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BUREAU OF REAL ESTATE

By H dew

Bureau of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0781

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

CHARLES THOMAS BETTENCOURT,

Respondent.

No. H-11817 SF

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between CHARLES THOMAS BETTENCOURT (Respondent), represented by James I. Fisher, and the Complainant, acting by and through Stephanie K. Sese, Counsel for the Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing of the Accusation filed on March 2, 2015 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 California Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.

1 Respondent acknowledges and understands that by withdrawing said Notice of Defense
2 Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner
3 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
4 accordance with the provisions of the APA, and Respondent will thereby waive other rights
5 afforded to Respondent in connection with the hearing, such as the right to present evidence in
6 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

15 6. Respondent understands that by agreeing to this Stipulation and
16 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and
17 Professions Code (Code), the costs of the audit which resulted in the determination that
18 Respondent committed the trust fund violation(s) found in the Determination of Issues. The
19 amount of said costs is \$3,785.90.

19 7. Respondent further understands that by agreeing to this Stipulation and
20 Agreement, the findings set forth below in the Determination of Issues become final and the
21 Commissioner may charge Respondent the costs of any audit conducted pursuant to Section
22 10148 of the Code to determine if the violations have been corrected. The maximum costs of
23 said audit shall not exceed \$3,785.90.

24 8. Respondent further understands that by agreeing to this Stipulation and
25 Agreement, Respondent agrees to pay, pursuant to Section 10106(a) of the Code, the
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1 investigative and enforcement costs which led to this disciplinary action. The amount of said
2 costs is \$1,545.00.

3 9. It is understood by the parties that the Commissioner may adopt the
4 Stipulation and Agreement as his decision in this matter thereby imposing the penalty and
5 sanctions on the real estate licenses and license rights of Respondent as set forth in the below
6 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and
7 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing
8 and proceeding on the Accusation under all provisions of the APA and shall not be bound by any
9 admission or waiver made herein.

10 10. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Bureau with respect to any matters which were not
13 specific allegations contained within the Accusation.

14 * * *

15 DETERMINATION OF ISSUES

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

19 The acts and/or omissions of Respondent as described in the Accusation are
20 grounds for the suspension or revocation of Respondent's license and license rights under the
21 following sections of the Code and the Regulations of the Real Estate Commissioner
22 (Regulations):

23 As to Paragraph 5(a), under Sections 10177(d), 10177(g), and 10145 of the Code
24 in conjunction with Section 2832.1 of the Regulations;

25 As to Paragraph 5(b), under Sections 10177(d), 10177(g), and 10145 of the Code
26 in conjunction with Section 2832 of the Regulations; and,

27 As to Paragraph 5(c), under Sections 10177(d), 10177(g), and 10130 of the Code.

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ORDER

All licenses and licensing rights of Respondent under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order. The restricted license issued to Respondent shall be subject to all provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner in the event of Respondent's conviction or plea of *nolo contendere* to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, the Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision and Order.

4. Respondent shall, within nine (9) months from the effective date of this Decision and Order, present evidence satisfactory to the Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,

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1 Respondent's real estate license shall automatically be suspended until Respondent presents
2 evidence satisfactory to the Commissioner of having taken and successfully completed the
3 continuing education requirements. Proof of completion of the continuing education courses
4 must be delivered to the Bureau of Real Estate Flag Section at P.O. Box 137013, Sacramento,
CA 95813-7013.

5 5. All licenses and licensing rights of Respondent are indefinitely suspended
6 unless or until Respondent provides proof satisfactory to the Commissioner of having taken and
7 successfully completed the continuing education course on trust fund accounting and handling as
8 specified in Paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
9 satisfaction of these requirements includes evidence that Respondent has successfully completed
10 the trust fund account and handling continuing education courses no earlier than 120 days prior
11 to the effective date of the Decision and Order in this matter. Proof of completion of the trust
12 fund accounting and handling course must be delivered to the Bureau of Real Estate Flag Section
13 at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758 prior to the
effective date of this Decision and Order.

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

18 7. Pursuant to Section 10148 of the Code Respondent shall pay the sum of
19 \$3,785.90 for the Commissioner's costs of the audit which led to this disciplinary action.
20 Respondent shall pay such costs within sixty (60) days of receiving an invoice from the
21 Commissioner. Payment of audit costs should not be made until Respondent receives the
22 invoice. If Respondent fails to satisfy this condition in a timely manner as provided herein,
23 Respondent's real estate license shall automatically be suspended until payment is made in full or
24 until a decision providing otherwise is adopted following a hearing held pursuant to this
condition.

25 8. Pursuant to Section 10148 of the Code Respondent shall pay the
26 Commissioner's reasonable costs, not to exceed \$3,785.90, for an audit to determine if
27

Respondent has corrected the violation(s) found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable costs the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such costs within sixty (60) days of receiving an invoice from the Commissioner. Payment of the audit costs should not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided herein, Respondent's real estate license shall automatically be suspended until payment is made in full or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

9. All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent pays the sum of \$1,545.00 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 made payable to the Bureau of Real Estate. The investigative and enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.

3/8/16

DATED

SKS

STEPHANIE K. SESE
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, discussed it with my counsel, 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

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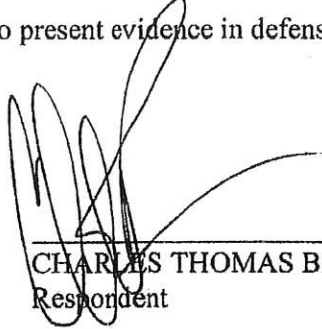
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1 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
2 the charges.

3
4 3.7.16

5 DATED

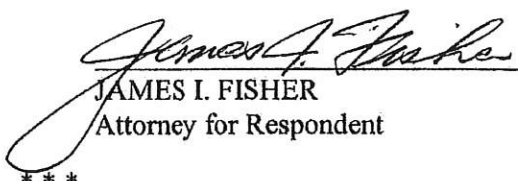

6 CHARLES THOMAS BETTENCOURT
7 Respondent

8 ***

9
10 I have reviewed the Stipulation and Agreement as to form and content and have
11 advised my client accordingly.

12
13 3/8/2016

14 DATED

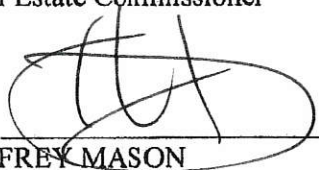

15 JAMES I. FISHER
16 Attorney for Respondent

17 ***

18
19 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
20 shall become effective at 12 o'clock noon on APR 26 2016.

21
22 IT IS SO ORDERED MARCH 30, 2016.

23
24 Wayne S. Bell
25 Real Estate Commissioner

26
27 By: 
JEFFREY MASON
Chief Deputy Commissioner

1 Bureau of Real Estate
2 1651 Exposition Blvd
3 P.O. Box 137007
4 Sacramento, CA 95813-7007

5 Telephone: (916) 263-8670

FILED

OCT 13 2015

BUREAU OF REAL ESTATE

By: K. Contreras

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CHARLES THOMAS BETTENCOURT,) H-11817 SF
13 Respondent.)

14 ORDER VACATING DEFAULT DECISION AND ORDER

15 On August 28, 2015, a Decision was rendered revoking the real estate broker
16 license of Respondent, CHARLES THOMAS BETTENCOURT, effective October 19, 2015.

17 On October 12, 2015, good cause was presented to vacate the Decision of
18 August 28, 2015, and to have the matter remanded to the Office of Administrative Hearings as a
19 contested matter.

20 NOW, THEREFORE, IT IS ORDERED that the Decision of August 28, 2015, is
21 vacated and that the Matter of the Accusation filed on March 2, 2015, is remanded to the Office
22 of Administrative Hearings.

23 This Order shall be effective immediately.

24 DATED: OCTOBER 13, 2015

25 REAL ESTATE COMMISSIONER

26 Jeffrey Mason
27 Chief Deputy Commissioner

FILED

SEP 28 2015

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

CHARLES THOMAS BETTENCOURT,)

Respondent.)

H-11817 SF

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on July 20, 2015, and the Findings of Fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate license and/or license rights on grounds of violation of Sections 10130 (real estate license requirement), 10145 (trust fund handling), and 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence) of the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("the Code"), and Sections 2832 (trust fund handling) and 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code of Regulations ("the Regulations").

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Real Estate Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

FINDINGS OF FACT

1

On February 24, 2015, Robin S. Tanner made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondent's last known mailing address on file with the Bureau on March 2, 2015.

On July 20, 2015, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2

Respondent is presently licensed and/or has license rights under the Code as a real estate broker.

3

At all times relevant, Respondent was engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(b) of the Code (property management), including the operation and conduct of a property management business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondent leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

4

On or about October 28, 2014, and continuing intermittently through October 29, 2014, an audit was conducted of Respondent at his main office located at 2115 Shattuck Avenue, Berkeley, California, where the auditor examined the records for the period of October 1, 2013, through September 30, 2014 (the audit period). While acting as real estate broker, Respondent accepted or received funds in trust (trust funds) and deposited or caused to be deposited those funds into a bank account maintained by Respondent.

5

An audit conducted by the Bureau of Real Estate revealed the following:

- (a) As of September 30, 2014, there was a shortage in Respondent's Bank Account #1 of at least \$16,401.54. Respondent failed to obtain the written consent of every principal who is an owner of the funds in Bank Account #1 prior to any disbursement which would reduce the balance of the funds in Bank Account #1 to an amount less than the existing aggregate account liability of Respondent to all owners and/or principals of those funds in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;
- (b) Respondent failed to deposit trust funds collected into a proper broker trust account. Instead, Respondent deposited trust funds collected into Bank Account #1, which was owned by an unlicensed corporate entity, "North Berkeley Properties" in violation of Section 10145 of the Code and Section 2832 of the Regulations; and,

- (c) Respondent conducted real estate activities under the unlicensed corporation "North Berkeley Properties" in violation of Section 10130 of the Code.

DETERMINATION OF ISSUES

1

Cause for disciplinary action against Respondent exists with reference to the acts set forth in Paragraphs 3 through 5, above, pursuant to Sections 10130, 10145, and 10177(d) and/or 10177(g) of the Code, and Sections 2832 and 2832.1 of the Regulations.

2

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

All licenses and licensing rights of Respondent CHARLES THOMAS BETTENCOURT under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on

OCT 19 2015

DATED: August 28, 2015

REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to read "JEFFREY MASON", is written over a horizontal line. The signature is stylized with large, bold letters and a circular flourish at the end.

By: JEFFREY MASON
Chief Deputy Commissioner

1 Bureau of Real Estate
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670

FILED

JUL 20 2015

BUREAU OF REAL ESTATE

By K. Contreras

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CHARLES THOMAS BETTENCOURT,)
13 Respondent.)
14 _____)

H-11817 SF

DEFAULT ORDER

15
16 Respondent, CHARLES THOMAS BETTENCOURT, having failed to file a
17 Notice of Defense within the time required by Section 11506 of the Government Code, is now
18 in default. It is, therefore, ordered that a default be entered on the record in this matter.

19 IT IS SO ORDERED July 20, 2015.

20
21 REAL ESTATE COMMISSIONER

22
23 By:

Joe M. Carrillo
24 JOE M. CARRILLO
25 Northern Regional Manager
26
27