

FILED

February 14, 2014

DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007
Telephone: (916) 227-0789

BUREAU OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	NO. H-11395 SF
	)	
BIAGINI PROPERTIES, INC. and	)	<u>STIPULATION AND AGREEMENT</u>
THOMAS JOHN BIAGINI,	)	
	)	
Respondents.	)	

It is hereby stipulated by and between Respondents BIAGINI PROPERTIES, INC. and THOMAS JOHN BIAGINI (collectively referred to herein as "Respondents"), acting by and through Marcia L. Gerston, Esq., Counsel for Respondents, and the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on May 30, 2012, in this matter:

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

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

4 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
7 acknowledge that Respondents understand that by withdrawing said Notice of Defense,
8 Respondents will thereby waive Respondents' right to require the Real Estate Commissioner
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 Respondents will waive other rights
11 afforded to Respondents in connection with the hearing, such as the right to present evidence in
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13 4. This Stipulation is based on the factual allegations contained in the
14 Accusation. In the interest of expedience and economy, Respondents choose not to contest these
15 factual allegations, but to remain silent and understand that, as a result thereof, these factual
16 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
17 forth below. The Commissioner shall not be required to provide further evidence to prove such
18 allegations.

19 5. This Stipulation and Respondents' decision not to contest the Accusation
20 are made for the purpose of reaching an agreed disposition in this proceeding and are expressly
21 limited to this proceeding and any other proceeding or case in which the Department, the state or
22 federal government, an agency of this state, or an agency of another state is involved.

23 6. It is understood by the parties that the Commissioner may adopt the
24 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and
25 sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"
26 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and

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1 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
2 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound
3 by any admission or waiver made herein.

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

8 8. Respondents understand that by agreeing to this Stipulation and
9 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business
10 and Professions Code ("the Code"), the costs of the audit which resulted in the determination
11 that Respondents committed the trust fund violation(s) found in the Determination of Issues.
12 The amount of such costs is \$5,000.00.

13 9. Respondents further understand that by agreeing to this Stipulation and
14 Agreement, the findings set forth below in the Determination of Issues become final, and that
15 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant
16 to Section 10148 of the Code to determine if the violations have been corrected. The
17 maximum costs of said audit shall not exceed \$5,000.00.

18 10. Respondents understand that by agreeing to this Stipulation and
19 Agreement, Respondents agree to pay, pursuant to Section 10106 of the Code, the costs of the
20 investigation and enforcement of this case which resulted in the determination that
21 Respondents committed the violation(s) found in the Determination of Issues. The amount of
22 such cost is \$712.40.

23 DETERMINATION OF ISSUES

24 By reason of the foregoing stipulations, admissions and waivers and solely for
25 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
26 that the following determination of issues shall be made:

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1 I.

2 The acts and omissions of Respondent BIAGINI PROPERTIES, INC. as
3 described in the Accusation are grounds for the suspension or revocation of the licenses and
4 license rights of Respondent BIAGINI PROPERTIES, INC. under the provisions of Section
5 10177(g) of the Code, in conjunction with Section 10145 of the Code, and Sections 2831.2 and
6 2832 of Title 10 of the California Code of Regulations ("the Regulations").

7 II.

8 The acts and omissions of Respondent THOMAS JOHN BIAGINI as described in
9 the Accusation are grounds for the suspension or revocation of the licenses and license rights of
10 Respondent THOMAS JOHN BIAGINI under the provisions of Sections 10177(h) and 10177(g)
11 of the Code, in conjunction with Section 10159.2 of the Code and Section 2725 of the
12 Regulations.

13 ORDER

14 I.

15 1. All licenses and licensing rights of Respondent BIAGINI PROPERTIES,
16 INC., under the Real Estate Law are publicly reprovod pursuant to Section 495 of the Code.

17 II.

18 1. All licenses and licensing rights of Respondent THOMAS JOHN
19 BIAGINI, under the Real Estate Law are publicly reprovod pursuant to Section 495 of the Code.

20 2. Notwithstanding any other provision of this Order, all licenses and
21 licensing rights of Respondent are suspended unless and until he provides proof satisfactory to
22 the Commissioner that he has taken and successfully completed the continuing education course
23 on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code. The
24 course must have been completed no earlier than one hundred twenty (120) days prior to the
25 effective date of this Order, and proof must be submitted prior to the effective date of this Order,
26 to prevent suspension of Respondent's license pursuant to this condition.

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1 III.

2 1. Respondents BIAGINI PROPERTIES INC. and THOMAS JOHN

3 BIAGINI, jointly and severally, shall pay the sum of \$5,000.00 for the Commissioner's cost of
4 the audit which led to this disciplinary action. Respondents shall pay such cost within sixty
5 (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may
6 indefinitely suspend all licenses and licensing rights of Respondents pending a hearing held in
7 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
8 made as provided for herein, or as provided for in a subsequent agreement between
9 Respondents and the Commissioner. The suspension shall remain in effect until payment is
10 made in full or until Respondents enter into an agreement satisfactory to the Commissioner to
11 provide for payment, or until a decision providing otherwise is adopted following a hearing
12 held pursuant to this condition.

13 2. Respondents BIAGINI PROPERTIES INC. and THOMAS JOHN

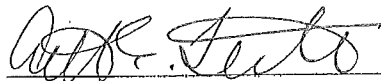
14 BIAGINI, jointly and severally, shall pay the Commissioner's costs, not to exceed \$5,000.00,
15 of any audit conducted pursuant to Section 10148 of the Code to determine if Respondents
16 have corrected the violations described in the Determination of Issues, above, and any other
17 violations found in the audit which led to this disciplinary action. In calculating the amount of
18 the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
19 salary for all persons performing audits of real estate brokers, and shall include an allocation
20 for travel time to and from the auditor's place of work. Respondents shall pay such cost within
21 sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities
22 performed during the audit and the amount of time spent performing those activities. If
23 Respondents fail to pay such cost within the sixty (60) days, the Commissioner may
24 indefinitely suspend all licenses and licensing rights of Respondents under the Real Estate Law
25 until payment is made in full or until Respondents enter into an agreement satisfactory to the
26 Commissioner to provide for payment. Upon full payment, the indefinite suspension provided
27 for in this paragraph shall be stayed.

IV.

All licenses and licensing rights of Respondents BIAGINI PROPERTIES INC.
and THOMAS JOHN BIAGINI are indefinitely suspended unless or until Respondents, jointly
and severally, pay the sum of \$712.40 for the Commissioner's reasonable cost of the
investigation and enforcement which led to this disciplinary action. Said payment shall be in
the form of a cashier's check or certified check made payable to the Department of Real Estate.

3-18-13

DATED



Annette E. Ferrante, Esq.
Counsel for Department of Real Estate

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2 I have read the Stipulation and Agreement and its terms are understood by me
3 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
4 the California Administrative Procedure Act (including but not limited to Sections 11506,
5 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
6 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
7 allegations in the Accusation at a hearing at which I would have the right to cross-examine
8 witnesses against me and to present evidence in defense and mitigation of the charges.
9 Respondents can signify acceptance and approval of the terms and conditions of this
10 Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
11 Respondents, to the Department at fax number (916) 227-9458. Respondents agree,
12 acknowledges and understands that by electronically sending to the Department a fax copy of
13 Respondents' actual signatures as they appears on the Stipulation and Agreement, that receipt
14 of the faxed copy by the Department shall be as binding on Respondents as if the Department
15 had received the original signed Stipulation and Agreement.

16 March 15, 2013
17 DATED

Thomas J. Biagini
THOMAS JOHN BIAGINI,
Respondent

18 March 15, 2013
19 DATED

Thomas J. Biagini
THOMAS JOHN BIAGINI,
As Designated Officer of Respondent
BIAGINI PROPERTIES, INC.

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22
23 I have reviewed this Stipulation and Agreement and Order as to form and
24 content and have advised my clients accordingly.

25 March 18, 2013
26 DATED

Marcia L. Gerston
Marcia L. Gerston, Esq.,
Attorney for Respondents
BIAGINI PROPERTIES, INC. and
THOMAS JOHN BIAGINI

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Decision in this matter as to Respondents BIAGINI PROPERTIES, INC. and THOMAS JOHN BIAGINI, and shall become effective at 12 o'clock noon on MAR 07 2014.

4/17/2013

REAL ESTATE COMMISSIONER



WAYNE S. BELL