

1 Department of Real Estate
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3 Los Angeles, California 90013-1105
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FILED

NOV 02 2018

DEPT. OF REAL ESTATE
By *Shirley Lanner*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	No. H-04964 SD
	)	
12 J RAY BAKER COMPANY; and	)	<u>STIPULATION</u>
	)	<u>AND</u>
13 JAY BARRY BAKER, individually and as	)	<u>AGREEMENT</u>
14 designated officer of J Ray Baker Company,	)	
	)	
15 Respondents.	)	

16
17 It is hereby stipulated by and between Respondents J RAY BAKER COMPANY
18 ("JRBC"), JAY BARRY BAKER ("BAKER"), represented by Frank M. Buda, Esq. and James
19 E. Lund, Esq., and the Complainant, acting by and through Julie L. To, Counsel for the
20 Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation
21 ("Accusation") filed on January 10, 2018, in Case No. H-04964 SD, in this matter.

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

27 DRE Stipulation & Agreement – J RAY BAKER COMPANY and JAY BARRY BAKER, H-04964 SD

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

4 3. On February 2, 2018, Respondents timely filed a Notice of Defense pursuant to
5 Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
7 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they
8 thereby waive their right to require the Commissioner to prove the allegations in the Accusation
9 at a contested hearing held in accordance with the provisions of the APA and that they will waive
10 other rights afforded to them in connection with the hearing such as the right to present evidence
11 in their defense and the right to cross-examine witnesses.

12 4. This Stipulation is based on the factual allegations contained in the Accusation.
13 In the interest of expedience and economy, Respondents choose not to contest these allegations,
14 but to remain silent, and understand that, as a result thereof, these factual allegations, without
15 being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to
16 herein. The Real Estate Commissioner shall not be required to provide further evidence to prove
17 said factual allegations.

18 5. This Stipulation is made for the purpose of reaching an agreed disposition of
19 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
20 which the Department of Real Estate ("Department") or another licensing agency of this state,
21 another state, or if the federal government is involved, and otherwise shall not be admissible in
22 any other criminal or civil proceeding.

23 6. It is understood by the parties that the Real Estate Commissioner may adopt
24 this Stipulation as the Commissioner's Decision in this matter, thereby imposing the penalty and
25 sanctions on Respondents' real estate licenses and license rights as set forth in below "Order." In
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1 the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement,
2 the Stipulation shall be void and of no effect and Respondents shall retain the right to a hearing
3 and proceeding on the Accusation under the provisions of the APA and shall not be bound by any
4 admission or waiver made herein.

5 7. The Order or any subsequent Order of the Real Estate Commissioner made
6 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further
7 administrative or civil proceedings by the Department of Real Estate with respect to any matters
8 which were not specifically alleged to be causes for Accusation in this proceeding but do
9 constitute a bar, estoppel and merger as to any allegations actually contained in the Accusations
10 against Respondents herein.

11 8. Respondents understand that by agreeing to this Stipulation, Respondents agree
12 to pay, pursuant to Business and Professions Code ("Code") Section 10148, the cost of the audit
13 which resulted in the determination that Respondents committed the violations found in the
14 Determination of Issues. The amount of said costs for the original audit (SD 150027) is
15 \$11,559.84. Respondents agree to pay, pursuant to Code Section 10148, \$11,559.84 for the cost
16 of Audit No. SD 150027.

17 9. Respondents have received, read, and understand the "Notice Concerning
18 Costs of Subsequent Audit." Respondents further understand that by agreeing to this Stipulation,
19 the findings set forth below in the Determination of Issues become final, and the Commissioner
20 may charge Respondents for the cost of any subsequent audits conducted pursuant to Code
21 Section 10148 to determine if the violations have been corrected. The maximum cost of the
22 follow-up audits will not exceed one-hundred twenty-five percent (125%) of the cost of the
23 original audit; in the instant case, the cost of the original audit is \$11,559.84, and the maximum
24 cost of the follow-up audit will not exceed \$14,449.80. Therefore, Respondents may be charged
25 a maximum of \$14,449.80 in the event of a subsequent audit.

10. Respondents understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant to Code Section 10106, the Commissioner's cost of the investigation and enforcement which resulted in the determination that Respondents committed the violations found in the Determination of Issues. The amount of said costs is \$2,462.20; therefore, Respondents agree to pay, pursuant to Code Section 10106, the amount \$2,462.20.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions 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:

The conduct, acts or omissions of Respondents JRBC and BAKER, as described in Paragraph 4, herein above, are in violation of: Code Section 10145 and Title 10, Chapter 6, California Code of Regulations ("Regulation") 2832.1; Code Sections 10145 and 10176(e) and Regulations 2835(a),(b), and (c); Code Sections 10145(d) and (g); Code Section 10145 and Regulation 2831; Code Section 10145(g) and Regulation 2831.1; Code Section 10145 and Regulation 2831.2; Code Section 10145 and Regulation 2832; Code Section 10145 and Regulation 2834; Code Section 10140.6 and Regulation 2773; and [as to BAKER only] Code Sections 10159.2 and 10177(h) and Regulation 2725, and are bases for the suspension or revocation of Respondents JRBC and BAKER's licenses and license rights as a violation of the Real Estate Law pursuant to Code Sections 10176(e), 10177(d), 10177(g), and 10177(h).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents J RAY BAKER COMPANY and JAY BARRY BAKER under the Real Estate Law are revoked; provided, however: (1) a restricted real estate corporation license shall be issued to Respondent JRBC, and

1 (2) a restricted real estate salesperson license shall be issued to Respondent BAKER, both to be
2 issued pursuant to Section 10156.5 of the Code if Respondents JRBC and BAKER make
3 applications therefore and pay to the Department the appropriate fees for each of their restricted
4 licenses within ninety (90) days from the effective date of this Decision and Order. The
5 restricted licenses issued to Respondents JRBC and BAKER shall be subject to all of the
6 provisions of Section 10156.7 of the Code and to the following limitations, conditions and
7 restrictions imposed under authority of Section 10156.6 of the Code:

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

12 2. The restricted licenses issued to Respondents JRBC and BAKER may be
13 suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to
14 the Commissioner that the respective Respondent has violated provisions of the California Real
15 Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or
16 conditions attaching to the restricted licenses.

17 3. Respondents JRBC and BAKER shall not be eligible to apply for the issuance
18 of unrestricted real estate licenses nor for removal of any of the conditions, limitations or
19 restrictions of a restricted license until three (3) years have elapsed from the effective date of
20 this Decision and Order.

21 4. Respondent BAKER shall submit with any application for license under an
22 employing broker, or any application for transfer to a new employing broker, a statement signed
23 by the prospective employing broker on a form approved by the Department of Real Estate
24 which shall certify:

25 (a) That the employing broker has read the Decision of the Commissioner
26

1 which granted the right to a restricted license; and

2 (b) That the employing broker will exercise close supervision over the
3 performance by the restricted licensee relating to activities for which a real
4 estate license is required.

5 5. Respondent BAKER shall, within nine (9) months from the effective date of
6 this Decision and Order, take and pass the Professional Responsibility Examination
7 administered by the Department, including the payment of the appropriate examination fee. If
8 Respondent BAKER fails to satisfy this condition, Respondent BAKER's real estate license
9 shall automatically be suspended until Respondent BAKER passes the examination.

10 6. Respondent BAKER shall, within nine (9) months from the effective date of
11 this Decision and Order, present evidence satisfactory to the Commissioner that Respondent
12 BAKER has, since the most recent issuance of an original or renewal real estate license, taken
13 and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
14 the Real Estate Law for renewal of a real estate license. If Respondent BAKER fails to satisfy
15 this condition, Respondent BAKER's real estate license shall automatically be suspended until
16 Respondent BAKER presents evidence satisfactory to the Commissioner of having taken and
17 successfully completed the continuing education requirements. Proof of completion of the
18 continuing education courses must be delivered to the Department of Real Estate, Flag Section at
19 P.O. Box 137013, Sacramento, CA 95813-7013.

20 7. All licenses and licensing rights of Respondents JRBC and BAKER are
21 indefinitely suspended unless or until Respondents JRBC and BAKER jointly and severally pay
22 the sum of \$2,462.20 for the Commissioner's reasonable cost of the investigation and
23 enforcement which led to this disciplinary action. Said payment shall be in the form of a
24 cashier's check or certified check made payable to the Department of Real Estate. The
25 investigation and enforcement costs must be delivered to the Department of Real Estate, Flag
26
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1 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
2 Decision and Order.

3 8. Pursuant to Section 10148 of the Code, Respondents JRBC and BAKER shall
4 pay the sum of \$11,559.84 for the Commissioner's cost of the audit which led to this disciplinary
5 action. Respondents JRBC and BAKER shall pay such cost within sixty (60) days of receiving
6 an invoice therefore from the Commissioner. Payment of audit costs should not be made until
7 Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner
8 as provided for herein, Respondents' real estate licenses shall automatically be suspended until
9 payment is made in full, or until a decision providing otherwise is adopted following a hearing
10 held pursuant to this condition.

11 9. Pursuant to Section 10148 of the Code, Respondents JRBC and BAKER shall
12 pay the Commissioner's reasonable cost, not to exceed \$14,449.80 [or, 125% of the original
13 audit cost], for a subsequent audit to determine if Respondents JRBC and BAKER have
14 corrected the violations found in the Determination of Issues. In calculating the amount of the
15 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
16 for all persons performing audits of real estate brokers, and shall include an allocation for travel
17 time to and from the auditor's place of work. Respondents shall pay such cost within sixty (60)
18 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should
19 not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition
20 in a timely manner as provided for herein, Respondents' real estate licenses shall automatically
21 be suspended until payment is made in full, or until a decision providing otherwise is adopted
22 following a hearing held pursuant to this condition.

23
24 DATED: 9-10-18



Julie L. To, Counsel for
Department of Real Estate

1 DATED: 9/30/2018

Jay B. Baker
J RAY BAKER COMPANY, Respondent
By: JAY BARRY BAKER, Designated Officer

3 *We have reviewed the Stipulation and Agreement as to form and content and have*
4 *advised our clients accordingly.*

5 DATED: 9.4.18

Frank M. Buda
Frank M. Buda, Esq.
Attorney for Respondents

7 DATED: 8/30/18

James E. Lund
James E. Lund, Esq.
Attorney for Respondents

10 * * *

11 The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
12 Respondents J RAY BAKER COMPANY and JAY BARRY BAKER, individually and as
13 designated officer of J RAY BAKER COMPANY, and shall become effective at 12 o'clock noon
14 on NOV 21 2018, 2018.

15 IT IS SO ORDERED October 25, 2018.

16 DANIEL J. SANDRI
17 ACTING REAL ESTATE COMMISSIONER

18 Daniel J. Sandri