

FILED

JAN 27 2023

DEPARTMENT OF REAL ESTATE

By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of

MICHAEL DENNIS BARWICK,

Respondent.

No. H-3375 FR

STIPULATION AND  
AGREEMENT

It is hereby stipulated by and between MICHAEL DENNIS BARWICK (Respondent), represented by Frank M. Buda, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate (Department), as follows for the purpose of settling and disposing of the First Amended Accusation (Accusation) filed on May 12, 2022, 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 in this proceeding.

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 will thereby waive Respondent's right to require the Real Estate  
5 Commissioner (Commissioner) to prove the allegations in the Accusation at a contested hearing  
6 held in accordance with the provisions of the APA and that Respondent will waive other rights  
7 afforded to Respondent in connection with the hearing such as the right to present evidence in  
8 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

20                   6.       It is understood by the parties that the Commissioner may adopt the  
21 Stipulation and Agreement as his Decision and Order in this matter thereby imposing the penalty  
22 and sanctions on Respondent's real estate license and license rights as set forth in the below  
23 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and  
24 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing  
25 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by  
26 any admission or waiver made herein.  
27

1                   7.       This Decision and Order or any subsequent Order of the Commissioner  
2 made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar  
3 to any further administrative or civil proceedings by the Department with respect to any matters  
4 which were not specifically alleged in Accusation H-3375 FR.

5   DETERMINATION OF ISSUES

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

9   I

10                  The acts and/or omissions of Respondent as described in the First Cause of Action  
11 of the Accusation violate Section 10166.02(b)(2) of the Business and Professions Code (Code) in  
12 conjunction with Sections 10177(d) and 10166.051 of the Code.

13   II

14                  The acts and/or omissions of Respondent as described in the Second Cause of  
15 Action of the Accusation violate Section 10085.5 of the Code and Section 2970 of Title 10,  
16 Chapter 6, of the California Code of Regulations (Regulations) in conjunction with Section  
17 10177(d) of the Code.

18   III

19                  The acts and/or omissions of Respondent as described in the Third Cause of  
20 Action of the Accusation violate Section 2905 of the Regulations in conjunction with Section  
21 10177(d) of the Code.

22   IV

23                  The acts and/or omissions of Respondent as described in the Forth Cause of  
24 Action of the Accusation violate Sections 490 and 10177(b) of the Code.

25   ORDER

26                  All licenses and licensing rights of Respondent under the Real Estate Law are  
27 revoked; provided, however, a restricted real estate broker license shall be issued to Respondent

1 pursuant to Section 10156.5 of the Code if Respondent makes application therefor and pays to  
2 the Department the appropriate fee for the restricted license within 90 days from the effective  
3 date of this Decision and Order. The restricted license issued to Respondent shall be subject to  
4 all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions  
5 and restrictions imposed under authority of Section 10156.6 of that Code:

6               1.       The restricted license issued to Respondent may be suspended prior to  
7 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo  
8 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real  
9 estate licensee.

10              2.       The restricted license issued to Respondent may be suspended prior to  
11 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that  
12 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
13 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
14 license.

15              3.       Respondent shall not be eligible to apply for the issuance of an  
16 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions  
17 of a restricted license until two (2) years have elapsed from the effective date of this Decision  
18 and Order. Respondent shall not be eligible to apply for any unrestricted licenses until all  
19 restrictions attaching to the license have been removed.

20              4.       Respondent shall, within nine (9) months from the effective date of this  
21 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,  
22 since the most recent issuance of an original or renewal real estate license, taken and  
23 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the  
24 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,  
25 Respondent's real estate license shall automatically be suspended until Respondent presents  
26 evidence satisfactory to the Commissioner of having taken and successfully completed the  
27 continuing education requirement.

5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

6. Pursuant to Section 10160 of the Code, Respondent shall pay the sum of \$3,791.17 for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Respondent shall pay such cost within 180 days from the effective date. If Respondent fails to satisfy this condition in a timely manner as provided for herein, Respondent's real estate license shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED

TRULY SUGHRUE, Counsel  
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the APA (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation and Statement of Issues at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

Respondent and Respondent's attorney further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by Respondent and Respondent's attorney:  
*Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and Respondent's attorney understand and agree that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

12-1-22  
DATED

Michael Dennis Barwick  
MICHAEL DENNIS BARWICK  
Respondent

\*\*\*

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

R-6: 2022  
DATED

Frank M. Buda  
FRANK M. BUDA  
Attorney for Respondent

\*\*\*

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on  
**FEB 17 2023**

IT IS SO ORDERED 1/24/23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley