

1 DEPARTMENT OF REAL ESTATE
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FILED

APR 10 2024

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:) Case No. H-12677 SF
12)
13 NORTH BERKELEY PROPERTIES and) STIPULATION AND AGREEMENT
14 CHARLES THOMAS BETTENCOURT,) IN SETTLEMENT AND ORDER
15)
16 Respondents.)
17)

18 It is hereby stipulated by and between Respondent NORTH BERKELEY
19 PROPERTIES ("NBP") and CHARLES THOMAS BETTENCOURT ("BETTENCOURT")
20 (collectively referred to as "Respondents"), acting by and through Joshua Rosenthal, counsel for
21 Respondents, and the Complainant, acting by and through Kyle Jones, Counsel for the
22 Department of Real Estate, as follows for the purpose of settling and disposing of the
23 Accusation filed on July 12, 2023, in this matter:

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

2. Respondents have received, read and understand the Statement to
Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department

1 of Real Estate in this proceeding.

2 3. Respondents filed Notices of Defense pursuant to Section 11505 of the
3 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
4 Respondents hereby freely and voluntarily withdraw said Notices of Defense. Respondents
5 acknowledge that they understand that by withdrawing said Notices of Defense they will
6 thereby waive their rights to require the Real Estate Commissioner ("Commissioner") to prove
7 the allegations in the Accusation at a contested hearing held in accordance with the provisions
8 of the APA, and that they will waive other rights afforded to them in connection with the
9 hearing, such as the right to present evidence in defense of the allegations in the Accusation
10 and the right to cross-examine witnesses.

11 4. Respondents, pursuant to the limitations set forth below, hereby admit that
12 the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding
13 are true and correct and the Real Estate Commissioner shall not be required to provide further
14 evidence of such allegations.

15 5. This Stipulation and Agreement is made for the purpose of reaching an
16 agreed disposition of this proceeding and is expressly limited to this proceeding and any other
17 proceeding or case in which the Department, the state or federal government, any agency of
18 this state, or an agency of another state is involved.

19 6. It is understood by the parties that the Real Estate Commissioner may adopt
20 the Stipulation and Agreement as her Decision in this matter, thereby imposing the penalties
21 and sanctions on Respondents' real estate licenses and license rights as set forth in the below
22 "Order." In the event that the Commissioner in her discretion does not adopt the Stipulation
23 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a
24 hearing and proceeding on the Accusation under all the provisions of the APA and shall not be
25 bound by any admission or waiver made herein.

26 7. The Order or any subsequent Order of the Real Estate Commissioner made
27 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to

1 any further administrative or civil proceedings by the Department of Real Estate with respect
2 to any matters which were not specifically alleged to be causes for accusation in this
3 proceeding.

4 8. Respondents understand that by agreeing to this Stipulation and Agreement,
5 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10148
6 of the California Business and Professions Code ("Code"), the costs of the audit which resulted
7 in the determination that Respondents committed the trust fund violation(s) found in the
8 Determination of Issues. The amount of such costs is \$9,294.70.

9 9. Respondents further understand that by agreeing to this Stipulation and
10 Agreement, the findings set forth below in the Determination of Issues become final, and that the
11 Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
12 Section 10148 of the Code to determine if the violations have been corrected and hold
13 Respondents jointly and severally responsible for paying the costs of the follow up audit. The
14 maximum costs of said audit shall not exceed \$11,618.37.

15 10. Respondents further understand that by agreeing to this Stipulation and
16 Agreement, Respondents agree to be responsible for jointly and severally paying, pursuant to
17 Section 10106 of the Code, the costs of the investigation and enforcement of this case which
18 resulted in the determination that Respondents committed the violation(s) found in the
19 Determination of Issues. The amount of such cost is \$1,329.30.

20 **DETERMINATION OF ISSUES**

21 By reason of the foregoing stipulations, admissions, and waivers, and solely for
22 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
23 and agreed that the following Determination of Issues shall be made:

24 The acts and/or omissions of NBP as described in the Accusation are grounds for
25 the suspension or revocation of the licenses and license rights of NBP under the provisions of
26 Sections 10145, 10176(d), and 10177(g) of the Code, and Sections 2832(a) and 2832.1 of Title
27 10 of the California Code of the Regulations ("Regulations").

The acts and/or omissions of BETTENCOURT as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of BETTENCOURT under the provisions of Sections 10145, 10159.2, 10176(d), 10177(g), and 10177(h) of the Code, and Sections 2832(a) and 2832.1 of the Regulations.

ORDER

I.

AS TO NBP

All licenses and licensing rights of NORTH BERKELEY PROPERTIES, under the Real Estate Law are revoked; provided, however, a restricted real estate broker corporation license shall be issued to NBP pursuant to Section 10156.5 of the Code if NBP makes application therefor and pays to the Department the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order. The restricted license issued to NBP 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 the Code:

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

2. NBP 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 four (4) years have elapsed from the effective date of this Decision and Order. NBP shall not be eligible to apply for any unrestricted licenses until all restrictions attaching to the license have been removed.

II.

AS TO BETTENCOURT

All licenses and licensing rights of BETTENCOURT under the Real Estate Law

1 are revoked; provided, however, a restricted real estate salesperson license shall be issued to
2 BETTENCOURT pursuant to Section 10156.5 of the Code if BETTENCOURT makes
3 application therefor for the restricted license within 90 days from the effective date of this
4 Decision and Order. The restricted license issued to BETTENCOURT shall be subject to all of
5 the provisions of Section 10156.7 of the Code and to the following limitations, conditions and
6 restrictions imposed under authority of Section 10156.6 of that Code:

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

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

16 3. BETTENCOURT shall not be eligible to apply for the issuance of an
17 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions
18 of a restricted license until four (4) years have elapsed from the effective date of this Decision
19 and Order.

20 4. BETTENCOURT shall submit with any application for license under an
21 employing broker, or any application for transfer to a new employing broker, a statement signed
22 by the prospective employing real estate broker on a form approved by the Department which
23 shall certify:

- 24 (a) That the employing broker has read the Decision and Order of the
25 Commissioner which granted the right to a restricted license; and
26
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1 (b) That the employing broker will exercise close supervision over the
2 performance by the restricted licensee relating to activities for which a real
3 estate license is required.

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

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

24 III.

25 AS TO NBP AND BETTENCOURT JOINTLY AND SEVERALLY

26 1. Pursuant to Section 10148 of the Code, Respondents, jointly and severally,
27 shall pay the sum of \$9,294.70 for the Commissioner's cost of the audit which led to this

1 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
2 invoice therefore from the Commissioner. The Commissioner shall indefinitely suspend all
3 licenses and licensing rights of Respondents pending a hearing held in accordance with Section
4 11500, et seq., of the Government Code, if payment is not timely made as provided for herein,
5 or as provided for in a subsequent agreement between Respondents and the Commissioner.
6 The suspension shall remain in effect until payment is made in full or until Respondents enter
7 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision
8 providing otherwise is adopted following a hearing held pursuant to this condition.

9 2. Respondents, jointly and severally, shall pay the Commissioner's costs, not
10 to exceed \$11,618.37, of any audit conducted pursuant to Section 10148 of the Code to
11 determine if Respondents have corrected the violations described in the Determination of
12 Issues, above, and any other violations found in the audit which led to this disciplinary action.
13 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
14 the estimated average hourly salary for all persons performing audits of real estate brokers, and
15 shall include an allocation for travel time to and from the auditor's place of work. Respondents
16 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
17 Commissioner detailing the activities performed during the audit and the amount of time spent
18 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
19 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents under
20 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
21 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
22 suspension provided for in this paragraph shall be stayed.

23 3. All licenses and licensing rights of Respondents, are indefinitely suspended
24 unless or until Respondents, jointly and severally, pay the sum of \$1,329.30 for the
25 Commissioner's reasonable cost of the investigation and enforcement which led to this
26 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
27 made payable to the Real Estate Fund. The investigative and enforcement costs must be

1 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
2 95813-7013, prior to the effective date of this Order.

3 2/6/24
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DATED


KYLE JONES, Attorney
Department of Real Estate

6 * * *

7 I have read the Stipulation and Agreement in Settlement and Order and its terms
8 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
9 rights given to me by the California Administrative Procedure Act (including but not limited to
10 Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
11 intelligently, and voluntarily waive those rights, including the right of requiring the
12 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
13 right to cross-examine witnesses against me and to present evidence in defense and mitigation
14 of the charges.

15 Respondents can signify acceptance and approval of the terms and conditions of
16 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
17 Respondent, to the Department at fax number (916) 576-7840 or by e-mail to
18 kyle.jones@dre.ca.gov. Respondent agrees, acknowledges, and understands that by
19 electronically sending to the Department a copy of Respondent's actual signature as it appears
20 on the Stipulation and Agreement, that receipt of the copy by the Department shall be as
21 binding on Respondent as if the Department had received the original signed Stipulation and
22 Agreement.

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1 February 2, 2024

2 DATED

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4 CHARLES THOMAS BETTENCOURT
5 Designated Officer for Respondent,
6 NORTH BERKELEY PROPERTIES

7 February 2, 2024

8 DATED

9 
10 CHARLES THOMAS BETTENCOURT
11 Respondent

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

14 2/2/2024

15 DATED

16 
17 JOSHUA ROSENTHAL,
18 Attorney for Respondents,
19 NORTH BERKELEY PROPERTIES
20 And CHARLES THOMAS
21 BETTENCOURT

22 * * *

23 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
24 this matter and shall become effective at 12 o'clock noon on MAY 01 2024.

25 IT IS SO ORDERED 4/2/2024, 2024.

26 CHIKA SUNQUIST
27 Real Estate Commissioner

