

FILED

DEC 09 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

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	)	Case No. H-10854 SF
	)	
	)	
MICHAEL CHARLES TATHAM, individually	)	
and, dba TATHAM PROPERTY MANAGEMENT,	)	STIPULATION AND AGREEMENT
and dba TATHAM REAL ESTATE	)	IN SETTLEMENT AND
	)	ORDER
Respondent.	)	
	)	

It is hereby stipulated by and between Respondent MICHAEL CHARLES TATHAM individually, and, dba TATHAM PROPERTY MANAGEMENT, and dba TATHAM REAL ESTATE (herein "TATHAM"), and the Complainant, acting by and through Kenneth C. Espell, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on or about February 17, 2010 in this matter:

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

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1 2. Respondent has received, read and understand 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 February 22, 2010 by Respondent, pursuant
5 to Section 11505 of the Government Code, for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
8 Defense he will thereby waive his right to require the Commissioner to prove the allegations in
9 the 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
14 Accusation. In the interest of expedience and economy, Respondent chooses not to contest these
15 allegations, but to remain silent and understand that, as a result thereof, these 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. This Stipulation is made for the purpose of reaching an agreed disposition of
20 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
21 which the Department, the state or federal government, or any agency of this state, another state
22 or federal government is involved.

23 6. The Order or any subsequent Order of the Real Estate Commissioner made
24 pursuant to this Stipulation and Agreement in Settlement and Order shall not constitute an
25 estoppel, merger, or bar to any further administrative or civil proceedings by the Department
26 with respect to any matters that were not specifically alleged to be causes for accusation in this
27 proceeding.

7. Respondent understands that by agreeing to this Stipulation and Agreement in Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the Business and Professions Code ("herein the Code"), the cost of the audit which resulted in the determination that Respondent committed the trust fund violation(s) found in Paragraph I, below, of the Determination of Issues. The amount of said costs is \$7,059.70.

8. Respondent further understands that by agreeing to this Stipulation and Agreement in Settlement and Order, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund violation(s) found in Paragraph I, below, of the Determination of Issues have been corrected. The maximum costs of said audit shall not exceed \$7,059.70.

DETERMINATION OF ISSUES

I

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

(a) A bank account reconciliation was performed for Trust #1 and as of September 30, 2009, there was a shortage of \$6,085.93 in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;

(b) TATHAM failed to reconcile the “Record of Trust Funds Received and Paid Out” to the “Separate Records for Each Beneficiary or Transaction” for Trust #1 on a monthly basis in violation of Section 2832.1 of the Regulations;

(c) TATHAM collected excess management fees in the amount of \$689.12 for the year 2008 in violation of Section 10145 of the Code and Section 2831.1, of the Regulations; and,

1 (d) TATHAM failed to maintain a log for the Earnest Money Deposits that
2 TATHAM received in connection with his resales activities in violation of
3 Section 10145 of the Code and Section 2831 of the Regulations.

4 ORDER

5 I

6 All licenses and licensing rights of Respondent under the Real Estate Law are
7 suspended for a period of 24 months from the effective date of this Order; provided, however,
8 that:

9 1. All but thirty (30) days of said suspension shall be stayed for two (2) years
10 upon the following terms and conditions:

11 (a) Respondent shall obey all laws, rules and regulations governing the
12 rights, duties and responsibilities of a real estate licensee in the State of California; and

13 (b) That no final subsequent determination be made, after hearing or upon
14 stipulation, that cause for disciplinary action brought within two (2) years from the effective
15 date of this Order. Should such a determination be made, the Commissioner may, in his
16 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
17 suspension. Should no such determination be made, the stay imposed herein shall become
18 permanent; and

19 (c) That Respondent petition pursuant to Section 10175.2 of the Code and
20 Respondent, shall pay a total monetary penalty pursuant to Section 10175.2 of the Code at a rate
21 of \$100 for each day of the suspension for a total monetary penalty of \$3,000;

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

25 (ii) No further cause for disciplinary action against the real estate
26 licenses of Respondent occurs within two (2) years from the effective date of the Decision in
27 this matter.

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

6 (iv) If Respondent pays the monetary penalty and any other monies due
7 under this Stipulation and Agreement in Settlement and if no further cause for disciplinary
8 action against the real estate licenses of Respondent occurs within two (2) years from the
9 effective date of this Order, the entire stay hereby granted under Paragraph 1 of this Order as to
10 Respondent shall become permanent.

11 2. Pursuant to Section 10148 of the Code, Respondent, shall pay the sum of
12 \$7,059.70 for the Commissioner's cost of the audit which led to this disciplinary action.
13 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from
14 the Commissioner. The Commissioner may indefinitely suspend all licenses and licensing
15 rights of Respondent pending a hearing held in accordance with Section 11500, et seq., of the
16 Government Code, if payment is not timely made as provided for herein, or as provided for in a
17 subsequent agreement between Respondent and the Commissioner. The suspension shall
18 remain in effect until payment is made in full or until Respondent enters into an agreement
19 satisfactory to the Commissioner to provide for payment, or until a decision providing
20 otherwise is adopted following a hearing held pursuant to this condition.

21 3. Respondent shall pay the Commissioner's costs, not to exceed \$ 7,059.70, for
22 any audit conducted pursuant to Section 10148 of the Code to determine if Respondent has
23 corrected the violations described in Paragraph I of the Determination of Issues, above. In
24 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
25 estimated average hourly salary for all persons performing audits of real estate brokers, and
26 shall include an allocation for travel time to and from the auditor's place of work. Respondent
27 shall pay such cost within sixty (60) days of receiving an invoice therefore from the

1 Commissioner detailing the activities performed during the audit and the amount of time spent
2 performing those activities.

3 4. If Respondent fails to pay such cost within the sixty (60) days, the
4 Commissioner may indefinitely suspend all licenses and licensing rights of Respondent under
5 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
6 satisfactory to the Commissioner to provide for payment. Upon payment in full, the indefinite
7 suspension provided in this paragraph shall be stayed.

8 II

9 1. Respondent shall, within six (6) months from the effective date of the
10 decision, take and pass the Professional Responsibility Examination administered by the
11 Department, including the payment of the appropriate examination fee. If Respondent fails to
12 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
13 rights until Respondent passes the examination.

14 2. Notwithstanding any other provision of this Order, all licenses and license
15 rights of Respondent are indefinitely suspended unless or until he provides proof satisfactory to
16 the Commissioner that he has taken and successfully completed the continuing education
17 course on trust fund accounting and handling specified in Section 10170.5(a)(3) of the Code.
18 Proof of satisfaction of this requirement includes evidence that Respondent has successfully
19 completed the trust fund accounting and handling continuing education course within 120 days
20 prior to the effective date of Commissioner's Order.

21 III

22 Respondent shall, within thirty (30) days from the effective date of this Order,
23 present evidence satisfactory to the Real Estate Commissioner, via certification from a licensed
24 CPA, that the trust fund shortage alleged in the Accusation (\$6,085.93 as of September 30, 2009)
25 has been cured and that the remaining violations as set forth in the Department's Accusation
26 have been corrected. The certification, which shall identify the source of the funds utilized to
27 cure the shortage, shall be submitted to the Department of Real Estate, Legal Section,

1 P. O. Box 187007, Sacramento, CA 95818-7007. If Respondent fails to satisfy this condition,
2 the Commissioner may order the suspension of Respondent's real estate license until Respondent
3 provides to the Commissioner the required evidence.

4
5
6 DATED

10/29/2010


KENNETH C. ESPELL, Counsel
DEPARTMENT OF REAL ESTATE

7 * * *

8 FACSIMILE TRANSMISSION

9 Respondent can signify acceptance and approval of the terms and conditions of
10 this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by
11 Respondent, to the Department at the following telephone/fax number: Attention: Kenneth C.
12 Espell at (916) 227-9458. Respondent agrees, acknowledges and understands that by
13 electronically sending to the Department a fax copy of Respondent's actual signature as it
14 appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall
15 be as binding on Respondent as if the Department had received the original signed Stipulation
16 and Agreement.

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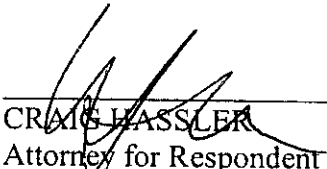
1 I have read the Stipulation and Agreement in Settlement and its terms are
2 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights
3 given to me by the California APA (including but not limited to Sections 11506, 11508, 11509,
4 and 11513 of the Government Code),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

8
9 11/16/10
10 DATED


11 MICHAEL CHARLES TATHAM,
Respondent

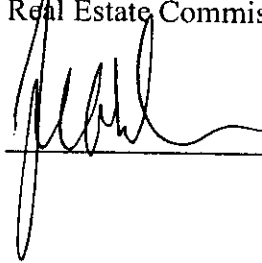
12 I have reviewed the Stipulation and Agreement as to form and content and have
13 advised my client accordingly.

14 11/16/10
15 DATED


16 CRAIG HASSLER
Attorney for Respondent

17 The foregoing Stipulation and Agreement is hereby adopted by me as my
18 Decision in this matter and shall become effective at 12 o'clock noon on DEC 29 2010

19 IT IS SO ORDERED 12/7/2010
20

21 JEFF DAVI
22 Real Estate Commissioner
23 
24
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FILED

FEB 17 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

KENNETH C. ESPELL, Counsel (SBN 178757)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0868 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
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MICHAEL CHARLES TATHAM, individually)
and dba, TATHAM PROPERTY MANAGEMENT,))
and dba, TATHAM REAL ESTATE,)
)
Respondents.)

NO. H-10854 SF

ACCUSATION

The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
Real Estate Commissioner of the State of California, for Accusation against Respondent
MICHAEL CHARLES TATHAM ("TATHAM"), is informed and alleges as follows:

1

TATHAM is presently licensed and/or has license rights under the Real Estate
Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real
estate broker. At all times relevant herein TATHAM conducted his real estate business under the
fictitious business names, Tatham Property Management and Tatham Real Estate.

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1 2

2 At all times herein mentioned, TATHAM engaged in the business of, acted in the
3 capacity of, advertised, or assumed to act as a real estate broker within the State of California
4 within the meaning of Sections 10131(a) and 10131(b) of the Code, including: the operation of a
5 property management business, with the public wherein, on behalf of others, for compensation or
6 in expectation of compensation, TATHAM offered to lease or rent, rented or leased, solicited
7 listings of places for rent, and solicited for prospective tenants of real property or improvements
8 thereon, and collected rents from real property or improvements thereon.

9 3

10 Beginning on March 26, 2009 and continuing intermittently until April 10, 2009,
11 an audit was conducted at TATHAM's main office located 1909 Spring Road, Vallejo,
12 California wherein the auditor examined records for the period January 1, 2008 through January
13 31, 2009 (the audit period).

14 4

15 While acting as a real estate broker as described in Paragraph 2, above, and within
16 the audit period TATHAM accepted or received funds in trust (trust funds) from or on behalf of
17 lenders, investors, borrowers and others in connected with his property management business.

18 5

19 Within the audit period, trust funds accepted or received by TATHAM were
20 deposited or caused to be deposited by Respondent into bank accounts maintained by TATHAM
21 at Bank of America, San Francisco, California, including: Account No. 05785-12986, entitled
22 "Tatham Real Estate Trust" (Trust #1) and thereafter from time to time made disbursement of
23 said trust funds.

24 6

25 In the course of the activities described in Paragraph 5, above, for the audit
26 period:

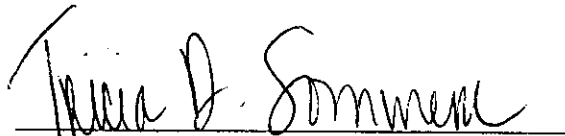
27 ///

- 1 (a) A bank account reconciliation was performed for Trust #1, and as of
2 September 30, 2009 there was a shortage of \$6,085.93 in violation of Section
3 10145 of the Code and Section 2831.1 of Chapter 6, Title 10, California Code of
4 Regulations (Regulations);
5 (b) TATHAM failed to reconcile the "Record of Trust Funds Received and Paid
6 Out" to the "Separate Records for Each Beneficiary or Transaction" for Trust #1
7 on a monthly basis in violation of Section 2832.1 of the Regulations;
8 (c) TATHAM Collected excess management fees in the amount of \$689.12 for
9 the year 2008 in violation of Section 10145 of the Code and Section 10213.1, of
10 the Regulations; and,
11 (d) TATHAM failed to maintain a log for the Earnest Money Deposits that
12 TATHAM received in connection with his resales activities in violation of
13 Section 10145 of the Code and Section 2831.1 of the Regulations.

14 7

15 The acts and/or omissions of TATHAM as alleged above, violated Sections 2831,
16 2831.1, and 2832.1 of the Regulations and Sections 10145 of the Code, and are grounds for
17 discipline under Sections 10176 and 10177(d) of the Code.

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

23
24 
25 TRICIA D. SOMMERS
26 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,
this 11th day of February, 2010.