

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
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6

FILED
JAN 12 2006

DEPARTMENT OF REAL ESTATE

By Care Shannon

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)

No. H-9296 SF

11 JOSEPH GERALD STILLWAGON,)

STIPULATION AND
AGREEMENT

12 Respondent.)
13)
14)

15 It is hereby stipulated by and between JOSEPH GERALD
16 STILLWAGON (hereafter Respondent) and his attorney, Thomas C.
17 Lasken, and the Complainant, acting by and through Truly
18 Sughrue, Counsel for the Department of Real Estate, as follows
19 for the purpose of settling and disposing the Accusation filed
20 on June 24, 2005 in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27

Stipulation and Agreement.

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

3. On July 15, 2005, Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he will thereby waive his rights to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA, and that he will waive other rights afforded to them in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This stipulation is based on the factual allegations contained in the Accusation. In the interest of expediency and economy, Respondent chooses not to contest these factual allegations, but to remain silent and understands that, as a result thereof, these factual statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below. The Real Estate Commissioner shall not be required to provide further evidence to prove such allegations.

5. This Stipulation and Respondent's decision not to contest the Accusation are made for the purpose of reaching an

1 agreed disposition of this proceeding and are expressly limited
2 to this proceeding and any other proceeding or case in which the
3 Department of Real Estate (herein "the Department"), the state or
4 federal government, an agency of this state, or an agency of
5 another state is involved.

6 6. Respondent understands that by agreeing to this
7 Stipulation and Agreement, Respondent agrees to pay, pursuant to
8 Section 10148 of the California Business and Professions Code,
9 the cost of the audit which resulted in the determination that
10 Respondent committed the trust fund violation(s) found in
11 Paragraph I, below, of the Determination of Issues. The amount
12 of said costs is \$3,897.60.

13 7. Respondent further understands that by agreeing
14 to this Stipulation and Agreement in Settlement, the findings
15 set forth below in the Determination Of Issues become final, and
16 that the Commissioner may charge said Respondent for the
17 costs of any audit conducted pursuant to Section 10148 of
18 the California Business and Professions Code to determine if
19 the violations have been corrected. The maximum costs of
20 said audit shall not exceed \$3,897.60.

21 8. It is understood by the parties that the Real
22 Estate Commissioner may adopt the Stipulation and Agreement as
23 his decision in this matter thereby imposing the penalty and
24 sanctions on the real estate licenses and license rights of
25 Respondent as set forth in the below "Order". In the event that
26 the Commissioner in his discretion does not adopt the Stipulation
27

1 and Agreement, it shall be void and of no effect, and Respondent
2 shall retain the right to a hearing and proceeding on the
3 Accusation under all the provisions of the APA and shall not be
4 bound by any admission or waiver made herein.

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

12 * * *

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations and waivers and
15 solely for the purpose of settlement of the pending Accusation
16 without a hearing, it is stipulated and agreed that the following
17 determination of issues shall be made:
18

19 I

20 The acts and omissions of Respondent as described in
21 the Accusation are grounds for the suspension or revocation of
22 Respondents licenses and license rights under the following
23 sections of the Code and Regulations:

24 (1) As to Paragraphs V, under Section 10176(g) and
25 10176(a) of the Code;

26 (2) As to Paragraph VI, under Section 10240 of the
27 Code;

1 (3) As to Paragraph VIII, under Section 10177(d) of
2 the Code in conjunction with Section 2831 of the Regulations;

3 (4) As to Paragraph VII, under Section 10160 of the
4 Code; and

5 (5) As to Paragraph IX, under Section 10177(h) of the
6 Code.

7 * * *

8 ORDER

9 I

10 All licenses and licensing rights of Respondent JOSEPH
11 GERALD STILLWAGON under the Real Estate Law are suspended for a
12 period of ninety (90) days from the effective date of this Order;
13 provided, however, that:

14 1) Forty-five (45) days of said suspension shall be stayed, upon
15 the condition that Respondent petition pursuant to Section
16 10175.2 of the Business and Professions Code and pays a
17 monetary penalty pursuant to Section 10175.2 of the Business
18 and Professions Code at a rate of \$100 for each day of the
19 suspension for a total monetary penalty of \$4,500.

20 a) Said payment shall be in the form of a cashier's check or
21 certified check made payable to the Recovery Account of the
22 Real Estate Fund. Said check must be delivered to the
23 Department prior to the effective date of the Order in this
24 matter.

25 b) No further cause for disciplinary action against the Real
26 Estate licenses of said Respondent occurs within two (2)
27

1 years from the effective date of the decision in this
2 matter.

3 c) If Respondent fails to pay the monetary penalty as provided
4 above prior to the effective date of this Order, the stay of
5 the suspension shall be vacated as to that Respondent and
6 the order of suspension shall be immediately executed, under
7 this Paragraph 1(d) of this Order, in which event the said
8 Respondent shall not be entitled to any repayment nor
9 credit, prorated or otherwise, for the money paid to the
10 Department under the terms of this Order.

11 d) If said Respondent pay the monetary penalty and any other
12 moneys due under this Stipulation and Agreement and if no
13 further cause for disciplinary action against the real
14 estate license of said Respondent occurs within two (2)
15 years from the effective date of this Order, the entire stay
16 hereby granted under Paragraph 1 of this Order, as to said
17 Respondent only, shall become permanent.

18 2) The remaining forty-five (45) days of said suspension shall be
19 stayed for two (2) years upon the following terms and
20 conditions:

- 21 a) Respondent shall obey all laws, rules and regulations
22 governing the rights, duties and responsibilities of a real
23 estate licensee in the State of California; and,
24 b) That no final subsequent determination be made, after
25 hearing or upon stipulation, that cause for disciplinary
26 action occurred within two (2) years from the effective date
27 of this Order. Should such a determination be made, the

Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

- 3) Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of the license until Respondent passes the examination.
- 4) Respondent shall, prior to the effective date of this Decision, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until Respondent presents proof that he has successfully completed the trust fund course.
- 5) Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the sum of \$3,897.60 for the Commissioner's cost of the audit which led to this

1 disciplinary action. Respondent shall pay such cost within
2 forty-five (45) days of receiving an invoice therefor from the
3 Commissioner. The Commissioner may suspend the restricted
4 license issued to Respondent pending a hearing held in
5 accordance with Section 11500, et seq., of the Government
6 Code, if payment is not timely made as provided for herein, or
7 as provided for in a subsequent agreement between the
8 Respondent and the Commissioner. The suspension shall remain
9 in effect until payment is made in full or until Respondent
10 enters into an agreement satisfactory to the Commissioner to
11 provide for payment, or until a decision providing otherwise
12 is adopted following a hearing held pursuant to this
13 condition.

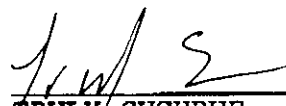
14 6) Pursuant to Section 10148 of the Business and Professions

15 Code, Respondent shall pay the Commissioner's reasonable cost,
16 not to exceed \$3,897.60, for an audit to determine if
17 Respondent has corrected the trust fund violation(s) found in
18 Paragraph I of the Determination of Issues. In calculating
19 the amount of the Commissioner's reasonable cost, the
20 Commissioner may use the estimated average hourly salary for
21 all persons performing audits of real estate brokers, and
22 shall include an allocation for travel time to and from the
23 auditor's place of work. Respondent shall pay such cost
24 within forty-five (45) days of receiving an invoice therefor
25 from the Commissioner detailing the activities performed
26 during the audit and the amount of time spent performing those
27 activities. The Commissioner may suspend the restricted

1 license issued to Respondent pending a hearing held in
2 accordance with Section 11500, et seq., of the Government
3 Code, if payment is not timely made as provided for herein, or
4 as provided for in a subsequent agreement between Respondent
5 and the Commissioner. The suspension shall remain in effect
6 until payment is made in full or until Respondent enters into
7 an agreement satisfactory to the Commissioner to provide for
8 payment, or until a decision providing otherwise is adopted
9 following a hearing held pursuant to this condition.

23-Nov-05

DATED

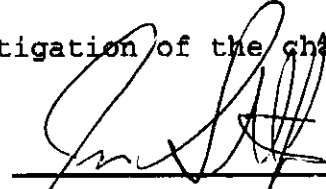
TRULY SUGHRUE
Counsel for Complainant

* * *

14 I have read the Stipulation and Agreement, discussed it
15 with my counsel, and its terms are understood by me and are
16 agreeable and acceptable to me. I understand that I am waiving
17 rights given to me by the California Administrative Procedure
18 Act, and I willingly, intelligently and voluntarily waive those
19 rights, including the right of requiring the Commissioner to
20 prove the allegations in the Accusation at a hearing at which I
21 would have the right to cross-examine witnesses against me and to
22 present evidence in defense and mitigation of the charges.

9/30/05

DATED

JOSEPH GERALD STILLWAGON
Respondent

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

3
4 Sept 30, 2005
5 DATED

Paul A
6 THOMAS C. LASKEN
7 Attorney for Respondent

8 * * *

9 The foregoing Stipulation and Agreement is hereby
10 adopted as my Decision and shall become effective at 12 o'clock
11 noon on February 2, 2006

12 IT IS SO ORDERED 1-4, 2005.

13 JEFF DAVI
14 Real estate Commissioner

15 Jeff Davi
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1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
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6 Telephone: (916) 227-0781

FILED

JUN 24 2005

DEPARTMENT OF REAL ESTATE

By James A. ...

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 9296 SF

12 JOSEPH GERALD STILLWAGON,)

ACCUSATION

13 Respondent.)
14)
15)

16 The Complainant, E. J. HABERER II, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against JOSEPH GERALD STILLWAGON (herein "Respondent"), is
19 informed and alleges as follows:

20 I

21 The Complainant, E. J. HABERER II, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation in
23 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 Business and Professions Code) (herein "the Code").

III

At all times herein mentioned, Respondent was and is licensed by the Department of Real Estate (hereafter 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 in the State of California within the meaning of:

(a) Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property; and

(b) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of a compensation.

V

In connection with the mortgage loan brokerage business described in Paragraph IV, Respondent collected and kept excess

1 credit report fees from borrowers and did not disclose such
2 excess compensation or secret profit to the borrowers in
3 violation of Section 10176(g) and 10176(a) of the Code.

4 VI

5 In connection with the mortgage loan brokerage
6 business described in Paragraph IV, Respondent violated and/or
7 willfully failed to comply with Section 10240 of the Code, in
8 that Respondent:

9 (a) failed to cause to be delivered to the borrowers
10 the written Disclosure Statement required by Section 10241 of
11 the Code;

12 (b) failed to obtain the signature of the borrowers
13 on any Written Disclosure Statement; and/or

14 (c) failed to retain on file for a period of three
15 years a true and correct copy of any Written Disclosure
16 Statement signed by the borrowers.

17 VII

18 In connection with Respondent's activities described in
19 Paragraph IV, Respondent accepted or received funds in trust
20 (hereinafter "trust funds"). Respondent failed to maintain a
21 record of all trust funds received and not deposited in a trust
22 account, as required by Section 2831 of Title 10, California Code
23 of Regulations (the Regulations).

24 VIII

25 Respondent failed to provide a copy of salesperson
26 license of nine of his licensees for inspection by the
27 Department in violation of Section 10160 of the Code.

IX

At all times mentioned herein, Respondent failed to exercise reasonable supervision over the activities of his salespersons, and permitted, ratified and/or caused the conduct described above. Respondent failed to reasonably or adequately review, oversee, inspect and manage the salespersons under his employ, and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

X

The facts alleged above are grounds for the suspension or revocation of Respondents licenses and license rights under the following sections of the Code and Regulations:

(1) As to Paragraphs V, under Section 10176(g) and 10176(a) of the Code;

(2) As to Paragraph VI, under Section 10240 of the Code;

(3) As to Paragraph VIII, under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;

(3) As to Paragraph VII, under Section 10160 of the Code; and

(5) As to Paragraph IX, under Section 10177(h) of the Code.

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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 Respondents,
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 E. J. HABERER II
Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 13th day of June, 2005
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