

FILED
SEP 12 2007

DEPARTMENT OF REAL ESTATE

By C. Shawner

Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-9923 SF
)	
)	<u>STIPULATION AND AGREEMENT</u>
PATRICIA ANN FORST,)	<u>IN SETTLEMENT</u>
)	<u>AND ORDER</u>
Respondent.)	
)	

It is hereby stipulated by and between PATRICIA ANN FORST (hereinafter "Respondent") and her attorney of record, Bradley M. Matteoni of Matteoni O'Laughlin & Hechman, and the Complainant, acting by and through David B. Seals, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on March 8, 2007, in this matter:

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

H-9923 SF

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ACCUSATION OF
PATRICIA ANN FORST

1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

3 2. Respondent has received, read and understands 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. A Notice of Defense was filed on March 16, 2007 by
8 Respondent, pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that she
12 understand that by withdrawing said Notice of Defense she will
13 thereby waive her right to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that she will
16 waive other rights afforded to her in connection with the
17 hearing such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

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

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1 Commissioner shall not be required to provide further evidence
2 to prove said factual allegations.

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

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

21 7. Respondent has received, read and understands the
22 "Notice Concerning Costs of Subsequent Audits". Respondent
23 understands that by agreeing to this Stipulation and Agreement
24 in Settlement, the findings set forth below in the DETERMINATION
25 OF ISSUES become final, and that the Commissioner may charge
26 Respondent for the costs of any audit for which they are charged
27 pursuant to Section 10148 of the Business and Professions Code

1 (hereinafter the "Code"). The reasonable cost of the audits
2 which led to this disciplinary action is \$3,110.72. The maximum
3 cost of the subsequent audits will not exceed \$3,110.72.

4
5 DETERMINATION OF ISSUES

6 I

7 By reason of the foregoing stipulations, admissions
8 and waivers and solely for the purpose of settlement of the
9 pending Accusation without a hearing, it is stipulated and
10 agreed that the facts alleged above are grounds for the
11 suspension or revocation of the licenses and license rights of
12 Respondent PATRICIA ANN FORST under Sections 10148 and 10177(h)
13 of the Code and Sections 2725, 2831 and 2834 of the Regulations
14 in conjunction with Section 10177(d) of the Code.

15 ORDER

16 I

17 All licenses and licensing rights of Respondent
18 PATRICIA ANN FORST under the Real Estate Law are suspended for a
19 period of sixty (60) days from the effective date of this Order;
20 provided, however, that:

21 1. Thirty (30) days of said suspension shall be stayed
22 for two (2) years upon the following terms and conditions:

23 A. Respondent shall obey all laws, rules and
24 regulations governing the rights, duties and
25 responsibilities of a real estate licensee in the
26 State of California; and

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1 B. That no final subsequent determination be made,
2 after hearing or upon stipulation, that cause for
3 disciplinary action occurred within two (2) years
4 from the effective date of this Order. Should
5 such a determination be made, the Commissioner
6 may, in his discretion, vacate and set aside the
7 stay order and reimpose all or a portion of the
8 stayed suspension. Should no such determination
9 be made, the stay imposed herein shall become
10 permanent.

11 2. The remaining thirty (30) days of said 60-day
12 suspension shall be stayed upon the condition that Respondent
13 petition pursuant to Section 10175.2 of the Business and
14 Professions Code and pays a monetary penalty pursuant to Section
15 10175.2 of the Business and Professions Code at a rate of \$100
16 for each day of the suspension for a total monetary penalty of
17 \$3000:

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

24 B. No further cause for disciplinary action against
25 the Real Estate licenses of said Respondent
26 occurs within two (2) years from the effective
27 date of the decision in this matter.

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

11 D. If Respondent pays the monetary penalty and any
12 other moneys due under this Stipulation and
13 Agreement and if no further cause for
14 disciplinary action against the real estate
15 licenses of Respondent occurs within two (2)
16 years from the effective date of this Order, the
17 entire stay hereby granted under Paragraphs I
18 shall become permanent.

19 3. Pursuant to Section 10148 of the Business and
20 Professions Code, Respondent shall pay the Commissioner's
21 reasonable cost for the audit which led to this disciplinary
22 action (\$3,110.72), if such costs has not already been paid, and
23 a subsequent audit (not to exceed \$3,110.72) to determine if
24 Respondent has corrected the trust fund violation(s) found in
25 the Determination of Issues. In calculating the amount of the
26 Commissioner's reasonable cost, the Commissioner may use the
27 estimated average hourly salary for all persons performing

1 audits of real estate brokers, and shall include an allocation
2 for travel time to and from the auditor's place of work.
3 Respondent shall pay such cost within 60 days of receiving an
4 invoice from the Commissioner detailing the activities performed
5 during the audit and the amount of time spent performing those
6 activities. The Commissioner may suspend the licenses of
7 Respondent pending a hearing held in accordance with Section
8 11500, et seq., of the Government Code, if payment is not timely
9 made as provided for herein, or as provided for in a subsequent
10 agreement between Respondent and the Commissioner. The
11 suspension shall remain in effect until payment is made in full
12 or until Respondent enters into an agreement satisfactory to the
13 Commissioner to provide for payment, or until a decision
14 providing otherwise is adopted following a hearing held pursuant
15 to this condition.

16 4. Respondent shall, prior to the date this
17 Stipulation becomes effective, submit proof satisfactory to the
18 Commissioner of having taken and successfully completed the
19 continuing education course on trust fund accounting and
20 handling specified in subdivision (a) of Section 10170.5 of the
21 Business and Professions Code. Proof of satisfaction of this
22 requirement includes evidence that Respondent has successfully
23 completed the trust fund account and handling continuing
24 education course within 120 days prior to the effective date of
25 the Stipulation in this matter. If Respondent fails to satisfy
26 this condition, the Commissioner may order suspension of

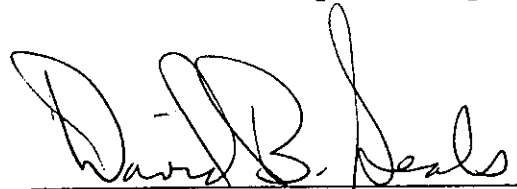
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1 Respondent's license until Respondent submits satisfactory proof
2 of completion of the course.

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

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11 DATED:

Aug. 1, 2007



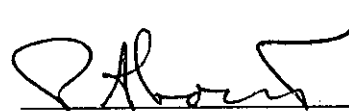
DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

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13 * * *

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

25
26 DATED:

7-30-07



PATRICIA ANN FORST
Respondent

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

* * *

IT IS SO ORDERED

ACCUSATION OF
PATRICIA ANN FORST

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

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

FILED
MAR -8 2007

DEPARTMENT OF REAL ESTATE

By *E. J. Haber*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of
12 PATRICIA ANN FORST,
13 Respondent.

) No. H-9923 SF
)
) ACCUSATION
)
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)

14
15 The Complainant, E. J. Haberer II, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against PATRICIA ANN FORST (hereinafter Respondent), is informed
18 and alleges as follows:

19 I

20 The Complainant, E. J. Haberer II, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 against Respondent in his official capacity.

23 II

24 Respondent is licensed and/or has license rights under
25 the Real Estate Law, Part 1 of Division 4 of the California
26 Business and Professions Code (hereinafter "Code") as a real
27 estate broker dba FP Management and Brokerage.

1 III

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

13 IV

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

18 V

19 On or about October 13, 2004 an investigative audit
20 (#OK040029) was conducted by the Department of the records and
21 bank records of Respondent for the period from January 1, 2003
22 to July 31, 2004, as said records related to her activities as a
23 real estate broker described above.

24 VI

25 During the period beginning three years from the
26 filing of this Accusation, Respondent maintained three accounts
27 (hereinafter Trust #1, Trust #2, and Trust #3) for her real

1 estate activities, into which trust funds were placed. All
2 accounts were at Union Bank of California, 1109 E. Arques Ave.,
3 Sunnyvale, CA 94085. Trust #1 was in the name of FP Management
4 and Brokerage Trustee for Miller, William L., Account No.
5 1380006 886. Trust #2 was in the name of FP Management and
6 Brokerage Trustee for Wolf, Terrance; Wolf, Julie, Account No.
7 1380011 596. Trust #3 was in the name of FP Management and
8 Brokerage Trustee for Brian, Robert E., Account No. 1380006 924.

9 VII

10 During the period beginning three years from the
11 filing of this Accusation, Terrance Wolf and Julie Wolf were
12 signatories on Trust #2. However, neither Terrance Wolf nor
13 Julie Wolf was licensed by the Department nor did either have
14 fidelity bond coverage at least equal to the minimum amount of
15 trust funds to which each had access at the time in violation of
16 Section 2834, Title 10, California Code of Regulations
17 (hereinafter the "Regulations") of the Regulations.

18 VIII

19 During the period beginning three years from the
20 filing of this Accusation, Respondent failed to maintain an
21 accurate record of all trust funds received and disbursed for
22 Trust #1 - Trust #3, in that, the records were not maintained in
23 columnar form and they did not specify the date funds were
24 received or from whom funds were received in violation of
25 Section 2831 of the Regulations.

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IX

During the period beginning three years from the filing of this Accusation, Respondent failed to retain for three years copies of all records and documents in connection with any transaction she had and for which a real estate license is required in violation of Section 10148 of the Code.

X

During the period beginning three years from the filing of this Accusation, Respondent failed to exercise reasonable supervision over the activities of salesperson Evelyn Perl, and permitted, ratified and/or caused the conduct described above. Respondent failed to reasonably or adequately review, oversee, inspect and manage Evelyn Perl and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

XI

The acts and/or omissions of Respondent as described above are grounds for the suspension or revocation of Respondent's licenses and license rights under Sections 10148 and 10177(h) of the Code and Sections 2725, 2831 and 2834 of the Regulations in conjunction with Section 10177(d) of the Code.

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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.

E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 28th day of February, 2007.