

BEFORE THE REAL ESTATE COMMISSION
STATE OF COLORADO

Complaint No. 2007121676

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CO DIV OF REAL ESTATE

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY ACTION AGAINST THE REAL ESTATE
BROKER'S LICENSE OF **KYLE R. BORTHICK (LICENSE #II40020618)**,

Respondent.

IT IS HEREBY STIPULATED by and between the Colorado Real Estate Commission (the "Commission") and Respondent, as follows:

1. At all times relevant hereto, Respondent was a licensed real estate broker or real estate salesperson in the State of Colorado.
2. The Commission has jurisdiction over Respondent, Respondent's license and the subject matter of this action.
3. The Commission commenced an investigation of Respondent's activities based upon a complaint filed on the Commission's own motion or by an individual with specific knowledge of Respondent's actions.
4. The Commission notified Respondent of the complaint and of the investigation and provided to Respondent a copy of the complaint and investigative report. The Commission offered Respondent the opportunity to give written data, views and arguments concerning the complaint, the investigation and the investigative report.
5. The Commission considered the investigative report and found reasonable grounds exist to refer Respondent to hearing for violations of the real estate licensing law. The Commission authorized the preparation of this settlement agreement including the disciplinary terms set forth herein and set forth on Exhibit A, attached hereto and incorporated herein, as a means to resolve the matter without the need for formal hearing.
6. Respondent admits to factual findings and violations of real estate licensing law and Commission rules as set forth in the investigative report identified on Exhibit A. The investigative report is incorporated herein by this reference.

7. Respondent agrees to and accepts the discipline set forth below. Respondent also agrees to and accepts the discipline set forth on Exhibit A.

a. If the discipline set forth on Exhibit A includes public censure, such censure shall appear in the "Real Estate News", a Commission publication.

b. If the discipline set forth on Exhibit A includes a fine, such fine shall be made payable to the "Colorado Real Estate Commission" and shall be paid to the Commission in good funds in one lump-sum payment when Respondent signs and returns this Stipulation and Final Agency Order to the Commission. Respondent's failure to include payment for the fine when returning this signed Stipulation and Final Agency Order to the Commission will not preclude the Commission from executing and accepting this Stipulation and Final Agency Order which has been signed by Respondent. In such event, the Commission may, in its sole discretion, execute this Stipulation and Final Agency Order signed by Respondent and treat Respondent's failure to provide payment of the fine as a failure to comply with the terms of this Stipulation and Final Agency Order.

c. If the discipline set forth on Exhibit A includes the completion of course work, Respondent shall enroll in and successfully complete the courses set forth on Exhibit A by the due dates set forth therein. Respondent shall also submit written proof of course work completion in a form and manner acceptable to the Commission by such due dates. All such course work shall be completed in addition to any continuing education courses required by §12-61-110.5, C.R.S. and the rules and regulations of the Commission.

d. If the discipline set forth on Exhibit A includes probation, Respondent's license shall be placed on probationary status for the period set forth on Exhibit A. During the period of probation, Respondent may engage in acts requiring a real estate license subject to the terms and conditions set forth on Exhibit A.

e. If the discipline set forth on Exhibit A includes suspension, Respondent's real estate license shall be suspended commencing on the date set forth on Exhibit A and continuing for the period set forth on Exhibit A. During the period of suspension, Respondent shall not engage in any act requiring a real estate license as set forth in §12-61-101 and §12-61-102, C.R.S. Any license(s) and/or pocket card(s) of Respondent and of any individual(s) licensed to Respondent shall be returned to the Commission no later than the effective date of the suspension.

f. Respondent acknowledges that the Commission will publish this Stipulation and Final Agency Order (or a summary of the disciplinary terms provided for herein) on the Commission's website and in the "Real Estate News", a Commission publication, and will treat this Stipulation and Final Agency Order and the investigative report as public records in the custody of the Commission.

8. It is the intent and purpose of this Stipulation to provide for the settlement of the particular issues, allegations and/or charges raised by the investigation of Respondent's activities by the Commission as set forth in paragraphs 3, 4 and 5 above and as set forth in the investigative report, except as provided in paragraph 11 below.

9. Upon execution by all parties, this Stipulation and Final Agency Order shall represent the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of law, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

10. Respondent expressly agrees and acknowledges that Respondent has entered into this Stipulation and Final Agency Order knowingly and voluntarily. After the opportunity to consult with legal counsel, Respondent affirms that Respondent has read this Stipulation and Final Agency Order and fully understands its nature, meaning and content. Respondent agrees that upon execution of this Stipulation and Final Agency Order, no subsequent action or assertion shall be maintained or pursued by Respondent asserting the invalidity in any manner of this Stipulation and Final Agency Order.

11. Respondent agrees that the following terms shall apply if Respondent fails to comply with any of the terms of this Stipulation and Final Agency Order:

a. In the event that Respondent fails to comply with any of the terms of this Stipulation and Final Agency Order, such failure shall constitute a violation of §12-61-113(1)(k), C.R.S. and the Commission shall have the right to proceed with formal disciplinary action against Respondent pursuant to §12-61-113, §12-61-114, §24-4-104 and §24-4-105, C.R.S. Completion of the terms of this Stipulation and Final Agency Order after the date required herein shall not excuse the failure to comply nor prohibit the Commission from proceeding with such formal disciplinary action.

b. In a proceeding against Respondent for failing to comply with the terms of this Stipulation and Final Agency Order, this Stipulation and Final Agency Order shall be admissible as evidence, and the matters at issue shall be limited to the question of whether or not Respondent has failed to comply with the terms of this Stipulation and Final Agency Order. Any issues relating to the underlying complaint or investigation that formed the basis for disciplinary action against Respondent (and any defenses that Respondent may have to such complaint and investigation) shall specifically not be at issue in the proceeding against Respondent for failing to comply with the terms of this Stipulation and Final Agency Order.

c. In the event that Respondent is found, after a hearing, to have failed to comply with any of the terms of this Stipulation and Final Agency Order, Respondent stipulates and agrees that the appropriate form of formal discipline to be imposed by the Commission shall consist of revocation of Respondent's license to engage in the business or capacity of a real estate broker or real estate salesperson. Upon such revocation, Respondent shall not engage in any act requiring a real estate license as set forth in §12-61-101 and §12-61-102, C.R.S. Respondent shall also be required to pay any unpaid fine provided for in this Stipulation and Final Agency Order. The Commission shall also have the right to publish the Final Agency Order from the hearing (or a summary of the disciplinary terms therein) on the Commission's website and in the "Real Estate News," a Commission publication, and to treat such Final Agency Order as a public record in the custody of the Commission.

12. Respondent understands and knowingly and voluntarily enters into this Stipulation and Final Agency Order. Respondent further understands and knowingly and voluntarily waives the following rights:

a. The right to a formal disciplinary hearing on the merits of the matters forming the basis of this Stipulation and Final Agency Order and the right to require the Commission to meet its burden of proof in a formal hearing.

b. The right to confront and cross-examine all witnesses against Respondent at a formal hearing.

c. The right to subpoena witnesses, present evidence and to testify on Respondent's own behalf at a formal hearing.

d. The right to be represented by counsel of Respondent's own choosing and at Respondent's expense at any stage of this proceeding.

e. The right to engage in pre-hearing discovery of the Commission's evidence.

f. The right to appeal the Final Agency Order provided for by this Stipulation.

13. On the date upon which this Stipulation is executed by an authorized representative of the Commission, it shall become the Final Agency Order of the Commission.

EXECUTED BY THE COMMISSION this 23rd day of September, 2008.

RESPONDENT-LICENSEE

COLORADO REAL ESTATE COMMISSION

Kyle R. Borthick
Respondent-Licensee

By: Marcia Waters
Director (or Designee of the Director)
1560 Broadway, Ste. 925
Denver, CO 80202

EXHIBIT A
Stipulation and Final Agency Order

Respondent Name: Kyle R. Borthick
License Number: II40020618
Complaint Number: 2007121676

Admissions: Respondent admits to the allegations, factual findings and conclusions of law in the investigative report dated August 26, 2008.

Respondent admits that these facts constitute violation of:
§12-61-113(1)(n), C.R.S.

Discipline: Respondent accepts all of the following discipline set forth below:

- Public Censure
- Fine and Surcharge: Respondent shall pay a fine of \$500.00. Respondent understands and acknowledges that, pursuant to section 24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 15% of this fine. Thus Respondent shall pay a total of \$575.00 (fine plus 15%) due and payable upon execution and return of this Stipulation to the Commission.