

FILED

JUN 30 2009

DEPARTMENT OF REAL ESTATE

By X. Mar

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of

JOHN JOSEPH USSERY,

Respondent.

No. H-5178 SAC

STIPULATION AND AGREEMENT

It is hereby stipulated by and between JOHN JOSEPH USSERY, (hereinafter "Respondent") and his attorney, C. BRECK JONES, and the Complainant, acting by and through RICHARD K. UNO, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on March 12, 2009 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent 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 Stipulation and Agreement.

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

1                   3.       Respondent filed a Notice of Defense pursuant to Section 11505 of the  
2 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
3 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent  
4 acknowledges that he will thereby waive his right to require the Commissioner to prove the  
5 allegations in the Accusation at a contested hearing held in accordance with the provisions of  
6 the APA and that he will waive other rights afforded to him in connection with the hearing such  
7 as the right to present evidence in defense of the allegations in the Accusation and the right to  
8 cross-examine witnesses.

9                   4.       Respondent, pursuant to the limitations set forth below, hereby admits  
10 that the factual allegations in Paragraphs 3 through 6 of the Accusation filed in this proceeding  
11 are true and correct and the Real Estate Commissioner shall not be required to provide further  
12 evidence to prove such allegations.

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

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

25 ///

26 ///

27 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

DETERMINATION OF ISSUES

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

1

The acts and/or omissions of Respondent as described in the Accusation, violate Sections 490 and 10177(b) of the Business and Professions Code.

ORDER

2

All licenses and licensing rights of Respondent JOHN JOSEPH USSERY under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor 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 Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code as to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent 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 Respondent 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.

///

1                   3.     Respondent shall not be eligible to apply for the issuance of an  
2 unrestricted real estate license nor for removal of any of the conditions, limitations or  
3 restrictions of a restricted license until FOUR (4) years have elapsed from the effective date of  
4 this Decision.

5                   4.     Respondent shall submit with any application for license under an  
6 employing broker, or any application for transfer to a new employing broker, a statement signed  
7 by the prospective employing broker on a form approved by the Department of Real Estate  
8 which shall certify:

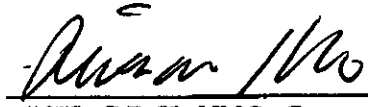
9                   (a)   That the employing broker has read the Decision of the Commissioner  
10 which granted the right to a restricted license; and

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

14                  5.     Six months after the issuance of the restricted license, and six months  
15 thereafter for a term of one year, Respondent shall provide proof acceptable to the Real Estate  
16 Commissioner that, during the preceding six months, Respondent has, each and every month,  
17 attended one or more sessions of Alcoholics Anonymous, or that such attendance in any month  
18 was impractical due to travel for work, the illness of Respondent or a member of Respondent's  
19 family, incarceration, residential treatment for substance abuse, extreme personal hardship for  
20 Respondent or a member of Respondent's family, or family emergency. The Commissioner  
21 may suspend the restricted license issued to respondent pending a hearing held in accordance  
22 with Section 11500, et seq., of the Government Code, if such proof is not timely submitted as  
23 provided for herein, or as provided for in a subsequent agreement between the Respondent and  
24 the Commissioner. The suspension shall remain in effect until such proof is submitted or until  
25 Respondent enters into an agreement satisfactory to the Commissioner to provide such proof,  
26 or until a decision providing otherwise is adopted following a hearing held pursuant to this  
27 condition.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

6/3/09



DATED

RICHARD K. UNO, Counsel  
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement, have 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 (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.

6/2/09



DATED

JOHN JOSEPH USSERY  
Respondent

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

6/2/09



DATED

C. BRECK JONES  
Attorney for Respondent

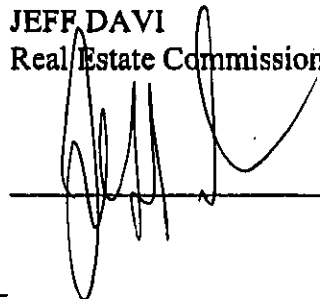
The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on

JUL 21 2009

IT IS SO ORDERED

6/23/09

JEFF DAVI  
Real Estate Commissioner



1 RICHARD K. UNO, Counsel (SBN 98275)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-2380  
6  
7

FILED

MAR 12 2009

DEPARTMENT OF REAL ESTATE

By H. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 JOHN JOSEPH USSERY, ) H-5178 SAC  
13 Respondent. ) ACCUSATION  
14 \_\_\_\_\_ )

15 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of  
16 the State of California, for cause of Accusation against JOHN JOSEPH USSERY, (hereinafter  
17 "Respondent"), is informed and alleges as follows:

18 1

19 Complainant makes this Accusation against Respondent in his official capacity.

20 2

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

24 3

25 On or about August 24, 2007, in the Superior Court of the State of California,  
26 County of Placer, Case No. 62-072051, Respondent was convicted of violating Section 647(f)  
27 of the California Penal Code (Public Intoxication), a misdemeanor and a crime that involves

1 moral turpitude and a crime which bears a substantial relationship under Section 2910, Title 10,  
2 California Code of Regulations, (herein Regulations), to the qualifications, functions or duties  
3 of a real estate licensee.

4 4

5 On or about December 18, 2007, in the Superior Court of the State of California,  
6 County of Placer, Case No. 62-73906, Respondent was convicted of violating Section 23152(a)  
7 of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a  
8 misdemeanor and crime involving moral turpitude which bears a substantial relationship under  
9 Section 2910 of the Regulations, to the qualifications, functions or duties of a real estate  
10 licensee.

11 5

12 On or about February 3, 2008, in the Superior Court of the State of California,  
13 County of Placer, Case No. 62-76324, Respondent was convicted of violating Section 647(f)  
14 of the California Penal Code (Public Intoxication), a misdemeanor and a crime which bears a  
15 substantial relationship under Section 2910, of the Regulations, to the qualifications, functions  
16 or duties of a real estate licensee.

17 FACTORS IN AGGRAVATION

18 6

19 On or about November 1, 1991, in the Superior Court of the State of California,  
20 County of Butte, Case No. CR 5110B, Respondent was convicted of violating Section 459 of  
21 the California Penal Code (Burglary), a misdemeanor.

22 7


23 The facts alleged in Paragraphs 3 through 5, above, constitute cause under  
24 Section 10177(b) and Section 490 of the Code for suspension or revocation of Respondent's  
25 license under the Real Estate Law.

26 ///

27 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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 provisions of law.

  
JOE M. CARRILLO  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 11 day of March, 2009.