

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

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FILED

DEC - 6 2012

DEPARTMENT OF REAL ESTATE

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 JOSEPH ANTHONY ANNUNZIATO,) NO. H-11358 SF
14 Respondent.) STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between Respondent JOSEPH ANTHONY
16 ANNUNZIATO (herein "Respondent"), by and through Robert A. Dimino, attorney of record
17 herein for Respondent, and the Complainant, acting by and through Mary F. Clarke, Counsel for
18 the Department of Real Estate (herein "the Department"), as follows for the purpose of settling
19 and disposing of the Accusation filed on April 17, 2012, 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 (herein
23 "APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of
24 this 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 in this
27 proceeding.

1 3. A Notice of Defense was filed on June 23, 2011, by Respondent, 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 he understands that by withdrawing said Notice of Defense he will
5 thereby waive his right to require the Real Estate Commissioner (herein "the Commissioner") to
6 prove the allegations in the Accusation at a contested hearing held in accordance with the
7 provisions of the APA and that he will waive other rights afforded to him in connection with the
8 hearing such as the right to present evidence in defense of the allegations in the Accusation and
9 the right to cross-examine witnesses.

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

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

21 6. The Order or any subsequent Order of the Commissioner made pursuant to
22 this Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger,
23 or bar to any further administrative or civil proceedings by the Department with respect to any
24 matters which were not specifically alleged to be causes for 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 California
27 Business and Professions Code (herein the "Code"), the cost of the audit which resulted in the

1 determination that Respondent committed the trust fund violations found below in the
2 Determination of Issues. The amount of said cost is \$4,280.82.

3 8. Respondent also understands that by agreeing to this Stipulation and
4 Agreement in Settlement and Order, the findings set forth below in the Determination of Issues
5 become final, and that the Commissioner may charge said Respondent for the costs of any audit
6 conducted pursuant to Section 10148 of the Code to determine if the trust fund violations found
7 below in the Determination of Issues have been corrected. The maximum costs of said audit
8 shall not exceed \$4,280.82.

9 9. Respondent further understands that by agreeing to this Stipulation and
10 Agreement in Settlement and Order, Respondent agrees to pay, pursuant to Section 10106(a) of
11 the Code, investigative and enforcement costs which led to this disciplinary action. The amount
12 of said cost is \$523.96.

13 DETERMINATION OF ISSUES

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

- 18 (a) as to Paragraph 7(a) under Section 2832.1 of the Regulations, in conjunction
19 with Section 10177(d) of the Code;
- 20 (b) as to Paragraph 7(b) under Section 2831 of the Regulations, in conjunction
21 with Section 10177(d) of the Code;
- 22 (c) as to Paragraph 7(c) under Section 10145 of the Code and Section 2831.1 of
23 the Regulations, in conjunction with Section 10177(d) of the Code;
- 24 (d) as to Paragraph 7(d) under Section 2831.2 of the Regulations, in
25 conjunction with Section 10177(d) of the Code;
- 26 (e) as to Paragraph 7(e) under Section 10145 of the Code and Section 2832 of
27 the Regulations, in conjunction with Section 10177(d) of the Code;

1 (f) as to Paragraph 7(f) under Section 2834 of the Regulations in conjunction
2 with Section 10177(d) of the Code; and

3 (g) as to Paragraph 7(g) under Section 10176(e) of the Code and Section 2835
4 of the Regulations, in conjunction with Section 10177(d) of the Code.

5 ORDER

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

11 B. All licenses and licensing rights of Respondent under the Real Estate Law are suspended
12 for a period of ninety (90) days from the effective date of this Order; provided, however,
13 that:

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

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

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

24 2. The remaining thirty (30) days of said 90-day suspension shall be stayed upon the
25 condition that Respondent petition pursuant to Section 10175.2 of the Code and pay a
26 monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day
27 of the suspension for a total monetary penalty of \$3,000.00:

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

4 (b) No further cause for disciplinary action against the real estate licenses of
5 Respondent occurs within two (2) years from the effective date of the Decision in
6 this matter.

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

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

18 3. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of \$4,280.82 for the
19 Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay
20 such cost within sixty (60) days of receiving an invoice therefor from the Commissioner.
21 The Commissioner may indefinitely suspend all licenses and licensing rights pending a
22 hearing held in accordance with Section 11500, et seq., of the Government Code, if
23 payment is not timely made as provided for herein, or as provided for in a subsequent
24 agreement between Respondent and the Commissioner. The suspension shall remain in
25 effect until payment is made in full or until Respondent enters into an agreement
26 satisfactory to the Commissioner to provide for payment, or until a decision providing
27 otherwise is adopted following a hearing held pursuant to this condition.

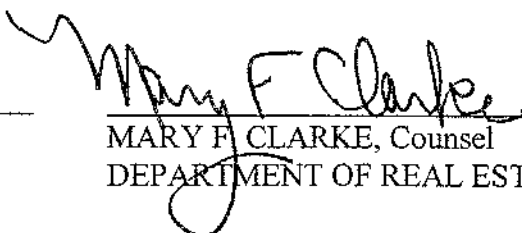
1 4. Respondent shall pay the Commissioner's costs, not to exceed \$4,280.82, of any audit
2 conducted pursuant to Section 10148 of the Code to determine if Respondent has
3 corrected the violations described in the Determination of Issues, above. In calculating
4 the amount of the Commissioner's reasonable cost, the Commissioner may use the
5 estimated average hourly salary for all persons performing audits of real estate brokers,
6 and shall include an allocation for travel time to and from the auditor's place of work.
7 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore
8 from the Commissioner detailing the activities performed during the audit and the
9 amount of time spent performing those activities. If Respondent fails to pay such cost
10 within the sixty (60) days, the Commissioner may indefinitely suspend all licenses and
11 licensing rights of Respondent under the Real Estate Law until payment is made in full
12 or until Respondent enters into an agreement satisfactory to the Commissioner to
13 provide for payment. Upon payment in full, the indefinite suspension provided in this
14 paragraph shall be stayed.

15 5. Respondent shall pay the sum of \$523.96 for the Commissioner's cost, pursuant to
16 Section 10106(a) of the Code, of the investigation and enforcement which led to this
17 disciplinary action. Said payment shall be in the form of a cashier's check or certified
18 check made payable to the Real Estate Fund. Said check must be received by the
19 Department prior to the effective date of the Order in this matter. If Respondent
20 fails to satisfy this condition, the stay of the suspension shall be vacated and the order
21 of suspension shall be immediately executed indefinitely until payment is made in full.

22 6. Respondent shall, within six (6) months from the issuance of the Order, take and pass
23 the Professional Responsibility Examination administered by the Department,
24 including the payment of the appropriate examination fee. If Respondent fails to
25 satisfy this condition, the stay of the suspension shall be vacated and the order of
26 suspension shall be immediately executed indefinitely until Respondent passes the
27 examination.

1
2 10-29-12

3 DATED

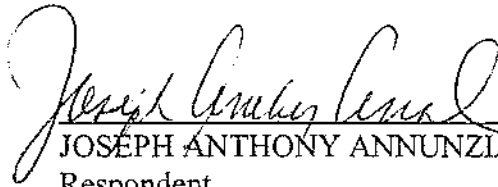
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5 MARY F. CLARKE, Counsel
6 DEPARTMENT OF REAL ESTATE

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8 I have read the Stipulation and Agreement in Settlement and Order and its terms
9 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
10 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
11 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
12 those rights, including the right of requiring the Commissioner to prove the allegations in the
13 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
14 and to present evidence in defense and mitigation of the charges.

15 9/26/12

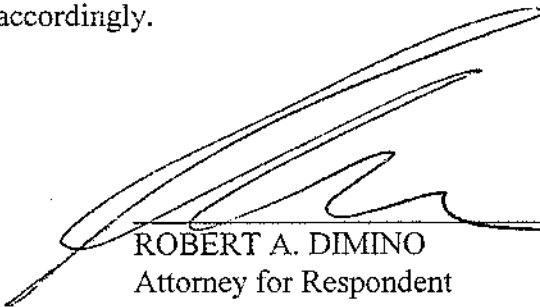
16 DATED

17 
18 JOSEPH ANTHONY ANNUNZIATO
19 Respondent

20 * * *

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

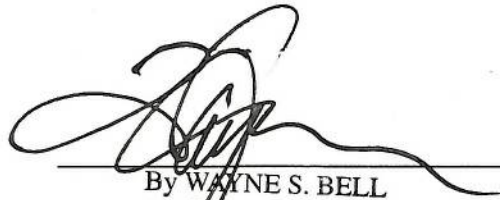
23 9/26/12
24 DATED

25 
26 ROBERT A. DIMINO
27 Attorney for Respondent

1 The foregoing Stipulation and Agreement in Settlement and Order is hereby
2 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
3 December 26, 2012.

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5 IT IS SO ORDERED 11/28/2012, 2012.

6
7 Real Estate Commissioner

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11 By WAYNE S. BELL
12 Chief Counsel
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