

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 576-8700

FILED

FEB 22 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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

10 * * *

11 In the Matter of the Accusation of)

12 TIMOTHY JAMES RUSHING,)

13 Respondent.)

No. H-3212 FR

STIPULATION AND
AGREEMENT

14 It is hereby stipulated by and between TIMOTHY JAMES RUSHING
15 (Respondent), and the Complainant, acting by and through Truly Sughrue, Counsel for the
16 Department of Real Estate (Department), as follows for the purpose of settling and disposing
17 the Accusation filed on November 16, 2018, in this matter:

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

23 2. Respondent has received, read, and understands the Statement to
24 Respondent, and the Discovery Provisions of the APA filed by the Department in this
25 proceeding.

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1 3. Respondent 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 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
4 acknowledges that Respondent understands that by withdrawing said Notice of Defense
5 Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA, and that Respondent will waive other rights afforded
8 to Respondent in connection with the hearing such as the right to present evidence in defense of
9 the allegations in the Accusation and the right to cross-examine witnesses.

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

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

21 6. Respondent understands that by agreeing to this Stipulation and
22 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and
23 Professions Code (Code), the cost of the audit, which resulted in the determination that
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.
25 The amount of said costs is \$3,244.85.

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1 7. Respondent further understands that by agreeing to this Stipulation and
2 Agreement, the findings set forth below in the Determination of Issues become final, and that
3 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum
5 costs of said audit shall not exceed \$4,056.06.

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

13 9. The Order or any subsequent Order of the Commissioner made pursuant to
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
15 administrative or civil proceedings by the Department with respect to any matters which were not
16 specifically alleged to be causes for action in Accusation H-3212 FR.

17 * * *

18 DETERMINATION OF ISSUES

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

22 I

23 The acts and omissions of Respondent as described in the Accusation are
24 grounds for the suspension or revocation of Respondent's licenses and license rights under the
25 following sections of the Code and Title 10 of the California Code of:

26 As to Paragraph 8(a), under Section 10177(d) of the Code in conjunction with
27 Section 10145 of the Code and Section 2832.1 of the Regulations;

1 As to Paragraph 8(b), under Section 10177(d) of the Code in conjunction with
2 Section 10145(g) of the Code and Section 2831.1 of the Regulations;

3 As to Paragraph 8(c), under Section 10177(d) of the Code in conjunction with
4 Section 2831.2 of the Regulations; and

5 As to Paragraph 8(d), under Section 10177(d) of the Code in conjunction with
6 Section 2831 of the Regulations.

7 * * *

8 ORDER

9 I

10 All licenses and licensing rights of Respondent under the Real Estate Law are
11 suspended for a period of sixty (60) days from the effective date of this Order; provided,
12 however, that:

13 1) Sixty (60) days of said suspension shall be stayed, upon the condition that
14 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
15 pursuant to Section 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total
16 monetary penalty of \$3,000.

17 a) Said payment shall be in the form of a cashier's check made payable to the
18 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
19 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
20 Order.

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

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

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

5 3) All licenses and licensing rights of Respondent are indefinitely suspended unless
6 or until Respondent provides proof satisfactory to the Commissioner, of having taken and
7 successfully completed the continuing education course on trust fund accounting and handling
8 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
9 satisfaction of these requirements includes evidence that Respondent has successfully completed
10 the trust fund account and handling continuing education courses, no earlier than 120 days prior
11 to the effective date of the Decision and Order in this matter. Proof of completion of the trust
12 fund accounting and handling course must be delivered to the Department of Real Estate, Flag
13 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the
14 effective date of this Decision and Order.

15 4) Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
16 \$3,244.85 for the Commissioner's cost of the audit which led to this disciplinary action.
17 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
18 Commissioner. Payment of audit costs should not be made until Respondent receives the
19 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
20 Respondent's real estate license shall automatically be suspended until payment is made in full,
21 or until a decision providing otherwise is adopted following a hearing held pursuant to this
22 condition.

23 5) Pursuant to Section 10148 of the Code, Respondent shall pay the Commissioner's
24 reasonable cost, not to exceed \$4,056.06, for an audit to determine if Respondent has corrected
25 the violation(s) found in the Determination of Issues. In calculating the amount of the
26 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
27 for all persons performing audits of real estate brokers, and shall include an allocation for travel

1 time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60)
2 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should
3 not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition
4 in a timely manner as provided for herein, Respondent's real estate license shall automatically be
5 suspended until payment is made in full, or until a decision providing otherwise is adopted
6 following a hearing held pursuant to this condition.

7
8 23-Jan-19
9 DATED

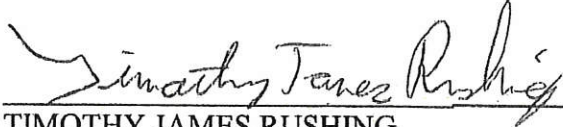

10 TRULY SUGHRUE
11 Counsel for Complainant

12 * * *

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

19 Respondent further agrees to send the original signed Stipulation and Agreement
20 by mail to the following address no later than one (1) week from the date the Stipulation and
21 Agreement is signed by Respondent: *Department of Real Estate, Legal Section, P.O. Box*
22 *137007, Sacramento, California 95813-7007*. Respondent understands and agreea that if he fails
23 to return the original signed Stipulation and Agreement by the due date, Complainant retains the
24 right to set this matter for hearing.

25 1-23-19
26 DATED


27 TIMOTHY JAMES RUSHING
Respondent

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The foregoing Stipulation and Agreement is hereby adopted as my Decision and
Order and shall become effective at 12 o'clock noon on MAR 15 2019.

IT IS SO ORDERED February 21, 2019.

REAL ESTATE COMMISSIONER

Daniel J. Aard