

Bureau of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013

(213) 576-6982

FILED

OCT 12 2016

BUREAU OF REAL ESTATE

By *Greg M. Buda*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

MICHAEL ROBERT FINK,

Respondent.

No. H-40020 LA

STIPULATION AND AGREEMENT

It is hereby stipulated by and between MICHAEL ROBERT FINK ("FINK" or "Respondent FINK") represented by Frank M. Buda, Esq. and the Complainant, acting by and through Julie L. To, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on November 16, 2015, in Case No. H-40020 LA, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"),

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

3 2. Respondent has received, read and understands the Statement to Respondent,
4 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in
5 this proceeding.

6 3. On December 3, 2015, Respondent filed a Notice of Defense pursuant to
7 Section 11506 of the Government Code for the purpose of requesting a hearing on the
8 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
9 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
10 Defense he thereby waives his right to require the Commissioner to prove the allegations in the
11 Accusation at a contested hearing held in accordance with the provisions of the APA and that he
12 will waive other rights afforded to him in connection with the hearing such as the right to
13 present evidence in defense of the allegations in the Accusation and the right to cross-examine
14 witnesses.

15 4. This Stipulation is based on the factual allegations contained in the
16 Accusation. In the interest of expedience and economy, Respondent chooses not to contest
17 these allegations, but to remain silent and understands that, as a result thereof, these factual
18 allegations, without being admitted or denied, will serve as a prima facie basis for the
19 disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to
20 provide further evidence to prove said factual allegations.

21 5. This Stipulation is made for the purpose of reaching an agreed disposition of
22 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
23 which the Bureau of Real Estate ("Bureau") or another licensing agency of this state, another
24 state or if the federal government is involved, and otherwise shall not be admissible in any other
25 criminal or civil proceeding.

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

7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Bureau of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

8. Respondent understands that by agreeing to this Stipulation and Agreement, Respondent agrees to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the determination that Respondents committed the violations found in the Determination of Issues. The amount of said costs for the original audit (LA140143) is \$3,599.90.

9. Respondent has received, read, and understands the "Notice Concerning Costs of Subsequent Audit." Respondent further understands that by agreeing to this Stipulation, the findings set forth below in the Determination of Issues become final, and the Commissioner may charge Respondent for the cost of any subsequent audit conducted pursuant to Business and Professions Code Section 10148 to determine if the violations have been corrected. The maximum cost of the follow-up audit will not exceed one hundred twenty percent (120%) of the cost of the original audit. In the instant case, the cost of the original audit LA140143 is \$3,599.90, and the maximum cost of the follow-up audit will not exceed \$4,319.88.

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10. Respondent understands that by agreeing to this Stipulation and Agreement, Respondent agrees to pay, pursuant to Section 10106 of the California Business and Professions Code ("Code"), the cost of the investigation and enforcement which resulted in the determination that Respondents committed the violations found in the Determination of Issues. The amount of said costs is \$1,496.65.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct, acts or omissions of Respondent, as described in Paragraph 4, herein above, are in violation of Business and Professions Code ("Code") Section 10145 and Regulations 2831, 2831.1, and 2835; Code Section 10159.5 and Regulation 2731; and Code Section 10162 and Regulation 2715, and are bases for the suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Code Sections 10177(d) and 10177(g).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent MICHAEL ROBERT FINK
under the Real Estate Law are suspended for a period of thirty (30) days from the effective date
of this Decision and Order; provided, however, that:

1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the
following terms and conditions:

a) 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,

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

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

1 3. Respondent shall, within six (6) months from the effective date of this
2 Decision and Order, take and pass the Professional Responsibility Examination administered by
3 the Bureau including the payment of the appropriate examination fee. If Respondent fails to
4 satisfy this condition, Respondent's real estate license shall automatically be suspended until
5 Respondent passes the examination.

6 4. All licenses and licensing rights of Respondent MICHAEL ROBERT FINK are
7 indefinitely suspended unless or until Respondent pays the sum of \$1,496.65 for the
8 Commissioner's reasonable cost of the investigation and enforcement which led to this
9 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
10 made payable to the Bureau of Real Estate. The investigative and enforcement costs must be
11 delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
12 95813-7013, prior to the effective date of this Decision and Order.

13 5. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
14 \$3,599.90 for the Commissioner's cost of the audit which led to this disciplinary action.
15 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
16 Commissioner. Payment of audit costs should not be made until Respondents receive the
17 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
18 Respondent's real estate license shall automatically be suspended until payment is made in full,
19 or until a decision providing otherwise is adopted following a hearing held pursuant to this
20 condition.

21 DATED: 8-23-16



Julie L. To, Counsel for Complainant

* * *

24 I have read the Stipulation and Agreement, have discussed it with my counsel,
25 and its terms are understood by me and are agreeable and acceptable to me. I understand that I
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1 am waiving rights given to me by the California Administrative Procedure Act (including, but
2 not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I
3 willingly, intelligently and voluntarily waive those rights, including the right of requiring the
4 Commissioner to prove the allegations in the Accusation at a hearing at which we would have
5 the right to cross-examine witnesses against us and to present evidence in defense and
6 mitigation of the charges.

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1 Respondent shall send a hard copy of the original signed Stipulation and
2 Agreement to: Julie To, Bureau of Real Estate, 320 West Fourth Street, Suite 350, Los Angeles,
3 CA 90013. In the event of time constraints before an administrative hearing, Respondent can
4 signify acceptance and approval of the terms and conditions of this Stipulation and Agreement
5 by emailing a scanned copy of the signature page, as actually signed by Respondent, to the
6 Bureau counsel assigned to this case. Respondent agrees, acknowledges and understands that by
7 electronically sending the Bureau a scan of Respondent's actual signature as it appears on the
8 Stipulation and Agreement, that receipt of the scan by the Bureau shall be binding on
9 Respondent as if the Bureau had received the original signed Stipulation and Agreement.


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11 DATED: 8/18/16


MICHAEL ROBERT FINK, Respondent

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

16 DATED: 8-19-16


Frank M. Buda, Attorney for Respondent

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19 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
20 this matter and shall become effective at 12 o'clock noon on ~~9/1~~ 8/1 2016.

21 IT IS SO ORDERED 10/7/2016

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23 REAL ESTATE COMMISSIONER

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25 WAYNE S. BELL
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