

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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FILED
AUG 12 1996
DEPARTMENT OF REAL ESTATE

By *Laurie L. Zan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-3174 SAC
12 NETWORK REAL ESTATE OF)
13 CENTRAL CALIFORNIA, INC.,) OAH No. N9601047
14 WILLIAM PAPOLA, JR.,)
15 Respondents.) STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between NETWORK REAL
17 ESTATE OF CENTRAL CALIFORNIA, INC. (hereinafter "Respondent
18 NETWORK") and WILLIAM PAPOLA, JR. (hereinafter "Respondent
19 PAPOLA"), and their attorney of record, Frank M. Buda, and the
20 Complainant, acting by and through David A. Peters, Counsel for
21 the Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation filed on November 17,
23 1995 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

H-3174 SAC

- 1 -

NETWORK REAL ESTATE OF
CENTRAL CALIFORNIA, INC.
WILLIAM PAPOLA, JR.



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 in Settlement.

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. On November 30, 1995, Respondents filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondents hereby freely and voluntarily withdraw
12 said Notice of Defense. Respondents acknowledge that they
13 understand that by withdrawing said Notice of Defense they will
14 thereby waive their right to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that they will waive
17 other rights afforded to them in connection with the hearing such
18 as the right to present evidence in defense of the allegations in
19 the Accusation and the right to cross-examine witnesses.

20 4. Respondents, pursuant to the limitations set forth
21 below, hereby agree that this matter shall be submitted on the
22 pleadings filed in these proceedings without admitting any of the
23 allegations contained therein. The Real Estate Commissioner shall
24 not be required to provide further evidence to prove such
25 allegations.

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1 5. It is understood by the parties that the Real Estate
2 Commissioner may adopt the Stipulation and Agreement as his
3 decision in this matter thereby imposing the penalty and sanctions
4 on Respondents' real estate licenses and license rights as set
5 forth in the below "Order". In the event that the Commissioner in
6 his discretion does not adopt the Stipulation and Agreement in
7 Settlement, it shall be void and of no effect, and Respondents
8 shall retain the right to a hearing and proceeding on the
9 Accusation under all the provisions of the APA and shall not be
10 bound by any admission or waiver made herein.

11 6. The Order or any subsequent Order of the Real Estate
12 Commissioner made pursuant to this Stipulation and Agreement in
13 Settlement shall constitute an estoppel, merger or bar to any
14 further administrative or civil proceedings by the Department of
15 Real Estate with respect to any matters which were specifically
16 alleged to be causes for accusation in this proceeding.

17 7. Pursuant to this Stipulation, the Determination of
18 Issues and Order are agreed to only for the purpose of this
19 proceeding between Respondents and the Department. The parties
20 hereto intend that the Decision not be given res judicata/
21 collateral estoppel effect except as between them. The order
22 based hereon shall not be treated as an admission of liability or
23 responsibility in any other proceeding not involving these same
24 parties.

25 8. Respondent PAPOLA has received, read, and
26 understands the "Notice Concerning Costs of Subsequent Audits".
27 Respondent PAPOLA understands that by agreeing to this Stipulation



1 and Agreement in Settlement, the findings set forth below in the
2 DETERMINATION OF ISSUES become final, and that the Commissioner
3 may charge Respondent PAPOLA for the costs of any audit conducted
4 pursuant to Section 10148 of the Business and Professions Code to
5 determine if the violations have been corrected. The maximum
6 costs of said audit will not exceed \$2,745.60.

7 DETERMINATION OF ISSUES

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

12 I

13 The acts and/or omissions of Respondents as described in
14 Paragraphs VIII, IX and XIII of the First Cause of Accusation,
15 violate Section 10177(d) of the Business and Professions Code in
16 conjunction with Section 10145 of the Business and Professions
17 Code and Sections 2832.1 and 2731 of Title 10, of the California
18 Code of Regulations and are grounds for the suspension or
19 revocation of the real estate licenses and all license rights of
20 Respondents under the provisions of the Real Estate Law.

21 ORDER

22 I

23 A. All licenses and licensing rights of Respondents
24 NETWORK REAL ESTATE OF CENTRAL CALIFORNIA, INC. and WILLIAM
25 PAPOLA, JR. under the Real Estate law are suspended for a period
26 of sixty (60) days from the effective date of this Order;
27 provided, however, that:

1 1. Forty (40) days of said suspension shall be stayed
2 for two (2) years upon the following terms and conditions:

- 3 (a) Respondents shall obey all laws, rules and
4 regulations governing the rights, duties and
5 responsibilities of a real estate licensee in the
6 State of California; and
- 7 (b) That no final subsequent determination be made,
8 after hearing or upon stipulation, that cause for
9 disciplinary action occurred within two (2) years
10 from the effective date of this Order. Should such
11 a determination be made, the Commissioner may, in
12 his discretion, vacate and set aside the stay order
13 and reimpose all or a portion of the stayed
14 suspension. Should no such determination be made,
15 the stay imposed herein shall become permanent.

16 2. The remaining twenty (20) days of said 60-day
17 suspension shall be stayed upon the condition that each Respondent
18 petitions pursuant to Section 10175.2 of the Business and
19 Professions Code and each Respondent pays a monetary penalty
20 pursuant to Section 10175.2 of the Business and Professions Code
21 at a rate of \$50.00 for each day of the suspension for a total
22 monetary penalty of \$2,000.00:

- 23 (a) Said payment shall be in the form of a cashier's
24 check or certified check made payable to the
25 Recovery Account of the Real Estate Fund. Said
26 check must be delivered to the Department prior to
27 the effective date of the Order in this matter.

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(b) No further cause for disciplinary action against the Real Estate licenses of Respondents occurs within two (2) years from the effective date of the decision in this matter.

(c) If Respondents fail to pay the monetary penalty in accordance with the terms and conditions of the Order, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondents shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms of this Order.

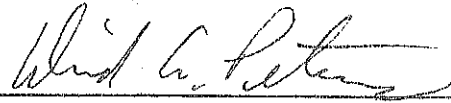
3. Pursuant to Section 10148 of the Business and Professions Code, Respondents shall pay the Commissioner's reasonable cost for an audit to determine if Respondents have corrected the trust fund violations found in Paragraphs I of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondents shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not

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1 timely made as provided for herein, or as provided for in a
2 subsequent agreement between the Respondents and the Commissioner.
3 The vacation and the set aside of the stay shall remain in effect
4 until payment is made in full, or until Respondents enter into an
5 agreement satisfactory to the Commissioner to provide for payment.
6 Should no order vacating the stay be issued, either in accordance
7 with this condition or conditions "1" and/or "2", the stay imposed
8 herein shall become permanent.

9
10 6/12/96

DATED



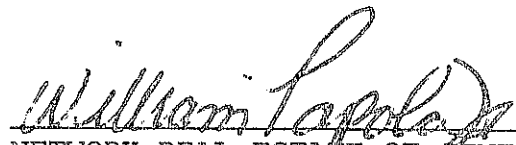
DAVID A. PETERS, Counsel
DEPARTMENT OF REAL ESTATE

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13 I have read the Stipulation and Agreement, have
14 discussed it with my counsel, and its terms are understood by me
15 and are agreeable and acceptable to me. I understand that I am
16 waiving rights given to me by the California Administrative
17 Procedure Act (including but not limited to Sections 11506, 11508,
18 11509, and 11513 of the Government Code), and I willingly,
19 intelligently, and voluntarily waive those rights, including the
20 right of requiring the Commissioner to prove the allegations in
21 the Accusation at a hearing at which I would have the right to
22 cross-examine witnesses against me to present evidence in defense
23 and mitigation of the charges.

24
25 June 24, 1996

DATED



NETWORK REAL ESTATE OF CENTRAL
CALIFORNIA, INC.

Respondent

By: William Papola, Jr.

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June 24 1996
DATED

William Papola, Jr.
WILLIAM PAPOLA, JR.
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

6-19-96
DATED

Frank M. Buda
FRANK M. BUDA
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement for Settlement is adopted by the Real Estate Commissioner as Decision and Order and shall become effective at 12 o'clock noon on September 3, 1996.

IT IS SO ORDERED 7/25/96

JIM ANTT, JR.
Real Estate Commissioner
J. Antt, Jr.