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FILED

APR 15 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:) DRE No. H-12410 SF
BLACK DIAMOND HOLDINGS and ERIN)
GARDERE,)
Respondents.)

ORDER DENYING RECONSIDERATION

On February 26, 2020, a Stipulation and Agreement was signed in the above-entitled matter. The Stipulation and Agreement was to become effective on March 20, 2020, and was stayed by separate Order to April 20, 2020.

On March 17, 2020, Respondents petitioned for reconsideration of the Stipulation and Agreement of February 26, 2020.

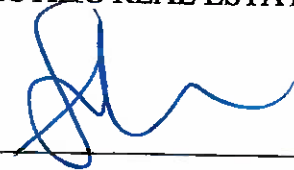
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I have given due consideration to the petition of Respondents. I find no good cause to reconsider the Stipulation and Agreement of February 26, 2020, and reconsideration is hereby denied.

IT IS SO ORDERED 4/14/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



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FILED

MAR 20 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:) DRE NO. H-12410 SF
BLACK DIAMOND HOLDINGS and ERIN GARDERE,)
Respondent(s).)

ORDER STAYING EFFECTIVE DATE

On February 26, 2020, a Decision was rendered in the above-entitled matter to become effective March 20, 2020.

IT IS HEREBY ORDERED that the effective date of March 20, 2020, is stayed for a period of 30 days to allow Respondents BLACK DIAMOND HOLDINGS and ERIN GARDERE to file a petition for reconsideration or consider Respondents' petition for reconsideration.

The Decision of February 26, 2020, shall become effective at 12 o' clock noon on April 20, 2020.

DATED: 3/20/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER


1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 576-8700

FILED

FEB 28 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BLACK DIAMOND HOLDINGS INC., and)
13 ERIN JOSEPH GARDERE,)
14 Respondents.)

No. H-12410 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between BLACK DIAMOND HOLDINGS INC.,
16 and ERIN JOSEPH GARDERE (Respondents), and the Complainant, acting by and through
17 Truly Sughrue, Counsel for the Department of Real Estate (Department), as follows for the
18 purpose of settling and disposing the Accusation filed on September 25, 2019, in this matter:

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

24 2. Respondents have received, read, and understand the Statement to
25 Respondent, and the Discovery Provisions of the APA filed by the Department in this
26 proceeding.
27

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 understands 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
19 Department, the state or federal government, an agency of this state, or an agency of another state
20 is involved.

21 6. Respondents understand that by agreeing to this Stipulation and
22 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and
23 Professions Code (Code), the cost of the audit, which resulted in the determination that
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.
25 The amount of said costs is \$2,196.90.

26 ///

27 ///

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 \$2,746.13.

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 Department with respect to any matters which were not
16 specifically alleged to be causes for action in Accusation H-12410 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 in 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 Regulations (Regulations):

1 As to Paragraph 11(a), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations; and

3 As to Paragraph 11(b), under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 10145 of the Code and Section 2832 of the Regulations.

5 II

6 The acts and omissions of Respondent ERIN JOSEPH GARDERE (GARDERE)
7 as described in the Second Cause of Action in the Accusation are grounds for the suspension or
8 revocation of GARDERE's licenses and license rights Section 10177(h) of the Code.

9 * * *

10 ORDER

11 I

12 All licenses and licensing rights of Respondent BLACK DIAMOND HOLDINGS
13 INC. (BDHI) under the Real Estate Law are suspended for a period of thirty (30) days from the
14 effective date of this Order; provided, however, that thirty (30) days of said suspension shall be
15 stayed for two (2) years upon the following terms and conditions:

16 a) BDHI shall obey all laws, rules and regulations governing the rights, duties and
17 responsibilities of a real estate licensee in the State of California; and,

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

23 II

24 All licenses and licensing rights of GARDERE under the Real Estate Law are
25 suspended for a period of thirty (30) days from the effective date of this Order; provided,
26 however, that thirty (30) days of said suspension shall be stayed for two (2) years upon the
27 following terms and conditions:

1 a) GARDERE shall obey all laws, rules and regulations governing the rights, duties
2 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 upon stipulation,
4 that cause for disciplinary action occurred within two (2) years from the effective date of this
5 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
6 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
7 such determination be made, the stay imposed herein shall become permanent.

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

18 III

19 1. Pursuant to Section 10148 of the Code, Respondents shall pay the sum of
20 \$2,196.90 for the Commissioner's cost of the audit which led to this disciplinary action.
21 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the
22 Commissioner. Payment of audit costs should not be made until Respondents receive the
23 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein,
24 Respondents' real estate license shall automatically be suspended until payment is made in full,
25 or until a decision providing otherwise is adopted following a hearing held pursuant to this
26 condition.

27 2. Pursuant to Section 10148 of the Code, Respondents shall pay the

1 Commissioner's reasonable cost, not to exceed \$2,746.13, for an audit to determine if
2 Respondents have corrected the violation(s) found in the Determination of Issues. In calculating
3 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
4 average hourly salary for all persons performing audits of real estate brokers, and shall include an
5 allocation for travel time to and from the auditor's place of work. Respondents shall pay such
6 costs within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment
7 of the audit costs should not be made until Respondents receive the invoice. If Respondents fail
8 to satisfy this condition in a timely manner as provided for herein, Respondents' real estate
9 license shall automatically be suspended until payment is made in full, or until a decision
10 providing otherwise is adopted following a hearing held pursuant to this condition.

11
12 21-Jan-2020
13 DATED

14 
15 TRULY SUGHRUE
16 Counsel for Complainant
17 * * *

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

24 Respondents further agree to send the original signed Stipulation by mail to the
25 following address no later than one (1) week from the date the Stipulation is signed by
26 Respondents: *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento,*
27 *California 95813-7007.* Respondents understand and agree that if they fail to return the original
signed Stipulation by the due date, Complainant retains the right to set this matter for hearing.

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1/14/2020
DATED

Erin J Gardere
ERIN JOSEPH GARDERE,
Designated Officer
BLACK DIAMOND HOLDINGS INC.,
Respondent

1/14/2020
DATED

Erin J Gardere
ERIN JOSEPH GARDERE
Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision and
Order and shall become effective at 12 o'clock noon on MAR 20 2020.

IT IS SO ORDERED 2/26/20.

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER
[Signature]