

FILED

JUN 25 2008

DEPARTMENT OF REAL ESTATE

By K. Max

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

5  
6  
7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA  
9

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10  
11 In the Matter of the Accusation of )  
12 DANIEL JOSEPH BARRY, BARRY )  
13 ESTATES INC., and LAURA ANN )  
14 BARRY, )  
15 Respondents. )

No. H-3801 SD

STIPULATION AND  
AGREEMENT

16 It is hereby stipulated by and between DANIEL JOSEPH  
17 BARRY, BARRY ESTATES INC., and LAURA ANN BARRY (hereinafter  
18 "Respondents"), represented by Steven A. McKinley and the  
19 Complainant, acting by and through Truly Sughrue, Counsel for  
20 the Department of Real Estate, as follows for the purpose of  
21 settling and disposing the Accusation filed on April 9, 2008  
22 in this matter:

23 1. All issues which were to be contested and all  
24 evidence which was to be presented by Complainant and  
25 Respondents at a formal hearing on the Accusation, which hearing  
26 was to be held in accordance with the provisions of the  
27 Administrative Procedure Act (APA), shall instead and in place

1 thereof be submitted solely on the basis of the provisions of  
2 this Stipulation and Agreement.

3 2. Respondents have received, read and understand the  
4 Statement to Respondent, and the Discovery Provisions of the APA  
5 filed by the Department of Real Estate in this proceeding.

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

19 4. Respondents admit that the factual allegations  
20 pertaining to them in the Accusation filed in this proceeding  
21 are true and correct, and that the Real Estate Commissioner  
22 shall not be required to provide further evidence to prove such  
23 allegations.

24 5. It is understood by the parties that the Real  
25 Estate Commissioner may adopt the Stipulation and Agreement as  
26 his decision in this matter thereby imposing the penalty and  
27 sanctions on the real estate licenses and license rights of

1 Respondent as set forth in the below "Order". In the event that  
 2 the Commissioner in his discretion does not adopt the  
 3 Stipulation and Agreement, it shall be void and of no effect,  
 4 and Respondents shall retain the right to a hearing and  
 5 proceeding on the Accusation under all the provisions of the APA  
 6 and shall not be bound by any admission or waiver made herein.

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

14 \* \* \*

15 DETERMINATION OF ISSUES

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

20 I

21 The acts and omissions of BARRY ESTATES INC.  
 22 (hereinafter "BEI") and LAURA ANN BARRY (hereinafter "L. BARRY")  
 23 as described in the Accusation are grounds for the suspension or  
 24 revocation of their licenses and license rights under the  
 25 following sections of the Business and Professions Code  
 26 (hereinafter "the Code"): BEI violated Section 10137 of the  
 27 Code; and L. BARRY violated Section 10130 of the Code.

II

The acts and/or omissions of DANIEL JOSEPH BARRY (hereinafter "D. BARRY") described in the Accusation, constitute failure on the part of D. BARRY, as designated broker-officer for BEI, to exercise reasonable supervision and control over the licensed activities of BEI required by Section 10159.2 of the Code, and is cause for the suspension or revocation of D. BARRY's license and/or license rights under Section 10177(h) of the Code.

\* \* \*

ORDER

I

All licenses and licensing rights of BEI under the Real Estate Law are suspended for a period of fifty (50) days from the effective date of this Order; provided, however, that:

1) Fifty (50) days of said suspension shall be stayed, upon the condition that BEI petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty of \$5,000.

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

1 b) No further cause for disciplinary action against the Real  
2 Estate licenses of BEI occurs within one (1) year from the  
3 effective date of the decision in this matter.

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

12 d) If BEI pays the monetary penalty and any other moneys due  
13 under this Stipulation and Agreement and if no further  
14 cause for disciplinary action against the real estate  
15 license of said Respondent occurs within one (1) year from  
16 the effective date of this Order, the entire stay hereby  
17 granted under this Order, as to said Respondent only, shall  
18 become permanent.

19 II

20 All licenses and licensing rights of D. BARRY under the  
21 Real Estate Law are suspended for a period of fifty (50) days  
22 from the effective date of this Order; provided, however, that:

23 1) Fifty (50) days of said suspension shall be stayed, upon the  
24 condition that D. BARRY petition pursuant to Section 10175.2  
25 of the Code and pays a monetary penalty pursuant to Section  
26 10175.2 of the Code at a rate of \$100 for each day of the  
27 suspension for a total monetary penalty of \$5,000.

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

b) No further cause for disciplinary action against the Real Estate licenses of said Respondent occurs within one (1) years from the effective date of the decision in this matter.

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

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

III

All licenses and licensing rights of Respondent L. BARRY (hereinafter "L. BARRY") under the Real Estate Law are suspended

1 for a period of fifty (50) days from the effective date of this  
2 Order; provided, however, that:

3 2) Fifty (50) days of said suspension shall be stayed, upon the  
4 condition that L. BARRY petition pursuant to Section 10175.2  
5 of the Code and pays a monetary penalty pursuant to Section  
6 10175.2 of the Code at a rate of \$50 for each day of the  
7 suspension for a total monetary penalty of \$2,500.

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

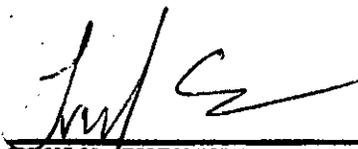
13 b) No further cause for disciplinary action against the Real  
14 Estate licenses of said Respondent occurs within one (1)  
15 year from the effective date of the decision in this  
16 matter.

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

25 d) If L. BARRY pays the monetary penalty and any other moneys  
26 due under this Stipulation and Agreement and if no further  
27 cause for disciplinary action against the real estate

1 license of said Respondent occurs within one (1) year from  
2 the effective date of this Order, the entire stay hereby  
3 granted under this Order, as to said Respondent only, shall  
4 become permanent.

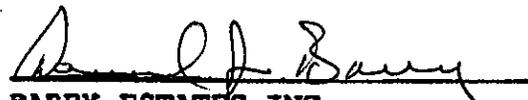
5 7-May-08  
6 DATED

7   
8 TRULY/SUGHRUE  
9 Counsel for Complainant

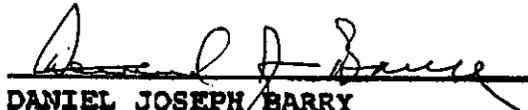
10 \* \* \*

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

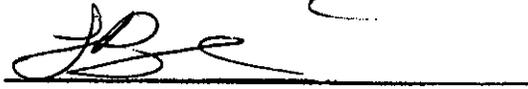
20 5-2-08  
21 DATED

22   
23 BARRY ESTATES INC.  
24 Daniel Joseph Barry for  
25 Respondent

26 5-2-08  
27 DATED

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29 DANIEL JOSEPH BARRY  
30 Respondent

31 5.2.08  
32 DATED

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34 LAURA ANN BARRY  
35 Respondent

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

5/2/08

DATED

STEVEN A. MCKINLEY  
Attorney for Respondents

\* \* \*

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on JUL 16 2008, 2008.

IT IS SO ORDERED 6-18-08, 2008.

JEFF DAVI  
Real estate Commissioner

[Signature]

FILED

APR - 9 2008

DEPARTMENT OF REAL ESTATE

By R. Henry

1 TRULY SUGHRUE, Counsel  
2 State Bar No. 223266  
3 Department of Real Estate  
4 P.O. Box 187007  
5 Sacramento, CA 95818-7007  
6 Telephone: (916) 227-0781

8 BEFORE THE DEPARTMENT OF REAL ESTATE

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11 In the Matter of the Accusation of )  
12 DANIEL JOSEPH BARRY, BARRY )  
13 ESTATES INC., and LAURA ANN )  
14 BARRY, )  
15 Respondents. )

No. H-3801 SD

ACCUSATION

16  
17 The Complainant, JOSEPH AIU, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against DANIEL JOSEPH BARRY, BARRY ESTATES INC., and LAURA ANN  
20 BARRY, (hereinafter "Respondents"), are informed and alleges as  
21 follows:

22 I

23 The Complainant, JOSEPH AIU, a Deputy Real Estate  
24 Commissioner of the State of California, makes this Accusation  
25 in his official capacity.

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II

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

III

At all times herein mentioned, Respondent BARRY ESTATES INC., (hereinafter "BEI") was and is licensed by the State of California Department of Real Estate (hereinafter "Department") as a real estate broker corporation.

IV

At all times herein mentioned, Respondent DANIEL JOSEPH BARRY, (hereinafter "D. BARRY") was and is licensed by the Department individually and as the designated broker officer of BEI. As said designated officer-broker, D. BARRY was and now is responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of BEI for which a license is required.

V

Respondent LAURA ANN BARRY, (hereinafter "L. BARRY") was and is licensed by the Department individually as a real estate salesperson. L. BARRY's real estate salesperson license expired on or about May 5, 2006. L. BARRY failed to timely renew her salesperson license. L. BARRY's renewal was effective on or about July 26, 2006.

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1 VI

2 At all times herein mentioned Respondents engaged in  
3 the business of, acted in the capacity of, advertised or assumed  
4 to act as a real estate broker in the State of California within  
5 the meaning of Section 10131(a) of the Code, including the  
6 operation and conduct of a real estate resale brokerage with the  
7 public wherein, on behalf of others, for compensation or in  
8 expectation of compensation, Respondents sold and offered to  
9 sell, bought and offered to buy, solicited prospective sellers  
10 and purchasers of, solicited and obtained listings of, and  
11 negotiated the purchase and resale of real property.

12 VII

13 Beginning on or about May 2, 2006 and continuing  
14 through to on or about July 26, 2007, BEI employed and  
15 compensated L. BARRY, to perform the acts and conduct the  
16 activities described in Paragraph VI, above, including but not  
17 limited to the activities described in Paragraph VIII, below.

18 VIII

19 In course of the activities and employment described  
20 above, without being licensed by the Department either as a real  
21 estate salesperson or as a real estate broker, L. BARRY, acting  
22 for and on behalf of another or others, for or in expectation of  
23 compensation, negotiated and arranged the purchase and sale of  
24 real property, including but not limited to the real property  
25 located at:

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- 1 • 472 Avenida Primavera, Del Mar, California;
- 2 • 4647 Rancho Laguna Bend, Rancho Santa Fe, California;
- 3 • 6749 Via Cordoba, Rancho Santa Fe, California;
- 4 • 100 Tenth Street, Del Mar, California;
- 5 • 17575 Rancho La Noria, Rancho Santa Fe, California;
- 6 • 15135 Paseo del Sol, Del Mar, California;
- 7 • 4551 Rancho Del mar Trails, San Diego, California;
- 8 • 1208 Rancho Encinitas, San Diego, California;
- 9 • 13910 Rancho Solana Trail, San Diego, California;
- 10 • 111 4<sup>th</sup> Street, Del Mar, California;
- 11 • 17513 Rancho La Noria, Rancho Santa Fe, California;
- 12 • 17487 Calle Mayor, Rancho Santa Fe, California;
- 13 • 2775 Costebelle, La Jolla, California;
- 14 • 13466 El Presidio Trail, San Diego, California; and
- 15 • 4296 Corte Langostino, San Diego, California.

16 IX

17 In acting as described above, BEI violated and/or  
18 willfully failed to comply with Section 10137 of the Code, and  
19 L. BARRY violated and/or willfully failed to comply with Section  
20 10130 of the Code.

21 X

22 D. BARRY failed to exercise reasonable supervision  
23 over the acts of CFI in such a manner as to allow the acts and  
24 events described above to occur.

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XI

1 The acts and/or omissions of D. BARRY described in  
2 Paragraph X, constitute failure on the part of D. BARRY, as  
3 designated broker-officer for BEI, to exercise reasonable  
4 supervision and control over the licensed activities of BEI  
5 required by Section 10159.2 of the Code.  
6

XII

7 The facts alleged above are grounds for the suspension  
8 or revocation of the licenses and license rights of Respondents  
9 under the following provisions of the Code:  
10

11 (a) As to Paragraphs VII through IX, BEI under Section  
12 10137 of the Code in conjunction with Section 10177(d) of the  
13 Code; and

14 (b) As to Paragraphs VII through IX, L. BARRY under  
15 Section 10130 of the Code in conjunction with Section 10177(d)  
16 of the Code.

XIII

17 The facts alleged in Paragraphs X and XI, are grounds  
18 for the suspension or revocation of the licenses and license  
19 rights of Respondent D. BARRY under Sections 10177(g) and/or  
20 10177(h) of the Code, and Section 10177(d) of the Code in  
21 conjunction with Section 10159.2 of the Code.  
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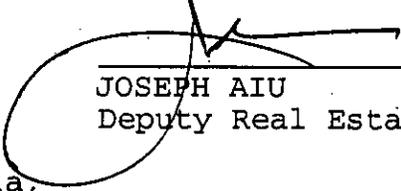
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1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondents  
5 under the Real Estate Law (Part 1 of Division 4 of the Business  
6 and Professions Code), and for such other and further relief as  
7 may be proper under other provisions of law.

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9   
JOSEPH AIU  
Deputy Real Estate Commissioner

10 Dated at San Diego, California,  
11 this 1 day of April, 2008.  
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