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FILED

JAN 31 2018

BUREAU OF REAL ESTATE
By B. Nicholas

7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

12 RE SOLUTIONS, INC., and DANA ELAINE
13 FOSS,

14 Respondents.)

No. H-6429 SAC

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between RE SOLUTIONS, INC. (RE
16 SOLUTIONS), and DANA ELAINE FOSS (FOSS) (collectively "Respondents"), represented
17 by Daniel Raff, and the Complainant, acting by and through Truly Sughrue, Counsel for the
18 Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing the
19 Accusation filed on August 29, 2016, in this matter:

20 1. All issues which were to be contested and all evidence which was to be
21 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
22 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
23 shall instead and in place thereof be submitted solely on the basis of the provisions of this
24 Stipulation and Agreement.

25 2. Respondents have received, read, and understand the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Bureau in this proceeding.
27

1 3. Respondents 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 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
4 acknowledge that Respondents understand that by withdrawing said Notice of Defense
5 Respondents will thereby waive Respondents' 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 Respondents will waive other rights
8 afforded to Respondents in connection with the hearing such as the right to present evidence in
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

20 6. Respondents understand that by agreeing to this Stipulation and
21 Agreement, Respondents agree 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 Respondents committed the trust fund handling violation(s) found in the Determination of
24 Issues. The amount of said costs is \$3,769.16.

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

1 Section 10148 of the Code to determine if the violations have been corrected. The maximum
2 costs of said audit shall not exceed \$4,711.45.

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

10 9. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Bureau with respect to any matters which were not
13 specifically alleged to be causes for action in Accusation H-6429 SAC.

14 * * *

15 DETERMINATION OF ISSUES

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

19 I

20 The acts and omissions of Respondents as described in the First Cause of Action
21 of the Accusation are grounds for the suspension or revocation of Respondents' licenses and
22 license rights under the following sections of the Code and Title 10 of the California Code of:

23 As to Paragraph 11(a), under Section 10177(d) and/or 10177(g) of the Code in
24 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

25 As to Paragraph 11(b), under Section 10176(i);

26 As to Paragraph 11(c), under Sections 10177(d) and/or 10177(g) of the Code in
27 conjunction with Section 2831.1 of the Regulations;

1 As to Paragraph 11(d), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 2831.2 of the Regulations.

3 II

4 The acts and/or omissions of FOSS as described in the Second Cause of Action
5 of the Accusation is cause for the suspension or revocation of Respondent's license and/or
6 license rights under Section 10177(h) of the Code.

7 * * *

8 ORDER

9 I

10 All licenses and licensing rights of Respondent RE SOLUTIONS under the Real
11 Estate Law are revoked; provided, however, a restricted real estate corporate broker license shall
12 be issued to RE SOLUTIONS pursuant to Section 10156.5 of the Code if RE SOLUTIONS
13 makes application therefor and pays to the Bureau the appropriate fee for the restricted license
14 within 90 days from the effective date of this Decision and Order. The restricted license issued
15 to RE SOLUTIONS shall be subject to all of the provisions of Section 10156.7 of the Code and
16 to the following limitations, conditions and restrictions imposed under authority of Section
17 10156.6 of that Code:

18 1. The restricted license issued to RE SOLUTIONS may be suspended prior
19 to hearing by Order of the Commissioner in the event of RE SOLUTIONS's conviction or plea of
20 nolo contendere to a crime which is substantially related to RE SOLUTIONS's fitness or
21 capacity as a real estate licensee.

22 2. The restricted license issued to RE SOLUTIONS may be suspended prior
23 to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that RE
24 SOLUTIONS has violated provisions of the California Real Estate Law, the Subdivided Lands
25 Law, Regulations of the Commissioner or conditions attaching to the restricted license.

26 3. RE SOLUTIONS shall not be eligible to apply for the issuance of an
27 unrestricted real estate license nor for removal of any of the conditions, limitations, or

1 restrictions of a restricted license until three (3) years have elapsed from the effective date of this
2 Decision and Order. RE SOLUTIONS shall not be eligible to apply for any unrestricted licenses
3 until all restrictions attaching to the license have been removed.

4 II

5 All licenses and licensing rights of Respondent FOSS under the Real Estate Law
6 are revoked; provided, however, a restricted real estate broker license shall be issued to FOSS
7 pursuant to Section 10156.5 of the Code if FOSS makes application therefor and pays to the
8 Bureau the appropriate fee for the restricted license within 90 days from the effective date of this
9 Decision and Order. The restricted license issued to FOSS shall be subject to all of the
10 provisions of Section 10156.7 of the Code and to the following limitations, conditions and
11 restrictions imposed under authority of Section 10156.6 of that Code:

12 1. The restricted license issued to FOSS may be suspended prior to hearing
13 by Order of the Commissioner in the event of FOSS's conviction or plea of nolo contendere to a
14 crime which is substantially related to FOSS's fitness or capacity as a real estate licensee.

15 2. The restricted license issued to FOSS may be suspended prior to hearing
16 by Order of the Commissioner on evidence satisfactory to the Commissioner that FOSS has
17 violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of
18 the Commissioner or conditions attaching to the restricted license.

19 3. FOSS shall not be eligible to apply for the issuance of an unrestricted real
20 estate license nor for removal of any of the conditions, limitations, or restrictions of a restricted
21 license until three (3) years have elapsed from the effective date of this Decision and Order.
22 FOSS shall not be eligible to apply for any unrestricted licenses until all restrictions attaching to
23 the license have been removed.

24 4. FOSS shall, within nine (9) months from the effective date of this
25 Decision and Order, present evidence satisfactory to the Commissioner that FOSS has, since the
26 most recent issuance of an original or renewal real estate license, taken and successfully
27 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate

1 Law for renewal of a real estate license. If FOSS fails to satisfy this condition, FOSS's real
2 estate license shall automatically be suspended until FOSS presents evidence satisfactory to the
3 Commissioner of having taken and successfully completed the continuing education
4 requirements. Proof of completion of the continuing education courses must be delivered to the
5 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

6 5. All licenses and licensing rights of FOSS are indefinitely suspended unless
7 or until FOSS provides proof satisfactory to the Commissioner, of having taken and successfully
8 completed the continuing education course on trust fund accounting and handling specified in
9 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these
10 requirements includes evidence that FOSS has successfully completed the trust fund account and
11 handling continuing education courses, no earlier than 120 days prior to the effective date of the
12 Decision and Order in this matter. Proof of completion of the trust fund accounting and handling
13 course must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,
14 Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this
15 Decision and Order.

16 6. FOSS shall, within six (6) months from the effective date of this Decision
17 and Order, take and pass the Professional Responsibility Examination administered by the
18 Bureau including the payment of the appropriate examination fee. If FOSS fails to satisfy this
19 condition, FOSS's real estate license shall automatically be suspended until FOSS passes the
20 examination.

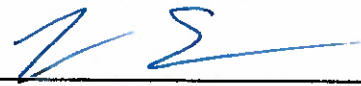
21 III

22 1. Pursuant to Section 10148 of the Code, Respondents shall jointly and
23 severally pay the sum of \$3,769.16 for the Commissioner's cost of the audit which led to this
24 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
25 invoice therefore from the Commissioner. Payment of audit costs should not be made until
26 Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner
27 as provided for herein, Respondents' real estate license shall automatically be suspended until

1 payment is made in full, or until a decision providing otherwise is adopted following a hearing
2 held pursuant to this condition.

3 2. Pursuant to Section 10148 of the Code, Respondents shall pay the
4 Commissioner's reasonable cost, not to exceed \$4,711.45, for an audit to determine if
5 Respondents have corrected the violation(s) found in the Determination of Issues. In calculating
6 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
7 average hourly salary for all persons performing audits of real estate brokers, and shall include an
8 allocation for travel time to and from the auditor's place of work. Respondents shall pay such
9 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of
10 the audit costs should not be made until Respondents receive the invoice. If Respondents fail to
11 satisfy this condition in a timely manner as provided for herein, Respondents' real estate license
12 shall automatically be suspended until payment is made in full, or until a decision providing
13 otherwise is adopted following a hearing held pursuant to this condition.

14 18-Dec-17
15 DATED

14 
15 TRULY SUGHRUE
16 Counsel for Complainant

17 * * *

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

25 Respondents and Respondents' attorney further agree to send the original signed
26 Stipulation and Agreement by mail to the following address no later than one (1) week from the
27

1 date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:
2 Bureau of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.
3 Respondents and Respondents' attorney understand and agree that if they fail to return the
4 original signed Stipulation and Agreement by the due date, Complainant retains the right to set
5 this matter for hearing.

6
7 12/13/17
8 DATED

Dana Foss
Dana Elaine Foss, President
RE SOLUTIONS, INC.
Respondent

9
10
11 12/13/17
12 DATED

Dana Elaine Foss
DANA ELAINE FOSS
Respondent

13 ***

14 I have reviewed the Stipulation and Agreement as to form and content and have
15 advised my clients accordingly.

16 12/13/17
17 DATED

Daniel Raff
DANIEL RAFF
Attorney for Respondents

18 ***

19 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
20 Order and shall become effective at 12 o'clock noon on FEB 21 2018

21 IT IS SO ORDERED Jan. 26, 2018

22
23 WAYNE S. BELL
24 REAL ESTATE COMMISSIONER

25 Wayne S. Bell
26
27

Respondents and Respondents' attorney understand and agree that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

Dana Elaine Foss, President
RE SOLUTIONS, INC.
Respondent

DANA ELAINE FOSS
Respondent

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

Attorney for Respondents

* * *

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

IT IS SO ORDERED _____

WAYNE S. BELL
REAL ESTATE COMMISSIONER