

Findings

FILED

1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105

MAY 10 2012

4 Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: *Shirley Valeri*

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

No. H-37511 LA
2011090776

13 MAGNO REALTY GROUP and ROBERT G.)
14 SILVERMAN, individually and as)
15 designated officer of Magno)
16 Realty Group,)

STIPULATION
AND
AGREEMENT

17 Respondents.)

18 It is hereby stipulated by and between MAGNO REALTY
19 GROUP and ROBERT G. SILVERMAN, represented by Mary E. Work, Esq.,
20 and the Complainant, acting by and through James A. Demus,
21 Counsel for the Department of Real Estate, as follows for the
22 purpose of settling and disposing of the Accusation filed on
23 September 08, 2011, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondents
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

1 Procedure Act ("APA"), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement ("Stipulation").

4 2. Respondents have received, read and understand the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department of Real Estate in this
7 proceeding.

8 3. Respondents timely filed a Notice of Defense
9 pursuant to Section 11506 of the Government Code for the purpose
10 of requesting a hearing on the allegations in the Accusation.
11 Respondents hereby freely and voluntarily withdraw said Notice of
12 Defense. Respondents acknowledge that they understand that by
13 withdrawing said Notice of Defense they thereby waive the right
14 to require the Commissioner to prove the allegations in the
15 Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that they will waive other rights
17 afforded to them in connection with the hearing such as the right
18 to present evidence in their defense of the allegations in the
19 Accusation and the right to cross-examine witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interest of
22 expedience and economy, Respondents choose not to contest these
23 allegations, but to remain silent and understand that, as a
24 result thereof, these factual allegations, without being admitted
25 or denied, will serve as a prima facie basis for the disciplinary
26 action stipulated to herein. The Real Estate Commissioner shall
27 not be required to provide further evidence to prove said factual

1 allegations.

2 5. This Stipulation is made for the purpose of
3 reaching an agreed disposition of this proceeding and is
4 expressly limited to this proceeding and any other proceeding or
5 case in which the Department of Real Estate ("Department"), the
6 state or federal government, or any agency of this state, another
7 state or federal government is a party.

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

18 7. The Order or any subsequent Order of the Real
19 Estate Commissioner made pursuant to this Stipulation shall not
20 constitute an estoppel, merger or bar to any further
21 administrative or civil proceedings by the Department of Real
22 Estate with respect to any matters which were not specifically
23 alleged to be causes for Accusation in this proceeding but do
24 constitute a bar, estoppel and merger as to any allegations
25 actually contained in the Accusation against Respondents herein.

26 8. Respondents understand that by agreeing to this
27 Stipulation, Respondents agree to pay, pursuant to Business and

1 Professions Code Section 10148, the cost of the audit which led
2 to this disciplinary action. The amount of said cost is
3 \$3,251.50.

4 9. Respondents have received, read, and understand the
5 "Notice Concerning Costs of Subsequent Audit." Respondents
6 further understand that by agreeing to this Stipulation, the
7 findings set forth below in the Determination of Issues become
8 final, and the Commissioner may charge Respondents for the cost
9 of any subsequent audit conducted pursuant to Business and
10 Professions Code Section 10148 to determine if the violations
11 have been corrected. The maximum cost of the subsequent audit
12 will not exceed \$3,251.50.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing, it is stipulated and agreed
15 that the following determination of issues shall be made:

16 I.

17 The conduct of MAGNO REALTY GROUP as described in
18 Paragraph 4, hereinabove, is a basis for discipline of its
19 license and license rights pursuant to Business and Professions
20 Code ("Code") Section 10177(g).

21 II.

22 The conduct of ROBERT G. SILVERMAN, as described in
23 Paragraph 4, hereinabove, is a basis for discipline of his
24 license and license rights pursuant to Business and Professions
25 Code ("Code") Section 10177(g).

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

6 4. Pursuant to Section 10148 of the Business and
7 Professions Code, Respondent shall pay the Commissioner's
8 reasonable cost for: a) the audit which led to this disciplinary
9 action and b) a subsequent audit to determine if Respondent has
10 corrected the trust fund violations found in the Determination of
11 Issues. In calculating the amount of the Commissioner's
12 reasonable cost, the Commissioner may use the estimated average
13 hourly salary for all persons performing audits of real estate
14 brokers, and shall include an allocation for travel costs,
15 including mileage, time to and from the auditor's place of work
16 and per diem. Respondent shall pay such costs within 60 days of
17 receiving an invoice from the Commissioner detailing the
18 activities performed during the audit and the amount of time
19 spent performing those activities. The Commissioner may, in her
20 discretion, vacate and set aside the stay order, if payment is
21 not timely made as provided for herein, or as provided for in a
22 subsequent agreement between the Respondent and the Commissioner.
23 The vacation and the set aside of the stay shall remain in effect
24 until payment is made in full, or until Respondent enters into an
25 agreement satisfactory to the Commissioner to provide for
26 payment.

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1 II.

2 All licenses and licensing rights of Respondent ROBERT
3 G. SILVERMAN, under the Real Estate Law are revoked; provided,
4 however, a restricted real estate broker license shall be issued
5 to Respondent pursuant to Section 10156.5 of the Business and
6 Professions Code, if Respondent makes application therefore and
7 pays to the Department the appropriate fee within 90 days from
8 the effective date of this Decision.

9 The restricted license issued to Respondent shall be
10 subject to all of the provisions of Section 10156.7 of the
11 Business and Professions Code and to the following limitations,
12 conditions and restrictions imposed under authority of Section
13 10156.6 of that code:

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

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

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

6 4. Respondent shall, within nine months from the
7 effective date of this Decision, present evidence satisfactory
8 to the Real Estate Commissioner that Respondent has, since the
9 most recent issuance of an original or renewal real estate
10 license, taken and successfully completed the continuing
11 education requirements of Article 2.5 of Chapter 3 of the Real
12 Estate Law for renewal of a real estate license. If Respondent
13 fails to satisfy this condition, the Commissioner may order the
14 suspension of the restricted license until the Respondent
15 presents such evidence. The Commissioner shall afford
16 Respondent the opportunity for a hearing pursuant to the
17 Administrative Procedure Act to present such evidence.

18 5. Pursuant to Section 10148 of the Business and
19 Professions Code, Respondent shall pay the Commissioner's
20 reasonable cost for: a) the audit which led to this disciplinary
21 action and b) a subsequent audit to determine if Respondent has
22 corrected the trust fund violations found in the Determination of
23 Issues. In calculating the amount of the Commissioner's
24 reasonable cost, the Commissioner may use the estimated average
25 hourly salary for all persons performing audits of real estate
26 brokers, and shall include an allocation for travel costs,
27 including mileage, time to and from the auditor's place of work

1 and per diem. Respondent shall pay such costs within 60 days of
2 receiving an invoice from the Commissioner detailing the
3 activities performed during the audit and the amount of time
4 spent performing those activities. The Commissioner may, in his
5 discretion, vacate and set aside the stay order, if payment is
6 not timely made as provided for herein, or as provided for in a
7 subsequent agreement between the Respondent and the Commissioner.
8 The vacation and the set aside of the stay shall remain in effect
9 until payment is made in full, or until Respondent enters into an
10 agreement satisfactory to the Commissioner to provide for
11 payment.

12 III

13 Respondent ROBERT G. SILVERMAN shall within six (6)
14 months from the effective date of the Decision herein, take and
15 pass the Professional Responsibility Examination administered by
16 the Department including the payment of the appropriate
17 examination fee. If Respondent ROBERT G. SILVERMAN fails to
18 satisfy this condition, the Commissioner may order suspension of
19 Respondent ROBERT G. SILVERMAN's license until Respondent passes
20 the examination.

21 IV

22 Respondents shall provide proof satisfactory to the
23 Real Estate Commissioner of restitution to Robert Di Nonno as
24 follows: 1) \$5,000 within ten(10) days of the effective date of
25 this Decision; 2) an additional \$5,000 within sixty(60) days of
26 the effective date of this Decision; and 3) four(4) subsequent
27 quarterly payments of \$5,000 each. If Respondents fail to

1 satisfy these conditions, the Real Estate Commissioner may order
2 suspension of Respondents' licenses until Respondents provide
3 proof of restitution satisfactory to the Commissioner.

4 V.

5 All proof of payment and completed coursework shall be
6 submitted to Department Counsel James A. Demus, Attention: Legal
7 Section, Department of Real Estate, 320 W. Fourth St., Suite 350,
8 Los Angeles, California 90013-1105, on or before the dates set
9 forth above.

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12 DATED: 3/9/12

James A. Demus
13 JAMES A. DEMUS, Counsel for
14 the Department of Real Estate

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16 EXECUTION OF THE STIPULATION

17 I have read the Stipulation and discussed it with my
18 counsel. Its terms are understood by me and are agreeable and
19 acceptable to me. I understand that I am waiving rights given to
20 me by the California Administrative Procedure Act (including but
21 not limited to Sections 11506, 11508, 11509 and 11513 of the
22 Government Code), and I willingly, intelligently and voluntarily
23 waive those rights, including the right of requiring the
24 Commissioner to prove the allegations in the Accusation at a
25 hearing at which I would have the right to cross-examine
26 witnesses against me and to present evidence in defense and
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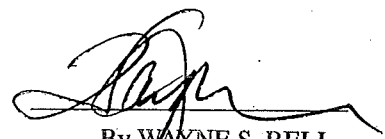
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents MAGNO REALTY GROUP and ROBERT G. SILVERMAN and shall become effective at 12 o'clock noon on MAY 30 2012, 2012.

IT IS SO ORDERED 4/24, 2012.

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel