

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670

FILED

AUG 04 2015

BUREAU OF REAL ESTATE

By L. First

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)

Case No. H-11812 SF

12 FERDINAND MANGABAT PIANO,)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

13 Respondent.)
14)
15)

16 It is hereby stipulated by and between Respondent FERDINAND MANGABAT
17 PIANO ("Respondent"), acting by and through his counsel, Brian M. Sanders, Esq., and the
18 Complainant, acting by and through Jason D. Lazark, Counsel for the Bureau of Real Estate
19 ("Bureau"), as follows for the purpose of settling and disposing of the Accusation filed on
20 February 11, 2015, in this matter:

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

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

1 3. On or about March 12, 2015, Respondent filed a Notice of Defense pursuant
2 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
3 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
4 of Defense. Respondent acknowledges and understands that by withdrawing said Notice of
5 Defense, he will thereby waive his right to require the Real Estate Commissioner
6 ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA and that he will waive other rights afforded to him
8 in connection with the hearing such as the right to present evidence in defense of the
9 allegations in the Accusation and the right to cross-examine witnesses.

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

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

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

24 7. Respondent understands that by agreeing to this Stipulation and Agreement,
25 Respondent agrees to be responsible for paying, pursuant to Section 10148 of the California
26 Business and Professions Code ("the Code"), the costs of the audit which resulted in the
27 determination that Respondent committed the trust fund violation(s) found in the Determination

1 of Issues. The amount of such costs is \$5,772.13.

2 8. Respondent further understands that by agreeing to this Stipulation and
3 Agreement, the findings set forth below in the Determination of Issues become final, and that the
4 Commissioner may charge Respondent for the costs of any audit conducted pursuant to Section
5 10148 of the Code to determine if the violations have been corrected and hold Respondent
6 responsible for paying the costs of the follow up audit. The maximum costs of said audit shall
7 not exceed \$5,772.13.

8 9. Respondent understands that by agreeing to this Stipulation and Agreement,
9 Respondent agrees to be responsible for paying, pursuant to Section 10106 of the Code, the costs
10 of the investigation and enforcement of this case which resulted in the determination that
11 Respondent committed the violations found in the Determination of Issues. The amount of such
12 costs is \$1,223.00.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and waivers, and solely for
15 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
16 that the acts and omissions of Respondent, as described in the Accusation, are grounds for the
17 suspension or revocation of the licenses and license rights of Respondent under the provisions of
18 Sections 10177(d) and 10177(g) of the Code, in conjunction with Sections 10145 and 10145(g)
19 of the Code, and Sections 2831.2, 2832 and 2832.1 of Title 10 of the California Code of
20 Regulations ("the Regulations").

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 DECISION AND ORDER

2 All licenses and licensing rights of Respondent under the Real Estate Law are
3 suspended for a period of forty-five (45) days from the effective date of this Decision and Order;
4 provided, however, that:

5 1. Thirty (30) days of said suspension shall be stayed upon the condition that
6 Respondent petitions, pursuant to Section 10175.2 of the Code, and pays a monetary penalty,
7 pursuant to Section 10175.2 of the Code, at a rate of \$100 for each day of the suspension, for a
8 total monetary penalty of \$3,000.00.

9 a. Said payment shall be in the form of a cashier's check made payable to
10 the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
11 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
12 Order.

13 b. No further cause for disciplinary action against the real estate license
14 of Respondent occurs within two (2) years from the effective date of the Decision and Order in
15 this matter.

16 c. If Respondent fails to pay the monetary penalty in accordance with the
17 terms and conditions of the Decision and Order, the Commissioner may, without a hearing, order
18 the immediate execution of all or any part of the stayed suspension, in which event, Respondent
19 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
20 Bureau under the terms of this decision.

21 d. If Respondent pays the monetary penalty, and if no further cause for
22 disciplinary action against the real estate license of Respondent occurs within two (2) years
23 from the effective date of the Decision and Order herein, then the stay hereby granted shall
24 become permanent.

25 2. The remaining fifteen (15) days of said suspension shall be stayed for two (2)
26 years upon the following terms and conditions:
27

1 a. Respondent shall obey all laws, rules and regulations governing the
2 rights, duties and responsibilities of a real estate licensee in the State of California, and

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

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

14 4. All licenses and licensing rights of Respondent are indefinitely suspended
15 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
16 successfully completed the continuing education course on trust fund accounting and handling
17 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
18 satisfaction of these requirements includes evidence that Respondent has successfully completed
19 the trust fund accounting and handling continuing education course, no earlier than one hundred
20 twenty (120) days prior to the effective date of the Decision and Order in this matter. Proof of
21 completion of the trust fund accounting and handling course must be delivered to the Bureau of
22 Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-
23 263-8785, prior to the effective date of this Decision and Order.

24 5. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
25 \$5,772.13 for the Commissioner's cost of the audit which led to this disciplinary action.
26 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
27 Commissioner. Payment of audit costs should not be made until Respondent receives the


1 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
2 Respondent's real estate license shall automatically be suspended until payment is made in full,
3 or until a decision providing otherwise is adopted following a hearing held pursuant to this
4 condition.

5 6. Pursuant to Section 10148 of the Code, Respondent shall pay the
6 Commissioner's reasonable cost, not to exceed \$5,772.13, for an audit to determine if
7 Respondent has corrected the violation(s) found in the Determination of Issues. In calculating
8 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
9 average hourly salary for all persons performing audits of real estate brokers, and shall include
10 an allocation for travel time to and from the auditor's place of work. Respondent shall pay such
11 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of
12 the audit costs should not be made until Respondent receives the invoice. If Respondent fails to
13 satisfy this condition in a timely manner as provided for herein, Respondent's real estate license
14 shall automatically be suspended until payment is made in full, or until a decision providing
15 otherwise is adopted following a hearing held pursuant to this condition.

16 7. All licenses and licensing rights of Respondent are indefinitely suspended
17 unless or until Respondent pays the sum of \$1,223.00 for the Commissioner's reasonable costs
18 of the investigation and enforcement which led to this disciplinary action. Said payment shall
19 be in the form of a cashier's check or certified check made payable to the Bureau of Real
20 Estate. The investigative and enforcement costs must be delivered to the Bureau of Real
21 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
22 date of this Decision and Order.

23
24
25 6-19-15

26 DATED

27

JASON D. LAZARK, Counsel
Bureau of Real Estate

