

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013

4 Telephone: (213) 576-6982
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FILED

JUL 22 2013

BUREAU OF REAL ESTATE

By Janice B. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-38289 LA
12 CHRISTIAN MICHAEL DAVEY,)
13 doing business as Empire) STIPULATION AND AGREEMENT
14 Management Company,)
15)
16 Respondent.)
17

18 It is hereby stipulated by and between CHRISTIAN
19 MICHAEL DAVEY (sometimes referred to as Respondent), and his
20 attorney, Mark F. Miller, and the Complainant, acting by and
21 through James R. Peel, Counsel for the Department of Real
22 Estate, as follows for the purpose of settling and disposing of
23 the Accusation filed on July 24, 2012, in this matter.
24

25 1. All issues which were contested and all evidence
26 which was presented by Complainant and Respondent at a formal
27 hearing on the Accusation, which hearing is to be held in

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

5 2. Respondent has received, read and understands the
6 Statement to Respondent, the Discovery Provisions of the
7 Administrative Procedure Act ("APA") and the Accusation filed by
8 the Department of Real Estate in this proceeding.

9 3. On August 13, 2012, Respondent filed a Notice of
10 Defense pursuant to Section 11506 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondent hereby freely and voluntarily withdraws
13 said Notice of Defense. Respondent acknowledges that he
14 understands that by withdrawing said Notice of Defense he will
15 thereby waive his right to require the Commissioner to prove the
16 allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that he will waive
18 other rights afforded to him in connection with the hearing such
19 as the right to present evidence in defense of the allegations
20 in the Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation filed in this
23 proceeding. In the interest of expedience and economy,
24 Respondent chooses not to contest these factual allegations, but
25 to remain silent and understands that, as a result thereof,
26 these factual statements, will serve as a prima facie basis for
27

1 the disciplinary action stipulated to herein. The Real Estate
2 Commissioner shall not be required to provide further evidence
3 to prove such allegations.

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

10 6. It is understood by the parties that the Real
11 Estate Commissioner may adopt the Stipulation as his decision
12 in this matter thereby imposing the penalty and sanctions on
13 Respondent's real estate licenses and license rights as set
14 forth in the below "Order". In the event that the Commissioner
15 in his discretion does not adopt the Stipulation, the
16 Stipulation shall be void and of no effect, and Respondent shall
17 retain the right to a hearing and proceeding on the Accusation
18 under all the provisions of the APA and shall not be bound by
19 any stipulation or waiver made herein.
20

21 7. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation shall not
23 constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department of Real
25 Estate with respect to any conduct which was not specifically
26 alleged to be causes for accusation in this proceeding.

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DETERMINATION OF ISSUES

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

I

The conduct, acts and/or omissions of Respondent CHRISTIAN MICHAEL DAVEY, as set forth in the Accusation, constitute cause for the suspension or revocation of all of the real estate licenses and license rights of Respondent under the provisions of Sections 10177(d) and 10177(g) of the Business and Professions Code ("Code") for violation of Code Section 10145.

ORDER

All licenses and licensing rights of Respondent CHRISTIAN MICHAEL DAVEY under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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

2. That no final subsequent determination be made, after hearing or upon stipulation that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the

1 Commissioner may, in his discretion, vacate and set aside the
2 stay order and reimpose all or a portion of the stayed
3 suspension. Should no such determination be made, the stay
4 imposed herein shall become permanent.

5 3. Respondent shall, within six months from the
6 effective date of this Decision, take and pass the Professional
7 Responsibility Examination administered by the Department
8 including the payment of the appropriate examination fee. If
9 Respondent fails to satisfy this condition, the Commissioner may
10 order suspension of Respondent's license until Respondent passes
11 the examination.

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

24 5. All licenses and licensing rights of Respondent
25 are indefinitely suspended unless or until Respondent provides
26 proof satisfactory to the Commissioner of having corrected all
27 trust account shortages and provides evidence of the source of

1 the funds used to cure said shortage.

2 6. Pursuant to Section 10148 of the Business and
3 Professions Code, Respondent shall pay the Commissioner's
4 reasonable cost for: a) the audit which led to this
5 disciplinary action with a cost of \$6,001.60 and b) a subsequent
6 audit to determine if Respondent has corrected the trust fund
7 violations found in paragraphs I of the Determination of Issues.
8 In calculating the amount of the Commissioner's reasonable cost,
9 the Commissioner may use the estimated average hourly salary for
10 all persons performing audits of real estate brokers, and shall
11 include an allocation for travel costs, including mileage, time
12 to and from the auditor's place of work and per diem.
13 Respondent shall pay such cost within 60 days of receiving an
14 invoice from the Commissioner detailing the activities performed
15 during the audit and the amount of time spent performing those
16 activities. The Commissioner may, in his discretion, vacate and
17 set aside the stay order if payment is not timely made as
18 provided for herein, or as provided for in a subsequent
19 agreement between the Respondent and the Commissioner. The
20 vacation and the set aside of the stay shall remain in effect
21 until payment is made in full, or until Respondent enters into
22 an agreement satisfactory to the Commissioner to provide for
23 payment. Should no order vacating the stay be issued, either in
24 accordance with this condition or condition "2" above, the stay
25 imposed herein shall become permanent.
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1 7. Respondent understands that by agreeing to this
2 Stipulation and Agreement, Respondent agrees to pay, pursuant to
3 Section 10106 of the California Business and Professions Code
4 (Code), the cost of the investigation and enforcement which
5 resulted in the determination that Respondent committed the
6 violations found in the Determination of Issues. The amount of
7 said costs is \$366.

8 All licenses and licensing rights of Respondent are
9 indefinitely suspended unless or until Respondent pays the sum
10 of \$366 for the Commissioner's reasonable cost of the
11 investigation and enforcement which led to this disciplinary
12 action. Said payment shall be in the form of a cashier's check
13 or certified check made payable to the Department of Real
14 Estate.

15
16 DATED: March 28, 2013 James R. Peel
17 JAMES R. PEEL, Counsel for the
18 Department of Real Estate

19 * * *

20 I have read the Stipulation and Agreement, discussed
21 it with counsel, and its terms are understood by me and are
22 agreeable and acceptable to me. I understand that I am waiving
23 rights given to me by the California Administrative Procedure
24 Act (including but not limited to Sections 11506, 11508, 11509
25 and 11513 of the Government Code), and I willingly,
26 intelligently and voluntarily waive those rights, including the
27 right of requiring the Commissioner to prove the allegations in

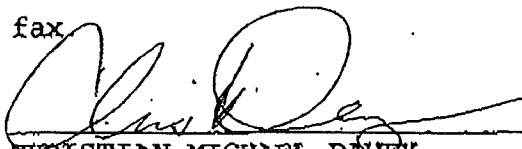
1 the Accusation at a hearing at which I would have the right to
2 cross-examine witnesses against me and to present evidence in
3 defense and mitigation of the charges.

4 Respondent can signify acceptance and approval of the
5 terms and conditions of this Stipulation and Agreement by faxing
6 a copy of the signature page, as actually signed by Respondent,
7 to the Department at the following telephone/fax number:

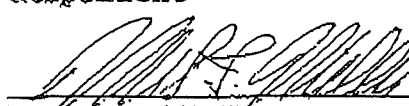
8 (213) 576-6917. Respondent agrees, acknowledges and understands
9 that by electronically sending to the Department a fax copy of
10 his or her actual signature as it appears on the Stipulation and
11 Agreement, that receipt of the faxed copy by the Department
12 shall be as binding on Respondents as if the Department had
13 received the original signed Stipulation and Agreement.

14 Further, if the Respondent is represented, the
15 Respondent's counsel can signify his or her agreement to the
16 terms and conditions of the Stipulation and Agreement by
17 submitting that signature via fax.

18 DATED: 3/15/2013


19 CHRISTIAN MICHAEL DAVEY
20 Respondent

21 DATED: 3/25/2013


22 MARK F. MILLER, OF HANFREDI, LEVINE,
23 Respondent's Counsel
24 ELLIS, MILLER
25 + LANSOW, APC
26
27

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15 Respondent's counsel can signify his or her agreement to the
16 terms and conditions of the Stipulation and Agreement by
17 submitting that signature via fax.

18 DATED: _____

CHRISTIAN MICHAEL DAVEY
Respondent

21 DATED: _____

MARK F. MILLER
Respondent's Counsel

* * *

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 AUG 21 2013.

IT IS SO ORDERED MAY 6, 2013.

REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to be "Jeffrey Mason", written over a horizontal line.

By: Jeffrey Mason
Chief Deputy Commissioner