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Department of Real Estate
P.O. Box 137007
Sacramento, CA 95813-7007

Telephone: (916) 576-8700

FILED

FEB 23 2023

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-3441 FR
BLAIN ARDEN DIERKES,)	
)	<u>STIPULATION AND</u>
<u>Respondent.</u>)	<u>AGREEMENT</u>

It is hereby stipulated by and between BLAIN ARDEN DIERKES (Respondent), 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 Accusation filed on June 8, 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, and the Discovery Provisions of the APA 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 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
20 state 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 Code, the cost of the
23 audit, which resulted in the determination that Respondent committed the trust fund handling
24 violation(s) found in the Determination of Issues. The amount of said costs is \$2,829.50.

25 7. Respondent further understands that by agreeing to this Stipulation and
26 Agreement, the findings set forth below in the Determination of Issues become final, and that
27 the Commissioner may charge Respondent for the costs of any audit conducted pursuant to

1 Section 10148 of the Code to determine if the violations have been corrected. The maximum
2 costs of said audit shall not exceed \$3,536.88.

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

10 9. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Department with respect to any matters which were
13 not specifically alleged to be causes for action in Accusation H-3441 FR

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 Respondent as described in the Accusation are
20 grounds for the suspension or revocation of Respondent's licenses and license rights under the
21 following sections of the Code and Title 10 of the California Code of:

22 As to Paragraph 8, under Section 10177(g) of the Code in conjunction with
23 Section 10145 of the Code and Section 2832.1 of the Regulations;

24 As to Paragraph 9, under Section 10177(g) of the Code in conjunction with
25 Section 10145 of the Code and Section 2832 of the Regulations; and

26 As to Paragraph 10, under Section 10177(g) of the Code in conjunction with
27 Section 10159.5 of the Code and Section 2731 of the Regulations.

1 * * *

2 ORDER

3 I

4 All licenses and licensing rights of Respondent under the Real Estate Law are
5 suspended for a period of forty-five (45) days from the effective date of this Order; provided,
6 however, that:

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

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

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

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

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

26 2) Fifteen (15) days of said suspension shall be stayed for two (2) years upon the
27 following terms and conditions:

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

3 b) That no final subsequent determination be made, after hearing or upon stipulation,
4 that cause for disciplinary action occurred within two (2) years from the effective date of this
5 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
6 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
7 such determination be made, the stay imposed herein shall become permanent.

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


18 4) Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
19 \$2,829.50 for the Commissioner's cost of the audit which led to this disciplinary action.
20 Respondent shall pay such cost within 120 days of receiving an invoice therefore from the
21 Commissioner. Payment of audit costs should not be made until Respondent receives the
22 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
23 Respondent's real estate license shall automatically be suspended until payment is made in full,
24 or until a decision providing otherwise is adopted following a hearing held pursuant to this
25 condition.

26 5) Pursuant to Section 10148 of the Code, Respondent shall pay the Commissioner's
27 reasonable cost, not to exceed \$3,536.88, for an audit to determine if Respondent has corrected

1 the violation(s) found in the Determination of Issues. In calculating the amount of the
2 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
3 for all persons performing audits of real estate brokers, and shall include an allocation for travel
4 time to and from the auditor's place of work. Respondent shall pay such costs within 120 days of
5 receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be
6 made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a
7 timely manner as provided for herein, Respondent's real estate license shall automatically be
8 suspended until payment is made in full, or until a decision providing otherwise is adopted
9 following a hearing held pursuant to this condition.

10 21 December 2022

11 DATED


12 TRULY SUGHRUE
13 Counsel for Complainant

14 * * *

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

22 Respondent and Respondent's attorney further agree to send the original signed
23 Stipulation and Agreement by mail to the following address no later than one (1) week from the
24 date the Stipulation and Agreement is signed by Respondent and Respondent's attorney:
25 *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-*
26 *7007.* Respondent and Respondent's attorney understand and agree that if they fail to return the
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original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

12-21-2022
DATED


BLAIN ARDEN DIERKES
Respondent

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

12/20/2022
DATED


NICHOLAS R. RUIZ
Attorney for Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on MAR 16 2023.

IT IS SO ORDERED 2.14.23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

