

FILED

APR 21 2010

DEPARTMENT OF REAL ESTATE

1 Department of Real Estate  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0781

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \*

11	In the Matter of the Accusation of	)	No. H-5312 SAC
		)	
12	TIM LEWIS COMMUNITIES,	)	
	JAY TIMOTHY LEWIS,	)	<u>STIPULATION AND AGREEMENT</u>
13	TIFFANY ANNE ARMSTRONG and	)	
	LAURA JEAN FENDER,	)	
14		)	
		)	
15	Respondents.	)	
		)	

16  
17 It is hereby stipulated by and between TIM LEWIS COMMUNITIES,  
18 JAY TIMOTHY LEWIS, TIFFANY ANNE ARMSTRONG and LAURA JEAN FENDER  
19 (collectively referred to as "Respondents") and Curtis C. Sproul of Sproul Trost, LLP, attorney  
20 of record herein for Respondents, and the Complainant, acting by and through Angela L.  
21 Cash, Counsel for the Department of Real Estate (hereinafter "the Department"), as follows  
22 for the purpose of settling and disposing the Accusation filed on November 24, 2009 in this  
23 matter:

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

DRE No. H-5312 SAC

TIM LEWIS COMMUNITIES, et al.

1 provisions of this Stipulation and Agreement.

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

4           3. On December 9, 2009, Respondents filed a Notice of Defense pursuant to  
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations  
6 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.  
7 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they  
8 will thereby waive their rights to require the Commissioner to prove the allegations in the  
9 Accusation at a contested hearing held in accordance with the provisions of the APA, and that  
10 they will waive other rights afforded to them in connection with the hearing such as the right to  
11 present evidence in defense of the allegations in the Accusation and the right to cross-examine  
12 witnesses.

13           4. This stipulation is based on the factual allegations contained in the  
14 Accusation. In the interest of expediency 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 allegations, without being admitted or denied, will serve as a prima facie basis for the  
17 "Determination of Issues" and "Order" set forth below. The Real Estate Commissioner shall not  
18 be required to provide further evidence to prove such allegations.

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

23           6. It is understood by the parties that the Real Estate Commissioner may adopt  
24 the Stipulation and Agreement as his decision in this matter thereby imposing the penalty and  
25 sanctions on the real estate licenses and license rights of Respondents as set forth in the below  
26 "Order". 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 the provisions of the APA and shall not be bound by  
3 any admission or waiver made herein.

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

8 DETERMINATION OF ISSUES

9 I

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

13 The acts and/or omissions of Respondents TIM LEWIS COMMUNITIES,  
14 TIFFANY ANNE ARMSTRONG and LAURA JEAN FENDER as stipulated above constitute  
15 grounds for disciplinary action against the real estate licenses and license rights of these  
16 Respondents under the provision of Section 10177(g) of the Business and Professions Code  
17 (hereinafter "the Code") and Section 10177(d) of the Code in conjunction with Sections 11012  
18 and 11018.2 of the Code.

19 The acts and/or omissions of Respondent JAY TIMOTHY LEWIS as stipulated  
20 above constitute grounds for disciplinary action against the real estate licenses and license rights  
21 of this Respondent under the provision of Sections 10177(g) of the Code, 10177(h) of the Code  
22 and 10177(d) of the Code in conjunction with Sections 10159.2, 11012 and 11018.2 of the Code

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ORDER

I

All licenses and licensing rights of Respondent TIM LEWIS COMMUNITIES under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of the Decision herein; provided, however, thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of \$50 for each day of the suspension for a total monetary penalty of \$1,500:

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

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

3. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, vacate and set aside the stay order, and order the immediate execution of all or any part of the stayed suspension.

4. No final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action against Respondent occurred within two (2) years of the effective date of the Decision herein. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order, and order the execution of all or any part of the stayed suspension, in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

///

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

5 II

6 All licenses and licensing rights of Respondent JAY TIMOTHY LEWIS under  
7 the Real Estate Law are suspended for a period of thirty (30) days from the effective date of the  
8 Decision herein; provided, however, thirty (30) days of said suspension shall be stayed for two  
9 (2) years upon the following terms and conditions:

10 Respondent pays a monetary penalty pursuant to Section 10175.2 of the  
11 Business and Professions Code at a rate of \$50 for each day of the suspension for a total  
12 monetary penalty of \$1,500:

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

16 2. No further cause for disciplinary action against the Real Estate license of  
17 Respondent occurs within two (2) years from the effective date of the decision in this matter.

18 3. If Respondent fails to pay the monetary penalty in accordance with the  
19 terms and conditions of the Decision, the Commissioner may, without a hearing, vacate and set  
20 aside the stay order, and order the immediate execution of all or any part of the stayed  
21 suspension.

22 4. No final subsequent determination be made, after hearing or upon  
23 stipulation, that cause for disciplinary action against Respondent occurred within two (2) years  
24 of the effective date of the Decision herein. Should such a determination be made, the  
25 Commissioner may, in his discretion, vacate and set aside the stay order, and order the execution  
26 of all or any part of the stayed suspension, in which event the Respondent shall not be entitled to  
27

1 any repayment nor credit, prorated or otherwise, for money paid to the Department under the  
2 terms of this Decision.

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

7 III

8 Respondent TIFFANY ANNE ARMSTRONG is hereby publicly reprovod.

9 IV

10 Respondent LAURA JEAN FENDER is hereby publicly reprovod.

11  
12 2/24/10

13 Dated

14 

15 ANGELA L. CASH  
16 Real Estate Counsel

17 \* \* \*

18 I have read the Stipulation and Agreement, discussed it with my counsel, and its  
19 terms are understood by me and are agreeable and acceptable to me. I understand that I am  
20 waiving rights given to me by the California Administrative Procedure Act, and I willingly,  
21 intelligently and voluntarily waive those rights, including the right of requiring the  
22 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the  
23 right to cross-examine witnesses against me and to present evidence in defense and mitigation  
24 of the charges.

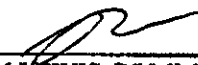
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2/18/10

Dated

  
TIM LEWIS COMMUNITIES  
Respondent

2/18/10

Dated

  
JAY TIMOTHY LEWIS  
Respondent

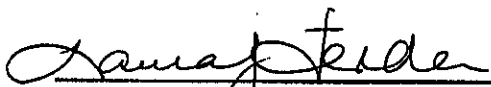
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Dated

  
TIFFANY ANNE ARMSTRONG  
Respondent

2/18/10

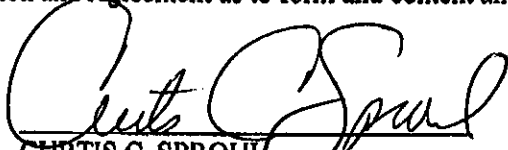
Dated

  
LAURA JEAN BENDER  
Respondent

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

2-22-2010

Dated

  
CURTIS C. SPROUL  
SPROUL TROST, LLP  
Attorney for Respondents

\*\*\*

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on MAY 12 2010

IT IS SO ORDERED 3-30-10

JEFF DAVIS  
REAL ESTATE COMMISSIONER

  
TIM LEWIS COMMUNITIES, et al.

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NOV 24 2009

DEPARTMENT OF REAL ESTATE

By K. Henry

1 ANGELA L. CASH, Counsel  
2 State Bar No. 230882  
3 Department of Real Estate  
4 P.O. Box 187007  
5 Sacramento, CA 95818-7007  
6 Telephone: (916) 227-0785

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of  
12  
13 TIM LEWIS COMMUNITIES,  
14 JAY TIMOTHY LEWIS,  
15 TIFFANY ANNE ARMSTRONG and  
16 LAURA JEAN FENDER,  
Respondents.

No. H- 5312 SAC  
ACCUSATION

17  
18 The Complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner of the  
19 State of California, for cause of Accusation against TIM LEWIS COMMUNITIES, (hereinafter  
20 "TLC"), JAY TIMOTHY LEWIS (hereinafter "LEWIS"), TIFFANY ANNE ARMSTRONG  
21 (hereinafter "ARMSTRONG") and LAURA JEAN FENDER (hereinafter "FENDER")  
22 (collectively referred to as "Respondents") is informed and alleges as follows:

23 1

24 Complainant makes this Accusation in her official capacity.

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1  
2 Respondents are presently licensed and/or have license rights under the Real  
3 Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter  
4 "Code").

3

5  
6 At all times herein mentioned, Respondent TLC was and now is licensed by the  
7 Department of Real Estate of the State of California (hereinafter "the Department") as a  
8 corporate real estate broker by and through Respondent LEWIS as designated officer-broker of  
9 Respondent TLC to qualify said corporation and to act for said corporation as a real estate  
10 broker.

4

11  
12 At all times herein mentioned, Respondent LEWIS was licensed as a real estate  
13 broker individually and beginning on or about November 4, 2004 as the designated broker-officer  
14 for-Respondent TLC. As said designated officer-broker, Respondent LEWIS was at all times  
15 mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the  
16 activities of the officers, agents, real estate licensees and employees of Respondent TLC for  
17 which a license is required.

5

18  
19 At all times herein mentioned, Respondents acted in the capacity of, advertised,  
20 or assumed to act as a real estate broker within the State of California within the meaning of  
21 Sections 10131(a) of the Code, including the operation and conduct of a real estate brokerage  
22 business with the public wherein, on behalf of others, for compensation or in expectation of  
23 compensation, Respondents sold and offered to sell, solicited prospective sellers and purchasers  
24 of, and negotiated the purchase and sale of real property.

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Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent TLC, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent TLC committed such act or omission while engaged in the furtherance of the business or operations of Respondent TLC and while acting within the course and scope of their corporate authority and employment.

7

At all times material herein, Respondents ARMSTRONG and FENDER were licensed as real estate salespersons in the employ of Respondent TLC.

8

At all times mentioned herein Respondents were the owners or subdividers, or agents of the owners or subdividers of subdivided lands as defined in Sections 11000, 11003, and 11004.5 of the Code.

9

Said subdivision is known as or commonly called "Villemont Condominium", and is located in or near the County of Placer, State of California (hereinafter "Subdivision").

10

From approximately January 2006 through June 2007, the Department issued the following five separate Final Subdivision Public Reports to TL Villemont, L.P.:

Report Number	Phase	Lots Covered by Report	Date Report Issued
117763SA-F00	1	1-55	January 12, 2006
127272SA-F00	2	68-99	March 23, 2007
130209SA-F00	3	136-163 and 211-230	March 23, 2007
130604SA-F00	4	100-135	June 26, 2007
130605SA-F00	5	164-210	June 26, 2007

1 11

2 The public reports identified in paragraph 10, above, authorized TL Villemont,  
3 L.P. to offer for sale, negotiate the sale and sell the lots covered by the public reports as  
4 identified in paragraph 10, above.

5 12

6 In approximately December 2006, TL Investments, L.P. acquired title to lots 239  
7 and 245 in the Subdivision. By acquiring title of some of the subdivision interests in the  
8 Subdivision, T.L. Villemont, L.P. made a material change in the setup of the offering described  
9 in the public reports identified above in paragraph 10, without first notifying the Department in  
10 writing of such intended change.

11 13

12 On December 1, 2006, without obtaining a public report authorizing such  
13 offering, negotiation, or sale, Respondents solicited prospective purchasers and offered for sale  
14 lots 239 and 245 in the Subdivision including but not limited to entering into a sales agreement  
- 15 with TL Investments, L.P. Escrow closed for both lots on approximately December 29, 2006.  
16 Lots 239 and 245 were not covered by a final public report identified in Paragraph 10, above.

17 14

18 From approximately May 14, 2009 through June 21, 2009, without obtaining a  
19 public report authorizing such offering, negotiation, or sale, Respondents solicited prospective  
20 purchasers and offered for sale lots in the Subdivision including but not limited to entering into  
21 a sales agreement with Boris Feldman and Lyundmila Kirilkina (lot 240, located in Villemont  
22 Phase 6), Josephine Nethery (lot 242, located in Villemont Phase 6), Terry and Sharon Gardner  
23 (lot 243, located in Villemont Phase 6) and Melinda King (lot 245, located in Villemont Phase  
24 6). Lots 240, 242, 243 and 245 were not covered by a final public report identified in Paragraph  
25 10, above.

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Respondent LEWIS failed to exercise reasonable supervision over the acts of Respondent TLC in such a manner as to allow the acts and omissions on the part of Respondent TLC, described above, to occur.

The acts and omissions of Respondents described in Paragraphs 12 through 14, above, violate Sections 11012 (notice of change in setup of offering) and 11018.2 (no offering to sell or selling without a public report) of the Code and constitute cause for the suspension or revocation of the licenses and license rights of Respondents under Section 10177(d) of the Code.

The acts and omissions of Respondents described in Paragraphs 12 through 14, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondents under Section 10177(g) of the Code.

The acts and omissions of Respondent LEWIS described in Paragraphs 12 through 14, above, constitute failure on the part of Respondent LEWIS, as designated broker-officer of Respondent TLC, to exercise reasonable supervision and control over the licensed activities of Respondent LEWIS as required by Section 10159.2 which constitute grounds for the suspension or revocation of the licenses and license rights of Respondent LEWIS under Section 10177(g) and/or 10177(h).

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1                   WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary  
3 action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of  
4 Division 4 of the Business and Professions Code) and for such other and further relief as may be  
5 proper under other provisions of law.

6 *Brenda Smith for  
Tricia D. Sommers*  
7 

8 TRICIA D. SOMMERS  
9 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,

11 this 24th day of November, 2009.

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