

1 DEPARTMENT OF REAL ESTATE
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FILED

APR - 6 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of	)	
	)	NO. H-5133 SAC
13 BINDEL, INC, a Corporation, and	)	
14 DEBORAH ANN BINDEL,	)	<u>STIPULATION AND AGREEMENT</u>
	)	<u>IN SETTLEMENT AND ORDER</u>
15 Respondents.	)	
16	)	

17 It is hereby stipulated by and between BINDEL, INC. (herein "BI"), and
18 DEBORAH ANN BINDEL (herein "BINDEL") (herein jointly "Respondents") individually and
19 jointly, by and through W. Timothy Needham, attorney of record herein for Respondents, and the
20 Complainant, acting by and through Mary F. Clarke, Counsel for the Department of Real Estate
21 (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation
22 filed on January 20, 2009 in this matter:

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

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 in this
3 proceeding.

4 3. Notices of Defense were filed on February 4 and 9, 2009 by Respondents
5 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
6 the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
7 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
8 Notices of Defense, they will thereby waive their right to require the Real Estate Commissioner
9 (herein "Commissioner") to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that they will waive other rights afforded to them
11 in connection with the hearing such as the right to present evidence in defense of the allegations
12 in the Accusation and the right to cross-examine witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations pertaining to them in the Accusation filed in this proceeding are true and
15 correct and the Commissioner shall not be required to provide further evidence of such
16 allegations.

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

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

7. Respondents understand that by agreeing to this Stipulation and Agreement in Settlement and Order, Respondents jointly and severally agree to pay, pursuant to Section 10148 of the California Business and Professions Code (herein "Code"), the cost of the audit which resulted in the determination that Respondents committed the trust fund violations found in Paragraph I, below, of the Determination of Issues. The amount of said costs is \$4,919.42.

8. Respondents further understand that by agreeing to this Stipulation and Agreement in Settlement and Order, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondents, jointly and severally, for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund violation(s) found in Paragraph I, below, of the Determination of Issues have been corrected. The maximum costs of said audit shall not exceed \$4,919.42.

DETERMINATION OF ISSUES

I

The acts and omissions of Respondents as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or Chapter 6, Title 10, California Code of Regulations (herein “the Regulations”):

(a) as to Paragraph 9(a) and Respondent BI under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

(b) as to Paragraph 9(b) and Respondent BI under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;

(c) as to Paragraph 9(c) and Respondent BI under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

(d) as to Paragraph 9(d) and Respondent BI under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;

(e) as to Paragraph 9(e) and Respondent BI under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;

1 (f) as to Paragraph 9(f) and Respondent BI under Section 2834 of the
2 Regulations in conjunction with Section 10177(d) of the Code;

3 (g) as to Paragraph 9(g) and Respondent BI under Section 2726 of the
4 Regulations in conjunction with Section 10177(d) of the Code; and,

5 (h) as to Paragraph 10 and Respondent BINDEL under Section 10159.2 in
6 conjunction with Section 10177(d) of the Code, and Sections 10177(g) and (h) of the Code.

7 ORDER

8 I

9 All licenses and licensing rights of Respondent BI under the Real Estate Law are
10 suspended for a period of sixty (60) days from the effective date of this Order; provided,
11 however, that:

12 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the
13 following terms and conditions:

14 (a) Respondent BI shall obey all laws, rules and regulations governing the
15 rights, duties and responsibilities of a real estate licensee in the State of California; and,

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

21 2. The remaining thirty (30) days of said sixty (60) days suspension shall be
22 stayed upon the condition that Respondent BI petition pursuant to Section 10175.2 of the Code
23 and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$35.00 for each
24 day of the suspension for a total monetary penalty of \$1,050.00:

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

1 (b) No further cause for disciplinary action against the Real Estate licenses
2 of Respondent BI occurs within two (2) years from the effective date of the Order in this matter.

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

8 (d) If Respondent BI pays the monetary penalty and any other moneys due
9 under this Stipulation and Agreement in Settlement and Order and if no further cause for
10 disciplinary action against the real estate license of Respondent BI occurs within two (2) years
11 from the effective date of this Order, the entire stay hereby granted under Paragraph I of this
12 Order, as to Respondent BI, shall become permanent.

13 3. Respondents BI and BINDEL understand that by agreeing to this Stipulation
14 and Agreement in Settlement and Order, Respondents BI and BINDEL, jointly and severally
15 agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
16 determination that Respondents BI and BINDEL committed the trust fund violation(s) found in
17 Paragraph I, above, of the Determination of Issues. The amount of said cost is \$4,919.42.

18 4. Respondents BI and BINDEL, jointly and severally, shall pay the
19 Commissioner's costs, not to exceed \$4,919.42, of any audit conducted pursuant to Section
20 10148 of the Code to determine if Respondents BI and BINDEL have corrected the violations
21 described in Paragraph I of the Determination of Issues, above. In calculating the amount of the
22 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
23 for all persons performing audits of real estate brokers, and shall include an allocation for travel
24 time to and from the auditor's place of work. Respondents BI and BINDEL shall pay such cost
25 within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the
26 activities performed during the audit and the amount of time spent performing those activities. If
27 Respondents BI and BINDEL fail to pay such cost within the sixty (60) days, the Commissioner

1 may in his discretion indefinitely suspend all license and licensing rights of Respondent BI under
2 the Real Estate Law until payment is made in full or until Respondent BI enters into an
3 agreement satisfactory to the Commissioner to provide for payment. Upon payment in full, the
4 indefinite suspension provided in this paragraph shall be stayed.

5 II

6 All licenses and licensing rights of Respondent BINDEL under the Real Estate
7 Law are suspended for a period of sixty (60) days from the effective date of this Order; provided,
8 however, that:

9 1. All licenses and licensing rights of Respondent BINDEL under the Real
10 Estate Law are suspended until such time as Respondent BINDEL provides proof satisfactory to
11 the Commissioner that Respondent BINDEL has, within one hundred twenty (120) days prior to
12 the effective date of the Decision herein completed the continuing education course on trust fund
13 accounting and handling specified in subdivision (a) of Section 10170.5 of the Code.

14 2. Thirty (30) days of said suspension shall be stayed for two (2) years upon the
15 following terms and conditions:

16 (a) Respondent BINDEL shall obey all laws, rules and regulations
17 governing the rights, duties and responsibilities of a real estate licensee in the State of California;
18 and,

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

24 3. The remaining thirty (30) days of said sixty (60) days suspension shall be
25 stayed upon the condition that Respondent BINDEL petition pursuant to Section 10175.2 of the
26 Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$35.00
27 for each day of the suspension for a total monetary penalty of \$1,050.00:

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

4 (b) No further cause for disciplinary action against the Real Estate licenses
5 of Respondent BINDEL occurs within two (2) years from the effective date of the Order in this
6 matter.

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

13 (d) If Respondent BINDEL pays the monetary penalty and any other
14 moneys due under this Stipulation and Agreement in Settlement and if no further cause for
15 disciplinary action against the real estate license of Respondent BINDEL occurs within two (2)
16 years from the effective date of this Order, the entire stay hereby granted under Paragraph II of
17 this Order, as to Respondent BINDEL, shall become permanent.

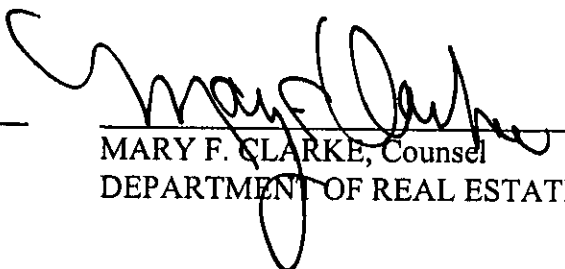
18 4. Respondents BINDEL and BI understand that by agreeing to this Stipulation
19 and Agreement in Settlement and Order, Respondents BINDEL and BI, jointly and severally
20 agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
21 determination that Respondents BINDEL and BI committed the trust fund violation(s) found in
22 Paragraph I, above, of the Determination of Issues. The amount of said cost is \$4,919.42.

23 5. Respondents BINDEL and BI, jointly and severally, shall pay the
24 Commissioner's costs, not to exceed \$4,919.42, of any audit conducted pursuant to Section
25 10148 of the Code to determine if Respondents BINDEL and BI have corrected the violations
26 described in Paragraph I of the Determination of Issues, above. In calculating the amount of the
27 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary

1 for all persons performing audits of real estate brokers, and shall include an allocation for travel
2 time to and from the auditor's place of work. Respondents BINDEL and BI shall pay such cost
3 within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the
4 activities performed during the audit and the amount of time spent performing those activities. If
5 Respondents BINDEL and BI fail to pay such cost within the sixty (60) days, the Commissioner
6 may in his discretion indefinitely suspend all license and licensing rights of Respondent BINDEL
7 under the Real Estate Law until payment is made in full or until Respondent BINDEL enters into
8 an agreement satisfactory to the Commissioner to provide for payment. Upon payment in full,
9 the indefinite suspension provided in this paragraph shall be stayed.

10
11 2-16-10

12 DATED

13 
14 MARY F. CLARKE, Counsel
15 DEPARTMENT OF REAL ESTATE

16 * * *

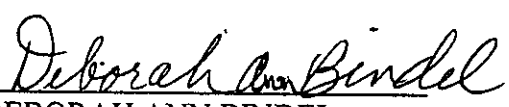
17 I have read the Stipulation and Agreement in Settlement and Order and have
18 discussed it with my attorney and its terms are understood by me and are agreeable and
19 acceptable to me. I understand that I am waiving rights given to me by the California APA
20 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government
21 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of
22 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I
23 would have the right to cross-examine witnesses against me and to present evidence in defense
24 and mitigation of the charges.

25 BINDEL, INC., Respondent

26 2-9-2010

27 DATED

By:


DEBORAH ANN BINDEL
Designated Officer Broker

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2-9-2010
DATED

Deborah Ann Bindel
DEBORAH ANN BINDEL
Respondent

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

2/5/10
DATED

[Signature]
W. TIMOTHY NEEDHAM
Attorney for Respondent

The foregoing Stipulation and Agreement in Settlement and Order is hereby
adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
April 26, 2010.

IT IS SO ORDERED 3/30, 2010.

JEFF DAVI
Real Estate Commissioner

[Signature]

MARY F. CLARKE, Counsel (SBN 186744)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0780 (Direct)

FILED

JAN 20 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	
	)	NO. H- 5133 SAC
BINDEL, INC., a Corporation, and	)	
DEBORAH ANN BINDEL,	)	<u>ACCUSATION</u>
	)	
Respondents.	)	
	)	

The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BINDEL, INC., and DEBORAH ANN BINDEL (herein "BI", "BINDEL", or the "Respondents"), is informed and alleges as follows:

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The Complainant makes this Accusation in his official capacity.

2

At all times herein mentioned, Respondents were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

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At all times herein mentioned, BI was and now is licensed by the State of California Department of Real Estate (herein the "Department") as a corporate real estate broker by and through BINDEL as designated officer-broker of BI to qualify said corporation and to act for said corporation as a real estate broker.

At all times herein mentioned, BINDEL was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of BI. As said designated officer-broker, BINDEL was at all times mentioned herein 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 BI for which a license is required.

Whenever reference is made in an allegation in this Accusation to an act or omission of BI, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with BI committed such act or omission while engaged in the furtherance of the business or operations of such corporate respondent and while acting within the course and scope of their authority and employment.

At all times herein mentioned, Respondents, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

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In so acting as real estate brokers, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in connection with the mortgage loan brokerage activities described in Paragraph 6, above, and thereafter from time to time made disbursements of said trust funds.

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund accounts") maintained by Respondents for the handling of trust funds at the Portland Oregon branch of the Wells Fargo Bank, N.A.:

- (a) "IMS Attn Dennis Bindel," account number 387-8259708 (herein "Bank #1");
- (b) "Norcal Home finance Trust Account," account number 015-6053431 (herein "Trust #1"); and,
- (c) "Bindel Inc Trust Account," account number 015-6053449 (herein "Trust #2").

Between about January 1, 2006 and about November 30, 2007, in connection with the collection and disbursement of said trust funds, Respondent BI:

- (a) failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Bank #1 and Trust #2 containing all the information required by Section 2831 of Chapter 6, Title 10, California Code of Regulations (herein "the Regulations");
- (b) failed to keep a separate record for each beneficiary or transaction for Bank #1 and Trust #1 containing all the information required by Section 2831.1 of the Regulations;

- 1 (c) failed to reconcile at least once a month, the balance of all separate
2 beneficiary or transaction records with Bank #1 and Trust #2, as
3 required by Section 2831.2 of the Regulations;
- 4 (d) failed to place trust funds entrusted to Respondents into the hands
5 of a principal on whose behalf the funds were received, into a
6 neutral escrow depository, or into a trust fund account in the name
7 of Respondents as trustee at a bank or other financial institution, in
8 conformance with the requirements of Section 10145 of the Code
9 and Section 2832 of the Regulations, in that Respondents placed
10 such funds in Bank #1;
- 11 (e) caused, suffered or permitted the balance of funds in Trust #2 to be
12 reduced to an amount, which as of December 31, 2006, was
13 approximately \$78.13 less than the aggregate liability of
14 Respondents to all owners of such funds, without the prior written
15 consent of the owners of such funds, in violation of Section 2832.1
16 of the Regulations;
- 17 (f) authorized Dennis Bindel, an unlicensed person without fidelity
18 bond coverage, to make withdrawals from Bank #1 and Trusts #1
19 and #2, in violation of Section 2834 of the Regulations; and,
- 20 (g) failed to have a written agreement with salesperson, Sharon
21 Boreing, in conformance with all the requirements of Section 2726
22 of the Regulations.

23 10

24 At all times mentioned herein, Respondent BINDEL failed to exercise reasonable
25 supervision over the acts of Respondent BI and its agents and employees in such a manner as to
26 allow the acts and omissions on the part of BI, described above, to occur in violation of Sections
27 10159.2 and 10177(g) and (h) of the Code.

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

- (a) as to Paragraph 9(a) and Respondent BI under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 9(b) and Respondent BI under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 9(c) and Respondent BI under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 9(d) and Respondent BI under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) as to Paragraph 9(e) and Respondent BI under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (f) as to Paragraph 9(f) and Respondent BI under Section 2834 of the Regulations in conjunction with Section 10177(d) of the Code;
- (g) as to Paragraph 9(g) and Respondent BI under Section 2726 of the Regulations in conjunction with Section 10177(d) of the Code;
and,
- (h) as to Paragraph 10 and Respondent BINDEL under Section 10159.2, in conjunction with Section 10177(d) of the Code, and Sections 10177(g) and (h) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code) and for such other and further relief as may
5 be proper under other applicable provisions of law.
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11 JOE M. CARRILLO
12 Deputy Real Estate Commissioner
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14 Dated at Sacramento, California
15 this 22 day of December, 2008.
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