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FILED

NOV 08 2023

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

SCOTT THOMAS SWINDELL,

Respondent.

No. H-7185 SAC

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between SCOTT THOMAS SWINDELL ("Respondent"), represented by Rizza Gonzales, and the Complainant, acting by and through Kyle Jones, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on January 25, 2023, in this matter:

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

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

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

9 4. This Order is based on the factual allegations contained in the Accusation.
10 Respondent admits the factual allegations contained in the Accusation are true. Respondent
11 admits his conduct as stated in the Accusation constitutes negligence under Section 10177(g) of
12 the Business and Professions Code ("Code"). The Commissioner shall not be required to
13 provide further evidence to prove such allegations.

14 5. It is understood by the parties that the Commissioner may adopt the
15 Stipulation and Agreement as his Decision and Order in this matter thereby imposing the penalty
16 and sanctions on Respondent's real estate license and license rights as set forth in the below
17 "Order". In the event the Commissioner in his discretion does not adopt the Stipulation and
18 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing
19 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
20 any admission or waiver made herein.

21 6. This Decision and Order or any subsequent Order of the Commissioner
22 made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar
23 to any further administrative or civil proceedings by the Department with respect to any matters
24 which were not specifically alleged in Accusation H-7185 SAC.

25 7. Respondent understands that by agreeing to this Order, Respondent agrees to pay,
26 pursuant to Section 10106 of the Code, the cost of the investigation and enforcement which
27

1 resulted in the determination that Respondent committed the violations found in the
2 Determination of Issues. The amount of said costs is \$4220.37.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions, and waivers, it is stipulated
5 and agreed that the acts and/or omissions of Respondent as described in the Accusation violate
6 Section 10177(g) (negligence) of the Code.

7 ORDER

8 Respondent's real estate broker license is revoked; provided, however, a restricted
9 real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the
10 Code if Respondent makes application therefor for the restricted license within 90 days from the
11 effective date of this Decision and Order. The restricted license issued to Respondent shall be
12 subject to all of the provisions of Section 10156.7 of the Code and to the following limitations,
13 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

23 3. Respondent shall not be eligible to apply for the issuance of an
24 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions
25 of a restricted license until three (3) years have elapsed from the effective date of this Decision
26 and Order.

1 4. Respondent shall submit with any application for license under an
2 employing broker, or any application for transfer to a new employing broker, a statement signed
3 by the prospective employing real estate broker on a form approved by the Department which
4 shall certify:

5 (a) That the employing broker has read the Decision and Order of the
6 Commissioner which granted the right to a restricted license; and


7 (b) That the employing broker will exercise close supervision over the
8 performance by the restricted licensee relating to activities for which a real
9 estate license is required.

10 5. Respondent shall, within nine (9) months from the effective date of this
11 Stipulation, present evidence satisfactory to the Commissioner that Respondent has, since the
12 most recent issuance of an original or renewal real estate license, taken and successfully
13 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
14 Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
15 Respondent's real estate license shall automatically be suspended until Respondent presents
16 evidence satisfactory to the Commissioner of having taken and successfully completed the
17 continuing education requirements. Proof of completion of the continuing education courses
18 must be delivered to the Department of Real Estate, Flag Section, at P.O. Box 137013,
19 Sacramento, CA 95813-7013.

20 6. Respondent shall notify the Commissioner in writing within 72 hours of
21 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,
22 Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of
23 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
24 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
25 constitute an independent violation of the terms of the restricted license and shall be grounds for
26 the suspension or revocation of that license.

1 7. All licenses and licensing rights of Respondent are indefinitely suspended
2 unless or until Respondent pays the sum of \$4220.37 for the Commissioner's reasonable cost of
3 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
4 the form of a cashier's check made payable to the Department. The investigative and
5 enforcement costs must be delivered to the Department, Flag Section at P.O. Box 137013,
6 Sacramento, CA 95813-7013, prior to the effective date of this Order.

7
8 10/3/23
9 DATED


KYLE JONES, Counsel
DEPARTMENT OF REAL ESTATE

10 * * *

11 I have read the Stipulation and Agreement and its terms are understood by me
12 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
13 the APA (including but not limited to Sections 11506, 11508, 11509, and 11513 of the
14 Government Code), and I willingly, intelligently, and voluntarily waive those rights, including
15 the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing
16 at which I would have the right to cross-examine witnesses against me and to present evidence
17 in defense and mitigation of the charges.

18 Respondent can signify acceptance and approval of the terms and conditions of
19 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
20 Respondent, to the Department at fax number (916) 576-7840 or by e-mail to
21 kyle.jones@dre.ca.gov. Respondent agrees, acknowledges, and understands that by
22 electronically sending to the Department a copy of Respondent's actual signature as it appears
23 on the Stipulation and Agreement, that receipt of the copy by the Department shall be as
24 binding on Respondent as if the Department had received the original signed Stipulation and
25 Agreement.
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DATED

SCOTT THOMAS SWINDELL
Respondent

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

September 21, 2023

DATED


RIZZA GONZALES
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate
Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on

IT IS SO ORDERED _____.

DOUGLAS R. McCAULEY
Real Estate Commissioner

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Sep 21, 2023
DATED


Scott Thomas Swindell (Sep 21, 2023 12:11 PDT)
SCOTT THOMAS SWINDELL
Respondent

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

DATED

RIZZA GONZALES
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate
Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on
NOV 29 2023

IT IS SO ORDERED 10/17/23

DOUGLAS R. McCAULEY
Real Estate Commissioner

