

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

FILED

MAY 22 2013

4 Telephone: (916) 227-0789

5 DEPARTMENT OF REAL ESTATE

6 By *K. Contreras*

7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 SYRUS PROPERTIES, INC.,) NO. H-11314 SF
14 a Corporation, and)
15 TRACY LYNN ENGELEN,) STIPULATION AND AGREEMENT
16 Respondents.) IN SETTLEMENT AND ORDER

17 It is hereby stipulated by and between SYRUS PROPERTIES, INC. (herein
18 "SPI"), and TRACY LYNN ENGELEN (herein "ENGELEN") (herein jointly "Respondents")
19 individually and jointly, by and through J. Anne Rawlins, attorney of record herein for
20 Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the
21 Department of Real Estate (herein "the Department"), as follows for the purpose of settling and
22 disposing of the Accusation filed on January 27, 2012 in this matter:

23 1. All issues which were to be contested and all evidence which was to be
24 presented by Complainant and Respondents 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. Respondents have 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. Notices of Defense were filed on February 7, 2012 by Respondents pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices of Defense.
7 Respondents acknowledge that they understand that by withdrawing said Notices of Defense,
8 they will thereby waive their right to require the Real Estate Commissioner (herein
9 "Commissioner") to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that they will waive other rights afforded to them
11 in connection with the hearing such as the right to present evidence in defense of the allegations
12 in the Accusation and the right to cross-examine witnesses.

13 4. This Stipulation is based on the factual allegations contained in the Accusation.
14 In the interests of expedience and economy, Respondents chose not to contest these allegations,
15 but to remain silent for the purpose of reaching an agreed disposition of this proceeding and
16 understand that, as a result thereof, these factual allegations, without being admitted or denied,
17 will serve as a prima facie basis for the disciplinary action stipulated to herein and are expressly
18 limited to this proceeding and any other proceeding or case in which the Department, the State or
19 Federal government, an agency of this State or an agency of another State is involved. The
20 Commissioner shall not be required to provide further evidence to prove said factual allegations.

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

- 1 (b) as to Paragraph 10(b) and SPI under Section 2831 of the Regulations
2 in conjunction with Section 10177(d) of the Code;
- 3 (c) as to Paragraph 10(c) and SPI under Section 2834 of the Regulations
4 in conjunction with Section 10177(d) of the Code;
- 5 (d) as to Paragraph 10(d) and SPI under Sections 10176(e) and
6 10177(g) of the Code;
- 7 (e) as to Paragraph 10(f) and SPI under Section 10177(g) of the Code;
8 and,
- 9 (f) as to Paragraph 11 and ENGELEN under Sections 10159.2, 10177(g)
10 and (h) of the Code, in conjunction with Section 10177(d) of the
11 Code.

12 ORDER

13 I

14 All licenses and licensing rights of Respondent SPI under the Real Estate Law
15 are suspended for a period of ninety (90) days from the effective date of this Order; provided,
16 however, that:

17 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the
18 following terms and conditions:

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

1 determination be made, the stay imposed herein shall become
2 permanent.

3 2. The remaining thirty (30) days of said ninety (90) days suspension shall be
4 stayed upon the condition that Respondent SPI petition pursuant to Section 10175.2 of the Code
5 and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each
6 day of the suspension for a total monetary penalty of \$1,500.00:

7 (a) Said payment shall be in the form of a cashier's check or certified
8 check made payable to the Recovery Account of the Real Estate
9 Fund. Said check must be received by the Department prior to the
10 effective date of the Order in this matter.

11 (b) No further cause for disciplinary action against the Real Estate
12 licenses of Respondent SPI occurs within two (2) years from the
13 effective date of the Order in this matter.

14 (c) If Respondent SPI fails to pay the monetary penalty as provided
15 above prior to the effective date of this Order, the stay of the
16 suspension shall be vacated as to Respondent SPI and the order of
17 suspension shall be immediately executed, under this Paragraph I
18 of this Order, in which event Respondent SPI shall not be entitled
19 to any repayment nor credit, prorated or otherwise, for the money
20 paid to the Department under the terms of this Order.

21 (d) If Respondent SPI pays the monetary penalty and any other moneys
22 due under this Stipulation and Agreement in Settlement and Order
23 and if no further cause for disciplinary action against the real estate
24 license of Respondent SPI occurs within two (2) years from the
25 effective date of this Order, the entire stay hereby granted under
26 Paragraph I of this Order, as to Respondent SPI, shall become
27 permanent.

1 3. Respondents SPI and ENGELN understand that by agreeing to this
2 Stipulation and Agreement in Settlement and Order, Respondents SPI and ENGELN, jointly
3 and severally agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which
4 resulted in the determination that Respondents SPI and ENGELN committed the trust fund
5 violation(s) found in Paragraph I, above, of the Determination of Issues. The amount of said cost
6 is \$5,130.00.

7 4. Respondents SPI and ENGELN, jointly and severally, shall pay the
8 Commissioner's costs, not to exceed \$5,130.00, of any audit conducted pursuant to Section
9 10148 of the Code to determine if Respondents SPI and ENGELN have corrected the
10 violations described in Paragraph I of the Determination of Issues, above. In calculating the
11 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
12 average hourly salary for all persons performing audits of real estate brokers, and shall include
13 an allocation for travel time to and from the auditor's place of work. Respondents SPI and
14 ENGELN shall pay such cost within sixty (60) days of receiving an invoice therefore from the
15 Commissioner detailing the activities performed during the audit and the amount of time spent
16 performing those activities. If Respondents SPI and ENGELN fail to pay such cost within the
17 sixty (60) days, the Commissioner may in his discretion indefinitely suspend all license and
18 licensing rights of Respondent SPI under the Real Estate Law until payment is made in full or
19 until Respondent SPI enters into an agreement satisfactory to the Commissioner to provide for
20 payment. Upon payment in full, the indefinite suspension provided in this paragraph shall be
21 stayed.

22 5. Respondents SPI and ENGELN, jointly and severally, shall pay the sum of
23 \$4,877.00 for the Commissioner's investigative and enforcement costs, pursuant to Section
24 10106(a) of the Code, of the investigation and enforcement which led to this disciplinary action.
25 Said payment shall be in the form of a cashier's check or certified check made payable to the
26 Real Estate Fund. Said check must be received by the Department prior to the effective date of
27 the Order in this matter. If Respondent fails to satisfy this condition, the stay of the suspension

1 shall be vacated and the order of suspension shall be immediately executed indefinitely until
2 payment is made in full.

3 II

4 All licenses and licensing rights of Respondent ENGELEN under the Real Estate
5 Law are suspended for a period of ninety (90) days from the effective date of this Order;
6 provided, however, that:

7 1. All licenses and licensing rights of Respondent ENGELEN under the Real
8 Estate Law are suspended until such time as Respondent ENGELEN provides proof satisfactory
9 to the Commissioner that Respondent ENGELEN has, within one hundred twenty (120) days
10 prior to the effective date of the Order herein completed the continuing education course on trust
11 fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Code.

12 2. Sixty (60) days of said suspension shall be stayed for two (2) years upon the
13 following terms and conditions:

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

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

24 3. The remaining thirty (30) days of said ninety (90) days suspension shall be
25 stayed upon the condition that Respondent ENGELEN petition pursuant to Section 10175.2 of
26 the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of
27 \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00:

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

(b) No further cause for disciplinary action against the Real Estate licenses of Respondent ENGELN occurs within two (2) years from the effective date of the Order in this matter.

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

(d) If Respondent ENGELN pays the monetary penalty and any other moneys due under this Stipulation and Agreement in Settlement and if no further cause for disciplinary action against the real estate license of Respondent ENGELN occurs within two (2) years from the effective date of this Order, the entire stay hereby granted under Paragraph II of this Order, as to Respondent ENGELN, shall become permanent.

4. Respondents ENGELN and SPI understand that by agreeing to this Stipulation and Agreement in Settlement and Order, Respondents ENGELN and SPI, jointly and severally agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the determination that Respondents ENGELN and SPI committed the trust fund violation(s) found in Paragraph I, above, of the Determination of Issues. The amount of said cost is \$5,130.00.

1 5. Respondents ENGELEN and SPI, jointly and severally, shall pay the
2 Commissioner's costs, not to exceed \$5,130.00, of any audit conducted pursuant to Section
3 10148 of the Code to determine if Respondents ENGELEN and SPI have corrected the violations
4 described in Paragraph I of the Determination of Issues, above. In calculating the amount of the
5 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
6 for all persons performing audits of real estate brokers, and shall include an allocation for travel
7 time to and from the auditor's place of work. Respondents ENGELEN and SPI shall pay such
8 cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing
9 the activities performed during the audit and the amount of time spent performing those
10 activities. If Respondents ENGELEN and SPI fail to pay such cost within the sixty (60) days,
11 the Commissioner may in his discretion indefinitely suspend all license and licensing rights of
12 Respondent ENGELEN under the Real Estate Law until payment is made in full or until
13 Respondent ENGELEN enters into an agreement satisfactory to the Commissioner to provide for
14 payment. Upon payment in full, the indefinite suspension provided in this paragraph shall be
15 stayed.

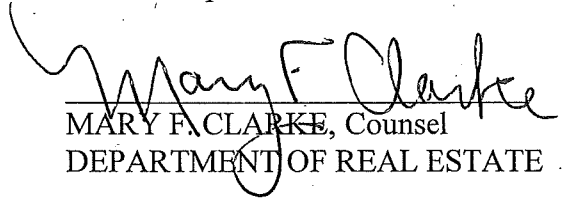
16 6. Respondents SPI and ENGELEN, jointly and severally, shall pay the sum of
17 \$4,877.00 for the Commissioner's investigative and enforcement costs, pursuant to Section
18 10106(a) of the Code, of the investigation and enforcement which led to this disciplinary action.
19 Said payment shall be in the form of a cashier's check or certified check made payable to the
20 Real Estate Fund. Said check must be received by the Department prior to the effective date of
21 the Order in this matter. If Respondent fails to satisfy this condition, the stay of the suspension
22 shall be vacated and the order of suspension shall be immediately executed indefinitely until
23 payment is made in full.

24 7. Respondents SPI and ENGELEN, jointly and severally, shall pay the sum of
25 \$165.00, representing the mark-ups identified in the Accusation, to John Kenney, by the
26 effective date of the Order and shall submit evidence of said payment to the Department, if
27 Respondent ENGELEN fails to satisfy this condition, the Commissioner may order the

1 suspension of Respondent ENGELN's license until Respondent ENGELN submits proof of
2 said payment.

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

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9 3-15-13
DATED



MARY F. CLARKE, Counsel
DEPARTMENT OF REAL ESTATE

11 * * *

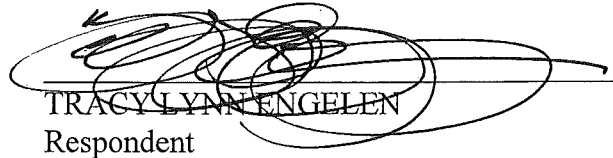
12 I have read the Stipulation and Agreement in Settlement and Order and have
13 discussed it with my attorney and its terms are understood by me and are agreeable and
14 acceptable to me. I understand that I am waiving rights given to me by the California APA
15 (including but not limited to Sections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

20 SYRUS PROPERTIES, INC., Respondent

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22 02/05/2013
DATED

By: 
TRACY LYNN ENGELN
Designated Officer Broker

23
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26 02/05/2013
DATED


TRACY LYNN ENGELN
Respondent

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I have reviewed the Stipulation and Agreement in Settlement and Order as to form and content and have advised my clients accordingly.

02/05/2013
DATED

J. Anne Rawlins
J. ANNE RAWLINS
Attorney for Respondents

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

JUN 21 2013

IT IS SO ORDERED Apr. 30, 2013

REAL ESTATE COMMISSIONER

[Signature]

By: Jeffrey Mason
Chief Deputy Commissioner