

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

FILED
JUL 11 2002

DEPARTMENT OF REAL ESTATE

By Marie L. Zin

10 BEFORE THE DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA
12

13 * * *

14 In the Matter of the Accusation of)	DRE No. H-8044 SF
15 GARY THOMAS McCAULEY,)	OAH No. N-2002020532
16 Respondent.)	<u>STIPULATION AND AGREEMENT</u>

17 It is hereby stipulated by and between Respondent GARY
18 THOMAS McCAULEY (hereinafter "McCAULEY" or "Respondent"),
19 individually and by and through Allan Schwartz, Esq.,
20 Respondent's attorney of record herein, and the Complainant,
21 acting by and through James L. Beaver, Counsel for the Department
22 of Real Estate, as follows for the purpose of settling and
23 disposing of the Accusation filed on January 29, 2002 in this
24 matter (hereinafter "the Accusation"):

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26
27 DRE No. H-8044 SF

GARY THOMAS McCAULEY

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

8 2. Respondent has received, read and understands the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department of Real Estate in this
11 proceeding.

12 3. On February 11, 2002, Respondent filed a Notice of
13 Defense pursuant to Section 11505 of the Government Code for the
14 purpose of requesting a hearing on the allegations in the
15 Accusation. Respondent hereby freely and voluntarily withdraws
16 said Notice of Defense. Respondent acknowledges that Respondent
17 understands that by withdrawing said Notice of Defense Respondent
18 will thereby waive Respondent's right to require the Commissioner
19 to prove the allegations in the Accusation at a contested hearing
20 held in accordance with the provisions of the APA and that
21 Respondent will waive other rights afforded to Respondent in
22 connection with the hearing such as the right to present evidence
23 in defense of the allegations in the Accusation and the right to
24 cross-examine witnesses.

25 4. Respondent, pursuant to the limitations set forth
26 below, hereby admits that the factual allegations in the
27 Accusation are true and correct and stipulates and agrees that

DRE No. H-8044 SF

GARY THOMAS MCCAULEY

1 the Real Estate Commissioner shall not be required to provide
2 further evidence of such allegations.

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

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

18 7. Respondent understands that by agreeing to this
19 Stipulation and Agreement, Respondent agrees to pay, pursuant to
20 Section 10148 of the California Business and Professions Code,
21 the cost of the audit which resulted in the determination that
22 Respondent committed the trust fund violation(s) found in
23 paragraph I, below, of the Determination of Issues. The amount
24 of said costs is \$1,257.87.

25 8. Respondents further understands that by agreeing
26 to this Stipulation and Agreement in Settlement, the findings set
27 forth below in the Determination Of Issues become final, and that

DRE No. H-8044 SF

GARY THOMAS MCCAULEY

1 the Commissioner may charge said Respondent for the costs of any
2 audit conducted pursuant to Section 10148 of the California
3 Business and Professions Code to determine if the violations have
4 been corrected. The maximum costs of said audit shall not exceed
5 \$1,499.87.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, admissions and
8 waivers and solely for the purpose of settlement of the pending
9 Accusation without hearing, it is stipulated and agreed that the
10 following Determination of Issues shall be made:

11 I

12 The acts and omissions of Respondent as described in
13 the Accusation are grounds for the suspension or revocation of
14 the licenses and license rights of Respondent under the following
15 provisions of the California Business and Professions Code
16 (hereinafter "the Code") and/or Chapter 6, Title 10, California
17 Code of Regulations (hereinafter "the Regulations"):

18 (a) As to Paragraph VII(a) under Section 10145 of the
19 Code and Section 2832(a) of the Regulations in conjunction with
20 Section 10177(d) of the Code;

21 (b) As to Paragraph VII(b) under Section 10145 of the
22 Code and Section 2831 of the Regulations in conjunction with
23 Section 10177(d) of the Code;

24 (c) As to Paragraph VII(c) under Section 10145 of the
25 Code and Section 2831.2 of the Regulations in conjunction with
26 Section 10177(d) of the Code; and

1 (d) As to Paragraph VII(d) under Section 10145 of the
2 Code and Section 2832.1 of the Regulations in conjunction with
3 Section 10177(d) of the Code.

4 ORDER

5 I

6 All licenses and licensing rights of Respondent GARY
7 THOMAS McCAULEY under the Real Estate Law are revoked; provided,
8 however, a restricted real estate broker license shall be issued
9 to said Respondent pursuant to Section 10156.5 of the Business
10 and Professions Code if, within 90 days from the effective date
11 of the Decision entered pursuant to this Order, Respondent makes
12 application for the restricted license and pays to the Department
13 of Real Estate the appropriate fee therefor.

14 The restricted license issued to Respondent shall be
15 subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following limitations,
17 conditions and restrictions imposed under authority of Section
18 10156.6 of that Code:

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

24 2. The restricted license issued to Respondent may be
25 suspended prior to hearing by Order of the Real Estate
26 Commissioner on evidence satisfactory to the Commissioner that

1 Respondent has violated provisions of the California Real Estate
2 Law, the Subdivided Lands Law, Regulations of the Real Estate
3 Commissioner or conditions attaching to the restricted license.

4 3. Respondent shall not be eligible to apply for the
5 issuance of an unrestricted real estate license nor for the
6 removal of any of the conditions, limitations or restrictions of
7 a restricted license until two (2) years have elapsed from the
8 effective date of this Decision.

9 4. Pursuant to Section 10148 of the Business and
10 Professions Code, Respondent shall pay the sum of \$1,257.87 as
11 and for the Commissioner's cost of the audit which led to this
12 disciplinary action. Respondent shall pay such cost within 45
13 days of receiving an invoice therefor from the Commissioner. The
14 Commissioner may suspend the restricted license issued to
15 respondent pending a hearing held in accordance with Section
16 11500, et seq., of the Government Code, if payment is not timely
17 made as provided for herein, or as provided for in a subsequent
18 agreement between the Respondent and the Commissioner. The
19 suspension shall remain in effect until payment is made in full
20 or until Respondent enters into an agreement satisfactory to the
21 Commissioner to provide for payment, or until a decision
22 providing otherwise is adopted following a hearing held pursuant
23 to this condition.

24 5. Pursuant to Section 10148 of the Business and
25 Professions Code, Respondent shall pay the Commissioner's
26 reasonable cost, not to exceed \$1,499.87, for an audit to
27 determine if Respondent has corrected the trust fund violation(s)

1 found in paragraph I of the Determination of Issues. In
2 calculating the amount of the Commissioner's reasonable cost, the
3 Commissioner may use the estimated average hourly salary for all
4 persons performing audits of real estate brokers, and shall
5 include an allocation for travel time to and from the auditor's
6 place of work. Respondent shall pay such cost within 45 days of
7 receiving an invoice therefor from the Commissioner detailing the
8 activities performed during the audit and the amount of time
9 spent performing those activities. The Commissioner may suspend
10 the restricted license issued to respondent pending a hearing
11 held in accordance with Section 11500, et seq., of the Government
12 Code, if payment is not timely made as provided for herein, or as
13 provided for in a subsequent agreement between the Respondent and
14 the Commissioner. The suspension shall remain in effect until
15 payment is made in full or until Respondent enters into an
16 agreement satisfactory to the Commissioner to provide for
17 payment, or until a decision providing otherwise is adopted
18 following a hearing held pursuant to this condition.

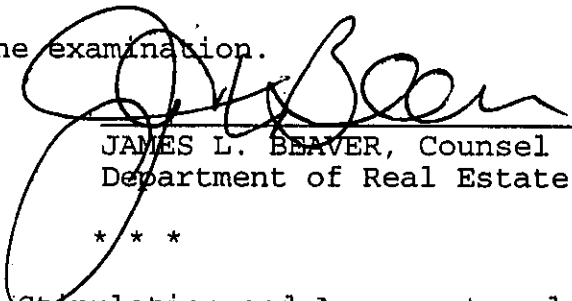
19 6. Respondent shall, within nine months from the
20 effective date of the Decision, present evidence satisfactory to
21 the Real Estate Commissioner that Respondent has, since the most
22 recent issuance of an original or renewal real estate license,
23 taken and successfully completed the continuing education
24 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
25 for renewal of a real estate license. If Respondent fails to
26 satisfy this condition, the Commissioner may order the suspension
27 of the restricted license until the Respondent presents such

1 evidence. The Commissioner shall afford Respondent the
2 opportunity for a hearing pursuant to the Administrative
3 Procedure Act to present such evidence.

4 7. Respondent shall, within six (6) months from the
5 issuance of the restricted license, take and pass the
6 Professional Responsibility Examination administered by the
7 Department, including the payment of the appropriate examination
8 fee. If Respondent fails to satisfy this condition, the
9 Commissioner may order the suspension of the restricted license
10 until Respondent passes the examination.

11 5-28-02

12 DATED

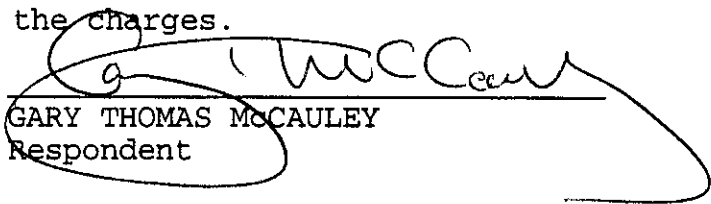
13 
14 JAMES L. BEAVER, Counsel
15 Department of Real Estate

16 * * *

17 I have read the Stipulation and Agreement and have
18 discussed its terms with my attorney and its terms are understood
19 by me and are agreeable and acceptable to me. I understand that I
20 am waiving rights given to me by the California Administrative
21 Procedure Act (including but not limited to Sections 11506,
22 11508, 11509, and 11513 of the Government Code), and I willingly,
23 intelligently, and voluntarily waive those rights, including the
24 right of requiring the Commissioner to prove the allegations in
25 the Accusation at a hearing at which I would have the right to
26 cross-examine witnesses against me and to present evidence in
27 defense and mitigation of the charges.

28 5-23-02

29 DATED

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31 GARY THOMAS MCCAULEY
32 Respondent

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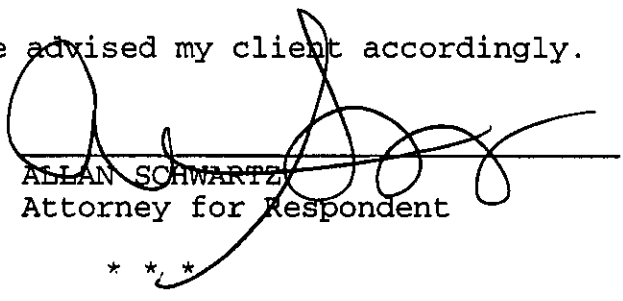
34 DRE No. H-8044 SF

35 GARY THOMAS MCCAULEY

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

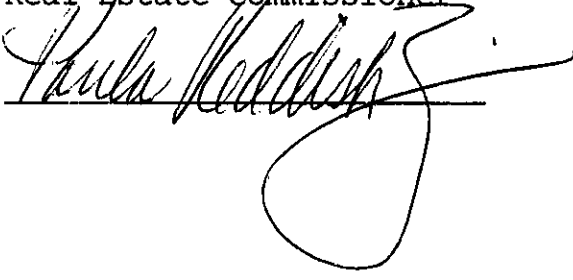
4 5/23/02
5 DATED

6 
ALLAN SCHWARTZ
Attorney for Respondent

7 * * *

8 The foregoing Stipulation and Agreement is hereby
9 adopted by as my Decision in this matter and shall become
10 effective at 12 o'clock noon on AUGUST 1, 2002.

11 IT IS SO ORDERED June 24, 2002.

12 PAULA REDDISH ZINNEBANN
13 Real Estate Commissioner
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**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

MAR 13 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GARY THOMAS McCAULEY,

Case No. H-8044 SF

OAH No. N-2002020532

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 **MONDAY, JUNE 3, 2002**, at the hour of **9:00 A.M.**, 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: MARCH 13, 2002

DEPARTMENT OF REAL ESTATE

By

James L. Beaver
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 (916) 227-0788 (Direct)

FILED
JAN 29 2002

DEPARTMENT OF REAL ESTATE

Laurie P. Zini

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-8044 SF
12 GARY THOMAS McCAULEY,) ACCUSATION
13 Respondent.)
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15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against GARY THOMAS McCAULEY (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 I

20 The Complainant, Les R. Bettencourt, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

23 II

24 At all times herein mentioned, Respondent was and now
25 is licensed and/or has license rights under the Real Estate Law
26 (Part 1 of Division 4 of the Business and Professions Code)
27 (hereinafter "the Code").

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III

At all times herein mentioned, Respondent was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a real estate broker.

IV

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

V

In so acting as a real estate broker, as described in Paragraph IV above, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said funds.

///

VI

The aforesaid trust funds accepted or received by Respondent were deposited or caused to be deposited by Respondent into one or more bank accounts (hereinafter "trust fund accounts") maintained by Respondent for the handling of trust funds, including but not necessarily limited to the following accounts maintained by Respondent at the Fillmore Street, San Francisco, California, branch of Wells Fargo Bank:

(a) The "Gary McCauley Trust Account ERA McCauley Wilson & Butterfield" account, Account Number 001-2059903 (hereinafter "Trust Account #1"); and

(b) The "ERA McCauley-Wilson Butterfield" account, Account Number 004-7350640 (hereinafter "Bank Account #1").

VII

Within the three-year period immediately preceding the filing of this Accusation, in connection with the collection and disbursement of said trust funds, Respondent:

(a) Failed, within three (3) business days after receipt of the trust funds, to place trust funds entrusted to Respondent into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of Respondent as trustee at a bank or other financial institution in conformance with the requirements of Section 10145 of the Code and Section 2832(a) of Chapter 6, Title 10, California Code of Regulations

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1 (hereinafter "the Regulations"), in that Respondent placed such
2 funds in Bank Account #1, an account that was not in the name of
3 Respondent as trustee;

4 (b) Failed to keep a columnar record in chronological
5 sequence of all trust funds received and disbursed from Trust
6 Account #1 containing all the information required by Section
7 2831 of the Regulations;

8 (c) Failed to reconcile, at least once a month, the
9 balance of all separate beneficiary or transaction records with
10 the record of all trust funds received into and disbursed from
11 Trust Account #1;

12 (d) Caused, suffered or permitted the balance of
13 funds in Trust Account #1 to be reduced to an amount which, as
14 of June 30, 2001, was approximately \$6,179.46 less than the
15 aggregate liability of Respondent to all owners of such funds,
16 and as of July 31, 2001 was approximately \$6,028.46 less than
17 the aggregate liability of Respondent to all owners of such
18 funds, without the prior written consent of the owners of such
19 funds; and

20 (e) Commingled with Respondent's own money or
21 property in Bank Account #1 the sum of \$4,512.92 received and
22 held by Respondent in trust on behalf of owners and tenants.

23 VIII

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

1 (a) As to Paragraph VII(a), under Section 10145 of
2 the Code and Section 2832(a) of the Regulations in conjunction
3 with Section 10177(d) of the Code;

4 (b) As to Paragraph VII(b), under Section 10145 of
5 the Code and Section 2831 of the Regulations in conjunction with
6 Section 10177(d) of the Code;

7 (c) As to Paragraph VII(c), under Section 10145 of
8 the Code and Section 2831.2 of the Regulations in conjunction
9 with Section 10177(d) of the Code;

10 (d) As to Paragraph VII(d), under Section 10145 of
11 the Code and Section 2832.1 of the Regulations in conjunction
12 with Section 10177(d) of the Code; and

13 (e) As to Paragraph VII(e), under Section 10176(e) of
14 the Code.

15 PRIOR ADMINISTRATIVE PROCEEDINGS

16 On or about August 27, 1997, written notice was given
17 Respondent by the Department that an examination by an auditor
18 for the Department had disclosed violations by Respondent of
19 Section 10145 of the Code and Sections 2832, 2831.2, 2832.1 and
20 2834 of the Regulations during the period from December 1, 1996
21 to May 31, 1997, and that Respondent should take corrective
22 action to rectify the violations.

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

12 Dated at Oakland, California,
13 this 18th day of January, 2002.
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