

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

OCT - 6 2011

DEPARTMENT OF REAL ESTATE
By *H. Mar*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-5449 SAC
13)
13 BURMASTER REAL ESTATE SERVICES,) STIPULATION AND AGREEMENT
14 INC. and KEITH ARNOLD KLASSEN,)
14)
15 Respondents.)

16 It is hereby stipulated by and between Respondents BURMASTER REAL
17 ESTATE SERVICES, INC. ("BURMASTER"), and KEITH ARNOLD KLASSEN
18 ("KLASSEN"), (collectively "Respondents"), acting by and through Frank M. Buda, Counsel
19 for Respondents, and the Complainant, acting by and through John W. Barron, Counsel for the
20 Department of Real Estate, as follows for the purpose of settling and disposing of the
21 Accusation filed on August 25, 2010, 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
24 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
25 (hereafter "APA"), shall instead and in place thereof be submitted solely on the basis of the
26 provisions of this Stipulation and Agreement.

27 ///

H-5449 SAC

BURMASTER REAL ESTATE SERVICES, INC.
and KEITH ARNOLD KLASSEN

1 2. Respondents have received, read and understand 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 September 3, 2010, Respondents filed a Notice of Defense pursuant
5 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice
7 of Defense. Respondents acknowledge that Respondents understand that by withdrawing said
8 Notice of Defense, Respondents will thereby waive Respondents' 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 Respondents will waive other rights
11 afforded to Respondents 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, Respondents choose not to contest
15 these factual allegations, but to remain silent and understand 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.

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

24 6. It is understood by the parties that the Real Estate Commissioner may
25 adopt the Stipulation and Agreement as her decision in this matter, thereby imposing the penalty
26 and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"
27 below. In the event that the Commissioner in her discretion does not adopt the Stipulation and

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

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

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions and waivers and solely for
10 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
11 that the acts and omissions of Respondents described in the Accusation are grounds for the
12 suspension or revocation of the licenses and license rights of Respondents under the provisions
13 of Sections 10145 and 10177(d) of the Business and Professions Code (hereafter "the Code"),
14 and Sections 2726, 2831(a)(6), 2831.2, 2832 and 2834 of Title 10 of the California Code of
15 Regulations.

16 ORDER

17 1

18 1. All licenses and licensing rights of BURMASTER under the Real Estate
19 Law are suspended for a period of sixty (60) days from the effective date of this Order; provided,
20 however, that:

21 a. Thirty (30) days of said suspension shall be stayed, upon the condition
22 that BURMASTER petitions pursuant to Section 10175.2 of the Business and Professions Code
23 and pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code
24 at a rate of \$50 for each day of the suspension for a total monetary penalty of \$1,500.

25 b. 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 delivered to
27 the Department prior to the effective date of the Decision in this matter.

1 c. No further cause for disciplinary action against the real estate license of
2 BURMASTER occurs within two (2) years from the effective date of the decision in this matter.

3 d. If BURMASTER fails to pay the monetary penalty in accordance with the
4 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
5 immediate execution of all or any part of the stayed suspension, in which event, BURMASTER
6 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
7 Department under the terms of this decision.

8 e. If BURMASTER pays the monetary penalty, and if no further cause for
9 disciplinary action against the real estate license of BURMASTER occurs within two (2) years
10 from the effective date of the Decision herein, then the stay hereby granted shall become
11 permanent.

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

14 a. BURMASTER 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
18 date of this Order. Should such a determination be made, the Commissioner may, in her
19 discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
20 suspension. Should no such determination be made, the stay imposed herein shall become
21 permanent.

22 2

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

26 a. Thirty (30) days of said suspension shall be stayed, upon the condition
27 that KLASSEN petitions pursuant to Section 10175.2 of the Business and Professions Code and

1 pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a
2 rate of \$50 for each day of the suspension for a total monetary penalty of \$1,500.

3 b. Said payment shall be in the form of a cashier's check or certified check
4 made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered
5 to the Department prior to the effective date of the Decision in this matter.

6 c. No further cause for disciplinary action against the real estate license of
7 KLASSEN occurs within two (2) years from the effective date of the decision in this matter.

8 d. If KLASSEN fails to pay the monetary penalty in accordance with the
9 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
10 immediate execution of all or any part of the stayed suspension, in which event, KLASSEN
11 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
12 Department under the terms of this decision.

13 e. If KLASSEN pays the monetary penalty, and if no further cause for
14 disciplinary action against the real estate license of KLASSEN occurs within two (2) years
15 from the effective date of the Decision herein, then the stay hereby granted shall become
16 permanent.

17 2. The remaining thirty (30) days of said suspension shall be stayed for two
18 (2) years upon the following terms and conditions:

19 a. KLASSEN shall obey all laws, rules and regulations governing the rights,
20 duties and responsibilities of a real estate licensee in the State of California; and

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

27 ///

3. KLASSEN shall, within six (6) months from the effective date of this
Order, take and pass the Professional Responsibility Examination administered by the
Department, including the payment of the appropriate examination fee. If KLASSEN fails to
satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
rights of KLASSEN until KLASSEN passes the examination.

4. Notwithstanding any other provision of this Order, all licenses and licensing rights of KLASSEN are suspended unless and until he provides proof satisfactory to the Commissioner that he has taken and successfully completed the continuing education course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code. The course must have been completed no earlier than one hundred twenty (120) days prior to the effective date of this Order, and proof must be submitted prior to the effective date of this Order, to prevent suspension of KLASSEN's license pursuant to this condition.

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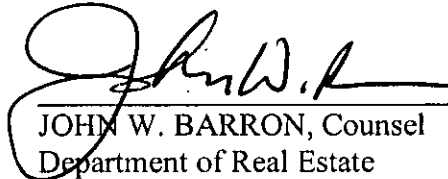
1. Respondents shall, jointly and severally, pay the sum of \$5,586.08 for
the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all licenses and licensing right of Respondents 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 Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter 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.

2. Respondents shall, jointly and severally, pay the Commissioner's costs,
not to exceed \$5,586.08, of any audit conducted pursuant to Section 10148 of the Code to
determine if Respondents have corrected the violations described in the Determination of
Issues, above, and any other violations found in the audit which led to this disciplinary action.

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

11 3. Respondents have received, read and understand the "Notice Concerning
12 Costs of Subsequent Audit". Respondents further understand that by agreeing to this
13 Stipulation, the findings set forth in the Determination of Issues become final, and the
14 Commissioner may charge Respondents for the cost of any subsequent audit conducted
15 pursuant to Business and Professions Code Section 10148 to determine if the violations have
16 been corrected. The maximum cost of the follow-up audit will not exceed \$5,586.08.

17
18 9/22/11
19 DATED

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21 
22 JOHN W. BARRON, Counsel
23 Department of Real Estate

24 * * *

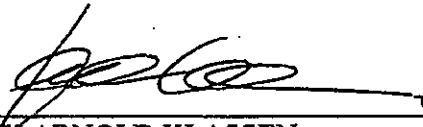
25 I have read the Stipulation and Agreement and its terms are understood by me
26 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
27 the California Administrative Procedure Act (including but not limited to Sections 11506,
11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
voluntarily waive those rights, including the right of requiring the Commissioner to prove the

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1 allegations in the Accusation at a hearing at which I would have the right to cross-examine
2 witnesses against me and to present evidence in defense and mitigation of the charges.

3
4 9/20/11

5 DATED

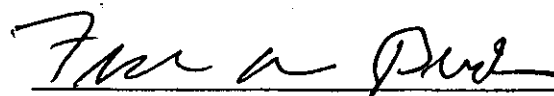
6 
7 KEITH ARNOLD KLASSEN
8 Respondent and as the Designated
9 Officer/Broker for Respondent
10 BURMASTER REAL ESTATE
11 SERVICES, INC.

12 ***

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

15 9-20-11

16 DATED

17 
18 FRANK M. BUDA
19 Attorney for Respondents

20 ***

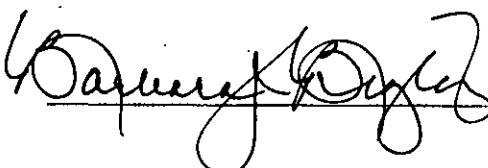
21 The foregoing Stipulation and Agreement is hereby adopted by me as my
22 Decision in this matter as to Respondents BURMASTER REAL ESTATE SERVICES, INC.
23 and KEITH ARNOLD KLASSEN and shall become effective at 12 o'clock noon on

24 OCT 27 2011

25 IT IS SO ORDERED

26 10/4/11

27 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) 227-0789
6 (916) 227-0792 (direct)

FILED

AUG 25 2010

DEPARTMENT OF REAL ESTATE

By L. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

11
12 In the Matter of the Accusation of)
13 BURMASTER REAL ESTATE SERVICES,) No. H-5449 SAC
14 INC. and KEITH ARNOLD KLASSEN,)
15 Respondents.) ACCUSATION
16)

17 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
18 of the State of California, for cause of Accusation against BURMASTER REAL ESTATE
19 SERVICES, INC. (hereafter "BURMASTER") and KEITH ARNOLD KLASSEN (hereafter
20 "KLASSEN"), (hereafter collectively "Respondents"), is informed and alleges as follows:

21 1

22 The Complainant makes this Accusation in her official capacity.

23 2

24 At all times relevant herein, BURMASTER was and is licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code
26 (hereafter, "the Code") by the Department of Real Estate (hereafter "the Department") as a
27 corporate real estate broker.

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At all times relevant herein, KLASSEN was and is presently licensed by the Department as a real estate broker.

4

At all times relevant herein, KLASSEN was and is licensed by the Department as the designated broker/officer of BURMASTER. As the designated broker/officer, KLASSEN was 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 BURMASTER for which a real estate license is required.

5

At all times relevant herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) (Broker Defined – performing services for borrowers/lenders in connection with loans secured by real property) of the Code, including the operation and conduct of a loan brokerage business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondents arranged, negotiated, processed and consummated such loans; and engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code (Broker Defined – Property Management/Collection of Rent), 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 or offered to lease or 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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Whenever reference is made in an allegation in this Accusation to an act or omission of BURMASTER, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with BURMASTER committed such act or omission while engaged in furtherance of the business or operations of BURMASTER and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACTION

On or about the period of February 8, 2010, and continuing intermittently through February 18, 2010, an audit was conducted of the records of BURMASTER at its main office located at 2020 Hurley Way, Suite 105, Sacramento, California. The auditor herein examined the records for the period of January 1, 2009, through January 31, 2010 (the audit period).

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers and others in connection with mortgage activities, and deposited or caused to be deposited those funds into a bank account maintained by Respondents, including:

1. Trust Account #1

Wells Fargo Bank
P. O. Box 6995
Portland, Oregon 97228-6995
Account No. 2118825849

Account Name: Burmaster Real Estate Service Inc.
CIP Trust Account

Signatories: Gary Scott Burmaster (president)
Daisha Jackson (bookkeeper)

Thereafter, from time to time, Respondents made disbursements of said trust funds.

In the course of the activities described in Paragraph 5, above, in connection with the collection and disbursement of trust funds:

(a) As of December 31, 2009, the adjusted bank balance for Trust Account #1 was \$239,791.16 and the accountability was \$250,684.13. The shortage in the amount of \$10,892.97 was the result of a negative balance of \$6,795.36 in property owner Dennis Burmaster's account for properties located at 3723 42nd Street and 7426 19th Street in Sacramento, California, and an additional \$4,097.61 shortage for which the auditor was unable to identify a cause. In addition, Respondents failed to provide evidence that the owners of the trust funds in Trust Account #1 had given their written consent to allow Respondents to reduce the balance of the funds in the account to an amount less than the existing trust fund liabilities. Such acts and/or omissions by Respondents violate Section 10145 (Trust Fund Handling and Retention Requirement) of the Code and Section 2832.1 (Written Consent of Principals in Trust Fund Handling for Multiple Beneficiaries) of Title 10, California Code of Regulations (hereafter "the Regulations").

(b) The "Addendum to Certificate of Authority" for Trust Account #1 lists Daisha Jackson as a signatory on the account. Although Daisha Jackson is an employee of BURMASTER, she is not a real estate licensee and does not have a fidelity bond. In addition, KLASSEN was not listed as a signatory for Trust Account #1. Such acts and/or omissions by Respondents violate Section 2834 (Signature Requirements for Trust Account Withdrawals) of the Regulations.

(c) Respondents failed to perform the required monthly reconciliations comparing the balance of the control records to the total balance of the beneficiary records for Trust Account #1. Such acts and/or omissions violate Section 2831.2 (Requirement of Monthly Trust Fund Account Reconciliation) of the Regulations.

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(d) Respondents collected trust funds in the form of rent receipts and owner deposits, and failed to place those funds in a designated trust account within three (3) days, including:

<u>Tenant or Owner</u>	<u>Property</u>	<u>Amount</u>	<u>Date Received</u>	<u>Date Deposited</u>
F. Gimble	2201 Trails	\$1,050.00	12/16/09	12/24/09
T. Crocker	809 Carro #4	\$ 385.00	10/16/09	10/23/09
H. Moslehi	4626 Ashdale Court #1	\$ 500.00	10/16/09	10/23/09
J. Deary	2347 Imran	\$ 300.00	06/05/09	06/26/09

Such acts and/or omissions violate Section 10145 of the Code and Section 2832 (Trust Fund Handling – Deposit into Escrow or Trust Account) of the Regulations.

(e) Respondents failed to maintain a record of all trust funds received and not placed in the broker's trust account related to their resale activities to account for the collection of earnest money deposits made payable to title companies. Such acts and/or omissions violate Section 2831(a)(6) (Requirement for Trust Fund Records Maintenance) of the Regulations.

10

The acts and/or omissions of Respondents as alleged in Paragraph 9, above, violate Section 10145 of the Code and Sections 2831(a)(6), 2831.2, 2832, 2832.1 and 2834 of the Regulations, and are grounds for discipline under Section 10177(d) (Willful Disregard/Violation of Real Estate Law) of the Code.

SECOND CAUSE OF ACTION

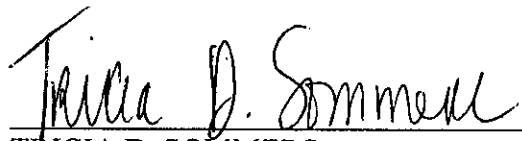
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Cheryl Ann Staley is employed as a real estate salesperson by BURMASTER. However, BURMASTER does not have a broker-salesperson agreement with Cheryl Ann Staley. Such acts and/or omissions violate Section 2726 (Requirement of Broker-Salesperson Relationship Agreement) of the Regulations.

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The acts and/or omissions of Respondents, as alleged in Paragraph 11, above, are grounds for discipline under Section 10177(d) of the Code.

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



TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,

this 19th day of August, 2010.