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

Telephone: (916) 227-0781

FILED

NOV 19 2009

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of AJPROP.COM INC. and JAMES PATRICK BURRELL, Respondents.	No. H-3966 SD STIPULATION AND AGREEMENT

It is hereby stipulated by and between AJPROP.COM INC. and JAMES PATRICK BURRELL, (hereinafter "Respondents") represented by Frank M. Buda, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on May 19, 2009 in this matter:

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

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

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

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

5. This Stipulation and Respondents decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate (herein "the Department"), the state or federal government, an agency of this state, or an agency of another state is involved.

6. Respondents understand that by agreeing to this Stipulation and

Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and Professions Code, the cost of the audit which resulted in the determination that Respondents committed the trust fund violation(s) found in the Determination of Issues. The amount of said costs is $5,564. Respondent shall be given credit for any amount already paid toward the audit cost.

7. Respondents further understand that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to Section 10148 of the California Business and Professions Code to determine if the violations have been corrected. The maximum costs of said audit shall not exceed $5,564.

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

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

10. In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), AJPROP.COM INC. (hereinafter "AJPROP") wishes to voluntarily surrender its corporate real estate broker license issued by the Department of Real Estate (hereinafter "Department"), pursuant to Business and Professions Code (hereinafter "the Code") Section 10100.2. JAMES PATRICK BURRELL (hereinafter "BURRELL") is the designated broker-officer of AJPROP, designated pursuant to Section 10211 of the Code, and is authorized to sign this declaration on behalf of AJPROP. BURRELL is represented by Frank M. Buda, and is acting on behalf of AJPROP.

9. BURRELL understands that by so voluntarily surrendering AJPROP's license, AJPROP may be relicensed as a broker corporation only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. BURRELL also understands that by so voluntarily surrendering AJPROP's license, Respondents agree to the following:

A. The filing of this Stipulation and Agreement shall be deemed as Respondent AJPROP declaration and petition for voluntary surrender.

B. It shall also be deemed to be an understanding and agreement by AJPROP that it waives all rights AJPROP has to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that AJPROP also waives other rights afforded to AJPROP in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

10. BURRELL on behalf of AJPROP further agrees that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-3966 SD, may be considered by the Department to be true and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code Section 11522.

11. BURRELL on behalf of AJPROP freely and voluntarily surrenders all AJPROP's licenses and license rights under the Real Estate Law.

* * *

DETERMINATION OF ISSUES

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

I

The acts and omissions of AJPROP as described in the Accusation are grounds for the suspension or revocation of AJPROP licenses and license rights under the following sections of the Code and Regulations:

(1) As to Paragraphs 9(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code;

(2) As to Paragraph 9(b), under Section 10177(d) of the Code in conjunction with Section 2832.1 of the Regulations; and

(6) As to Paragraph 10, under Section 10176(f) of the Code.

II

The acts and/or omissions of BURRELL as described in the Accusation is cause for the suspension or revocation of BURRELL's license and/or license rights under Section 10177(h) of the Code.

* * *

ORDER

I

All licenses and licensing rights of BURRELL under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to BURRELL shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

2. The restricted license issued to BURRELL may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands

Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. BURRELL shall not be eligible to apply for the issuance of an unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

4. Any restricted license issued to BURRELL pursuant to this Decision shall be suspended for a period of fifty (50) days from the issuance of the restricted license; provided, however, that fifty (50) days of said suspension shall be stayed, upon the condition that Respondent petition pursuant to Section 10175.2 of the Business and Professions Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of $150 for each day of the suspension for a total monetary penalty of $7,500.

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 Respondent occurs within two (2) years from the effective date of the decision in this matter.

c) If Respondent 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 said Respondent 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 two (2) years from the effective date of this Order, the entire stay hereby granted this Order, as to said Respondent only, shall become permanent.

4. BURRELL shall, prior to and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of having taken and completed the continuing education course on trust fund accounting and handling specified in Paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code from an approved continuing education course provider. Said course may have been completed within one hundred and eighty (120) days prior to the effective date of the order herein.

5. BURRELL shall, within nine (9) months from the effective date of this Order, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Pursuant to Section 10148 of the Business and Professions Code, BURRELL shall pay the sum of $5,564 for the Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may suspend the Respondent's license pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

7. Pursuant to Section 10148 of the Business and Professions Code, BURRELL shall pay the Commissioner's reasonable cost, not to exceed $5,564, for an audit to determine if Respondent has corrected the trust fund violation(s) found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend Respondent's license pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide

for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

II

AJPROP's petition for voluntary surrender of its corporate real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration incorporated herein as part of this Stipulation and Agreement. Respondent's license certificates, pocket cards and any branch office license certificates shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

DEPARTMENT OF REAL ESTATE
Attn: Licensing Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

19-Oct-09
DATED

TRULY SUGHRUE
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, 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 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation 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.

AJPROP.COM INC.
Respondent

10/13/2009
DATED

By: James Patrick Burrell
JAMES PATRICK BURRELL,
Designated Broker/Officer

10/13/2009
DATED

James Patrick Burrell
JAMES PATRICK BURRELL
Respondent

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

10/13/09
DATED

Frank Buda
FRANK M. BUDA
Attorney for Respondents

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The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on DEC 10 2009

IT IS SO ORDERED 11/16, 2009.

JEFF DAVI
Real estate Commissioner

Barbara J. Bigby
BY: Barbara J. Bigby
Chief Deputy Commissioner

11966 SD
10/13/09

FILED

MAY 19 2009

DEPARTMENT OF REAL ESTATE

By

TRULY SUGHRUE, Counsel
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of AJPROP.COM INC. and JAMES PATRICK BURRELL, Respondents.	No. H-3966 SD ACCUSATION

The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against AJPROP.COM INC. and JAMES PATRICK BURRELL (hereinafter "Respondents"), are informed and alleges as follows:

1

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

2

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 "the Code").

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3

At all times mentioned, AJPROP.COM INC. (hereinafter "AJPROP") was and is licensed by the Department of Real Estate (hereafter the "Department") as a restricted real estate broker corporation.

4

At all times mentioned, JAMES PATRICK BURRELL (hereinafter "BURRELL") was and is licensed by the Department of Real Estate as a restricted real estate broker and as the designated officer for AJPROP.

5

As said designated officer-broker, BURRELL was 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 AJPROP for which a license is required.

6

At all times mentioned, Respondents engaged in activities on behalf of others for which a real estate license is required under Section 10131(b) of the Code, for or in expectation of compensation, and leased or rented, offered to lease or rent, solicited prospective tenants, collected rents on, and/or managed certain real properties in California.

7

In acting as real estate brokers, as described in Paragraph 6, Respondents accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said trust funds.

8

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into on or more bank accounts (hereinafter "trust funds

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accounts") maintained by Respondents for the handling of trust funds, including but not limited to the following:

TITLE AND ACCOUNT NUMBERS	BANK
AJPROP.COM, Inc Trust Account TR Account No. 80188998 (hereinafter "Trust #1")	First National Bank 401 West A Street San Diego, CA 92101

9

Between on or about January 1, 2006 through December 31, 2007, in connection with the collection and disbursement of said trust funds Respondents:

(a) Failed to deposit and maintain trust funds in Trust #1 in such manner that as of September 28, 2007, there was a shortage of $17,554.05 of trust funds.

(b) Failed to obtain prior written consent from each of the principals for the reduction of the aggregate balance of trust funds in Trust #1 to an amount less than the existing aggregate trust fund liability to the owners of said funds in violation of Section 2832.1 of the Regulations.

10

In the course of the activities described in Paragraph 6, Respondents entered into exclusive management agreements with property owners, including but not limited to 530 20th Street, San Diego, California. These agreements did not contain a definite, specified date of final and complete termination as required by Section 10176(f) of the Code.

11

BURRELL failed to exercise reasonable supervision over the acts of AJPROP in such a manner as to allow the acts and events described above to occur.

12

The acts and/or omissions of BURRELL described in Paragraph 11, constitutes failure on the part of BURRELL, as designated broker-officer for AJPROP, to exercise

reasonable supervision and control over the licensed activities of AJPROP required by Section 10159.2 of the Code.

13

The facts alleged above are grounds for the suspension or revocation of Respondents licenses and license rights under the following sections of the Code and Regulations:

(1) As to Paragraphs 9(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code;

(2) As to Paragraph 9(b), under Section 10177(d) of the Code in conjunction with Section 2832.1 of the Regulations; and

(6) As to Paragraph 10, under Section 10176(f) of the Code.

14

The facts alleged in Paragraphs 11 and 12, are grounds from the suspension or revocation of the licenses and license rights of Respondent BURRELL under Sections 10177(g) and/or 10177(h) of the Code, and Section 10177(d) of the Code in conjunction with Section 10159.2 of the Code.

PRIOR PROCEEDINGS

15

Effective March 23, 1998, in Case No. H-2337 SD, the Real Estate Commissioner revoked the real estate broker license of Respondent BURRELL for violation of Sections 10130 of the Code, but granted each Respondent the right to the issuance of a restricted real estate broker license, subject to terms, conditions and restrictions pursuant to Sections 10156.6 and 10156.7 of the Code. BURRELL's restricted real estate broker's license was also suspended for thirty (30) days stayed upon terms and conditions.

16

Effective August 24, 2006, in Case No. H-3497 SD, the Real Estate Commissioner revoked the real estate broker license of: (1) Respondent AJPROP for violation

of Sections 10145 and 10176(f) of the Code and Sections 2832.1, 2831, 2835, and 2832 of the Regulations in conjunction with Section 10177(d) of the Code, and (2) Respondent BURREL for violation of Section 10177(h) of the Code, but granted each Respondent the right to the issuance of a restricted real estate broker license, subject to terms, conditions and restrictions pursuant to Sections 10156.6 and 10156.7 of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

JOSEPH AIU
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 14 day of May, 2009.