

1 Department of Real Estate
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3 Sacramento, CA 95818-7007

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FILED

SEP 10 2012

DEPARTMENT OF REAL ESTATE

By L. Jones

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

10 * * *

11 In the Matter of the Accusation of

12 KAWEAH FINANCIAL GROUP INC., and
13 ERNIE BYRON SHANES,

14 Respondents.

No. H-2683 FR

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between KAWEAH FINANCIAL GROUP INC.,
16 and ERNIE BYRON SHANES (hereinafter "Respondents"), represented by Josh Bettencourt,
17 and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of
18 Real Estate (hereinafter "Department"), as follows for the purpose of settling and disposing
19 the Accusation filed on October 21, 2011 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
23 (hereinafter "APA"), shall instead and in place thereof be submitted solely on the basis of the
24 provisions of this 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 (hereinafter "Commissioner") to
6 prove the allegations in the Accusation at a contested hearing held in accordance with the
7 provisions of the APA, and that they will waive other rights afforded to them in connection with
8 the hearing such as the right to present evidence in defense of the allegations in the Accusation
9 and the right to cross-examine witnesses.

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

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

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

27

1 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty
2 of \$1,500.

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

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

8 c) If KAWEAH fails to pay the monetary penalty as provided above prior to the
9 effective date of this Order, the stay of the suspension shall be vacated as to that
10 Respondent and the order of suspension shall be immediately executed, under this
11 Order, in which event the said Respondent shall not be entitled to any repayment nor
12 credit, prorated or otherwise, for the money paid to the Department under the terms of
13 this Order.

14 d) If KAWEAH pays the monetary penalty and any other moneys due under this
15 Stipulation and Agreement and if no further cause for disciplinary action against the
16 real estate license of said Respondent occurs within two (2) years from the effective
17 date of this Order, the entire stay hereby granted this Order, as to said Respondent
18 only, shall become permanent.


19 II

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

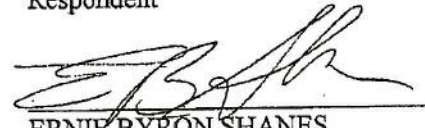
23 1) Thirty (30) days of said suspension shall be stayed, upon the condition that SHANES petition
24 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
25 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty
26 of \$1,500.

1 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
2 intelligently and voluntarily waive those rights, including the right of requiring the
3 Commissioner to prove the allegations in the Accusations at a hearing at which I would have the
4 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
5 the charges.

6 6/24/13
7 DATED


Ernie Byron Shanes, on behalf of
KAWEAH FINANCIAL GROUP INC
Respondent

9
10 6/21/12
11 DATED


ERNIE BYRON SHANES
Respondent

12 ***

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

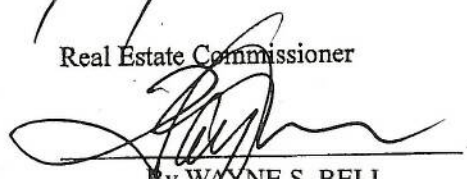
15
16 6/22/12
17 DATED


JOSH BETTENCOURT
Attorney for Respondents

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19
20 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
21 shall become effective at 12 o'clock noon on OCT 01 2012.

22 IT IS SO ORDERED 8/27/2012.

23 Real Estate Commissioner
24
25 
26 By WAYNE S. BELL
27 Chief Counsel