

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

MAR 25 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 * * *

12 In the Matter of the Accusation of)

13) NO. H-10375 SF

14 LEON PHAM,)

15) STIPULATION AND AGREEMENT
16) IN SETTLEMENT AND ORDER

17 Respondent.)

18 It is hereby stipulated by and between Respondent LEON PHAM (herein
19 "Respondent"), by and through Frank M. Buda, attorney of record herein for Respondent, and the
20 Complainant, acting by and through Mary F. Clarke, Counsel for the Department of Real Estate
21 (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation
22 filed on April 10, 2008 in this matter (herein "the Accusation"):

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

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

4 3. A Notice of Defense was filed on April 25, 2008 by Respondent, pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
7 Respondent acknowledges that he understands that by withdrawing said Notice of Defense, he
8 will thereby waive his right to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that
10 he will waive other rights afforded to him in connection with the hearing such as the right to
11 present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

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

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

26
27 \\\

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

6 7. Respondent understands that by agreeing to this Stipulation and Agreement
7 in Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the California
8 Business and Professions Code (herein "Code"), the cost of the audit which resulted in the
9 determination that Respondent committed the trust fund violations found in the Determination
10 of Issues, below. The amount of said costs is \$4,854.40.

11 8. Respondent further understands that by agreeing to this Stipulation and
12 Agreement in Settlement and Order, the findings set forth below in the Determination of Issues
13 become final, and that the Commissioner may charge said Respondent for the costs of any audit
14 conducted pursuant to Section 10148 of the Code to determine if the trust fund violations found
15 in the Determination of Issues, below, have been corrected. The maximum costs of said audit
16 shall not exceed \$4,854.40.

17 DETERMINATION OF ISSUES

18 The acts and omissions of Respondent as described in the Accusation are grounds
19 for the suspension or revocation of the license and license rights of Respondent under the
20 following provisions of the Code and/or Chapter 6, Title 10, California Code of Regulations
21 (herein "the Regulations"):

22 1. failed to reconcile at least once a month, the balance of all separate
23 beneficiary or transaction records with Trust #1, as required by Section 2831.2 of the
24 Regulations; and

25 2. authorized Cliff Wood, an unlicensed person without fidelity bond
26 coverage, to make withdrawals from Trust #1 and Trust #2, in violation of Regulation 2834 of
27 the Regulations.

ORDER

All licenses and licensing rights of Respondent under the Real Estate Law are publicly reprovod pursuant to Section 495 of the Code:

Said public reproval is issued upon the following terms and conditions:

1. Respondent submits proof satisfactory to the Commissioner that

Respondent has taken and completed at an accredited institution the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Said course must have been completed not earlier than 120 days prior to the effective date of the Decision herein. If Respondent fails to take and complete said course prior to the effective date of the Decision, the Commissioner may in his discretion indefinitely suspend all licenses and licensing rights of Respondent under the Real Estate Law until such course has been taken and completed.

2. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of

\$4,854.40 for the Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such cost within 60 days of receiving an invoice therefor from the Commissioner. The Commissioner may indefinitely suspend all licenses and licensing rights pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

3. Respondent shall pay the Commissioner's costs, not to exceed

\$4,854.40, of any audit conducted pursuant to Section 10148 of the Code to determine if Respondent has corrected the violations described in the Determination of Issues, above. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the

1 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
2 include an allocation for travel time to and from the auditor's place of work. Respondent shall
3 pay such cost within 60 days of receiving an invoice therefore from the Commissioner detailing
4 the activities performed during the audit and the amount of time spent performing those
5 activities. If Respondent fails to pay such cost within the 60 days, the Commissioner may in his
6 discretion indefinitely suspend the license and licensing rights of Respondent under the Real
7 Estate Law until payment is made in full or until Respondent enters into an agreement
8 satisfactory to the Commissioner to provide for payment. Upon payment in full, the indefinite
9 suspension provided in this paragraph shall be stayed.

10
11 1-29-09

12 DATED

13 MARY F. CLARKE, Counsel
14 DEPARTMENT OF REAL ESTATE

15 ***

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

23
24 12/16/08

25 DATED

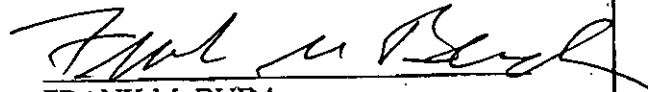
26 LEON PHAM, Respondent

27 ***

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

3
4 12-16-08

5 DATED

6 

7 FRANK M. BUDA

8 Attorney for Respondent

9 ***

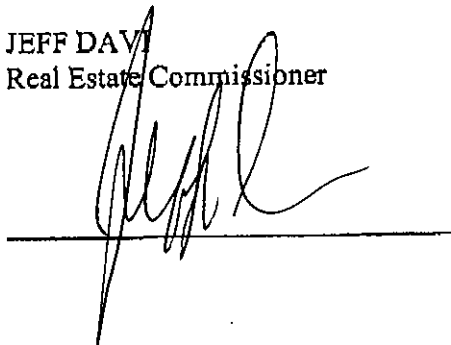
10 The foregoing Stipulation and Agreement in Settlement and Order is hereby
11 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

12 April 14, 2009

13 IT IS SO ORDERED

14 2/26/09

15 JEFF DAVIS
16 Real Estate Commissioner

17 

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0780 (Direct)

FILED

APR 10 2008

DEPARTMENT OF REAL ESTATE

By B. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 LEON PHAM,)
13 Respondent.)
14)

NO. H-10375 SF

ACCUSATION

15 The Complainant, E. J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against LEON PHAM (herein "Respondent"), dba Affordable Property
18 Management, is informed 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 in
22 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 (herein "the Code").

1 III

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

5 IV

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

17 V

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

24 VI

25 The aforesaid trust funds accepted or received by
26 Respondent were deposited or caused to be deposited by Respondent
27 into one or more bank accounts (herein "trust fund accounts")

1 maintained by Respondent for the handling of trust funds at
2 Union City, California, branch of Bank of the West, including
3 but not necessarily limited to:

4 (a) "Leon Pham, Trustee", account number 603-012121
5 (herein "Trust #1"); and,

6 (b) "Leon Pham, Trustee", account number 603-044157
7 (herein "Trust #2").

8 VII

9 Between on or about January 1, 2006 and on or about
10 July 31, 2007, in connection with the collection and disbursement
11 of said trust funds, Respondent:

12 (a) failed to keep a columnar record in chronological
13 sequence of all trust funds received and disbursed from Trust #1
14 and Trust #2 containing all the information required by Section
15 2831 of Chapter 6, Title 10, California Code of Regulations
16 (herein "the Regulations");

17 (b) failed to reconcile at least once a month, the
18 balance of all separate beneficiary or transaction records with
19 Trust #1 and Trust #2, as required by Section 2831.2 of the
20 Regulations; and,

21 (c) authorized Cliff Wood, an unlicensed person
22 without fidelity bond coverage, to make withdrawals from Trust #1
23 and Trust #2, in violation of Regulation 2834 of the Regulations.

24 VIII

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

1 (a) as to Paragraph VII(a) under Section 10145 of the
2 Code and Section 2831 of the Regulations in conjunction with
3 Section 10177(d) of the Code;

4 (b) as to Paragraph VII(b) under Section 10145 of the
5 Code and Section 2831.2 of the Regulations in conjunction with
6 Section 10177(d) of the Code; and,

7 (c) as to Paragraph VII(c) under Section 10145 of the
8 Code and Section 2834 of the Regulations in conjunction with
9 Section 10177(d) of the Code.

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

17
18
19
20 

21 E. J. HABERER II
22 Deputy Real Estate Commissioner

23
24 Dated at Oakland, California

25 this 26th day of February, 2008.