

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED

MAY 21 2013

DEPARTMENT OF REAL ESTATE

By *L. First*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)
13 ED FAVINGER,) NO. H-5760 SAC
14 Respondent.) STIPULATION AND AGREEMENT
15 _____)

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17 It is hereby stipulated by and between Respondent ED FAVINGER,
18 (“Respondent”), acting by and through Frank M. Buda, Esq., Counsel for Respondent, and the
19 Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for the Department of
20 Real Estate (“Department”), as follows for the purpose of settling and disposing of the
21 Accusation filed on January 9, 2012, in this matter:

22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondent 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 (“APA”), shall instead and in place thereof be submitted solely on the basis of the provisions
26 of this Stipulation and Agreement.

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

4 3. Respondent 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 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that Respondent understands that by withdrawing said Notice of Defense,
8 Respondent will thereby waive Respondent's right to require the Real Estate Commissioner
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 Respondent will waive other rights
11 afforded to Respondent 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, Respondent chooses not to contest these
15 factual allegations, but to remain silent and understands that, as a result thereof, these factual
16 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
17 forth below. The Commissioner shall not be required to provide further evidence to prove such
18 allegations.

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

23 6. It is understood by the parties that the Commissioner may adopt the
24 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and
25 sanctions on Respondent's real estate license and license rights as set forth in the "Order"
26 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and
27 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing

1 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound
2 by any admission or waiver made herein.

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

7 8. Respondent understands that by agreeing to this Stipulation and
8 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business
9 and Professions Code ("the Code"), the costs of the audit which resulted in the determination
10 that Respondent committed the trust fund violation(s) found in the Determination of Issues.
11 The amount of such costs is \$3,885.00.

12 9. Respondent further understands that by agreeing to this Stipulation and
13 Agreement, the findings set forth below in the Determination of Issues become final, and that
14 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant
15 to Section 10148 of the Code to determine if the violations have been corrected. The
16 maximum costs of said audit shall not exceed \$3,885.00.

17 10. Respondent understands that by agreeing to this Stipulation and
18 Agreement, Respondent agrees to pay, pursuant to Section 10106 of the Code, the costs of the
19 investigation and enforcement of this case which resulted in the determination that Respondent
20 committed the violation(s) found in the Determination of Issues. The amount of such cost is
21 \$852.46.

22 DETERMINATION OF ISSUES

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

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I.

The acts and omissions of Respondent ED FAVINGER (herein "Respondent") as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of Sections 10145, 10177(g), and 10177(h) of the Code, and Sections 2725, 2831.2, 2832, and 2832.1, of Title 10 of the California Code of Regulations.

ORDER

All licenses and licensing rights of Respondent ED FAVINGER (herein "Respondent") under the Real Estate Law are suspended for a period of one-hundred-twenty (120) days from the effective date of this Order; provided, however, that:

1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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

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

2. Sixty (60) days of said suspension shall be stayed, upon the condition that Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the suspension for a total monetary penalty of \$3,000.00.

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

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

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

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

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

24 5. Notwithstanding any other provision of this Order, all licenses and
25 licensing rights of Respondent are suspended unless and until he provides proof satisfactory to
26 the Commissioner that he has taken and successfully completed the continuing education course
27 on Risk Management specified in Section 10170.5(a)(5) of the Code. The course must have

1 been completed no earlier than one hundred twenty (120) days prior to the effective date of this
2 Order, and proof must be submitted prior to the effective date of this Order, to prevent
3 suspension of Respondent's license pursuant to this condition.

4 6. Respondent shall pay the sum of \$3,885.00 for the Commissioner's cost
5 of the audit which led to this disciplinary action. Respondent shall pay such cost within sixty
6 (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may
7 indefinitely suspend all licenses and licensing rights of Respondent pending a hearing held in
8 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
9 made as provided for herein, or as provided for in a subsequent agreement between
10 Respondent and the Commissioner. The suspension shall remain in effect until payment is
11 made in full or until Respondent enters into an agreement satisfactory to the Commissioner to
12 provide for payment, or until a decision providing otherwise is adopted following a hearing
13 held pursuant to this condition.

14 7. Respondent shall pay the Commissioner's costs, not to exceed
15 \$3,885.00, of any audit conducted pursuant to Section 10148 of the Code to determine if
16 Respondent has corrected the violations described in the Determination of Issues, above, and
17 any other violations found in the audit which led to this disciplinary action. In calculating the
18 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
19 average hourly salary for all persons performing audits of real estate brokers, and shall include
20 an allocation for travel time to and from the auditor's place of work. Respondent shall pay
21 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner
22 detailing the activities performed during the audit and the amount of time spent performing
23 those activities. If Respondent fails to pay such cost within the sixty (60) days, the
24 Commissioner may indefinitely suspend all licenses and licensing rights of Respondent under
25 the Real Estate Law until payment is made in full or until Respondent enters into an agreement
26 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
27 suspension provided for in this paragraph shall be stayed.

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8. All licenses and licensing rights of Respondent are indefinitely
suspended unless or until Respondent pays the sum of \$852.46 for the Commissioner's
reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
payment shall be in the form of a cashier's check or certified check made payable to the Real
Estate Fund.

10-4-12

DATED

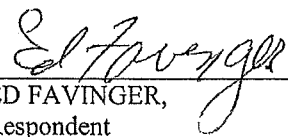


ANNETTE E. FERRANTE, Counsel
Department of Real Estate

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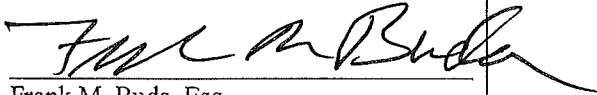
I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government 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. Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondent, to the Department at fax number (916) 227-9458. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

10/3/2012
DATED


ED FAVINGER,
Respondent

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

10-3-12
DATED


Frank M. Buda, Esq.,
Attorney for Respondent ED FAVINGER

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The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter as to Respondent ED FAVINGER, and shall become effective at 12
o'clock noon on JUN 11 2013

IT IS SO ORDERED

11/30/2012
REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel