

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

JAN 14 2013

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13) NO. H-5834 SAC
14 ARTHUR RAY SMITH,)
15) STIPULATION AND AGREEMENT
Respondent.) IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between ARTHUR RAY SMITH
17 (herein "Respondent") and the Complainant, acting by and through Mary F. Clarke, Counsel for
18 the Department of Real Estate (herein "the Department"), as follows for the purpose of settling
19 and disposing of the Accusation filed on June 15, 2012, in this matter:

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

25 2. Respondent has received, read and understands the Statement to Respondent,
26 the Discovery Provisions of the APA, and the Accusation filed by the Department in this
27 proceeding.

1 3. A Notice of Defense was filed on September 10, 2012, by Respondent pursuant
2 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
3 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
4 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
5 Defense, he will thereby waive his right to require the Real Estate Commissioner (herein "the
6 Commissioner") to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA and that he will waive other rights afforded to him in
8 connection with the hearing such as the right to present evidence in defense of the allegations in
9 the Accusation and the right to cross-examine witnesses.

10 4. Respondent, pursuant to the limitations set forth below, hereby admits that
11 the factual allegations pertaining to him in the Accusation filed in this proceeding are true and
12 correct and the Commissioner shall not be required to provide further evidence of such
13 allegations.

14 5. It is understood by the parties that the Commissioner may adopt the
15 Stipulation and Agreement in Settlement and Order as his decision in this matter thereby
16 imposing the penalty and sanctions on Respondent's real estate license and license rights as set
17 forth in the below "Order". In the event that the Commissioner in his discretion does not
18 adopt the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect,
19 and Respondent shall retain the right to a hearing and proceeding on the Accusation under all
20 the provisions of the APA and shall not be bound by any admission or waiver made herein.

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

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1 DETERMINATION OF ISSUES

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3 By reason of the foregoing stipulations, admissions and waivers, and for the
4 purpose of settlement of the pending Accusation, without a hearing, it is stipulated and agreed
5 that the following Determination of Issues shall be made:

6 The acts and/or omissions of Respondent as described in the Accusation violate
7 Sections 490 and 10177(b) of the California Business and Professions Code (herein the "Code").

8 ORDER

9 A. All licenses and licensing rights of Respondent ARTHUR RAY SMITH
10 under the Real Estate Law are hereby revoked provided, however, a restricted real estate broker-
11 license shall be issued to Respondent pursuant to Section 10156.6 of the Code, if Respondent
12 makes application therefore and pays to the Department of Real Estate the appropriate fee for
13 said license within ninety (90) days from the effective date of this Decision.

14 B. The restricted license issued to Respondent shall be subject to all of the
15 provisions of Section 10156.7 of the Code and to the following limitations, conditions, and
16 restrictions imposed under authority of Section 10156.6 of the Code:

17 1. The restricted license issued to Respondent may be suspended prior to
18 hearing by Order of the Commissioner in the event of Respondent's
19 conviction or plea of nolo contendere to a crime which is substantially
20 related to Respondent's fitness or capacity as a real estate licensee.

21 2. The restricted license issued to Respondent may be suspended prior to
22 hearing by Order of the Commissioner on evidence satisfactory to the
23 Commissioner that Respondent has violated provisions of the California
24 Real Estate Law, the Subdivided Lands Law, Regulations of the Real
25 Estate Commissioner, or conditions attaching to the restricted license.

26 3. Respondent shall not be eligible to apply for the issuance of an
27 unrestricted real estate license or for the removal of any of the conditions,

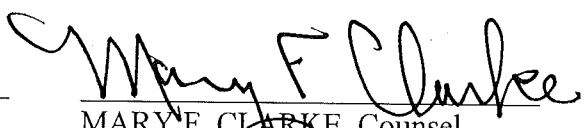
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limitations, or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Order.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, P. O. Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

5. Respondent shall, within nine (9) months from the effective date of the Order, present evidence satisfactory to the Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the APA to present such evidence.

11-30-12
DATED


MARY F. CLARKE, Counsel
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement in Settlement and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving

1 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
2 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
3 those rights, including the right of requiring the Commissioner to prove the allegations in the
4 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
5 and to present evidence in defense and mitigation of the charges.

6
7 Nov. 28, 2012
8 DATED

Arthur Ray Smith
ARTHUR RAY SMITH
Respondent

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10 * * *

11 The foregoing Stipulation and Agreement in Settlement and Order is hereby
12 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
13 February 4, 2013

14 IT IS SO ORDERED 1/9/13

15
16 Real Estate Commissioner

17
18 By: Awet P. Kidane
19 AWET P. KIDANE
20 Chief Deputy Commissioner