Code and Section 2753 of the Regulations;

5 (5) As to Paragraph 12, under Section 10177(d) of the Code in conjunction
6 with Section 10240 of the Code.

7 II

8 The acts and/or omissions of JOHN FILIGHERA (FILIGHERA) as described in
9 the Second Cause of Action of the Accusation is cause for the suspension or revocation of
10 FILIGHERA's license and/or license rights under Section 10177(h) of the Code.

11 * * *

12 ORDER

13 I

14 All licenses and licensing rights of Respondent JFAI under the Real Estate Law
15 are suspended for a period of thirty (30) days from the effective date of this Order; provided,
16 however, that:

17 1) Thirty (30) days of said suspension shall be stayed, upon the condition that JFAI petition
18 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
19 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty
20 of \$1,500.

21 a) Said payment shall be in the form of a cashier's check or certified check made payable to
22 the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered
23 to the Department prior to the effective date of the Order in this matter.

24 b) No further cause for disciplinary action against the Real Estate licenses of JFAI occurs
25 within two (2) years from the effective date of the decision in this matter.

26 c) If JFAI fails to pay the monetary penalty as provided above prior to the effective date of
27 this Order, the stay of the suspension shall be vacated as to that Respondent and the order

1 of suspension shall be immediately executed, under this Order, in which event the said
2 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for
3 the money paid to the Department under the terms of this Order.

4 d) If JFAI pays the monetary penalty and any other moneys due under this Stipulation and

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

9 2) Pursuant to Section 10148 of the Code, JFAI shall jointly and severally with FILIGHERA pay

10 the sum of \$8,211.83 for the Commissioner's cost of the audit which led to this disciplinary
11 action. Respondents shall pay such cost within sixty (60) days of receiving an invoice from the
12 Commissioner. The Commissioner may suspend the Respondent's license pending a hearing
13 held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely
14 made as provided for herein, or as provided for in a subsequent agreement between the
15 Respondent and the Commissioner. The suspension shall remain in effect until payment is made
16 in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide
17 for payment, or until a decision providing otherwise is adopted following a hearing held pursuant
18 to this condition.

19 3) Pursuant to Section 10148 of the Code, JFAI shall jointly and severally with FILIGHERA pay

20 the Commissioner's reasonable cost, not to exceed \$8,211.83, for an audit to determine if
21 Respondents have corrected the trust fund violation(s) found in the Determination of Issues. In
22 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
23 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
24 include an allocation for travel time to and from the auditor's place of work. Respondent shall
25 pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the
26 activities performed during the audit and the amount of time spent performing those activities.
27 The Commissioner may suspend Respondent's license pending a hearing held in accordance with

1 Section 11500, et seq., of the Government Code, if payment is not timely made as provided for
2 herein, or as provided for in a subsequent agreement between Respondent and the Commissioner.
3 The suspension shall remain in effect until payment is made in full or until Respondent enters
4 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision
5 providing otherwise is adopted following a hearing held pursuant to this condition.

6 II

7 All licenses and licensing rights of Respondent FILIGHERA under the Real Estate Law
8 are suspended for a period of thirty (30) days from the effective date of this Order; provided,
9 however, that:

10 1) Thirty (30) days of said suspension shall be stayed, upon the condition that FILIGHERA
11 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
12 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty
13 of \$1,500.

14 a) Said payment shall be in the form of a cashier's check or certified check made payable to
15 the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered
16 to the Department prior to the effective date of the Order in this matter.

17 b) No further cause for disciplinary action against the Real Estate licenses of FILIGHERA
18 occurs within two (2) years from the effective date of the decision in this matter.

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

24 d) If FILIGHERA pays the monetary penalty and any other moneys due under this
25 Stipulation and Agreement and if no further cause for disciplinary action against the real
26 estate license of said Respondent occurs within two (2) years from the effective date of
27

1 this Order, the entire stay hereby granted this Order, as to said Respondent only, shall
2 become permanent.

3 2) Pursuant to Section 10148 of the Code, FILIGHERA shall jointly and severally with JFAI pay
4 the sum of \$8,211.83 for the Commissioner's cost of the audit which led to this disciplinary
5 action. Respondents shall pay such cost within sixty (60) days of receiving an invoice from the
6 Commissioner. The Commissioner may suspend the Respondent's license pending a hearing
7 held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely
8 made as provided for herein, or as provided for in a subsequent agreement between the
9 Respondent and the Commissioner. The suspension shall remain in effect until payment is made
10 in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide
11 for payment, or until a decision providing otherwise is adopted following a hearing held pursuant
12 to this condition.

13 3) Pursuant to Section 10148 of the Code, FILIGHERA shall jointly and severally with JFAI pay
14 the Commissioner's reasonable cost, not to exceed \$8,211.83, for an audit to determine if
15 Respondents have corrected the trust fund violation(s) found in the Determination of Issues. In
16 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
17 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
18 include an allocation for travel time to and from the auditor's place of work. Respondent shall
19 pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the
20 activities performed during the audit and the amount of time spent performing those activities.
21 The Commissioner may suspend Respondent's license pending a hearing held in accordance with
22 Section 11500, et seq., of the Government Code, if payment is not timely made as provided for
23 herein, or as provided for in a subsequent agreement between Respondent and the Commissioner.
24 The suspension shall remain in effect until payment is made in full or until Respondent enters
25 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision
26 providing otherwise is adopted following a hearing held pursuant to this condition.

27 4) All licenses and licensing rights of FILIGHERA are indefinitely suspended unless or until

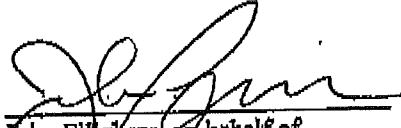
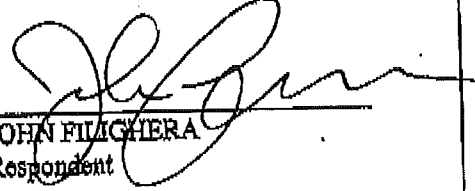
01/09/2013 WED 14:01 FAX ->-> FRANK BUDA

016/017

1 Respondent provides proof satisfactory to the Commissioner, of having taken and successfully
2 completed the continuing education course on trust fund accounting and handling specified in
3 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this
4 requirement includes evidence that respondent has successfully completed the trust fund account
5 and handling continuing education course within 120 days prior to the effective date of the
6 Decision in this matter.

23-Jan-13
DATED
TRULY SUGHRUE
Counsel for Complainant

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

1/10/2013
DATED
John Filighera, on behalf of
JOHN FILIGHERA & ASSOCIATES, INC.
Respondent1/10/2013
DATED
JOHN FILIGHERA
Respondent

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

3 1-18-13
4
5 DATED

Frank M. Buda
FRANK M. BUDA
Attorney for Respondents

6 * * *

7 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
8 shall become effective at 12 o'clock noon on APR 11 2013

9
10 IT IS SO ORDERED 3/21/2013

11
12 Real Estate Commissioner

13 Wayne S. Bell
14 WAYNE S. BELL
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