

1 Department of Real Estate
2 P.O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 576-8700

FILED

MAR 24 2021

DEPARTMENT OF REAL ESTATE

By B. Nicholas

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 STONE CREEK REALTY, INC., and)
13 TIMOTHY FRANCIS WESELY,)

14 Respondents.)

No. H-6980 SAC

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between STONE CREEK REALTY, INC., and
16 TIMOTHY FRANCIS WESELY (collectively "Respondents"), acting by and through Truly
17 Sughrue, Counsel for the Department of Real Estate (Department), as follows for the purpose
18 of settling and disposing the Accusation filed on August 17, 2020, in this matter:

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

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

27 ///

1 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
2 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
3 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
4 acknowledge that Respondents understand that by withdrawing said Notice of Defense
5 Respondents will thereby waive Respondents' rights to require the Real Estate Commissioner
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 Respondents will waive other rights
8 afforded to Respondents in connection with the hearing such as the right to present evidence in
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

10 4. This Stipulation and Agreement is based on the factual allegations
11 contained in the Accusation. In the interest of expediency and economy, Respondents choose not
12 to contest these factual allegations, but to remain silent and understand that, as a result thereof,
13 these factual statements will serve as a prima facie basis for the "Determination of Issues" and
14 "Order" set forth below. The Commissioner shall not be required to provide further evidence to
15 prove such allegations.

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

21 6. Respondents understand that by agreeing to this Stipulation and
22 Agreement, Respondents agrees to pay, pursuant to Section 10148 of the California Business
23 and Professions Code (Code), the cost of the audit, which resulted in the determination that
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.
25 The amount of said costs is \$4,732.30.

26 ///

27 ///

1 7. Respondent further understand that by agreeing to this Stipulation and
2 Agreement, the findings set forth below in the Determination of Issues become final, and that
3 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum
5 costs of said audit shall not exceed \$5,915.38.

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

13 9. The Order or any subsequent Order of the Commissioner made pursuant to
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
15 administrative or civil proceedings by the Department with respect to any matters which were not
16 specifically alleged to be causes for action in Accusation H-6980 SAC.

17 * * *

18 DETERMINATION OF ISSUES

19 By reason of the foregoing stipulations and waivers and solely for the purpose of
20 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
21 following determination of issues shall be made:

22 I

23 The acts and omissions of Respondents as described in the First Cause of Action
24 in the Accusation are grounds for the suspension or revocation of Respondents' licenses and
25 license rights under the following sections of the Code and Title 10, Chapter 6, of the California
26 Code of Regulations (Regulations):

27

1 As to Paragraph 11(a), under Section 10177(d) of the Code in conjunction with
2 Section 10145 of the Code and Section 2832.1 of the Regulations;

3 As to Paragraph 11(b), under Section 10177(d) of the Code in conjunction with
4 Section 10145 of the Code and Section 2832 of the Regulations;

5 As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with
6 Section 2831.1 of the Regulations; and

7 As to Paragraph 11(d), under Section 10177(d) of the Code in conjunction with
8 Section 10145 of the Code and Section 2831.2 of the Regulations.

9 II

10 The acts and/or omissions of TIMOTHY FRANCIS WESELY (WESELY) as
11 described in the Second Cause of Action of the Accusation is cause for the suspension or
12 revocation of WESELY's license and/or license rights under Section 10177(h) of the Code.

13 * * *

14 ORDER

15 I

16 All licenses and licensing rights of Respondent STONE CREEK REALTY, INC.
17 (SCRI) under the Real Estate Law are revoked; provided, however, a restricted real estate broker
18 license shall be issued to SCRI pursuant to Section 10156.5 of the Code if SCRI makes
19 application therefor and pays to the Department the appropriate fee for the restricted license
20 within 90 days from the effective date of this Decision and Order. The restricted license issued
21 to SCRI shall be subject to all of the provisions of Section 10156.7 of the Code and to the
22 following limitations, conditions and restrictions imposed under authority of Section 10156.6 of
23 that Code:

24 1. The restricted license issued to SCRI may be suspended prior to hearing by
25 Order of the Commissioner in the event of SCRI's conviction or plea of nolo contendere to a
26 crime which is substantially related to SCRI's fitness or capacity as a real estate licensee.
27

1 2. The restricted license issued to SCRI may be suspended prior to hearing by
2 Order of the Commissioner on evidence satisfactory to the Commissioner that SCRI has violated
3 provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the
4 Commissioner or conditions attaching to the restricted license.

5 3. SCRI shall not be eligible to apply for the issuance of an unrestricted real
6 estate license nor for removal of any of the conditions, limitations, or restrictions of a restricted
7 license until two (2) years have elapsed from the effective date of this Decision and Order. SCRI
8 shall not be eligible to apply for any unrestricted licenses until all restrictions attaching to the
9 license have been removed.

10 II

11 All licenses and licensing rights of Respondent WESELY under the Real Estate
12 Law are revoked; provided, however, a restricted real estate broker license shall be issued to
13 SCRI pursuant to Section 10156.5 of the Code if WESELY makes application therefor and pays
14 to the Department the appropriate fee for the restricted license within 90 days from the effective
15 date of this Decision and Order. The restricted license issued to WESELY shall be subject to all
16 of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and
17 restrictions imposed under authority of Section 10156.6 of that Code:

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

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

26 3. WESELY shall not be eligible to apply for the issuance of an unrestricted
27 real estate license nor for removal of any of the conditions, limitations, or restrictions of a

1 restricted license until two (2) years have elapsed from the effective date of this Decision and
2 Order. WESELY shall not be eligible to apply for any unrestricted licenses until all restrictions
3 attaching to the license have been removed.

4 4. WESELY shall, within nine (9) months from the effective date of this
5 Decision and Order, present evidence satisfactory to the Commissioner that WESELY has, since
6 the most recent issuance of an original or renewal real estate license, taken and successfully
7 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
8 Law for renewal of a real estate license. If WESELY fails to satisfy this condition, WESELY's
9 real estate license shall automatically be suspended until WESELY presents evidence satisfactory
10 to the Commissioner of having taken and successfully completed the continuing education
11 requirements. Proof of completion of the continuing education courses must be delivered to the
12 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

13 5. All licenses and licensing rights of WESELY are indefinitely suspended
14 unless or until WESELY provides proof satisfactory to the Commissioner, of having taken and
15 successfully completed the continuing education course on trust fund accounting and handling
16 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
17 satisfaction of these requirements includes evidence that WESELY has successfully completed
18 the trust fund account and handling continuing education courses, no earlier than 120 days prior
19 to the effective date of the Decision and Order in this matter. Proof of completion of the trust
20 fund accounting and handling course must be delivered to the Department of Real Estate, Flag
21 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the
22 effective date of this Decision and Order.

23 III

24 1. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
25 severally, pay the sum of \$4,732.30 for the Commissioner's cost of the audit which led to this
26 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
27 invoice therefore from the Commissioner. Payment of audit costs should not be made until

1 Respondents receives the invoice. If Respondents fails to satisfy this condition in a timely
2 manner as provided for herein, Respondents' real estate license shall automatically be suspended
3 until payment is made in full, or until a decision providing otherwise is adopted following a
4 hearing held pursuant to this condition.

5 2. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
6 severally, pay the Commissioner's reasonable cost, not to exceed \$5,915.38, for an audit to
7 determine if Respondents have corrected the violation(s) found in the Determination of Issues.
8 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
9 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
10 include an allocation for travel time to and from the auditor's place of work. Respondents shall
11 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
12 Payment of the audit costs should not be made until Respondents receives the invoice. If
13 Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents'
14 real estate license shall automatically be suspended until payment is made in full, or until a
15 decision providing otherwise is adopted following a hearing held pursuant to this condition.

16
17 9 February 2021

18 DATED



19
20 TRULY SUGHRUE
21 Counsel for Complainant


22 * * *

23 I have read the Stipulation and Agreement, discussed it with my counsel, and its
24 terms are understood by me and are agreeable and acceptable to me. I understand that I am
25 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
26 intelligently and voluntarily waive those rights, including the right of requiring the
27 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the

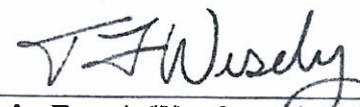
1 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
2 the charges.

3 Respondent and Respondent's attorney further agree to send the original signed
4 Stipulation by mail to the following address no later than one (1) week from the date the
5 Stipulation is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
6 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and
7 Respondent's attorney understand and agree that if they fail to return the original signed
8 Stipulation by the due date, Complainant retains the right to set this matter for hearing.

9
10 2/8/2021
11 DATED


12 TIMOTHY FRANCIS WESELY
13 Respondent

14 2/8/2021
15 DATED


16 Timothy Francis Wesely, on behalf of
17 STONE CREEK REALTY, INC.
18 Respondent

19 ***

20 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
21 Order and shall become effective at 12 o'clock noon on APR 14 2021

22 IT IS SO ORDERED 3.19.21

23 DOUGLAS R. McCAULEY
24 REAL ESTATE COMMISSIONER

25 