



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 withdraw said Notice of Defense. Respondent  
4 acknowledges that Respondent understands that by withdrawing said Notice of Defense  
5 Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner  
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in  
7 accordance with the provisions of the APA, and that Respondent will waive other rights afforded  
8 to Respondent in connection with the hearing such as the right to present evidence in defense of  
9 the allegations in the Accusation and the right to cross-examine witnesses.

10           4.       This stipulation is based on the factual allegations contained in the  
11 Accusation. In the interest of expediency and economy, Respondent chooses not to contest these  
12 factual allegations, but to remain silent and understands that, as a result thereof, these factual  
13 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth  
14 below. The Commissioner shall not be required to provide further evidence to prove such  
15 allegations.

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

20           6.       Respondent understands that by agreeing to this Stipulation and  
21 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and  
22 Professions Code (Code), the cost of the audit which resulted in the determination that  
23 Respondent committed the trust fund violation(s) found in the Determination of Issues. The  
24 amount of said costs is \$5,478.00.

25           7.       Respondent further understands that by agreeing to this Stipulation and  
26 Agreement in Settlement, the findings set forth below in the Determination Of Issues become  
27 final, and that the Commissioner may charge said Respondent for the costs of any audit

1 conducted pursuant to Section 10148 of the Code to determine if the violations have been  
2 corrected. The maximum costs of said audit shall not exceed \$5,478.00.

3 8. Respondent understands that by agreeing to this Stipulation and  
4 Agreement, Respondents agree to pay, pursuant to Section 10106 of the Code, the cost of the  
5 investigation and enforcement which resulted in the determination that Respondents committed  
6 the violation(s) found in the Determination of Issues. The amount of said costs is \$614.01.

7 9. It is understood by the parties that the Commissioner may adopt the  
8 Stipulation and Agreement as the Commissioner's decision in this matter thereby imposing the  
9 penalty and sanctions on the real estate licenses and license rights of Respondent as set forth in  
10 the below "Order". In the event that the Commissioner in the Commissioner's discretion does  
11 not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall  
12 retain the right to a hearing and proceeding on the Accusation under all the provisions of the  
13 APA and shall not be bound by any admission or waiver made herein.

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

18 \* \* \*

19 DETERMINATION OF ISSUES

20 By reason of the foregoing stipulations and waivers and solely for the purpose of  
21 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the  
22 following determination of issues shall be made:

23 II

24 The acts and omissions of Respondent as described in the Accusation are  
25 grounds for the suspension or revocation of Respondent's licenses and license rights under the  
26 following sections of the Code and Title 10 of the California Code of Regulations (Regulations):  
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(1) As to Paragraphs 7(a) and 7(b) under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

(2) As to Paragraph 7(c), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;

(3) As to Paragraph 7(d), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

(4) As to Paragraph 7(e), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations; and

(5) As to Paragraph 7(f), under Section 10177(d) of the Code in conjunction with Section 2832 of the Regulations and Section 10145 of the Code.

\* \* \*

ORDER

I

All licenses and licensing rights of Respondent under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Order; provided, however, that:

1. Thirty (30) days of said suspension shall be stayed for one (1) year 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 one (1) year 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 reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2. All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and successfully

1 completed the continuing education course on trust fund accounting and handling specified in  
2 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this  
3 requirement includes evidence that respondent has successfully completed the trust fund account  
4 and handling continuing education course within 120 days prior to the effective date of the  
5 Decision in this matter.

6 3. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of \$5,478.00 for the  
7 Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such  
8 cost within sixty (60) days of receiving an invoice therefor from the Commissioner. The  
9 Commissioner may suspend the Respondent's license pending a hearing held in accordance with  
10 Section 11500, et seq., of the Government Code, if payment is not timely made as provided for  
11 herein, or as provided for in a subsequent agreement between the Respondent and the  
12 Commissioner. The suspension shall remain in effect until payment is made in full or until  
13 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or  
14 until a decision providing otherwise is adopted following a hearing held pursuant to this  
15 condition.

16 4. Pursuant to Section 10148 of the Code, Respondent shall pay the Commissioner's  
17 reasonable cost, not to exceed \$5,478.00, for an audit to determine if Respondent has corrected  
18 the trust fund violation(s) found the Determination of Issues. In calculating the amount of the  
19 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary  
20 for all persons performing audits of real estate brokers, and shall include an allocation for travel  
21 time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60)  
22 days of receiving an invoice therefor from the Commissioner detailing the activities performed  
23 during the audit and the amount of time spent performing those activities. The Commissioner  
24 may suspend Respondent's license pending a hearing held in accordance with Section 11500, et  
25 seq., of the Government Code, if payment is not timely made as provided for herein, or as  
26 provided for in a subsequent agreement between Respondent and the Commissioner. The  
27 suspension shall remain in effect until payment is made in full or until Respondent enters into an

1 agreement satisfactory to the Commissioner to provide for payment, or until a decision providing  
2 otherwise is adopted following a hearing held pursuant to this condition.

3 5. All licenses and licensing rights of Respondent are indefinitely suspended unless or until  
4 Respondent pays the sum of \$614.01 for the Commissioner's reasonable cost of the investigation  
5 and enforcement which led to this disciplinary action. Said payment shall be in the form of a  
6 cashier's check or certified check made payable to the Real Estate Fund.

7 1-Oct-12

8 DATED

*J M S*

9 TRULY SUGHRUE  
Counsel for Complainant

10 \*\*\*

11 I have read the Stipulation and Agreement, discussed it with my counsel, and its  
12 terms are understood by me and are agreeable and acceptable to me. I understand that I am  
13 waiving rights given to me by the California Administrative Procedure Act, and I willingly,  
14 intelligently and voluntarily waive those rights, including the right of requiring the  
15 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the  
16 right to cross-examine witnesses against me and to present evidence in defense and mitigation of  
17 the charges.

18 9.27.2012

19 DATED

*Marilyn Francine Bailey Byrd*

20 MARILYN FRANCINE BAILEY-BYRD  
Respondent

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

23 9-28-12

24 DATED

*Karen M. Goodman*

25 KAREN M. GOODMAN  
Attorney for Respondent

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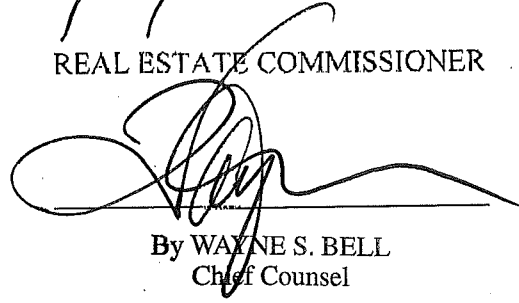
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The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
shall become effective at 12 o'clock noon on JAN 16 2013.

IT IS SO ORDERED

12/3/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL  
Chief Counsel