

04/29/2014 TUE 12:00 FAX --- FRANK BUDA

0002/007

FILED

MAY 20 2014

BUREAU OF REAL ESTATE

By L. Jones

Bureau of Real Estate
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Sacramento, CA 95813-7007

Telephone: (916) 263-8672

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

DAVID SILVA,

Respondent.

No. H-11594 SF

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between DAVID SILVA (Respondent), represented by Frank M. Buda; and the Complainant, acting by and through Truly Sughrus, Counsel for the Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing the Accusation (Accusation) filed on October 14, 2013 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 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

2. Respondent has received, read, and understands the Statement to Respondent, and the Discovery Provisions of the APA filed by the Bureau in this proceeding.

3. Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation.

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Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he will thereby waive his rights to require the Real Estate Commissioner (Commissioner) to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA, and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This stipulation is based on the factual allegations contained in the Accusation. In the interest of expediency and economy, Respondent chooses not to contest these factual allegations, but to remain silent and understands that, as a result thereof, these factual statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below. The Commissioner shall not be required to provide further evidence to prove such allegations.

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

6. Respondent understands that by agreeing to this Stipulation and Agreement, Respondent agrees to pay, pursuant to Section 10106 of the Business and Professions Code (Code), the cost of the investigation and enforcement which resulted in the determination that Respondents committed the violation(s) found in the Determination of Issues. The amount of said costs is \$1,883.90.

7. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement as his decision in this matter thereby imposing the penalty and sanctions on the real estate licenses and license rights of Respondent as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing

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and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

8. The Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Bureau with respect to any matters which were not specifically alleged to be causes for action in Accusation H-11594 SF.

* * *

DETERMINATION OF ISSUES

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

I

The acts and omissions of Respondent as described in the Accusation are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10177(g) of the Code.

* * *

ORDER

I

All licenses and licensing rights of Respondent under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that:

1) Fifteen (15) days of said suspension shall be stayed, upon the condition that Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty of \$750.

1 a) Said payment shall be in the form of a cashier's check made payable to the Bureau of
2 Real Estate. Said check must be delivered to the Bureau of Real Estate, Legal Section at
3 P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective date of this Order.

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

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

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

16 2) Forty-five (45) days of said suspension shall be stayed for two (2) years upon the following
17 terms and conditions:

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

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

25 3) All licenses and licensing rights of Respondent are indefinitely suspended unless or until
26 Respondent pays the sum of \$1,883.90 for the Commissioner's reasonable cost of the
27 investigation and enforcement which led to this disciplinary action. Said payment shall be in

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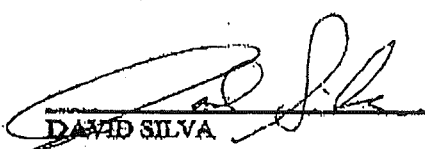
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the form of a cashier's check made payable to the Bureau of Real Estate. The investigative and enforcement costs must be delivered to the Bureau of Real Estate, Legal Section at P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective date of this Order.

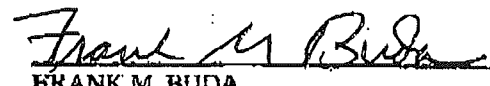
4) Respondent shall, within six (6) months from the effective date of this Order, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, Respondent real estate license shall automatically be suspended until Respondent passes the examination.

30 April -14
DATED
TRULY SUGHRUE
Counsel for Complainant

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusations at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

04/29/2014
DATED
DAVID SILVA
Respondent

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

4-30-14
DATED
FRANK M. BUDA
Attorney for Respondent

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1 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
2 shall become effective at 12 o'clock noon on JUN 09 2014.

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4 IT IS SO ORDERED MAY 16 2014

5
6 REAL ESTATE COMMISSIONER

7
8 JEFFREY MASON
9 Chief Deputy Commissioner