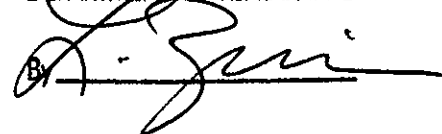


FILED

MAY - 8 2008

DEPARTMENT OF REAL ESTATE



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

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
TBROWN REAL ESTATE GROUP INC.)
and TRACY LYNN BROWN,)
Respondents.)

No. H-4933 SAC

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between TBROWN REAL ESTATE GROUP INC. and TRACY LYNN BROWN (hereinafter "Respondents") and their attorney, C. Breck Jones, 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 February 15, 2008 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 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this

1 Stipulation and Agreement.

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

5 3. Respondents filed a Notice of Defense pursuant to
6 Section 11505 of the Government Code for the purpose of
7 requesting a hearing on the allegations in the Accusation.

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

17
18 4. This stipulation is based on the factual
19 allegations contained in the Accusation. In the interest of
20 expediency and economy, Respondents choose not to contest these
21 factual allegations, but to remain silent and understands that,
22 as a result thereof, these factual statements will serve as a
23 prima facie basis for the "Determination of Issues" and "Order"
24 set forth below. The Real Estate Commissioner shall not be
25 required to provide further evidence to prove such allegations.

26 5. This Stipulation and Respondents decision not to
27 contest the Accusation are made for the purpose of reaching an

1 agreed disposition of this proceeding and are expressly limited
2 to this proceeding and any other proceeding or case in which the
3 Department of Real Estate (hereinafter "the Department"), the
4 state or federal government, an agency of this state, or an
5 agency of another state is involved.

6 6. Respondents understand that by agreeing to this
7 Stipulation and Agreement, Respondents agree to pay, pursuant to
8 Section 10148 of the California Business and Professions Code,
9 the cost of the audit which resulted in the determination that
10 Respondent committed the trust fund violation(s) found in
11 Paragraph I, below, of the Determination of Issues. The amount
12 of said costs is \$4,565.32.

13 7. Respondents further understand that by agreeing
14 to this Stipulation and Agreement in Settlement, the findings
15 set forth below in the Determination Of Issues become final, and
16 that the Commissioner may charge said Respondents for the
17 costs of any audit conducted pursuant to Section 10148 of
18 the California Business and Professions Code to determine if
19 the violations have been corrected. The maximum costs of
20 said audit shall not exceed \$4,565.32.

21 8. It is understood by the parties that the Real
22 Estate Commissioner may adopt the Stipulation and Agreement as
23 his decision in this matter thereby imposing the penalty and
24 sanctions on the real estate licenses and license rights of
25 Respondent as set forth in the below "Order". In the event that
26 the Commissioner in his discretion does not adopt the Stipulation
27

1 and Agreement, it shall be void and of no effect, and Respondents
2 shall retain the right to a hearing and proceeding on the
3 Accusation under all the provisions of the APA and shall not be
4 bound by any admission or waiver made herein.

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

12 * * *

13 DETERMINATION OF ISSUES

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

19 I

20 The acts and omissions of Respondent TBROWN REAL
21 ESTATE GROUP INC. (hereinafter "TREG") as described in the
22 Accusation are grounds for the suspension or revocation of
23 Respondents licenses and license rights under the following
24 sections of the Code and Regulations:

25 (1) As to Paragraphs IX(a), under Section 10177(d) of
26 the Code in conjunction with Section 10145 of the Code;
27

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

3 (3) As to Paragraph IX(c), under Section 10177(d) of
4 the Code in conjunction with Section 2831.2 of the Regulations;

5 (4) As to Paragraph X, under Section 10177(d) of the
6 Code in conjunction with Section 2832 of the Regulations; and

7 (5) As to Paragraph XI, under Section 10177(d) of the
8 Code in conjunction with Section 2905 of the Regulations and
9 Section 10148 of the Code.

10 II

11 The acts and/or omissions of Respondent TRACY LYNN
12 BROWN (hereinafter "BROWN") described in the Accusation,
13 constitute failure on the part of BROWN, as designated broker-
14 officer for TREG, to exercise reasonable supervision and control
15 over the licensed activities of TREG required by Section 10159.2
16 of the Code, and is cause for the suspension or revocation of
17 BROWN's license and/or license rights under Section 10177(h) of
18 the Code.

19 * * *

20 ORDER

21 I

22 All licenses and licensing rights of Respondent TREG under
23 the Real Estate Law are suspended for a period of sixty (60) days
24 from the effective date of this Order; provided, however, that

25 1) Sixty (60) days of said suspension shall be stayed for two (2)
26 years upon the following terms and conditions:

27 a) Respondent shall obey all laws, rules and regulations

governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,

b) That no final subsequent determination be made, after

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

2) Pursuant to Section 10148 of the Business and Professions

Code, TREG shall jointly and severally with BROWN pay the sum of \$4,565.32 for the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefor from the Commissioner. The Commissioner may suspend the TREG'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.

3) Pursuant to Section 10148 of the Business and Professions

Code, TREG shall jointly and severally with BROWN pay the

1 Commissioner's reasonable cost, not to exceed \$4,565.32, for
2 an audit to determine if Respondents have corrected the trust
3 fund violation(s) found in Paragraph I of the Determination of
4 Issues. In calculating the amount of the Commissioner's
5 reasonable cost, the Commissioner may use the estimated
6 average hourly salary for all persons performing audits of
7 real estate brokers, and shall include an allocation for
8 travel time to and from the auditor's place of work.

9 Respondent shall pay such cost within sixty (60) days of
10 receiving an invoice therefor from the Commissioner detailing
11 the activities performed during the audit and the amount of
12 time spent performing those activities. The Commissioner may
13 suspend TREG's license pending a hearing held in accordance
14 with Section 11500, et seq., of the Government Code, if
15 payment is not timely made as provided for herein, or as
16 provided for in a subsequent agreement between Respondent and
17 the Commissioner. The suspension shall remain in effect until
18 payment is made in full or until Respondent enters into an
19 agreement satisfactory to the Commissioner to provide for
20 payment, or until a decision providing otherwise is adopted
21 following a hearing held pursuant to this condition.

22 II

23 All licenses and licensing rights of Respondent BROWN under
24 the Real Estate Law are suspended for a period of sixty (60) days
25 from the effective date of this Order; provided, however, that:
26 1) Sixty (60) days of said suspension shall be stayed for two (2)
27 years upon the following terms and conditions:

1 a) Respondent shall obey all laws, rules and regulations

2 governing the rights, duties and responsibilities of a real
3 estate licensee in the State of California; and,

4 b) That no final subsequent determination be made, after

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

12 2) BROWN shall, prior to the effective date of this Decision,

13 submit proof satisfactory to the Commissioner of having taken
14 and successfully completed the continuing education course on
15 trust fund accounting and handling specified in subdivision
16 (a) of Section 10170.5 of the Business and Professions Code.
17 Proof of satisfaction of this requirement includes evidence
18 that BROWN has successfully completed the trust fund account
19 and handling continuing education course within 120 days prior
20 to the effective date of the Decision in this matter. If BROWN
21 fails to satisfy this condition, the Commissioner may order
22 the suspension of BROWN's license until BROWN presents proof
23 that she has successfully completed the trust fund course.

24 3) Pursuant to Section 10148 of the Business and Professions

25 Code, BROWN shall jointly and severally with TREG pay the sum
26 of \$4,565.32 for the Commissioner's cost of the audit which
27 led to this disciplinary action. Respondent shall pay such

1 cost within sixty (60) days of receiving an invoice therefor
2 from the Commissioner. The Commissioner may suspend BROWN's
3 license pending a hearing held in accordance with Section
4 11500, et seq., of the Government Code, if payment is not
5 timely made as provided for herein, or as provided for in a
6 subsequent agreement between the Respondent and the
7 Commissioner. The suspension shall remain in effect until
8 payment is made in full or until Respondent enters into an
9 agreement satisfactory to the Commissioner to provide for
10 payment, or until a decision providing otherwise is adopted
11 following a hearing held pursuant to this condition.

12 4) Pursuant to Section 10148 of the Business and Professions

13 Code, BROWN shall jointly and severally with TREG pay the
14 Commissioner's reasonable cost, not to exceed \$4,565.32, for
15 an audit to determine if Respondents have corrected the trust
16 fund violation(s) found in Paragraph I of the Determination of
17 Issues. In calculating the amount of the Commissioner's
18 reasonable cost, the Commissioner may use the estimated
19 average hourly salary for all persons performing audits of
20 real estate brokers, and shall include an allocation for
21 travel time to and from the auditor's place of work.

22 Respondent shall pay such cost within sixty (60) days of
23 receiving an invoice therefor from the Commissioner detailing
24 the activities performed during the audit and the amount of
25 time spent performing those activities. The Commissioner may
26 suspend BROWN's license pending a hearing held in accordance
27 with Section 11500, et seq., of the Government Code, if

1 payment is not timely made as provided for herein, or as
2 provided for in a subsequent agreement between Respondent and
3 the Commissioner. The suspension shall remain in effect until
4 payment is made in full or until Respondent enters into an
5 agreement satisfactory to the Commissioner to provide for
6 payment, or until a decision providing otherwise is adopted
7 following a hearing held pursuant to this condition.

3-27-08

DATED


TRULY SUGHRUE
Counsel for Complainant

* * *

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

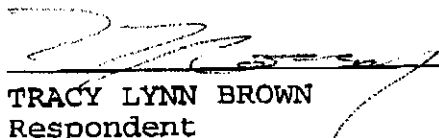
3-24-08

DATED


TBROWN REAL ESTATE GROUP INC.
By Tracy Brown
Designated Officer

3-24-08

DATED


TRACY LYNN BROWN
Respondent

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

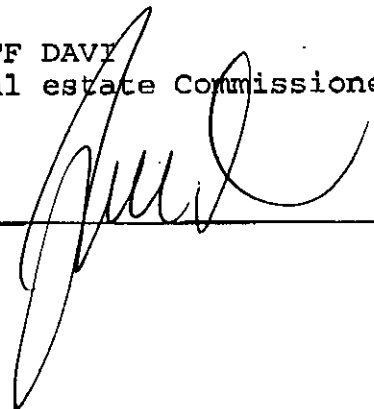
3-24-08

DATED


C. BRECK JONES
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on MAY 29 2008

IT IS SO ORDERED 5-6, 2008.
JEFF DAVIS
Real estate Commissioner

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
7 Telephone: (916) 227-0781
8

FILED

FEB 15 2008

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H- 4933 SAC
	)	
TBROWN REAL ESTATE GROUP INC.	)	<u>ACCUSATION</u>
and TRACY LYNN BROWN,	)	
	)	
Respondent.	)	

16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against TBROWN REAL ESTATE GROUP INC. and TRACY LYNN
19 BROWN (hereinafter "Respondents"), are informed and alleges as
20 follows:

21 I

22 The Complainant, CHARLES W. KOENIG, a Deputy Real
23 Estate Commissioner of the State of California, makes this
24 Accusation in his official capacity.

25 ///

26 ///

27 ///

1 II

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

5 III

6 At all times herein mentioned, TBROWN REAL ESTATE GROUP
7 INC. (hereinafter "TREG") was and is licensed by the Department
8 of Real Estate (hereafter the "Department") as a real estate
9 broker corporation.

10 IV

11 At all times herein mentioned, TRACY LYNN BROWN
12 (hereinafter "BROWN") was and is licensed by the Department
13 individually and as the designated officer for TREG.

14 V

15 As said designated officer-broker, BROWN was
16 responsible pursuant to Section 10159.2 of the Code for the
17 supervision of the activities of the officers, agents, real
18 estate licensees, and employees of TREG for which a license is
19 required.

20 VI

21 At all times herein mentioned, Respondents engaged in
22 the business of, acted in the capacity of, advertised and assumed
23 to act as real estate brokers in the State of California within
24 the meaning of:

25 ///

26 ///

27 ///

1 (a) Section 10131(a) of the Code, including the
2 operation and conduct of a real estate resale brokerage with the
3 public wherein, on behalf of others, for compensation or in
4 expectation of compensation, Respondent TREG sold and offered to
5 sell, bought and offered to buy, solicited prospective sellers
6 and purchasers of, solicited and obtained listings of, and
7 negotiated, the purchase and sale of real property;

8 (b) Section 10131(b) of the Code, including the
9 operation and conduct of a property management business with the
10 public wherein, on behalf of others, for compensation or in
11 expectation of compensation, Respondent TREG leased or rented and
12 offered to lease or rent, and placed for rent, and solicited
13 listings of places for rent, and solicited for prospective
14 tenants of real property or improvements thereon, and collected
15 rents from real property or improvements thereon.

16 VII

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

24 ///

25 ///

26 ///

27 ///

VIII

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (hereinafter "accounts") maintained by Respondents for the handling of trust funds, including but not limited to the following:

TITLE AND ACCOUNT NUMBERS

BANK

TBrown Real Estate Group Inc., DBA Onyx Realty, TBrown Mortgage Services, TBrown Property Management, Tbrown Realty Acct. Account No. 05807-41848 hereinafter "Account #1")	Bank of America 10607 Folsom Blvd. Rancho Cordova, CA
--	---

TBrown Real Estate Group Inc., DBA Onyx Realty, TBrown Mortgage Services, TBrown Property Management, Tbrown Realty Acct. Account No. 05801-41846 hereinafter "Account #2")	Bank of America 10607 Folsom Blvd. Rancho Cordova, CA
--	---

TBrown Real Estate Group Inc., DBA Onyx Realty, TBrown Mortgage Services, TBrown Property Management, Tbrown Realty Acct. hereinafter "Account #3")	Bank of America 10607 Folsom Blvd. Rancho Cordova, CA
---	---

IX

Between on or about July 1, 2006 through July 31, 2007, in connection with the collection and disbursement of said funds TREG:

(a) Failed to deposit and maintain trust funds in Account #1 in such manner that as of July 31, 2007, there was a shortage of \$1,064.53 of trust funds.

///

///

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

6 (c) Failed to reconcile the balance of separate
7 beneficiary or transaction records with the control records of
8 trust funds received and disbursed, at least once a month,
9 and/or failed to maintain a record of such reconciliations as
10 required by Section 2831.2 of the Regulations.

11 X

12 In connection with the receipt and disbursement of
13 trust funds described in Paragraph VIII above, TREG failed to
14 designate Account #1, Account #2, and Account #3 as trust
15 accounts, and/or failed to deposit the trust funds into a trust
16 account in the name of the broker as trustee in conformance with
17 Section 10145 of the Code and Section 2832 of the Regulations.
18

19 XI

20 TREG failed to maintain a record of delivery of the
21 pest control inspection report and certification and notice of
22 work completed to buyers for a period of three years as required
23 under Section 2905 of the Regulations and as required by Section
24 10148 of the Code, in connection with the sale of real property
25 identified as 7456 Franklin Blvd #3, Sacramento, California to
26 buyer James Martin on behalf of seller Rob Plannette.
27

XII

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

XIII

The acts and/or omissions of BROWN described in Paragraph XII, constitutes failure on the part of BROWN, as designated broker-officer for TREG, to exercise reasonable supervision and control over the licensed activities of TREG required by Section 10159.2 of the Code.

XIV

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 IX(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code;

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

(3) As to Paragraph IX(c), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations;

(4) As to Paragraph X, under Section 10177(d) of the Code in conjunction with Section 2832 of the Regulations and Section 10145 of the Code; and

(5) As to Paragraph XI, under Section 10177(d) of the Code in conjunction with Section 2905 of the Regulations and Section 10148 of the Code;

1 XV

2 The facts alleged in Paragraphs XII and XIII, are
3 grounds for the suspension or revocation of the license and
4 license rights of Respondent BROWN and under Sections 10177(g)
5 and/or 10177(h) of the Code, and Section 10177(d) of the Code in
6 conjunction with Section 10159.2 of the Code.

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

14
15 
16 CHARLES W. KOENIG
17 Deputy Real Estate Commissioner

18 Dated at Sacramento, California,
19 this 11th day of February 2008
20
21
22
23
24
25
26
27