

MAR 05 2007

By Jean Arnot

* * *

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 13, 2006, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof. Respondent has
3 demonstrated to my satisfaction that Respondent meets the
4 requirements of law for the issuance to Respondent of an
5 unrestricted real estate broker license and that it would not be
6 against the public interest to issue said license to Respondent.

7 NOW, THEREFORE, IT IS ORDERED that Respondent's
8 petition for reinstatement is granted and that a real estate
9 broker license be issued to Respondent if Respondent satisfies
10 the following conditions within nine (9) months from the date of
11 this Order:

12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

14 2. Submittal of evidence of having, since the most
15 recent issuance of an original or renewal real estate license,
16 taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
18 for renewal of a real estate license.

19 This Order shall be effective immediately.

20 DATED: 2-22-07

21 JEFF DAVIS
22 Real Estate Commissioner

23 
24
25
26
27

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
MAR 26 2004

DEPARTMENT OF REAL ESTATE

By Luis A. Zari

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)	No. H-8531 SF
11 ROY TIMOTHY CAVELLINI,)	OAH NO. N-2002020530
12 Respondent.)	<u>STIPULATION AND AGREEMENT</u>

13
14 It is hereby stipulated by and between Respondent ROY
15 TIMOTHY CAVELLINI (hereinafter "Respondent"), and Respondent's
16 attorney Jefferson Frazier, acting by and through David B
17 Seals, Counsel for the Department of Real Estate, as follows
18 for the purpose of settling and disposing of the Accusation
19 filed on September 24, 2003 this matter:

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

27 2. Respondent has received, read and understands

1 the Statement to Respondent, the Discovery Provisions of the
2 APA and the Accusation filed by the Department of Real Estate
3 in this proceeding.

4 3. On October 3, 2003, Respondent filed a Notice of
5 Defense pursuant to Section 11505 of the Government Code for
6 the purpose of requesting a hearing on the allegations in the
7 Accusation. Respondent hereby freely and voluntarily withdraws
8 said Notice of Defense. Respondent acknowledges that
9 Respondent understands that by withdrawing said Notice of
10 Defense Respondent will thereby waive Respondent's right to
11 require the Commissioner to prove the allegations in the
12 Accusation at a contested hearing held in accordance with the
13 provisions of the APA and that Respondent will waive other
14 rights afforded to Respondent in connection with the hearing
15 such as the right to present evidence in defense of the
16 allegations in the Accusation and the right to cross-examine
17 witnesses.

18 4. This Stipulation is based on the factual
19 allegations contained in the Accusation. In the interests of
20 expedience and economy, Respondent chooses not to contest these
21 allegations, but to remain silent and understands that, as a
22 result thereof, these factual allegations, without being
23 admitted or denied, will serve as a prima facie basis for the
24 disciplinary action stipulated to herein. The Real Estate
25 Commissioner shall not be required to provide further evidence
26 to prove said factual allegations.

27 5. It is understood by the parties that the Real

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

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

18 7. Respondent understands that by agreeing to this
19 Stipulation and Agreement, Respondent agrees to pay, pursuant
20 to Section 10148 of the Business and Professions Code, the cost
21 of the audit which led to this disciplinary action. The amount
22 of said cost is \$3,797.20.

23 8. Respondent has received, read, and understands
24 the "Notice Concerning Costs of Subsequent Audits". Respondent
25 understands that by agreeing to this Stipulation and Agreement
26 in Settlement, the findings set forth below in the DETERMINATION
27

1 OF ISSUES become final, and that the Commissioner may charge
2 Respondent for the cost of any audit conducted pursuant to
3 Section 10148 of the Business and Professions Code to determine
4 if the violations have been corrected. The maximum costs of
5 said audit shall not exceed \$5,019.20.

6 DETERMINATION OF ISSUES

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

11 I

12 The conduct of Respondent, as described in the
13 Accusation, constitutes cause for the suspension or revocation
14 of the real estate license and license rights of Respondent
15 under the provisions of Section 10177(d) of the California
16 Business and Professions Code ("Code") in conjunction with
17 Section 10145 of the Code.

18 ORDER

19 A. The real estate broker license and all license
20 rights of Respondent ROY TIMOTHY CAVELLINI under the Real Estate
21 Law are revoked.

22 B. A restricted real estate broker license shall be
23 issued to Respondent pursuant to Business and Professions Code
24 Section 10156.5, if Respondent makes application therefor and
25 pays to the Department the appropriate fee for said license
26 within ninety (90) days from the effective date of this Order.

1 C. The restricted license issued to Respondent shall
2 be subject to all the provisions of Section 10156.7 of the
3 Business and Professions Code and to the following limitations,
4 conditions and restrictions imposed under authority of Section
5 10156.6 of said Code:

6 (1) The license shall not confer any property right
7 in the privileges to be exercised, and the Real
8 Estate Commissioner may, by appropriate order
9 suspend the right to exercise any privileges
10 granted under the restricted license in the event
11 of:

12 (a) The conviction of Respondent (including a
13 plea of nolo contendere) to a crime which
14 bears a significant relation to Respondent's
15 fitness or capacity as a real estate
16 licensee; or,

17 (b) The receipt of evidence that Respondent has
18 violated provisions of the California Real
19 Estate Law, Subdivided Lands Law,
20 Regulations of the Real Estate Commissioner
21 or conditions attaching to the restricted
22 license.

23 (2) Respondent shall not be eligible to apply for
24 issuance of an unrestricted real estate license
25 nor the removal of any of the conditions,
26 limitations or restrictions attaching to the
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1 restricted license until two (2) years have
2 elapsed from the date of issuance of a restricted
3 license to Respondent.

4 D. Respondent shall, within nine (9) months from the
5 effective date of this ORDER, present evidence satisfactory to
6 the Real Estate Commissioner that he has, since the most recent
7 issuance of an original or renewal real estate license, taken
8 and successfully completed the continuing education requirements
9 of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
10 of a real estate license. If Respondent fails to satisfy this
11 condition, the Commissioner may order the suspension of the
12 restricted license until Respondent presents such evidence. The
13 Commissioner shall afford Respondent the opportunity for a
14 hearing pursuant to the Administrative Procedure Act to present
15 such evidence.

16 E. Respondent shall, prior to and as a condition of
17 the issuance of the restricted license, submit proof
18 satisfactory to the Commissioner of having taken and
19 successfully completed the continuing education course on trust
20 fund accounting and handling specified in subdivision (a) of
21 Section 10170.5 of the Business and Professions Code. Proof of
22 satisfaction of this requirement includes evidence that
23 respondent has successfully completed the trust fund account and
24 handling continuing education course within 120 days prior to
25 the effective date of the Decision in this matter.

1 F. Pursuant to Section 10148 of the Business and
2 Professions Code, Respondent shall pay the Commissioner's
3 reasonable cost for: a) the audit which led to this
4 disciplinary action, and b) a subsequent audit to determine if
5 Respondent has corrected the trust fund violations found in
6 Paragraph I of the Determination of Issues. In calculating the
7 amount of the Commissioner's reasonable cost, the Commissioner
8 may use the estimated average hourly salary for all persons
9 performing audits of real estate brokers, and shall include an
10 allocation for travel time to and from the auditor's place of
11 work. Respondent shall pay such cost within sixty (60) days of
12 receiving an invoice from the Commissioner detailing the
13 activities performed during the audit and the amount of time
14 spent performing those activities. The Commissioner may suspend
15 the restricted license issued to Respondent pending a hearing
16 held in accordance with Section 11500, et seq., of the
17 Government Code, if payment is not timely made as provided for
18 herein, or as provided for in a subsequent agreement between the
19 Respondent and the Commissioner. The suspension shall remain in
20 effect until payment is made in full or until Respondent enters
21 into an agreement satisfactory to the Commissioner to provide
22 for payment, or until a decision providing otherwise is adopted
23 following a hearing held pursuant to this condition.

24 G. Any restricted real estate broker license issued
25 to Respondent may be suspended or revoked for a violation by
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27

1 Respondent of any of the conditions attaching to the restricted
2 license.

3
4 2/25/2004

5 DATED



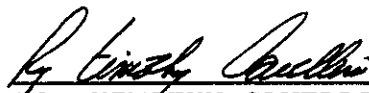
6 DAVID B. SEALS, Counsel
7 DEPARTMENT OF REAL ESTATE

8 * * *

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

20 2-25-04

21 DATED



22 ROY TIMOTHY CAVELLINI
23 Respondent

24 I have reviewed the Stipulation and Agreement in
25 Settlement as to form and content and have advised my client
26 accordingly.

27 2-25-04

DATED



JEFFERSON FRAZIER
Attorney for Respondent

* * *

1 The foregoing Stipulation and Agreement for
2 Settlement is hereby adopted by the Real Estate Commissioner as
3 her Decision and Order and shall become effective at 12 o'clock
4 noon on APRIL 16, 2004 .

5 IT IS SO ORDERED March 10, 2004 .

6 Real Estate Commissioner

7
8 John R. Liberator
9

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
JAN - 9 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROY TIMOTHY CAVELLINI

Case No. H-8531 SF

OAH No. N2003100430

Respondent

**FIRST CONTINUED
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, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **WEDNESDAY--FEBRUARY 25, 2004**, 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: JANUARY 9, 2004

By

DEPARTMENT OF REAL ESTATE

DAVID B. SEALS, Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
OCT 29 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROY TIMOTHY CAVELLINI

Case No. H-8531 SF

OAH No. N2003100430

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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MONDAY--DECEMBER 15, 2003**, at the hour of **1:30 PM**, 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.

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Dated: OCTOBER 29, 2003

By

DEPARTMENT OF REAL ESTATE

DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED

SEP 24 2003

DEPARTMENT OF REAL ESTATE

By Jean Dunn

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 ROY TIMOTHY CAVELLINI,)
14)
15 Respondent.)

NO. H-8531 SF

ACCUSATION

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California for cause of
18 Accusation against ROY TIMOTHY CAVELLINI (hereinafter
19 "Respondent") is informed and alleges as follows:

20 I

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

24 II

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the

27 ///

1 California Business and Professions Code (hereinafter "Code"), as
2 a real estate broker.

3 III

4 That at all times herein mentioned, Respondent FSC,
5 engaged in the business of, acted in the capacity of, advertised,
6 or assumed to act as a real estate broker in the State of
7 California within the meaning of Section 10131(b) of the Code,
8 for or in expectation of compensation, by leasing or renting or
9 offering to lease or rent, or placing for rent, or soliciting
10 listings of places for rent, or soliciting for prospective
11 tenants, or negotiating the sale, purchase or exchange of leases
12 on real property, or on a business opportunity, or collecting
13 rents from real property, or improvements thereon, or from
14 business opportunities.

15 IV

16 That at all times mentioned herein, Respondent accepted
17 or received funds in trust (hereafter trust funds) from and on
18 behalf of his principals placing them in bank accounts and at
19 times thereafter made disbursements of such funds.

20 V

21 From November 16, 2001 through June 17, 2002 an
22 investigative audit was performed by the Department of the
23 records and bank records of the Respondent for the period from
24 December 1, 2000 to November 1, 2001, as said records related to
25 his activities as a real estate broker.

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1 VI

2 Respondent maintained two bank accounts into which
3 trust funds were placed. Both accounts were located at Mt. Diablo
4 National Bank, 349 Main Street, Suite 110, Pleasanton, CA 94566.
5 Account No. 2300481 (hereinafter "Trust 1") and Account No.
6 2300408 (hereinafter "Trust 2") were both in the name of Roy
7 Cavellini, Trustee.

8 VII

9 The adjusted balance of Trust 1 as of October 31, 2001
10 was Forty-Eight Thousand Four Hundred Sixty-Seven and 72/100
11 Dollars (\$48,467.72) and the trust fund accountability in the
12 account as of October 31, 2001 was Seventy-Six Thousand Five
13 Hundred Eighty-Five and 40/100 Dollars (\$76,585.40). Therefore,
14 Respondent, as of October 31, 2001, had a trust fund shortage of
15 Twenty-Eight Thousand One Hundred Seventeen and 68/100 Dollars
16 (\$28,117.68).

17 VIII

18 The adjusted balance of Trust 2 as of October 31, 2001
19 was Three Hundred Seventy-Two Thousand Three Hundred Fifty-Four
20 and 57/100 Dollars (\$372,354.57) and the trust fund
21 accountability in the account as of October 31, 2001 was Three
22 Hundred Seventy-Three Thousand One Hundred Twenty-Nine and 57/100
23 Dollars (\$373,129.57). Therefore, Respondent, as of October 31,
24 2001, had a trust fund shortage of Seven Hundred Seventy-Five and
25 00/100 Dollars (\$775.00).

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IX

As of December 31, 2001 Respondent reimbursed or otherwise corrected \$26,751.80 for Trust 1 and \$775.00 for Trust 2 of the shortages.

X

Respondent caused the disbursement of trust funds from both Trust 1 and Trust 2 without the written consent of every principal who was an owner of the funds, causing the balance of the funds in the account to be an amount less than the existing aggregate trust fund liability of Respondent to all owners of said funds in violation of Section 10145 of the Code and Section 2832.1, Title 10, California Code of Regulations (hereinafter the "Regulations").

XI

Respondent failed to reconcile the balance of all separate beneficiary records with the record of all trust funds received on a monthly basis for both Trust 1 and Trust 2 in violation of Section 2831.2 of the Regulations.

XII

During the period of the audit, Respondent was doing business as Wilson Property Management but Respondent did not hold a license bearing that fictitious name in violation of Section 2731 of the Regulations.

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