

FILED

MAR 29 2016

BUREAU OF REAL ESTATE

By *pdw*

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670
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9 **BEFORE THE BUREAU OF REAL ESTATE**
10 **STATE OF CALIFORNIA**

11 * * *

12 In the Matter of the Accusation of)	
)	NO. H-6225 SAC
)	
14 EARL GENE KILMER,)	<u>STIPULATION AND AGREEMENT</u>
)	<u>IN SETTLEMENT AND ORDER</u>
)	
16 Respondent.)	

17 It is hereby stipulated by and between Respondent EARL GENE KILMER
18 (“Respondent”) and his counsel, Edgardo Gonzalez, and the Complainant, acting by and
19 through John W. Barron, Counsel for the Bureau of Real Estate (“the Bureau”), as follows for
20 the purpose of settling and disposing of the Accusation filed on February 24, 2015, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondent 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 of
25 this Stipulation and Agreement in Settlement and Order.

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

1 3. A Notice of Defense was filed by Respondent on March 12, 2015, pursuant to
2 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
3 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
4 Respondent acknowledges that he understands that by withdrawing said Notice of Defense, he
5 will thereby waive his right to require the Commissioner to prove the allegations in the
6 Accusation at a contested hearing held in accordance with the provisions of the APA and that he will
7 waive other rights afforded to him in connection with the hearing such as the right to present
8 evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

9 4. This Stipulation and Agreement in Settlement and Order is based on the factual
10 allegations contained in the Accusation. In the interests of expedience and economy, Respondent
11 chooses not to contest these allegations at hearing, but rather understands that, as a result thereof,
12 these allegations, without being admitted or denied, will serve as a prima facie basis for the
13 disciplinary action stipulated to herein. The Real Estate Commissioner ("Commissioner") shall
14 not be required to provide further evidence to prove said factual allegations.

15 5. This Stipulation and Respondent's decision not to contest the Accusation are
16 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
17 limited to this proceeding and any other proceeding or case in which the Bureau, the state or
18 federal government, an agency of this state, or an agency of another state is involved.

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

26 7. The Order or any subsequent Order of the Commissioner made pursuant to this
27 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar

1 to any further administrative or civil proceedings by the Bureau with respect to any matters
2 which were not specifically alleged to be causes for accusation in this proceeding.

3 8. Respondent understands that by agreeing to this Stipulation and Agreement,
4 Respondent agrees to pay, pursuant to Section 10148 of the California Business and Professions
5 Code (“the Code”), the cost of the audit which resulted in the determination that Respondent
6 committed the violation(s) found in the Determination of Issues. The amount of such costs is
7 \$5,584.53.

8 9. Respondent further understands that by agreeing to this Stipulation and
9 Agreement, the findings set forth below in the Determination of Issues becomes final, and the
10 Commissioner may charge Respondent for the costs of any audit conducted pursuant to Section
11 10148 of the Code to determine if the violations have been corrected. The maximum cost of
12 said audit shall not exceed \$5,584.53.

13 10. Respondent further understands 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 Respondent for the costs of the investigation herein. The amount
16 of such costs is \$3,392.50.

17 DETERMINATION OF ISSUES

18 The acts and omissions of Respondent as described in the Accusation are grounds
19 for the suspension or revocation of the license and license rights of Respondent under Sections
20 10140.6 (disclosure of license status in advertising), 10145 (trust fund handling), 10176(g)
21 (undisclosed compensation – affiliated company), 10177(g) (negligence/incompetence) of the
22 Code, and Sections 2773 (disclosure of license identification number on solicitation materials),
23 2831(a)(6) (maintenance of record of trust funds not deposited in broker trust account), 2831.2
24 (trust account reconciliation), 2832 (trust fund handling) and 2832.1 (trust fund handling for
25 multiple beneficiaries) of the Title 10, California Code of Regulations (“the Regulations”).

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ORDER

1. The restricted real estate broker license and license rights of Respondent are hereby revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.6 of the Code, if Respondent makes application therefore and pays to the Bureau of Real Estate the appropriate fee for said license within ninety (90) days from the effective date of this Decision.

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

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

(b) The restricted license issued to Respondent shall be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner, or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, nor the removal of any of the conditions of the restricted license, until three (3) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine (9) months from the effective date of this Decision, 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, Respondent's real estate license shall automatically be suspended until Respondent presents evidence satisfactory to the

1 Commissioner of having taken and successfully completed the continuing education
2 requirements. **Proof of completion of the continuing education courses must be delivered to**
3 **the Bureau of Real Estate, Flag Section at P.O. box 137013, Sacramento, CA 95813-7013.**

4 5. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
5 \$5,584.53 for the Commissioner's costs of the audit which led to this disciplinary action.

6 **Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from**
7 **the Commissioner.** Payment of audit costs should not be made until Respondent Receives the
8 invoice. If Respondent fails to satisfy this condition in a timely manner as provided herein,
9 Respondent's real estate license shall automatically be suspended until payment is made in full,
10 or until a decision providing otherwise is adopted following a hearing held pursuant to this
11 condition.

12 6. Pursuant to Section 10148 of the Code, Respondent shall pay the
13 Commissioner's costs, not to exceed \$5,584.53, for an audit to determine if Respondent has
14 corrected the violations described in the Determination of Issues. In calculating the amount of
15 the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
16 salary for all persons performing audits of real estate brokers, and shall include an allocation for
17 travel time to and from the auditor's place of work. **Respondent shall pay such cost within**
18 **sixty (60) days of receiving an invoice therefore from the Commissioner.** If Respondent fails
19 to satisfy this condition in a timely manner as provided herein, Respondent's real estate license
20 shall automatically be suspended until payment is made in full, or until a decision providing
21 otherwise is adopted following a hearing held pursuant to this condition.

22 7. Respondent shall, within six (6) months from the effective date of this Order,
23 take and pass the Professional Responsibility Examination administered by the Bureau, including
24 the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the
25 Commissioner shall order the suspension of all licenses and licensing rights of Respondent until
26 Respondent passes the examination.

27 8. Notwithstanding any other provision of this Order, all licenses and licensing


1 rights of Respondent are indefinitely suspended unless and until he provides proof satisfactory to
2 the Commissioner that he has taken and successfully completed the continuing education
3 course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code.
4 The course must have been completed no earlier than one hundred twenty (120) days prior to
5 the effective date of this Order, and proof must be submitted prior to the effective date of this
6 Order, to prevent suspension of Respondent's license pursuant to this condition.

7 9. All licenses and licensing rights of Respondent are indefinitely suspended
8 unless or until Respondent pays the sum of \$3,392.50 for the Commissioner's reasonable cost of
9 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
10 the form of a cashier's check or certified check made payable to the Bureau of Real Estate. **The**
11 **investigative and enforcement costs must be delivered to the Bureau of Real Estate, Flag**
12 **Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this**
13 **Decision and Order.**

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2/11/14

DATED


JOHN W. BARRON, Counsel
Bureau 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
rights given to me by the California APA (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

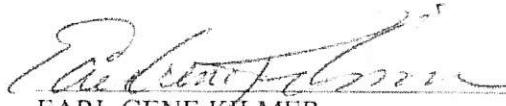
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1 and to present evidence in defense and mitigation of the charges.

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11/16/15

DATED

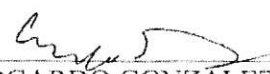


EARL GENE KILMER
Respondent

I have reviewed this Stipulation and Agreement In Settlement and Order as to form and content and have advised my client accordingly.

11-17-15

DATED



EDGARDO GONZALEZ
Attorney for Respondent


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

APR 19 2016

IT IS SO ORDERED

MARCH 27, 2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner