

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

FILED
JUL 14 2000

DEPARTMENT OF REAL ESTATE

Luis A. Zari

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-7807 SF
NEXUS REALTY GROUP, INC.)	OAH No. N-200004012
and BRYANT R. MOYNIHAN,)	<u>STIPULATION AND AGREEMENT</u>
Respondents.)	

It is hereby stipulated by and between Respondents
NEXUS REALTY GROUP, INC. (hereinafter "NEXUS") and BRYANT R.
MOYNIHAN (hereinafter "MOYNIHAN"), individually and by and
through William W. Hatcher, Jr., Esq., attorney of record herein
for Respondents, and the Complainant, acting by and through James
L. Beaver, Counsel for the Department of Real Estate, as follows
for the purpose of settling and disposing of the Accusation filed
on March 9, 2000 in this matter (hereinafter "the Accusation"):

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 (APA), shall instead and in place thereof be

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NEXUS REALTY GROUP, INC. et al.

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

3 2. Respondents have received, read and understand the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. On March 24, 2000, Respondents filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents hereby freely and voluntarily withdraw
11 said Notice of Defense. Respondents acknowledge that Respondents
12 understand that by withdrawing said Notice of Defense Respondents
13 will thereby waive Respondents' right to require the Commissioner
14 to prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA and that
16 Respondents will waive other rights afforded to Respondents in
17 connection with the hearing such as the right to present evidence
18 in defense of the allegations in the Accusation and the right to
19 cross-examine witnesses.

20 4. Respondents, pursuant to the limitations set forth
21 below, hereby admit that the factual allegations in the
22 Accusation are true and correct and the Real Estate Commissioner
23 shall not be required to provide further evidence of such
24 allegations.

25 5. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement as
27 her decision in this matter, thereby imposing the penalty and

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NEXUS REALTY GROUP, INC. et al.

1 sanctions on Respondents' real estate license and license rights
2 as set forth in the "Order" below. In the event that the
3 Commissioner in her discretion does not adopt the Stipulation and
4 Agreement, it shall be void and of no effect, and Respondents
5 shall retain the right to a hearing and proceeding on the
6 Accusation under all the provisions of the APA and shall not be
7 bound by any admission or waiver made herein.

8 6. This Stipulation and Agreement shall not
9 constitute an estoppel, merger or bar to any further
10 administrative or civil proceedings by the Department of Real
11 Estate with respect to any matters which were not specifically
12 alleged to be causes for accusation in this proceeding.

13 DETERMINATION OF ISSUES

14 I

15 The acts and omissions of Respondents as described in
16 Paragraphs VIII through X, inclusive, of the Accusation are
17 grounds for the suspension or revocation of the licenses and
18 license rights of Respondents NEXUS and MOYNIHAN under the
19 provisions of Section 10176(f) of the California Business and
20 Professions Code (hereinafter "the Code").

21 ORDER

22 I

23 All licenses and licensing rights of Respondent
24 NEXUS REALTY GROUP, INC. under the Real Estate Law are suspended
25 for thirty (30) days from the effective date of this Decision;
26 provided, however, that the suspension shall be stayed for a term

of one year upon the following terms and conditions:

1. Respondent's license and license rights shall be actually suspended for a period of five (5) days. If Respondent petitions, said five (5) day suspension (or a portion thereof) shall be stayed upon condition that Respondent pays a monetary penalty pursuant to Section 10175.2 of the Code at the rate of \$200.00 for each day of the suspension for a total monetary penalty of \$1,000.00.

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

3. Respondent shall not claim, demand, or receive any fee, compensation or commission pursuant to Paragraph 12.1 of the agreement described in Paragraph VIII of the Accusation for acts set forth in Section 10131(a) of the Code.

4. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the one year term of the stay provided for above, vacate and set aside the stay order, including any further stay imposed pursuant to Section 10175.2. Should no order vacating the stay be made pursuant to this condition, the stay imposed herein shall become permanent.

II

All licenses and licensing rights of Respondent BRYANT R. MOYNIHAN under the Real Estate Law are suspended for thirty (30) days from the effective date of this Decision; provided, however, that the suspension shall be stayed for a term of one

1 year upon the following terms and conditions:

2 1. Respondent's license and license rights shall be
3 actually suspended for a period of five (5) days. If Respondent
4 petitions, said five (5) day suspension (or a portion thereof)
5 shall be stayed upon condition that Respondent pays a monetary
6 penalty pursuant to Section 10175.2 of the Code at the rate of
7 \$200.00 for each day of the suspension for a total monetary
8 penalty of \$1,000.00.

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

12 3. Respondent shall not claim, demand, or receive any
13 fee, compensation or commission pursuant to Paragraph 12.1 of the
14 agreement described in Paragraph VIII of the Accusation for acts
15 set forth in Section 10131(a) of the Code.

16 4. The Commissioner may, if a final subsequent
17 determination is made, after hearing or upon stipulation, that
18 cause for disciplinary action occurred during the one year term
19 of the stay provided for above, vacate and set aside the stay
20 order, including any further stay imposed pursuant to Section
21 10175.2. Should no order vacating the stay be made pursuant to
22 this condition, the stay imposed herein shall become permanent.

23 May 16, 2000
24 DATED

25 
26 JAMES L. BEAVER, Counsel
27 Department of Real Estate

25 ///

26 ///

27 H-7807 SF

NEXUS REALTY GROUP, INC. et al.

1 * * *

2 I have read the Stipulation and Agreement and have
3 discussed its terms with my attorney and its terms are understood
4 by me and are agreeable and acceptable to me. I understand that I
5 am waiving rights given to me by the California Administrative
6 Procedure Act (including but not limited to Sections 11506,
7 11508, 11509, and 11513 of the Government Code), and I willingly,
8 intelligently, and voluntarily waive those rights, including the
9 right of requiring the Commissioner to prove the allegations in
10 the Accusation at a hearing at which I would have the right to
11 cross-examine witnesses against me and to present evidence in
12 defense and mitigation of the charges.

13 1/14/16, 2000
14 DATED

NEXUS REALTY GROUP, INC.
Respondent

15 By [Signature]
16 BRYANT R. MOYNIHAN
Designated Officer - Broker

17 1/14/16, 2000
18 DATED

[Signature]
BRYANT R. MOYNIHAN
Respondent

19 * * *

20
21 I have reviewed the Stipulation and Agreement as to
22 form and content and have advised my clients accordingly.

23 5/16/00
24 DATED

[Signature]
WILLIAM W. HATCHER, JR.
Attorney for Respondents

25 ///

26 ///

27 H-7807 SF

NEXUS REALTY GROUP, INC. et al.

* * *

1 The foregoing Stipulation and Agreement is hereby
2 adopted by as my Decision in this matter and shall become
3 effective at 12 o'clock noon on August 4, 2000.
4 _____

5 IT IS SO ORDERED

6 PAULA REDDISH ZINNEBANN
7 Real Estate Commissioner
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY - 2 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

NEXUS REALTY GROUP, INC. and
BRYANT R. MOYNIHAN,

Case No. H-7807 SF

OAH No. N-2000040012

Respondent

FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Thursday, June 1, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of
hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten
(10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission or other evidence including
affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The
interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: May 2, 2000

DEPARTMENT OF REAL ESTATE

By James L. Beaver
JAMES L. BEAVER

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR - 7 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

NEXUS REALTY GROUP, INC. and
BRYANT R. MOYNIHAN,

Case No. H-7807 SF

OAH No. N-2000040012

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Tuesday, May 9, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of
hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten
(10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission or other evidence including
affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The
interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: April 7, 2000

DEPARTMENT OF REAL ESTATE

By

JAMES L. BEAVER

Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
MAR - 9 2000

DEPARTMENT OF REAL ESTATE

Laurie A. Zai

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-7807 SF

12 NEXUS REALTY GROUP, INC. and)

ACCUSATION

13 BRYANT R. MOYNIHAN,)

14 Respondents.)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against NEXUS REALTY GROUP, INC., and BRYANT R.
18 MOYNIHAN (hereinafter "Respondents"), is informed and alleges as
19 follows:

20 I

21 Respondents are presently licensed and/or have license
22 rights under the Real Estate Law, Part 1 of Division 4 of the
23 Business and Professions Code (hereinafter "Code").

24 II

25 The Complainant, Les R. Bettencourt, a Deputy Real
26 Estate Commissioner of the State of California, makes this
27 Accusation against Respondents in his official capacity.

1 III

2 At all times herein mentioned, Respondent NEXUS REALTY
3 GROUP, INC (hereinafter "NEXUS") was and now is licensed by the
4 Department of Real Estate of the State of California (hereinafter
5 "the Department") as a corporate real estate broker by and
6 through Respondent BRYANT R. MOYNIHAN (hereinafter "MOYNIHAN") as
7 designated officer-broker of Respondent NEXUS to qualify said
8 corporation and to act for said corporation as a real estate
9 broker.

10 IV

11 At all times herein mentioned, Respondent MOYNIHAN was
12 and now is licensed by the Department as a real estate broker,
13 individually and as designated officer-broker of Respondent
14 NEXUS. As said designated officer-broker, Respondent MOYNIHAN
15 was at all times mentioned herein responsible pursuant to Section
16 10159.2 of the Code for the supervision of the activities of the
17 officers, agents, real estate licensees and employees of
18 Respondent NEXUS for which a license is required.

19 V

20 Whenever reference is made in an allegation in this
21 Accusation to an act or omission of Respondent NEXUS, such
22 allegation shall be deemed to mean that the officers, directors,
23 employees, agents and real estate licensees employed by or
24 associated with Respondent NEXUS committed such act or omission
25 while engaged in the furtherance of the business or operations of
26 such corporate Respondent and while acting within the course and
27 scope of their corporate authority and employment.

1 VI

2 At all times herein mentioned, Respondents engaged in
3 the business of, acted in the capacity of, advertised, or assumed
4 to act as a real estate broker within the State of California
5 within the meaning of Sections 10131(a) and 10131(b) of the Code,
6 including:

7 (a) The operation and conduct of a real estate resale
8 brokerage with the public wherein, on behalf of others, for
9 compensation or in expectation of compensation, Respondents sold
10 and offered to sell, bought and offered to buy, solicited
11 prospective sellers and purchases of, solicited and obtained
12 listings of, and negotiated the purchase and sale of real
13 property; and

14 (b) The operation and conduct of a property management
15 business with the public wherein, on behalf of others, for
16 compensation or in expectation of compensation, Respondents
17 leased or rented and offered to lease or rent, and placed for
18 rent, and solicited listings of places for rent, and solicited
19 for prospective tenants of real property or improvements thereon,
20 and collected rents from real property or improvements thereon.

21 VII

22 At all times mentioned herein to and until on or about
23 May 19, 1998, Petaluma California Industrial Facilities LLC and
24 Nicholas Jones (hereinafter "Owners") were the owners of real
25 property located at 1250 North McDowell Boulevard, Petaluma,
26 California (hereinafter "the Property").

27 ///

1 VIII

2 On or about April 11, 1996, Respondents entered into an
3 exclusive written agreement with Owners employing and authorizing
4 Respondents to perform the acts and conduct the activities
5 described in Paragraphs VI(a) and VI(b), above, for compensation,
6 for and on behalf of Owners, with respect to the Property.

7 IX

8 The agreement described in Paragraph VIII, above, did
9 not contain a definite, specified date of final and complete
10 termination.

11 X

12 At all times mentioned herein from and after July 24,
13 1998, Respondents claimed and demanded and continue to claim and
14 demand a fee, commission and/or compensation from Owners under
15 the agreement described in Paragraphs VIII and IX, above.

16 XI

17 Respondent MOYNIHAN failed to exercise reasonable
18 supervision over the acts of Respondent NEXUS in such a manner as
19 to allow the acts and omissions on the part of Respondent NEXUS
20 described in Paragraphs VIII through X, inclusive, above, to
21 occur.

22 XIII

23 The facts alleged above are grounds for the suspension
24 or revocation of the licenses and license rights of Respondents
25 under the following provisions of the Code and/or the
26 Regulations:

27 ///

1 (a) As to Paragraphs VIII through X, inclusive, and
2 each Respondent under Section 10176(f) of the Code; and

3 (b) As to Paragraph XI and Respondent MOYNIHAN under
4 Section 10177(g) and/or Section 10177(h) of the Code and Section
5 10159.2 of the Code in conjunction with Section 10177(d) of the
6 Code.

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against all licenses and license rights of Respondents
11 under the Real Estate Law (Part 1 of Division 4 of the Business
12 and Professions Code), and for such other and further relief as
13 may be proper under other provisions of law.

14
15 
16 LES R. BETTENCOURT
Deputy Real Estate Commissioner

17 Dated at Oakland, California,
18 this 29th day of February, 2000.