

1 Department of Real Estate
2 320 West Fourth Street, #350
3 Los Angeles, California 90013

4 (213) 576-6982
5 (213) 576-6907

FILED
AUG - 9 2005
DEPARTMENT OF REAL ESTATE

[Handwritten signature]

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) DRE No. H-31345 LA
13 BARRY CHARLES BINDER,) OAH No. L-2004110043
14) STIPULATION AND AGREEMENT
15 Respondent.)

16 It is hereby stipulated by and between BARRY CHARLES
17 BINDER, (sometimes referred to herein as "Respondent"),
18 represented by Frank M. Buda, Esq., and the Complainant, acting
19 by and through Martha J. Rosett, Counsel for the Department of
20 Real Estate, as follows for the purpose of settling and
21 disposing of the Accusation filed on October 5, 2004 in this
22 matter:

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

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

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

8 3. On October 20, 2004, Respondent filed a Notice of
9 Defense pursuant to Section 11506 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. In order to effectuate this settlement, Respondent
12 hereby freely and voluntarily withdraws said Notice of Defense.
13 Respondent acknowledges that he understands that by withdrawing
14 said Notice of Defense, he will thereby waive his rights to
15 require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA and that he will waive other rights
18 afforded to him in connection with the hearing such as the
19 right to present evidence in defense of the allegations in the
20 Accusation and the right to cross-examine witnesses.

21 4. Respondent, pursuant to the limitations set forth
22 below, although not admitting or denying the truth of the
23 allegations, will not contest the factual allegations contained
24 in the Accusation filed in this proceeding and the Real Estate
25 Commissioner shall not be required to provide further evidence
26 of such allegations.

27

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

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

19 7. The stipulations herein, and Respondent's
20 decision not to contest the Accusation, are made solely for the
21 purpose of reaching an agreed disposition of this proceeding
22 and are expressly limited to this proceeding, and any other
23 proceeding or case in which the Department of Real Estate or
24 another licensing agency of this state, another state, or if
25 the federal government is involved, and otherwise shall not be
26 admissible in any other criminal or civil proceedings.

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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 without a hearing, it is stipulated and agreed that the following Determination of Issues shall be made:

The conduct, acts or omissions of Respondent BARRY CHARLES BINDER, as set forth in the Accusation, constitute cause to suspend or revoke the real estate license and license rights of Respondent BARRY CHARLES BINDER under the provisions of Business and Professions Code ("Code") Section 10177(f).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent BARRY CHARLES BINDER are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that ninety (90) days of said suspension shall be stayed for four (4) 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 four (4) years of the effective date of this Decision. 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

1 suspension. Should no such determination be made, the stay
2 imposed herein shall become permanent.

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

10 4. During the time that the Order in Case Number 963-
11 1681 issued by the Department of Corporations is in effect,
12 Respondent shall not operate or perform escrows pursuant to
13 Financial Code Section 17006 nor shall he serve as the designated
14 broker-officer of a licensed real estate corporation that
15 operates or performs escrows pursuant to Financial Code Section
16 17006. Respondent's license may be suspended prior to hearing by
17 Order of the Real Estate Commissioner upon proof of violation of
18 the terms and conditions of this Order.

19 5. If no further cause for discipline occurs within
20 four years from the effective date of the Decision, the stay
21 hereby granted shall become permanent.

22
23 DATED: 7/18/05


MARTHA J. ROSETT
Counsel for Complainant

24
25
26 * * *

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

12 Respondent can signify acceptance and approval of the
13 terms and conditions of this Stipulation and Agreement by faxing
14 a copy of its signature page, as actually signed by Respondent,
15 to the Department at the following fax number (213) 576-6917.
16 Respondent agrees, acknowledges and understands that by
17 electronically sending to the Department a fax copy of his actual
18 signature as it appears on the Stipulation, that receipt of the
19 faxed copy by the Department shall be as binding on Respondent as
20 if the Department had received the original signed Stipulation
21 and Agreement.

22 DATED: June 24, 2005 Barry Charles Binder
23 BARRY CHARLES BINDER

24
25 DATED: June 24, 2005 Frank M. Buda
26 Frank M. Buda, Esq.
27 Attorney for Respondent

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2 discussed it with my counsel and its terms are understood by me
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5 Procedure Act (including but not limited to Sections 11506,
6 11508, 11509 and 11513 of the Government Code), and I
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20 if the Department had received the original signed Stipulation
21 and Agreement.

22
23 DATED: _____

BARRY CHARLES BINDER

24
25 DATED: _____

Frank M. Buda, Esq.
Attorney for Respondent

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27

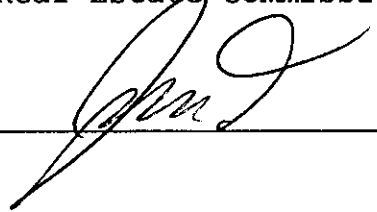
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision in this matter and shall become
effective at 12 o'clock noon on August 29, 2005.

IT IS SO ORDERED 8-11-05

JEFF DAVI
Real Estate Commissioner



Sacto
Doc

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
JAN 31 2005
DEPARTMENT OF REAL ESTATE

By *Sanna B. Alone*

In the Matter of the Accusation of

BARRY CHARLES BINDER,

}

Case No. H-31345 LA

OAH No. L-2004110043

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California on JUNE 2, 2005, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: January 31, 2005

By

Martha J. Rose
MARTHA J. ROSE, Counsel

cc: Barry Charles Binder
Thomas A. Greco, Esq.
Frank M. Buda, Esq./Sacto./OAH

Suarez
2004

FILED
OCT - 5 2004
DEPARTMENT OF REAL ESTATE

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013-1105

By *Leana B. Jones*

4 (213) 576-6982
5 (213) 576-6907

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-31345 LA
12)
13 BARRY CHARLES BINDER,) A C C U S A T I O N
14) Respondent.)
15)

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against BARRY CHARLES BINDER, (hereinafter "Respondent") is
19 informed and alleges as follows:

20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation in
23 her official capacity.

24 2.

25 At all times herein mentioned, Respondent was and still
26 is licensed and/or has license rights under the Real Estate Law
27 (Part 1 of Division 4 of the Business and Professions Code,

1 hereinafter "Code"). At all times mentioned herein, Respondent
2 was licensed as a real estate broker. Respondent was first
3 licensed by the Department of Real Estate (hereinafter
4 "Department") on or about July 10, 1974.

5 Prior DRE Discipline

6 3.

7 On or about October 1, 1997, in Department Case No.
8 H-27026 LA, Respondent's license was suspended for sixty days,
9 which suspension was stayed for two years on terms and
10 conditions, due to Respondent's violation of Code Section
11 10177(g).

12 Discipline by Department of Corporations

13 4.

14 Beginning on a date prior to May 1, 2002, Respondent
15 was an escrow office at Suburban Cities Escrow, Inc. formerly
16 Suburban Cities Escrow, Inc., f.k.a. Cal Cities Escrow,
17 Inc. (hereinafter "Suburban"), an escrow agent licensed by the
18 Department of Corporations pursuant to Financial Code Section
19 17000, et seq.

20 5.

21 On or about November 1, 1999, a Judgment on Special
22 Verdict was issued against Respondent in the Superior Court of
23 California, County of Orange in Case No. 794601, Reuben Hughes,
24 et al. vs. Remax College Park Realty, Inc., et al. According to
25 that judgement, the jury found that Respondent had been negligent
26 and had breached his fiduciary duty in a transaction in which he
27 was the designated-officer broker responsible for supervising the

1 underlying real estate transaction.

2 6.

3 On May 1, 2002, Suburban filed an application with the
4 Department of Corporations for a change of ownership which would
5 result in Respondent holding the title of Vice President and
6 serving as one of Suburban's three directors.

7 7.

8 On or about January 6, 2003, the Department of
9 Corporations brought an Accusation against Respondent, in support
10 of its notice of intent to issue an order barring Respondent from
11 any employment, management or control of any escrow agent
12 pursuant to California Financial Code Section 17423. On April 9,
13 2003, following an administrative hearing, the Department of
14 Corporations issued its order barring Respondent from any
15 employment, management or control of any escrow agent pursuant to
16 California Financial Code Section 17423.

17 8.

18 The discipline of Respondent's escrow agent license, as
19 set forth in Paragraph 7, above, constitutes grounds to suspend
20 or revoke Respondent's real estate license and license rights
21 pursuant to Code Sections 10177(f).

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1 WHEREFORE, the Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 BARRY CHARLES BINDER under the Real Estate Law and for such other
6 and further relief as may be proper under applicable provisions
7 of law.

8 Dated at Los Angeles, California
9 this 15th day of October, 2004.

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11 
12 Deputy Real Estate Commissioner
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20 cc: Barry Charles Binder
21 Sacto.
22 Maria Suarez
23 AE
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