

1 DEPARTMENT OF REAL ESTATE  
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**FILED**  
MAY 10 2013  
DEPARTMENT OF REAL ESTATE  
By *K. Frost*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 ) NO. H-4243 SD  
13 DME PARTNERS, INC. and )  
14 DONNA LEIGH SANFILIPPO, ) STIPULATION AND AGREEMENT  
15 Respondents. )

16 It is hereby stipulated by and between Respondents DME PARTNERS, INC., and  
17 DONNA LEIGH SANFILIPPO, (collectively "Respondents"), acting by and through Jacqueline  
18 A. Oliver, Esq., Counsel for Respondents, and the Complainant, acting by and through Annette  
19 E. Ferrante, Esq., Counsel for the Department of Real Estate ("Department"), as follows for the  
20 purpose of settling and disposing of the Accusation filed on October 21, 2011, in this matter:

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

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1                   2.       Respondents have received, read and understand the Statement to  
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department  
3 in this proceeding.

4                   3.       Respondents filed a Notice of Defense pursuant to Section 11505 of the  
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
6 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents  
7 acknowledge that Respondents understand that by withdrawing said Notice of Defense,  
8 Respondents will thereby waive Respondents' right to require the Real Estate Commissioner  
9 ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in  
10 accordance with the provisions of the APA and that Respondents will waive other rights  
11 afforded to Respondents in connection with the hearing such as the right to present evidence in  
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13                   4.       This Stipulation is based on the factual allegations contained in the  
14 Accusation. In the interest of expedience and economy, Respondents choose not to contest these  
15 factual allegations, but to remain silent and understand that, as a result thereof, these factual  
16 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set  
17 forth below. The Commissioner shall not be required to provide further evidence to prove such  
18 allegations.

19                   5.       This Stipulation and Respondents' decision not to contest the Accusation  
20 are made for the purpose of reaching an agreed disposition in this proceeding and are expressly  
21 limited to this proceeding and any other proceeding or case in which the Department, the state or  
22 federal government, an agency of this state, or an agency of another state is involved.

23                   6.       It is understood by the parties that the Commissioner may adopt the  
24 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and  
25 sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"  
26 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and

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1 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing  
2 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound  
3 by any admission or waiver made herein.

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

8           8.       Respondents understand that by agreeing to this Stipulation and  
9 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business  
10 and Professions Code (“the Code”), the costs of the audit which resulted in the determination  
11 that Respondents committed the trust fund violation(s) found in the Determination of Issues.  
12 The amount of such costs is \$3,300.00.

13           9.       Respondents further understand that by agreeing to this Stipulation and  
14 Agreement, the findings set forth below in the Determination of Issues become final, and that  
15 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant  
16 to Section 10148 of the Code to determine if the violations have been corrected. The  
17 maximum costs of said audit shall not exceed \$3,300.00.

18           10.      Respondents understand that by agreeing to this Stipulation and  
19 Agreement, Respondents agree to pay, pursuant to Section 10106 of the Code, the costs of the  
20 investigation and enforcement of this case which resulted in the determination that  
21 Respondents committed the violation(s) found in the Determination of Issues. The amount of  
22 such cost is \$700.00.

23           11.      In lieu of proceeding in this matter in accordance with the provisions of  
24 the APA, Respondent DME PARTNERS, INC. (“DME”) wishes to voluntarily surrender its  
25 corporate real estate broker license issued by the Department, pursuant to Code Section  
26 10100.2. Respondent DONNA LEIGH SANFILIPPO (“SANFILIPPO”) is an officer and

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1 director of Respondent DME, and is authorized to sign this declaration on behalf of  
2 Respondent DME. Respondent SANFILIPPO is represented by Attorney Jacqueline A. Oliver,  
3 and is acting on behalf of Respondent DME.

4           12. Respondent SANFILIPPO understands that by so voluntarily  
5 surrendering Respondent DME's license, Respondent DME may be relicensed as a broker  
6 corporation only by petitioning for reinstatement pursuant to Section 11522 of the Government  
7 Code. Respondent SANFILIPPO also understands that by so voluntarily surrendering  
8 Respondent DME's license, Respondents agree to the following:

9           a. The filing of this Stipulation and Agreement shall be deemed as  
10 Respondent DME's declaration and petition for voluntary surrender.

11           b. It shall also be deemed to be an understanding and agreement by  
12 Respondent DME that it waives all rights Respondent DME has to require the Commissioner to  
13 prove the allegations contained in the Accusation filed in this matter at a hearing held in  
14 accordance with the provisions of the APA, and that Respondent DME also waives other rights  
15 afforded to Respondent DME in connection with the hearing such as the right to discovery, the  
16 right to present evidence in defense of the allegations in the Accusation and the right to cross-  
17 examine witnesses.

18           13. Respondent SANFILIPPO on behalf of Respondent DME further agrees  
19 that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits  
20 and all relevant evidence obtained by the Department in this matter prior to the Commissioner's  
21 acceptance, and all allegations contained in the Accusation filed in the Department Case No.  
22 H-4243 SD, may be considered by the Department to be true and correct for the purpose of  
23 deciding whether to grant relicensure or reinstatement to Respondent DME pursuant to  
24 Government Code Section 11522.

25           14. Respondent SANFILIPPO on behalf of Respondent DME freely and  
26 voluntarily surrenders all of Respondent DME's licenses and license rights under the Real  
27 Estate Law.

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DETERMINATION OF ISSUES

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

I.

The acts and omissions of Respondent DME, as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent DME under the provisions of Sections 10240(a), 10145, 10176(e), and 10177(g) of the Code, and Sections 2831, 2831.1, 2831.2, 2832, 2835, and 2840 of Title 10 of the California Code of Regulations (“the Regulations”).

II.

The acts and omissions of Respondent SANFILIPPO as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent SANFILIPPO under the provisions of Sections 10159.2 and 10177(h) of the Code, and Section 2725 of Title 10 of the Regulations.

ORDER

I.

All licenses and licensing rights of Respondent SANFILIPPO under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this 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 SANFILIPPO 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 for disciplinary action occurred within two (2) years from the effective

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

5 2. Thirty (30) days of said suspension shall be stayed, upon the condition  
6 that Respondent SANFILIPPO petitions pursuant to Section 10175.2 of the Code and pays a  
7 monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of  
8 the suspension for a total monetary penalty of \$1,500.00.

9 a. Said payment shall be in the form of a cashier's check or certified check  
10 made payable to the Consumer Recovery Account of the Real Estate Fund. Said check must be  
11 delivered to the Department prior to the effective date of the Decision in this matter.

12 b. No further cause for disciplinary action against the real estate license of  
13 Respondent SANFILIPPO occurs within two (2) years from the effective date of the decision in  
14 this matter.

15 c. If Respondent SANFILIPPO fails to pay the monetary penalty in  
16 accordance with the terms and conditions of the Decision, the Commissioner may, without a  
17 hearing, order the immediate execution of all or any part of the stayed suspension, in which  
18 event, Respondent SANFILIPPO shall not be entitled to any repayment nor credit, prorated or  
19 otherwise, for money paid to the Department under the terms of this decision.

20 d. If Respondent SANFILIPPO pays the monetary penalty, and if no  
21 further cause for disciplinary action against the real estate license of Respondent SANFILIPPO  
22 occurs within two (2) years from the effective date of the Decision herein, then the stay hereby  
23 granted shall become permanent.

24 3. Respondent SANFILIPPO shall, within six (6) months from the effective  
25 date of this Order, take and pass the Professional Responsibility Examination administered by  
26 the Department, including the payment of the appropriate examination fee. If Respondent

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1 SANFILIPPO fails to satisfy this condition, the Commissioner may order the suspension of all  
2 licenses and licensing rights of Respondent SANFILIPPO until she passes the examination.

3 4. Notwithstanding any other provision of this Order, all licenses and  
4 licensing rights of Respondent SANFILIPPO are suspended unless and until she provides proof  
5 satisfactory to the Commissioner that she has taken and successfully completed the continuing  
6 education course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of  
7 the Code. The course must have been completed no earlier than one hundred twenty (120) days  
8 prior to the effective date of this Order, and proof must be submitted prior to the effective date  
9 of this Order, to prevent suspension of Respondent SANFILIPPO's license pursuant to this  
10 condition.

11 II.

12 1. Respondent SANFILIPPO shall pay the sum of \$3,300.00 for the  
13 Commissioner's cost of the audit which led to this disciplinary action. Respondent  
14 SANFILIPPO shall pay such cost within sixty (60) days of receiving an invoice therefore from  
15 the Commissioner. The Commissioner may indefinitely suspend all licenses and licensing  
16 right of Respondent SANFILIPPO pending a hearing held in accordance with Section 11500,  
17 et seq., of the Government Code, if payment is not timely made as provided for herein, or as  
18 provided for in a subsequent agreement between Respondent SANFILIPPO and the  
19 Commissioner. The suspension shall remain in effect until payment is made in full or until  
20 Respondent SANFILIPPO enters into an agreement satisfactory to the Commissioner to  
21 provide for payment, or until a decision providing otherwise is adopted following a hearing  
22 held pursuant to this condition.

23 2. Respondent SANFILIPPO shall pay the Commissioner's costs, not to  
24 exceed \$3,300.00, of any audit conducted pursuant to Section 10148 of the Code to determine  
25 if Respondent SANFILIPPO has corrected the violations described in the Determination of  
26 Issues, above, and any other violations found in the audit which led to this disciplinary action.  
27 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use

1 the estimated average hourly salary for all persons performing audits of real estate brokers, and  
2 shall include an allocation for travel time to and from the auditor's place of work. Respondent  
3 SANFILIPPO shall pay such cost within sixty (60) days of receiving an invoice therefore from  
4 the Commissioner detailing the activities performed during the audit and the amount of time  
5 spent performing those activities. If Respondent SANFILIPPO fails to pay such cost within  
6 the sixty (60) days, the Commissioner may indefinitely suspend all licenses and licensing  
7 rights of Respondent SANFILIPPO under the Real Estate Law until payment is made in full or  
8 until Respondent SANFILIPPO enters into an agreement satisfactory to the Commissioner to  
9 provide for payment. Upon full payment, the indefinite suspension provided for in this  
10 paragraph shall be stayed.

11 III.

12 1. All licenses and licensing rights of Respondent SANFILIPPO are  
13 indefinitely suspended unless or until Respondent SANFILIPPO pays the sum of \$700.00 for  
14 the Commissioner's reasonable cost of the investigation and enforcement which led to this  
15 disciplinary action. Said payment shall be in the form of a cashier's check or certified check  
16 made payable to the Real Estate Fund.

17 IV.

18 1. All licenses and licensing rights of Respondent SANFILIPPO are  
19 indefinitely suspended unless or until Respondent SANFILIPPO provides proof satisfactory to  
20 the Commissioner, of having made payment to Ryan Murtie in the amount of \$4,520.25, or as  
21 otherwise mutually agreed between Respondent SANFILIPPO and Ryan Murtie.

22 2. All licenses and licensing rights of Respondent SANFILIPPO are  
23 indefinitely suspended unless or until Respondent SANFILIPPO provides proof satisfactory to  
24 the Commissioner, of having made payment to Ryan Freeman in the amount of \$645.59, or as  
25 otherwise mutually agreed between Respondent SANFILIPPO and Ryan Freeman.

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I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges. Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondents, to the Department at fax number (916) 227-9458. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

9/11/2012

DATED

  
DONNA LEIGH SANFILIPPO,  
Respondent

9/11/2012

DATED

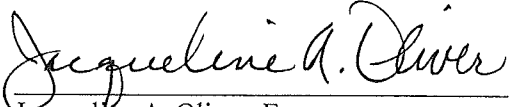
  
DONNA LEIGH SANFILIPPO,  
As Designated Officer of Respondent  
DME PARTNERS, INC.

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*I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my clients accordingly.*

9/11/2012

DATED

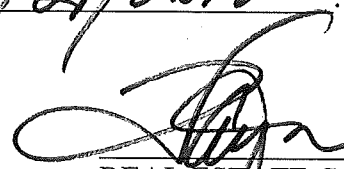
  
Jacqueline A. Oliver, Esq.,  
Attorney for Respondents  
DME PARTNERS, INC. and  
DONNA LEIGH SANFILIPPO

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The foregoing Stipulation and Agreement is hereby adopted by me as my  
Decision in this matter as to Respondents DME PARTNERS, INC. and DONNA LEIGH  
SANFILIPPO, and shall become effective at 12 o'clock noon on  
MAY 30 2013

IT IS SO ORDERED 11/29/2012

  
REAL ESTATE COMMISSIONER  
By WAYNE S. BELL  
Chief Counsel