

FLAG

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789

**FILED**  
MAY 11 2011

DEPARTMENT OF REAL ESTATE  
By *R. Mar*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	
	)	NO. H-4093 SD
	)	
12 INDEPENDENCE REALTY, INC.,	)	<u>STIPULATION AND AGREEMENT</u>
	)	
13 Respondent.	)	
	)	

16 It is hereby stipulated by and between Respondent INDEPENDENCE  
17 REALTY, INC. (hereafter "Respondent"), acting by and through Frank M. Buda, Counsel for  
18 Respondent, and the Complainant, acting by and through John W. Barron, Counsel for the  
19 Department of Real Estate, as follows for the purpose of settling and disposing of the  
20 Accusation filed on April 15, 2010, in this matter:

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

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H-4093 SD

INDEPENDENCE REALTY, INC.

1           2.     Respondent has received, read and understands the Statement to  
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department  
3 of Real Estate in this proceeding.

4           3.     On April 21, 2010, Respondent filed a Notice of Defense pursuant to  
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the  
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice  
7 of Defense. Respondent acknowledges that Respondent understands that by withdrawing said  
8 Notice of Defense, Respondent will thereby waive Respondent's right to require the  
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in  
10 accordance with the provisions of the APA and that Respondent will waive other rights  
11 afforded to Respondent in connection with the hearing such as the right to present evidence in  
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13           4.     This Stipulation is based on the factual allegations contained in the  
14 Accusation. In the interest of expedience and economy, Respondent chooses not to contest  
15 these factual allegations, but to remain silent and understands that, as a result thereof, these  
16 factual statements will serve as a prima facie basis for the "Determination of Issues" and  
17 "Order" set forth below. The Real Estate Commissioner shall not be required to provide further  
18 evidence to prove such allegations. The attached Statement of Mitigation provided by  
19 Respondent is hereby incorporated by reference and shall become part of the Stipulation.

20           5.     This Stipulation and Respondent's decision not to contest the Accusation  
21 are made for the purpose of reaching an agreed disposition of this proceeding and are expressly  
22 limited to this proceeding and any other proceeding or case in which the Department of Real  
23 Estate, the State or the federal government, an agency of this State, or an agency of another state  
24 is involved.

25           6.     It is understood by the parties that the Real Estate Commissioner may adopt  
26 the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and  
27 sanctions on Respondent's real estate license and license rights as set forth in the "Order"

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

5 7. This Stipulation and Agreement shall not constitute an estoppel, merger or  
6 bar to any further administrative or civil proceedings by the Department of Real Estate with  
7 respect to any matters which were not specifically alleged to be causes for accusation in this  
8 proceeding.

9 DETERMINATION OF ISSUES

10 By reason of the foregoing stipulations, admissions and waivers and solely for  
11 the purpose of settlement of the Accusation without hearing, it is stipulated and agreed that the  
12 acts and omissions of Respondent described in the Accusation are grounds for the suspension or  
13 revocation of the licenses and license rights of Respondent under the provisions of Section  
14 10177(g) (negligence) of the California Business and Professions Code.

15 ORDER

16 All licenses and licensing rights of Respondent under the Real Estate Law are  
17 suspended for a period of thirty (30) days from the effective date of the Decision herein;  
18 provided, however, thirty (30) days of said suspension shall be stayed for one (1) year upon the  
19 following terms and conditions:

- 20 1. Respondent shall obey all laws, rules and regulations governing the rights,  
21 duties and responsibilities of a real estate licensee in the State of California;  
22 and  
23 2. That no final subsequent determination be made, after hearing or upon  
24 stipulation, that cause for disciplinary action occurred within one (1) year  
25 of the effective date of this Decision. Should such a determination be  
26 made, the Commissioner may, in his discretion, vacate and set aside the

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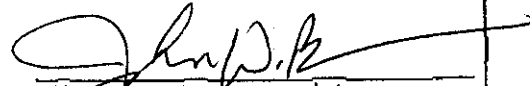
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stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2/25/11

DATED


  
JOHN W. BARRON, Counsel  
Department of Real Estate

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I have read the Stipulation and Agreement 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 (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 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.

2-22-11

DATED

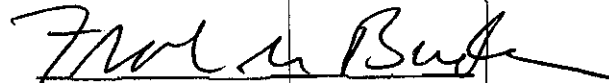
  
EMILE NICOLAS MISIRACA  
Designated Broker/Officer for Respondent  
INDEPENDENCE REALTY, INC.

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

2-22-11

DATED

  
FRANK M. BUDA  
Attorney for Respondent

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H-4093 SD

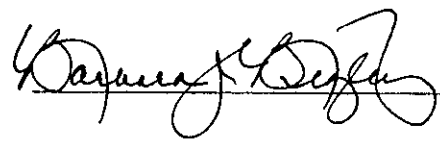
INDEPENDENCE REALTY, INC.

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The foregoing Stipulation and Agreement is hereby adopted by me as my  
Decision in this matter as to Respondent INDEPENDENCE REALTY, INC., and shall become  
effective at 12 o'clock noon on JUN 1 2011

IT IS SO ORDERED 5/9/11

BARBARA J. BIGBY  
Acting Real Estate Commissioner



1 JOHN W. BARRON, Counsel (SBN 171246)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-0792

FILED

APR 15 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \*\*\*

11 In the Matter of the Accusation of )  
12 ) No. H-4093 SD  
13 INDEPENDENCE REALTY, INC., )  
14 ) ACCUSATION  
15 Respondent. )

16 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the  
17 State of California, for cause of Accusation against INDEPENDENCE REALTY, INC.,  
18 (hereinafter "Respondent"), is informed and alleges as follows:

19 1

20 The Complainant makes this Accusation in his official capacity.

21 2

22 Respondent is presently licensed and/or has license rights under the Real Estate  
23 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code").

24 3

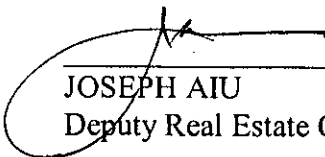
25 At all times herein mentioned, Respondent was and is licensed by the Department  
26 of Real Estate (hereafter "the Department") as a real estate corporation.

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On or about June 12, 2008, in the Superior Court of the State of California, County of San Diego, Case No. 37-2007-00006542-SC-SC-EC, a final judgment was entered against Respondent based on grounds of fraud, misrepresentation or deceit with reference to a transaction for which a real estate license is required.

The facts set forth above constitute cause under Section 10177.5 of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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 Respondent under the Code, and for such other and further relief as may be proper under the provisions of law.

  
\_\_\_\_\_  
JOSEPH AIU  
Deputy Real Estate Commissioner

Dated at San Diego, California,  
this 9 day of April, 2010.