

David Zue

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Department of Real Estate
320 W. 4th St., Room 350
Los Angeles, California 90013

Telephone: (213) 576-6982

FILED

AUG 23 2012

DEPARTMENT OF REAL ESTATE
BY: *R. H. DeLoach*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-37759 LA
)	L-2012 020 701
)	
)	
)	<u>STIPULATION AND AGREEMENT</u>
HEYMING & JOHNSON, INC.;)	
and FRANK TOBIAS HEYMING)	
individually and as)	
designated officer of)	
Heyming & Johnson, Inc.,)	
)	
Respondents.)	

It is hereby stipulated by and between HEYMING & JOHNSON, INC., and FRANK TOBIAS HEYMING (sometimes referred to as Respondents), and their attorney, The Giardinelli Law Group, and the Complainant, acting by and through James R. Peel, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on December 21, 2011, in this matter.

1 1. All issues which were contested and all evidence
2 which was presented by Complainant and Respondents at a formal
3 hearing on the Accusation, which hearing is to be held in
4 accordance with the provisions of the Administrative Procedure
5 Act ("APA"), shall instead and in place thereof be submitted
6 solely on the basis of the provisions of this Stipulation and
7 Agreement ("Stipulation").

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the
10 Administrative Procedure Act ("APA") and the Accusation filed by
11 the Department of Real Estate in this proceeding.

12 3. On January 3, 2012, Respondents filed a Notice of
13 Defense pursuant to Section 11506 of the Government Code for the
14 purpose of requesting a hearing on the allegations in the
15 Accusation. Respondents hereby freely and voluntarily withdraw
16 said Notice of Defense. Respondents acknowledge that they
17 understand that by withdrawing said Notice of Defense they will
18 thereby waive their rights to require the Commissioner to prove
19 the allegations in the Accusation at a contested hearing held in
20 accordance with the provisions of the APA and that they will
21 waive other rights afforded to them in connection with the
22 hearing such as the right to present evidence in defense of the
23 allegations in the Accusation and the right to cross-examine
24 witnesses.
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2 4. This Stipulation is based on the factual
3 allegations contained in the Accusation filed in this
4 proceeding. In the interest of expedience and economy,
5 Respondents choose not to contest these factual allegations, but
6 to remain silent and understand that, as a result thereof, these
7 factual statements, will serve as a prima facie basis for the
8 disciplinary action stipulated to herein. The Real Estate
9 Commissioner shall not be required to provide further evidence
10 to prove such allegations.

11 5. This Stipulation is made for the purpose of
12 reaching an agreed disposition of this proceeding and is
13 expressly limited to this proceeding and any other proceeding or
14 case in which the Department of Real Estate ("Department"), the
15 state or federal government, or an agency of this state, another
16 state or the federal government is involved.

17 6. It is understood by the parties that the Real
18 Estate Commissioner may adopt the Stipulation as his decision
19 in this matter thereby imposing the penalty and sanctions on
20 Respondents' real estate licenses and license rights as set
21 forth in the below "Order". In the event that the Commissioner
22 in his discretion does not adopt the Stipulation, the
23 Stipulation shall be void and of no effect, and Respondent shall
24 retain the right to a hearing and proceeding on the Accusation
25 under all the provisions of the APA and shall not be bound by
26 any stipulation or waiver made herein.
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any conduct which was not specifically
6 alleged to be causes for accusation in this proceeding.

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations and waivers
9 and solely for the purpose of settlement of the pending
10 Accusation, it is stipulated and agreed that the following
11 determination of issues shall be made:

12 I

13 The conduct, acts and/or omissions of Respondents
14 HEYMING & JOHNSON, INC., and FRANK TOBIAS HEYMING, as set forth
15 in the Accusation, constitute cause for the suspension or
16 revocation of all of the real estate licenses and license rights
17 of Respondents under the provisions of Section 10177(g) of the
18 Business and Professions Code ("Code").
19

20 ORDER

21 All licenses and licensing rights of Respondents
22 HEYMING & JOHNSON, INC., and FRANK TOBIAS HEYMING under the Real
23 Estate Law are suspended for a period of sixty (60) days from
24 the effective date of this Decision.

25 1. Provided, however, that sixty (60) days of said
26 suspension shall be stayed for two (2) years, upon the following
27 terms and conditions:

1 a. Respondents shall obey all laws, rules and
2 regulations governing the rights, duties and responsibilities of
3 a real estate licensee in the State of California; and

4 b. That no final subsequent determination be made,
5 after hearing or upon stipulation that cause for disciplinary
6 action occurred within two (2) years of the effective date of
7 this Decision. Should such a determination be made, the
8 Commissioner may, in his discretion, vacate and set aside the
9 stay order and reimpose all or a portion of the stayed
10 suspension. Should no such determination be made, the stay
11 imposed herein shall become permanent.

12 2. Pursuant to Section 10148 of the Business and
13 Professions Code, Respondents HEYMING & JOHNSON, INC. and FRANK
14 TOBIAS HEYMING shall pay the Commissioner's reasonable cost for
15 the audit which led to this disciplinary action, and shall pay
16 the Commissioner's reasonable cost for a subsequent audit to
17 determine if Respondent HEYMING & JOHNSON, INC. has corrected
18 the violations found in the Determination of Issues. In
19 calculating the amount of the Commissioner's reasonable cost,
20 the Commissioner may use the estimated average hourly salary for
21 all persons performing audits of real estate brokers, and shall
22 include an allocation for travel costs, including mileage, time
23 to and from the auditor's place of work and per diem.
24 Respondents shall pay such cost within 45 days of receiving an
25 invoice from the Commissioner detailing the activities performed
26 during the audit and the amount of time spent performing those
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1 activities. The Commissioner may, in his discretion, vacate and
2 set aside the stay order, if payment is not timely made as
3 provided for herein, or as provided for in a subsequent
4 agreement between the Respondents and the Commissioner. The
5 vacation and the set aside of the stay shall remain in effect
6 until payment is made in full, or until Respondents enter into
7 an agreement satisfactory to the Commissioner to provide for
8 payment. Should no order vacating the stay be issued the stay
9 imposed herein shall become permanent.

10 3. All licenses and licensing rights of Respondent
11 FRANK TOBIAS JOHNSON are indefinitely suspended unless and until
12 Respondent provides proof satisfactory to the Commissioner, of
13 having taken and successfully completed the continuing education
14 course on trust fund accounting and handling specified in
15 paragraph (3) of subdivision (a) of Section 10170.5 of the
16 Business and Professions Code. Proof of satisfaction of this
17 requirement includes evidence that Respondent has successfully
18 completed the trust fund account and handling continuing
19 education course within 120 days prior to the effective date of
20 the Decision in this matter.

21 4. Prior to the effective date of this Decision,
22 Respondents shall submit satisfactory proof to the Department of
23 Real Estate that all trust account shortages have been
24 corrected. If the Commissioner determines that the proof is
25 unsatisfactory the Commissioner may, by separate order, suspend
26 Respondent's license.
27

1 5. All proof requested by this Order shall be
2 submitted to Department Counsel James Peel, Department of Real
3 Estate, 320 W. Fourth St., Room 350, Los Angeles, California
4 90013.

5 DATED: June 8, 2012

James R. Peel
6 JAMES R. PEEL, Counsel for the
7 Department of Real Estate

8 * * *

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

20 Respondents can signify acceptance and approval of the
21 terms and conditions of this Stipulation and Agreement by faxing
22 a copy of the signature page, as actually signed by Respondents,
23 to the Department at the following telephone/fax number:

24 (213) 576-6917. Respondents agree, acknowledge and understand
25 that by electronically sending to the Department a fax copy of
26 his or her actual signature as it appears on the Stipulation and
27 Agreement, that receipt of the faxed copy by the Department

1 shall be as binding on Respondents as if the Department had
2 received the original signed Stipulation and Agreement.

3 Further, if the Respondents are represented, the
4 Respondents' counsel can signify his or her agreement to the
5 terms and conditions of the Stipulation and Agreement by
6 submitting that signature via fax.

7
8 DATED: June 6, 2012 [Signature] Pres.
9 HEYMING & JOHNSON, INC.,
Respondent

10 DATED: June 6, 2012 [Signature]
11 FRANK TOBIAS JOHNSON
12 Respondent Heyming & Johnson

13 DATED: June 7, 2012 [Signature]
14 The Giardinelli Law Group
15 Counsel For Respondents

16 * * *

17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision and Order in this matter, and shall
19 become effective at 12 o'clock noon on _____

20 IT IS SO ORDERED _____

21 REAL ESTATE COMMISSIONER
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shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

Further, if the Respondents are represented, the Respondents' counsel can signify his or her agreement to the terms and conditions of the Stipulation and Agreement by submitting that signature via fax.

DATED: _____
HEYMING & JOHNSON, INC.,
Respondent

DATED: _____
FRANK TOBIAS JOHNSON
Respondent

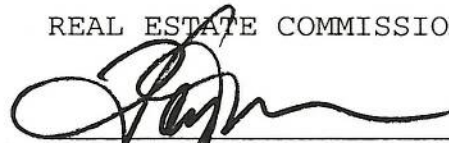
DATED: _____
The Giardinelli Law Group
Counsel For Respondents

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and Order in this matter, and shall become effective at 12 o'clock noon on SEP 12 2012.

IT IS SO ORDERED 7/2/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel