

FILED

FEB 13 2012

DEPARTMENT OF REAL ESTATE

By R. Jones

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

WESTERN SIERRA PROPERTIES INC.,
JOHN A. CONCA, and GEORGE
DOMENIC SHAMPINE JR.,

Respondents.

No. H-5697 SAC

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between WESTERN SIERRA PROPERTIES INC., JOHN A. CONCA, and GEORGE DOMENIC SHAMPINE JR. (hereinafter "Respondents"), and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate (hereinafter "Department"), as follows for the purpose of settling and disposing the Accusation filed on October 25, 2011 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 (hereinafter "APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

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

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

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

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

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

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1 Should no such determination be made, the stay imposed herein shall become permanent.

2 II

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

5 1) Thirty (30) days of said suspension shall be stayed, upon the condition that CONCA petition
6 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
7 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty
8 of \$1,500.

9 a) Said payment shall be in the form of a cashier's check or certified check made payable to
10 the Recovery Account of the Real Estate Fund. Said check must be delivered to the
11 Department prior to the effective date of the Order in this matter.

12 b) No further cause for disciplinary action against the Real Estate licenses of CONCA
13 occurs within two (2) years from the effective date of the decision in this matter.

14 c) If CONCA fails to pay the monetary penalty as provided above prior to the effective date
15 of this Order, the stay of the suspension shall be vacated as to that Respondent and the
16 order of suspension shall be immediately executed, under this Order, in which event the
17 said Respondent shall not be entitled to any repayment nor credit, prorated or otherwise,
18 for the money paid to the Department under the terms of this Order.

19 d) If CONCA pays the monetary penalty and any other moneys due under this Stipulation
20 and Agreement and if no further cause for disciplinary action against the real estate
21 license of said Respondent occurs within two (2) years from the effective date of this
22 Order, the entire stay hereby granted this Order, as to said Respondent only, shall become
23 permanent.

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

26 a) CONCA shall obey all laws, rules and regulations governing the rights, duties and
27 responsibilities of a real estate licensee in the State of California; and,

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

6 3) Respondent shall, within six (6) months from the effective date of this Decision, take and
7 pass the Professional Responsibility Examination administered by the Department including the
8 payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the
9 Commissioner may order suspension of the license until Respondent passes the examination.

10 III

11 All licenses and licensing rights of Respondent DOMENIC SHAMPINE JR.
12 (hereinafter "SHAMPINE") under the Real Estate Law are suspended for a period of thirty (30)
13 days from the effective date of this Order; provided, however, that:

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

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

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

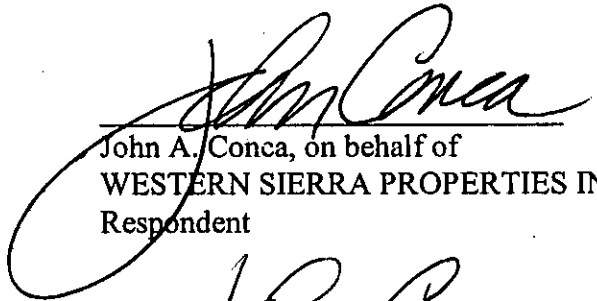
24 5-Dec-11
25 DATED

11 S
25 TRULY SUGHRUE
26 Counsel for Complainant

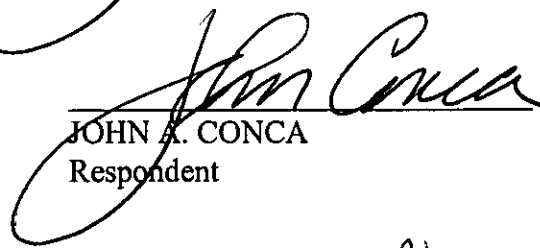
27 * * *

1 I have read the Stipulation and Agreement, discussed it with my counsel, and its
2 terms are understood by me and are agreeable and acceptable to me. I understand that I am
3 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
4 intelligently and voluntarily waive those rights, including the right of requiring the
5 Commissioner to prove the allegations in the Accusations at a hearing at which I would have the
6 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
7 the charges.

8 12-5-2011
9 DATED


John A. Conca, on behalf of
WESTERN SIERRA PROPERTIES INC.
Respondent

11 12-5-2011
12 DATED


JOHN A. CONCA
Respondent

14 12-5-2011
15 DATED

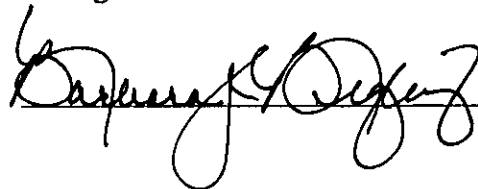

DOMENIC SHAMPINE JR.
Respondent

17 * * *

18 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
19 shall become effective at 12 o'clock noon on MAR 05 2012

20 IT IS SO ORDERED 1/9 2012

22 BARBARA J. BIGBY
23 Acting Real Estate Commissioner

24 
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26
27

FILED

October 25, 2011

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By

R. Jones

6 Telephone: (916) 227-0789
7 (916) 227-0781 (Direct)

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-5697 SAC

12 WESTERN SIERRA PROPERTIES INC.,)
13 JOHN A. CONCA, and GEORGE)
14 DOMENIC SHAMPINE JR.,)

ACCUSATION

15 Respondents.)

16 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against WESTERN SIERRA PROPERTIES INC.,
18 JOHN A. CONCA, and GEORGE DOMENIC SHAMPINE JR. (hereinafter "Respondents"), is
19 informed and alleges as follows:

20 PRELIMINARY ALLEGATIONS

21 1

22 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
23 State of California, makes this Accusation in her official capacity.

24 2

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

3

At all times mentioned, Respondent WESTERN SIERRA PROPERTIES INC. (WESTERN) was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

4

At all times mentioned, Respondent JOHN A. CONCA (CONCA) was and is licensed by the Department individually and as the designated broker officer of WESTERN. As said designated officer-broker, CONCA 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 WESTERN for which a license is required.

5

At all times mentioned, Respondent GEORGE DOMENIC SHAMPINE JR. (hereinafter "SHAMPINE") was and now is licensed by the Department as a real estate salesperson, and was employed as such by WESTERN.

6

At all times 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 Sections 10131(a) of the Code, including the operation and conduct of a real estate brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents sold and offered to sell, solicited prospective sellers and purchasers of, and negotiated the purchase and sale of real property.

FIRST CAUSE OF ACTION

7

Each and every allegation in Paragraphs 1 through 6, inclusive, above, is incorporated by this reference as if fully set forth herein.

8

At all times mentioned, Respondents were the owner or subdivider, or agents of

1 the owner or subdivider of subdivided lands as defined in Sections 11000, 11003, and 11004.5
2 of the Code.

3 9

4 Said subdivision is known as or commonly called "Estey Estates", and is located
5 in or near the County of Placerville, State of California (hereinafter "Estey Estates").

6 10

7 On or about August 12, 2003, the Department issued to Estey Estates, LLC, a
8 California Limited Liability Company, the Department's Final Subdivision Public Report, File
9 Number 108469SA-F00 (hereinafter "the Final Public Report"), authorizing said subdividers to
10 offer for sale and sell lots in the Estey Estates.

11 11

12 On or about August 11, 2008, the Final Public Report expired and was not
13 renewed.

14 12

15 On or about September 27, 2010, Bank of Stockton foreclosed on thirteen (13) of
16 the unsold lots in the Estey Estates subdivision.

17 13

18 At no time has the Department issued to Bank of Stockton any conditional public
19 report or any final public report authorizing any person to offer for sale or lease, negotiate the
20 sale or lease, or sell or lease of any lots, units or parcels in the Estey Estates subdivision.

21 14

22 Between approximately January 2011 through March 2011, Respondents solicited
23 prospective purchasers, offered for sale, and sold lots in the Estey Estates subdivision, including,
24 but not limited to, the sale of lot 7 to Piazza General Construction, and lot 8 to Karen Ruth
25 Mulligan.

26 15

27 Respondents sold and offered for sale lots in Estey Estates subdivision, as

1 described above, without first applying for or obtaining any conditional public report or final
2 public report authorizing such offering, negotiation, or sale, all in violation of Sections 11010
3 and 11018.2 of the Code.

4 16

5 The acts and omissions of Respondents described in the First Cause of Action,
6 violate Sections 11010 and 11018.2 of the Code and constitute cause for the suspension or
7 revocation of the licenses and license rights of Respondents under Section 10177(d) of the Code.

8 17

9 The acts and omissions of Respondents described in the First Cause of Action,
10 constitute cause for the suspension or revocation of the licenses and license rights of
11 Respondents under Section 10177(g) of the Code.

12 SECOND CAUSE OF ACTION

13 18

14 Each and every allegation in Paragraphs 1 through 17, inclusive, above, is
15 incorporated by this reference as if fully set forth herein.

16 19

17 CONCA failed to exercise reasonable supervision over the acts of WESTERN in
18 such a manner as to allow the acts and events described above to occur.

19 20

20 The acts and/or omissions of CONCA described in Paragraph 18, constitute
21 failure on the part of CONCA, as designated broker-officer for WESTERN, to exercise
22 reasonable supervision and control over the licensed activities of WESTERN required by Section
23 10159.2 of the Code.

24 21

25 The facts described above as to the Second Cause of Action under Section
26 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction
27 with Section 10177 (d) of the Code.

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 be
5 proper under other provisions of law.

6
7 
8 TRICIA SOMMERS
9 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 30th day of September, 2011

12
13 DISCOVERY DEMAND

14 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of
15 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
16 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate
17 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
18 Office of Administrative Hearings deems appropriate.
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