

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

FILED
JUL - 8 2004

DEPARTMENT OF REAL ESTATE

By Lucie A. Z...

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-8613 SF
)	OAH No. 2004020520
BENJAMIN ALAN BARBIC,	)
)	)
Respondent.	)
)	<u>STIPULATION AND AGREEMENT</u>

It is hereby stipulated by and between Respondent ,
BENJAMIN ALAN BARBIC, individually and by and through Alan
William Nudelman, Esq., attorney of record herein for Respondent,
and the Complainant, acting by and through James L. Beaver,
Counsel for the Department of Real Estate (herein "the
Department"), as follows for the purpose of settling and
disposing of the Accusation filed on January 12, 2004 in this
matter (herein "the Accusation"):

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

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BENJAMIN ALAN BARBIC

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement.

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

8 3. On January 27, 2004, Respondent filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that Respondent
13 understands that by withdrawing said Notice of Defense Respondent
14 will thereby waive Respondent's right to require the Real Estate
15 Commissioner (herein "the Commissioner") to prove the allegations
16 in the Accusation at a contested hearing held in accordance with
17 the provisions of the APA and that Respondent will waive other
18 rights afforded to Respondent in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

22 4. This stipulation is based on the factual
23 allegations contained in the Accusation. In the interest of
24 expediency and economy, Respondent chooses not to contest these
25 factual allegations, but to remain silent and understands that,
26 as a result thereof, these factual statements will serve as a

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1 prima facie basis for the "Determination of Issues" and "Order"
2 set forth below. The Real Estate Commissioner shall not be
3 required to provide further evidence to prove such allegations.

4 5. This Stipulation and Respondent's decision not to
5 contest the Accusation are made for the purpose of reaching an
6 agreed disposition of this proceeding and are expressly limited
7 to this proceeding and any other proceeding or case in which the
8 Department of Real Estate (herein "the Department"), the state or
9 federal government, an agency of this state, or an agency of
10 another state is a party.

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

21 7. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation and
23 Agreement in Settlement shall not constitute an estoppel,
24 merger or bar to any further administrative or civil
25 proceedings by the Department of Real Estate with respect to
26

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1 any matters which were not specifically alleged to be causes
2 for accusation in this proceeding.

3 DETERMINATION OF ISSUES

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

8 I

9 The acts and omissions of Respondent BENJAMIN ALAN
10 BARBIC as described in the Accusation are grounds for the
11 suspension or revocation of the licenses and license rights of
12 Respondent under the provisions of Sections 490 and 10177(b) of
13 the California Business and Professions Code (herein "the Code").

14 ORDER

15 I

16 All licenses and licensing rights of Respondent
17 BENJAMIN ALAN BARBIC under the Real Estate Law are revoked;
18 provided, however, a restricted real estate salesperson license
19 shall be issued to said Respondent pursuant to Section 10156.5
20 of the Business and Professions Code if, within 90 days from
21 the effective date of the Decision entered pursuant to this
22 Order, the Respondent, prior to and as a condition of the
23 issuance of said restricted license, makes application for the
24 restricted license and pays to the Department of Real Estate
25 the appropriate fee therefor.
26

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

6 1. The restricted license issued to such Respondent
7 may be suspended prior to hearing by Order of the Real Estate
8 Commissioner in the event of the Respondent's conviction or
9 plea of nolo contendere to a crime which is substantially
10 related to Respondent's fitness or capacity as a real estate
11 licensee.

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

19 3. Respondent shall not be eligible to apply for the
20 issuance of an unrestricted real estate license or for the
21 removal of any of the conditions, limitations or restrictions
22 of a restricted license until two (2) years have elapsed from
23 the effective date of this Decision.

24 4. Respondent shall, within nine months from the
25 effective date of the Decision, present evidence satisfactory
26

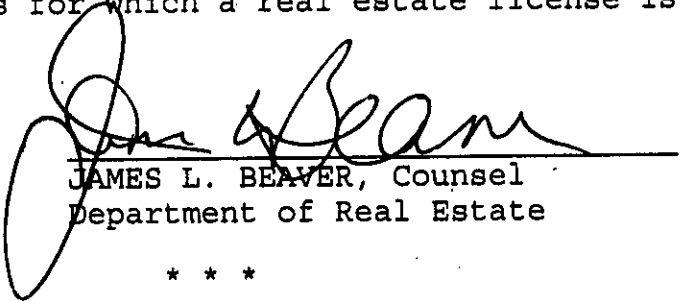
1 to the Commissioner that Respondent has, since the most recent
2 issuance of an original or renewal real estate license, taken
3 and successfully completed the continuing education
4 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
5 for renewal of a real estate license. If Respondent fails to
6 satisfy this condition, the Commissioner may order the
7 suspension of the restricted license until the Respondent
8 presents such evidence. The Commissioner shall afford
9 Respondent the opportunity for a hearing pursuant to the
10 Administrative Procedure Act to present such evidence.

11 5. Respondent shall submit with any application for
12 license under an employing broker, or any application for
13 transfer to a new employing broker, a statement signed by the
14 prospective employing real estate broker on a form approved by
15 the Department of Real Estate which shall certify:
16

17 a. That the employing broker has read the Decision of
18 the Commissioner which granted the right to a restricted license;
19 and

20 b. That the employing broker will exercise close
21 supervision over the performance by the restricted licensee
22 relating to activities for which a real estate license is
23 required.

24 May 24 2004
25 DATED

26 
JAMES L. BEAVER, Counsel
Department of Real Estate

27 * * *

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BENJAMIN ALAN BARBIC

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

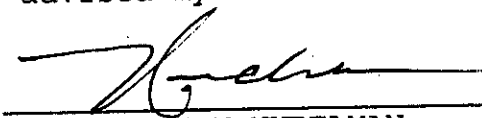
12 5/1/04
13 DATED


14 BENJAMIN ALAN BARBIC
15 Respondent

16 * * *

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

19 5/19/04
20 DATED


21 ALAN WILLIAM NUDELMAN
22 Attorney for Respondent

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24 ///

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26 ///

27 ///

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BENJAMIN ALAN BARBIC

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

FILED
FEB 25 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BENJAMIN ALAN BARBIC,

Case No. H-8613 SF

OAH No.

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 **WEDNESDAY, MAY 5, 2004**, at the hour of **1:30 P.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.

DEPARTMENT OF REAL ESTATE

Dated: FEBRUARY 25, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel (L2)

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
JAN 12 2004

DEPARTMENT OF REAL ESTATE

Laurel Z...

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

10 * * *

11 In the Matter of the Accusation of)
12 BENJAMIN ALAN BARBIC,)
13 Respondent.)

No. H-8613 SF
ACCUSATION

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against BENJAMIN ALAN BARBIC (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 I

20 At all times herein mentioned, Respondent was and now
21 is licensed and/or has license rights under the Real Estate Law,
22 Part 1 of Division 4 of the Business and Professions Code
23 (hereinafter "Code") as a real estate salesperson.

24 II

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

1 III

2 On or about February 11, 2003, in the Superior Court of
3 the State of California, County of San Joaquin, Respondent was
4 convicted of the crime of Disturbing The Peace in violation of
5 Penal Code Section 415, a misdemeanor and a crime involving moral
6 turpitude which bears a substantial relationship under Section
7 2910 of Chapter 6, Title 10, California Code of Regulations
8 (herein "the Regulations"), to the qualifications, functions or
9 duties of a real estate licensee.

10 IV

11 On or about July 28, 2003, in the Superior Court of the
12 State of California, County of Santa Clara, Respondent was
13 convicted of the crime of Disturbing The Peace in violation of
14 Penal Code Section 415, a misdemeanor and a crime involving moral
15 turpitude which bears a substantial relationship under Section
16 2910 of the Regulations to the qualifications, functions or
17 duties of a real estate licensee.

18 V

19 The facts alleged above constitute cause under Sections
20 490 and 10177(b) of the Code for suspension or revocation of all
21 licenses and license rights of Respondent under the Real Estate
22 Law.

23 ///

24 ///

25 ///

26 ///

27 ///

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

Les R. Bettencourt
LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 19th day of November, 2003.