

FILED
OCT 14 2011

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-2380

DEPARTMENT OF REAL ESTATE

By [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

12 In the Matter of the Accusation of) DRE No. H-11057 SF
13)
13 PHIL AGUILAR BARAJAS,) STIPULATION AND AGREEMENT
14) IN SETTLEMENT AND ORDER
15 Respondent.)

16 It is hereby stipulated by and between PHIL AGUILAR BARAJAS (BARAJAS)
17 and his attorney, Roger D. Wintle, and the Complainant, acting by and through Richard K. Uno,
18 Counsel for the Department of Real Estate; as follows for the purpose of settling and disposing
19 of the Accusation filed on January 27, 2011, in this matter:

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

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

1 3. On February 3, 2011, Respondent filed a Notice of Defense pursuant to
2 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
3 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
4 Respondent acknowledges that he understands that by withdrawing said Notice of Defense he
5 will thereby waive his right to require the Commissioner to prove the allegations in the
6 Accusation at a contested hearing held in accordance with the provisions of the APA and that he
7 will waive other rights afforded to him in connection with the hearing such as the right to present
8 evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

9 4. Respondent, pursuant to the limitations set forth below, hereby admits that the
10 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
11 true and correct and the Real Estate Commissioner shall not be required to provide further
12 evidence of such allegations.

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

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

25 7. Respondent understands that by agreeing to this Stipulation and Agreement
26 In Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the Business
27 ///

1 and Professions Code, the cost of the audit which led to this disciplinary action. The amount of
2 said cost is \$6,734.00.

3 8. Respondent has received, read and understands the "Notice Concerning Costs
4 of Subsequent Audits". Respondent understands that by agreeing to this Stipulation and
5 Agreement in Settlement and Order, the findings set forth below in the DETERMINATION OF
6 ISSUES become final, and that the Commissioner may charge Respondent for the cost of any
7 audit conducted pursuant to Section 10148 of the Business and Professions Code to determine if
8 the violations have been corrected. The maximum costs of said audit will not exceed \$6,734.00.

9 DETERMINATION OF ISSUES

10 By reason of the foregoing stipulations, admissions and waivers, and solely for
11 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
12 agreed that the acts and/or omissions of Respondent, as described in the Accusation, constitute
13 grounds for the suspension or revocation of the licenses and license rights of Respondent PHIL
14 AGUILAR BARAJAS under the provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1 and
15 2835 of the Regulations and Sections 10145, 10176(a), 10176(e), 10176(i), 10177(d) and
16 10177(g) of the Business and Professions Code (the Code).

17 ORDER

18 1. All licenses and licensing rights of respondent PHIL AGUILAR BARAJAS,
19 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
20 license shall be issued to Respondent pursuant to Section 10156.5 of the Business and
21 Professions Code, if Respondent makes application therefore and pays to the Department of Real
22 Estate the appropriate fee for the restricted license within 90 days from the effective date of this
23 Decision. The restricted license issued to Respondent shall be subject to all of the provisions of
24 Section 10156.7 of the Business and Professions Code and to the following limitations,
25 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

26 ///

27 ///

1 a. The license shall not confer any property right in the privileges to be
2 exercised, and the Real Estate Commissioner may by appropriate order suspend, prior to a
3 hearing, the right to exercise any privileges granted under this restricted license in the event of:

4 (1) The conviction of Respondent (including a plea of nolo contendere)

5 of a crime which is substantially related to Respondent's fitness or
6 capacity as a real estate licensee; or

7 (2) The receipt of evidence that Respondent has violated provisions

8 of the California Real Estate Law, the Subdivided Lands Law,
9 Regulations of the Real Estate Commissioner, or conditions
10 attaching to this restricted license.

11 b. Respondent shall not be eligible to apply for the issuance of an unrestricted
12 real estate license nor the removal of any of the conditions, limitations, or restrictions attaching
13 to the restricted license until two (2) years have elapsed from the date of issuance of the
14 restricted license to Respondent.

15 c. With the application for license, or with the application for transfer to a new
16 employing broker, Respondent shall submit a statement signed by the prospective employing
17 real estate broker on a form approved by the Department which shall certify as follows:

18 (1) That the employing broker has read the Decision which is the

19 basis for the issuance of the restricted license; and

20 (2) That the employing broker will carefully review all transaction

21 documents prepared by the restricted licensee and otherwise
22 exercise close supervision over the licensee's performance of acts
23 for which a license is required.

24 d. Respondent shall, within nine (9) months from the effective date of this Order,
25 present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the
26 most recent issuance of an original or renewal real estate license, taken and successfully
27 completed the continuing education requirements as specified in subdivision (a) of Section

1 10170.5 of the Business and Professions Code. If Respondent fails to satisfy this condition, the
2 Commissioner may order the suspension of the restricted license until Respondent presents such
3 evidence. The Commissioner shall afford Respondent the opportunity for hearing pursuant to
4 the Administrative Procedure Act to present such evidence.

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

10 2. The restricted real estate salesperson license and license rights of
11 Respondent, under the Real Estate Law are suspended for a period of sixty (60) days from the
12 effective date of obtaining a restricted real estate salesperson license; provided, however, that if
13 the Respondent petitions, thirty (30) days of said suspension shall be stayed upon condition
14 that:

15 a. Respondent pays a monetary penalty pursuant to Section 10175.2 of the
16 Business and Professions Code at the rate of \$100.00 per day for thirty (30) days of the
17 suspension for a total monetary penalty of \$3,000.00.

18 b. Said payment shall be in the form of a cashier's check or certified check made
19 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
20 Department prior to the effective date of the Decision in this matter.

21 c. No further cause for disciplinary action against the real estate license of
22 Respondent occurs within one year from the effective date of the Decision in this matter.

23 d. If Respondent fails to pay the monetary penalty in accordance with the terms
24 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
25 execution of all or any part of the stayed suspension in which event Respondent shall not be
26 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
27 under the terms of this Decision.

1 e. If Respondent pays the monetary penalty, and if no further cause for
2 disciplinary action against the real estate license of Respondent occurs within one (1) year from
3 the effective date of the Decision, the stay hereby granted shall become permanent.

4 3. The remaining thirty (30) days of said suspension shall be stayed for one (1)
5 year upon the following terms and conditions:

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

8 b) That no final subsequent determination be made, after hearing or upon
9 stipulation, that cause for disciplinary action occurred within one (1) year from the effective date
10 of this Order. Should such a determination be made, the Commissioner may, in her discretion,
11 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.

12 4. Pursuant to Section 10148 of the Business and Professions Code, Respondent
13 shall pay for the cost of audit No. SC 080037 in the amount of \$6,734.00 for the
14 Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and an
15 amount equal to or less than \$6,734.00 for: b) a subsequent audit to determine if Respondent has
16 corrected the trust fund violations found in the Determination of Issues. In calculating the
17 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
18 average hourly salary for all persons performing audits of real estate brokers, and shall include
19 an allocation for travel costs, including mileage, time to and from the auditor's place of work
20 and per diem. Respondent shall pay such cost within sixty (60) days of receiving an invoice
21 from the Commissioner detailing the activities performed during the audit and the amount of
22 time spent performing those activities. The Commissioner may, in her discretion, vacate and set
23 aside the stay order, if payment is not timely made as provided for herein, or as provided for in a
24 subsequent agreement between the Respondent and the Commissioner. The vacating and the
25 setting aside of the stay shall remain in effect until payment is made in full, or until Respondent
26 enters into an agreement satisfactory to the Commissioner to provide for payment. Should no
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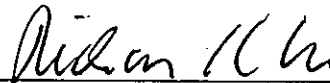
1 order vacating the stay be issued, either in accordance with this condition, the stay imposed
2 herein shall become permanent.

3 5. All licenses and licensing rights of Respondent are indefinitely suspended
4 until Respondent provides proof satisfactory to the Commissioner, of having taken and
5 successfully completed the continuing education course on trust fund accounting and handling
6 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
7 Code. Proof of satisfaction of this requirement includes evidence that Respondent has
8 successfully completed the trust fund account and handling continuing education course within
9 120 days prior to the effective date of the Decision in this matter.

10 6. Respondent shall, prior to the effective date, provide proof satisfactory to the
11 Commissioner, of having cured the shortage found in the audit. Proof of satisfaction of this
12 requirement includes a letter from an attorney or certified public accountant testifying to the fact
13 that said shortage has been cured by Respondent. If Respondent fails to satisfy this condition,
14 the Commissioner may order the suspension of Respondent's license until Respondent presents
15 proof that Respondent has cured the trust fund shortage.

16
17 7/5/11

18 DATED

17 

18 RICHARD K. UNO, Counsel
19 DEPARTMENT OF REAL ESTATE

20 * * *

21
22 I have read the Stipulation and Agreement in Settlement and Order and its terms
23 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
24 rights given to me by the California Administrative Procedure Act (including but not limited to
25 Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
26 intelligently, and voluntarily waive those rights, including the right of requiring the

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1 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
2 right to cross-examine witnesses against me and to present evidence in defense and mitigation
3 of the charges.
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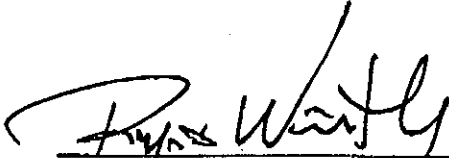
6 _____
DATED

PHIL AGUILAR BARAJAS
Respondent

8 ***
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10 *I have reviewed this Stipulation and Agreement as to form and content and have*
11 *advised my clients accordingly.*

12 7/1/11
13 _____
DATED

14 
ROGER D. WINTLE
Attorney For Respondent

15 ***
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17
18 The foregoing Stipulation and Agreement In Settlement and Order is hereby
19 adopted by the Real Estate Commissioner as his Decision and Order and shall become effective
20 at 12 o'clock noon on _____.

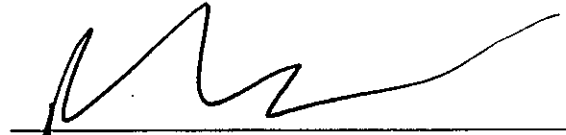
21 IT IS SO ORDERED _____
22

23 BARBARA J. BIGBY
Acting Real Estate Commissioner
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1 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
2 right to cross-examine witnesses against me and to present evidence in defense and mitigation
3 of the charges.

4
5 7/4/11

6 DATED

7 
8 PHIL AGUILAR BARAJAS
9 Respondent

10 ***

11 *I have reviewed this Stipulation and Agreement as to form and content and have
12 advised my clients accordingly.*

13
14 DATED

15 ROGER D. WINTLE
16 Attorney For Respondent

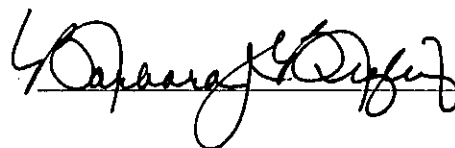
17 ***

18 The foregoing Stipulation and Agreement In Settlement and Order is hereby
19 adopted by the Real Estate Commissioner as his Decision and Order and shall become effective
20 at 12 o'clock noon on 11/3/11

21 IT IS SO ORDERED

9/16/11

22 BARBARA J. BIGBY
23 Acting Real Estate Commissioner

24
25 
26
27

1 RICHARD K. UNO, COUNSEL (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

FILED

JAN 27 2011

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 PHIL AGUILAR BARAJAS,)

13 Respondent.)
14

No. H-11057 SF

ACCUSATION

15
16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
17 of the State of California for cause of Accusation against PHIL AGUILAR BARAJAS
18 (BARAJAS), is informed and alleges as follows:

19 1

20 The Complainant makes this Accusation in her official capacity.

21 2

22 At all times mentioned herein, BARAJAS was licensed by the Department of
23 Real Estate (the Department) as a real estate broker dba Barajas Real Estate Group.

24 3

25 At all times mentioned, Respondent engaged in the business of, acted in the
26 capacity of, advertised or assumed to act as a real estate broker in the State of California, within
27 the meaning of Section 10131(a) of the Business and Professions Code (Code), including the

1 operation and conduct of a residential resale brokerage wherein Respondent bought, sold or
2 offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or
3 exchange of real property or business opportunities, all for or in expectation of compensation
4 and within the meaning of Section 10131(b) of the Code, including the operation and conduct
5 of a property management business wherein Respondent leased, rented, or offered to lease or
6 rent, solicited listings for lease or rent, collected rents from tenants or lessees, or performed
7 other services for real property owners and tenants or lessees, all for or in expectation of
8 compensation.

9 FIRST CAUSE OF ACTION

10 4

11 Beginning on or about March 1, 2010 and intermittently through April 20, 2010,
12 the Department conducted an audit of BARAJAS' property management business for the
13 period of January 1, 2008 to January 31, 2009, as set forth in Audit Nos. OK-09-0089 (PM) and
14 OK-09-0110 (OA), dated April 26, 2010. During the course of the property management
15 activities described in Paragraph 3, Respondent received and disbursed funds held in trust on
16 behalf of others.

17 5

18 The following facts were ascertained by the audit for the period referred to above:

19 a. BARAJAS maintained three bank accounts at Savings Bank of Mendocino
20 County, 200 North School Street, Ukiah, California 95482:

21 (1) Trust #1 was designated as the "Phil A. Barajas Tammie L. Watkins-Barajas
22 DbA Barajas Real Estate Group Property Mgmt Trust Acct", Account No. 01-631624;

23 (2) Bank #1 was designated as the "Phil A. Barajas Tammie L. Watkins-Barajas
24 DbA Barajas Real Estate Group", Account No. 01628687;

25 (3) Bank #2 was designated as the "Filiberto A. Barajas aka Phil A. Barajas
26 Tammie L. Watkins-Barajas aka Tammie L. Barajas," Account No. 1588600.

27 ///

b. Trust #1 was used for property management activities, Bank #1 was used for business purposes while Bank #2 was used as a personal account. Deposits in Trust #1 consisted of rents and security deposits collected from tenants. Disbursements consisted of payments for expenses related to the properties managed, remittances to owners and to BARAJAS for management fees;

c. An accountability was performed for Trust #1 and as of May 31, 2009, a shortage of \$9,724.83 was revealed in violation of Section 10145 of the Code;

d. BARAJAS failed to obtain the written consent of every owner of the trust funds to allow the balance of the trust account to fall to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds in violation of Section 2832.1 of the Regulations. After discovery, BARAJAS failed to notify the owners of the trust funds of the trust account shortages;

e. BARAJAS withdrew trust funds in the amount of \$8,500.00 from Trust #1 and deposited them into Bank #1, thereby commingling funds in violation of Section 2835 of the Regulations and Section 10176(e) of the Code;

f. BARAJAS failed to maintain a record of all trust funds received and disbursed for Trust #1, as required by Section 2831 of the Regulations;

g. BARAJAS failed to maintain separate beneficiary records for Trust #1, as required by Section 2831.1 of the Regulations;

h. BARAJAS failed to perform the required monthly reconciliations comparing the balance of the control records to the total balance of the beneficiary records for Trust #1, as required by Section 2831.2 of the Regulations.

The acts and omissions of Respondent BARAJAS described in Paragraph 5, above, constitute violations of Sections 2831 (Control Records), 2831.1 (Separate Beneficiary Records), 2831.2 (Monthly Reconciliations), 2832.1 (Written Consent Trust Fund Owners), and 2835 (Commingling) of the Regulations and Sections 10145 (Trust Fund Handling) and

1 10176(e) (Commingling) of the Code and constitute grounds for disciplinary action under
2 Sections 10176(e) (Commingling), 10177(d) (Willful Disregard/Violation of Real Estate Law)
3 or, in the alternative, 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

4 SECOND CAUSE OF ACTION

5 7

6 Complainant refers to Paragraphs 1 through 6, above, and incorporates them
7 herein by reference.

8 8

9 Within the three year period prior to the filing of this Accusation, BARAJAS, in
10 order to induce owners to hire him as their property manager, represented that he would
11 maintain trust funds in the trust account until it was appropriate to make distributions.

12 9

13 BARAJAS, in fact, disbursed trust funds in the amount \$8,500.00 to himself
14 during the audit period.

15 10

16 BARAJAS' representations, as described in Paragraph 8 above, were false or
17 misleading and were known by BARAJAS to be false or misleading when made or were made
18 by BARAJAS with no reasonable grounds for believing said representations to be true. In truth
19 and in fact, BARAJAS knew that he would disburse trust funds for his own use.

20 11

21 The above acts and/or omissions of BARAJAS violate Section 2832 (Trust Fund
22 Handling) of the Regulations and Sections 10145 (Trust Fund Handling), 10176(a) (Substantial
23 Misrepresentation), 10176(i) (Fraud/Dishonest Dealing) of the Code and constitute grounds for
24 disciplinary action under the provisions of Sections 10176(a), 10176(i), 10177(d) (Willful
25 Disregard/Violation of Real Estate Law) or, in the alternative, 10177(g)
26 (Negligence/Incompetence Real Estate Licensee) of the Code.

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Complainant refers to Paragraphs 1 through 11, above, and incorporates the same herein by reference.

Within the three year period prior to the filing of this Accusation, BARAJAS, in order to induce owners to hire him as their property manager, represented that he would maintain trust funds in the trust account until it was appropriate to make distributions.

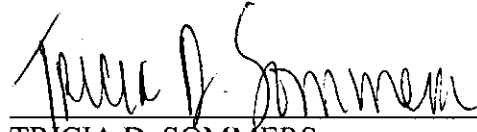
BARAJAS, in fact, failed to refund security deposits held in trust, in the amount of \$7,200.00 to property owner Jan Davis trust after she terminated BARAJAS' property management services.

BARAJAS' representations, as described in Paragraph 13 above, were false or misleading and were known by BARAJAS to be false or misleading when made or were made by BARAJAS with no reasonable grounds for believing said representations to be true. In truth and in fact, BARAJAS knew that he would not return security deposits held in trust for property owners.

The above acts and/or omissions of BARAJAS violate Section 2832 (Trust Fund Handling) of the Regulations and Sections 10145 (Trust Fund Handling), 10176(a) (Substantial Misrepresentation), 10176(i) (Fraud/Dishonest Dealing) of the Code and constitute grounds for disciplinary action under the provisions of Sections 10176(a), 10176(i), 10177(d) (Willful Disregard/Violation of Real Estate Law) or, in the alternative, 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

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

6
7 
8 TRICIA D. SOMMERS
9 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 14th day of January, 2011.
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