

1 Bureau of Real Estate
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3 Sacramento, CA 95818-7007

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FILED

APR 19 2018

BUREAU OF REAL ESTATE

By B. Nicholas

7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 OMNI PROPERTIES, INC., and DION)
13 CHENG,)

14 Respondents.)

No. H-12186 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between OMNI PROPERTIES, INC. (OMNI),
16 and DION CHENG (CHENG) (collectively "Respondents"), represented by Wayne Burkamp,
17 and the Complainant, acting by and through Truly Sughrue, Counsel for the Bureau of Real
18 Estate (Bureau), as follows for the purpose of settling and disposing the Accusation filed on
19 December 26, 2017, in this matter:

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

25 2. Respondents have received, read, and understand the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Bureau in this proceeding.
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1 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
2 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
3 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
4 acknowledge that Respondents understand that by withdrawing said Notice of Defense
5 Respondents will thereby waive Respondents' rights 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 Respondents will waive other rights
8 afforded to Respondents in connection with the hearing such as the right to present evidence in
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

20 6. Respondents understand that by agreeing to this Stipulation and
21 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and
22 Professions Code (Code), the cost of the audit, which resulted in the determination that
23 Respondents committed the trust fund handling violation(s) found in the Determination of
24 Issues. The amount of said costs is \$6,164.99.

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1 7. Respondents further understand that by agreeing to this Stipulation and
2 Agreement, the findings set forth below in the Determination of Issues become final, and that
3 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum
5 costs of said audit shall not exceed \$7,706.24.

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

13 9. The Order or any subsequent Order of the Commissioner made pursuant to
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
15 administrative or civil proceedings by the Bureau with respect to any matters which were not
16 specifically alleged to be causes for action in Accusation H-12186 SF.

17 * * *

18 DETERMINATION OF ISSUES

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

22 I

23 The acts and omissions of Respondents as described in the First Cause of Action
24 of the Accusation are grounds for the suspension or revocation of Respondents' licenses and
25 license rights under the following sections of the Code and Title 10 of the California Code of:

26 As to Paragraphs 11(a) through 11(c), under Section 10177(d) of the Code in
27 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

1 As to Paragraph 11(d), under Section 10177(d) of the Code in conjunction with
2 Section 10145 of the Code and Section 2832 of the Regulations;

3 As to Paragraph 11(e), under Section 10177(d) of the Code in conjunction with
4 Section 10145(d) of the Code;

5 As to Paragraph 11(f), under Section 10177(d) of the Code in conjunction with
6 Section 2731 of the Regulations and Section 10159.5 of the Code; and

7 As to Paragraph 11(g), under Section 10177(d) of the Code in conjunction with
8 Section 2773 of the Regulations and Section 10140.6(b) of the Code.

9 II

10 The acts and omissions of Respondents as described in the Second Cause of
11 Action of the Accusation are grounds for the suspension or revocation of Respondents' licenses
12 and license rights under Sections 10177(d) of the Code in conjunction with Section 10130 of the
13 Code.

14 III

15 The acts and/or omissions of CHENG as described in the Third Cause of Action
16 of the Accusation is cause for the suspension or revocation of Respondent's license and/or
17 license rights under Section 10177(h) of the Code.

18 * * *

19 ORDER

20 I

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

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

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

3. OMNI 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.
OMNI shall not be eligible to apply for any unrestricted licenses until all restrictions attaching to
the license have been removed.

II

All licenses and licensing rights of Respondent CHENG under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to CHENG pursuant to Section 10156.5 of the Code if CHENG 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 CHENG shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

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

6 4. CHENG shall, within nine (9) months from the effective date of this
7 Decision and Order, present evidence satisfactory to the Commissioner that CHENG has, since
8 the most recent issuance of an original or renewal real estate license, taken and successfully
9 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
10 Law for renewal of a real estate license. If CHENG fails to satisfy this condition, CHENG's real
11 estate license shall automatically be suspended until CHENG presents evidence satisfactory to
12 the Commissioner of having taken and successfully completed the continuing education
13 requirements. Proof of completion of the continuing education courses must be delivered to the
14 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

15 5. All licenses and licensing rights of CHENG are indefinitely suspended
16 unless or until CHENG provides proof satisfactory to the Commissioner, of having taken and
17 successfully completed the continuing education course on trust fund accounting and handling
18 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
19 satisfaction of these requirements includes evidence that CHENG has successfully completed the
20 trust fund account and handling continuing education courses, no earlier than 120 days prior to
21 the effective date of the Decision and Order in this matter. Proof of completion of the trust fund
22 accounting and handling course must be delivered to the Bureau of Real Estate, Flag Section at
23 P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective
24 date of this Decision and Order.

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III

1. Pursuant to Section 10148 of the Code, Respondents shall jointly and severally pay the sum of \$6,164.99 for the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of audit costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents' 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.

2. Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's reasonable cost, not to exceed \$7,706.24, for an audit to determine if Respondents have corrected the violation(s) found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, 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. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents' 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.

5-March-18

DATED

TRULY SUGHRUE
Counsel for Complainant

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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 Accusation 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.

Respondents and Respondents' attorney further agree to send the original signed
Stipulation and Agreement by mail to the following address no later than one (1) week from the
date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:

Bureau of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.

Respondents and Respondents' attorney understand and agree that if they fail to return the
original signed Stipulation and Agreement by the due date, Complainant retains the right to set
this matter for hearing.

2/24/18

DATED



Dion Cheng, Designated Officer
OMNI PROPERTIES, INC.,
Respondent

2/24/18

DATED



DION CHENG
Respondent

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2 *I have reviewed the Stipulation and Agreement as to form and content and have*
3 *advised my clients accordingly.*

4 2/14/2018
5 DATED

Wayne Burkamp
6 WAYNE BURKAMP
7 Attorney for Respondents

8 * * *

9 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
10 Order and shall become effective at 12 o'clock noon on MAY 10 2018

11 IT IS SO ORDERED April 11, 2018

12 WAYNE S. BELL
13 REAL ESTATE COMMISSIONER

14 Daniel J. Sandri
15 By: DANIEL J. SANDRI
16 Chief Deputy Commissioner