

FILED

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

MAY 23 2014

BUREAU OF REAL ESTATE

4 Telephone: (916) 263-8670
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By K. Contreras

6 BEFORE THE BUREAU OF REAL ESTATE

7 STATE OF CALIFORNIA

8 * * *

9 In the Matter of the Accusation of)

NO. H-11569 SF

10 JOHN STEPHEN SHIELLS,)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

11)
12) Respondent.)

13 It is hereby stipulated by and between JOHN STEPHEN SHIELLS (herein
14 "Respondent") by and through Louis A. Gonzalez, Jr., attorney of record herein for Respondent,
15 and the Complainant, acting by and through Mary F. Clarke, Counsel for the Bureau of Real
16 Estate (herein "the Bureau"), as follows for the purpose of settling and disposing of the
17 Accusation filed on August 16, 2013, in this matter:

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

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

25 3. A Notice of Defense was filed on August 30, 2013, by Respondent pursuant to
26 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
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1 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
2 Respondent acknowledges that he understands that by withdrawing said Notice of Defense, he
3 will thereby waive his rights to require the Real Estate Commissioner (herein "Commissioner")
4 to prove the allegations in the Accusation at a contested hearing held in accordance with the
5 provisions of the APA and that he will waive other rights afforded to him in connection with the
6 hearing such as the right to present evidence in defense of the allegations in the Accusation and
7 the right to cross-examine witnesses.

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

14 5. It is understood by the parties that the Commissioner may adopt the Stipulation
15 and Agreement in Settlement and Order as his decision in this matter, thereby imposing the
16 penalty and sanctions on Respondent's real estate license and license rights as set forth in the
17 below "Order". In the event the Commissioner in his discretion does not adopt the Stipulation
18 and Agreement in Settlement and Order, it shall be void and of no effect, and Respondent shall
19 retain the right to a hearing and proceeding on the Accusation under all the provisions of the
20 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 this
22 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar
23 to any further administrative or civil proceedings by the Bureau with respect to any matters
24 which were not specifically alleged to be causes for Accusation in this proceeding.

25 7. Respondent understands that by agreeing to this Stipulation and Agreement in
26 Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the California
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1 Business and Professions Code (herein "Code"), the cost of the audit which resulted in the
2 determination that Respondent committed the violations found in the Determination of Issues.
3 The amount of said costs is \$8,322.00.

4 8. Respondent understands that by agreeing to this Stipulation and Agreement in
5 Settlement and Order, the findings set forth below in the Determination of Issues become final,
6 and that the Commissioner may charge said Respondent, for the costs of any audit conducted
7 pursuant to Section 10148 of the Code to determine if the trust fund violations found in the
8 Determination of Issues, below, have been corrected. The maximum costs of said audit shall not
9 exceed \$8,322.00.

10 9. Respondent further understands that by agreeing to this Stipulation and
11 Agreement in Settlement and Order, Respondent agrees to pay, pursuant to Section 10106(a) of
12 the Code, investigative and enforcement costs of \$5,905.65 which led to this disciplinary action.

13 DETERMINATION OF ISSUES

14 The acts and omissions of Respondent as described in the Accusation are grounds
15 for the suspension or revocation of the license and license rights of Respondent under the
16 following provisions of the Code and/or Chapter 6, Title 10, California Code of Regulations
17 (herein "the Regulations"):

- 18 (a) as to Paragraph 6(a) under Section 10145 of the Code and Section
19 2832 of the Regulations in conjunction with Section 10177(d) of the
20 Code;
- 21 (b) as to Paragraph 6(b) under Section 2831 of the Regulations in
22 conjunction with Section 10177(d) of the Code;
- 23 (c) as to Paragraph 6(c) under Section 10145 of the Code and Section
24 2831.1 of the Regulations in conjunction with Section 10177(d) of the
25 Code;
- 26 (d) as to Paragraph 6(d) under Section 2831.2 of the Regulations in
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- 1 conjunction with Section 10177(d) of the Code;
- 2 (e) as to Paragraph 6(e) under Section 10176(e) of the Code and Section
- 3 2835 of the Regulations in conjunction with Section 10177(d) of the
- 4 Code;
- 5 (f) as to Paragraph 6(f) under Section 10238(a) of the Code in conjunction
- 6 with Section 10177(d) of the Code;
- 7 (g) as to Paragraph 6(g) under Sections 10240 and 10241 of the Code in
- 8 conjunction with Section 10177(d) of the Code;
- 9 (h) as to Paragraph 6(h) under Section 10238(l) of the Code in conjunction
- 10 with Section 10177(d) of the Code;
- 11 (i) as to Paragraph 6(i) under Section 10238(h) of the Code in conjunction
- 12 with Section 10177(d) of the Code;
- 13 (j) as to Paragraph 6(j) under Section 10238(f) of the Code in conjunction
- 14 with Section 10177(d) of the Code;
- 15 (k) as to Paragraph 6(k) under Sections 10238(k) and 10233 of the Code in
- 16 conjunction with Section 10177(d) of the Code;
- 17 (l) as to Paragraph 6(l) under Section 10238(g) of the Code in conjunction
- 18 with Section 10177(d) of the Code; and
- 19 (m) as to Paragraph 6(m) under Sections 10232.2 and 10232.25 of the Code in
- 20 conjunction with Section 10177(d) of the Code.

21 ORDER

22 All licenses and licensing rights of Respondent under the Real Estate Law are

23 suspended for a period of ninety (90) days from the effective date of this Order; provided,

24 however, that:

25 1. All licenses and licensing rights of Respondent under the Real Estate Law are

26 suspended until such time as Respondent provides proof satisfactory to the Commissioner that

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1 Respondent has, within one hundred twenty (120) days prior to the effective date of the Order
2 herein completed the continuing education course on trust fund accounting and handling
3 specified in subdivision (a) of Section 10170.5 of the Code.

4 2. All licenses and licensing rights of Respondent under the Real Estate Law are
5 suspended until such time as Respondent provides proof satisfactory to the Commissioner that
6 Respondent has complied with each and every section of the Code as described in the
7 Accusation, Paragraph 6(a)-(m) on Pages 2-4, which sections are also described in the
8 Determination of Issues, above, prior to the effective of this Order.

9 3. Sixty (60) days of said ninety (90) day said suspension shall be stayed for two
10 (2) years upon the following terms and conditions:

11 (a) Respondent shall obey all laws, rules and regulations governing the
12 rights, duties and responsibilities of a real estate licensee in the
13 State of California; and,

14 (b) That no final subsequent determination be made, after hearing or
15 upon stipulation, that cause for disciplinary action occurred within
16 two (2) years from the effective date of this Order. Should such a
17 determination be made, the Commissioner may, in his discretion,
18 vacate and set aside the stay order and reimpose all or a portion of
19 the stayed suspension. Should no such determination be made, the
20 stay imposed herein shall become permanent.

21 4. The remaining thirty (30) days of said ninety (90) day suspension shall be
22 stayed upon the condition that Respondent petitions, pursuant to Section 10175.2 of the Code,
23 and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00 for
24 each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

25 (a) Said payment shall be in the form of a cashier's check or certified
26 check made payable to the Recovery Account of the Real Estate Fund.
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1 Said check must be received by the Bureau prior to the effective date
2 of this Order.

3 (b) No further cause for disciplinary action against the Real Estate license
4 of Respondent occurs within two (2) years from the effective date of
5 this Order.

6 (c) If Respondent fails to pay the monetary penalty as provided above prior
7 to the effective date of this Order, the suspension shall go into effect
8 automatically and remain in effect until Respondent pays the monetary
9 penalty in full, in which event Respondent shall not be entitled to any
10 repayment nor credit, prorated or otherwise, for the money paid to the
11 Bureau under the terms of this Order.

12 (d) If Respondent pays the monetary penalty and any other moneys due
13 under this Stipulation and Agreement in Settlement and if no further
14 cause for disciplinary action against the real estate license of
15 Respondent occurs within two (2) years from the effective date of this
16 Order, the entire stay hereby granted under this Order shall become
17 permanent.

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19 5. Respondent understands that by agreeing to this Stipulation and Agreement in
20 Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the Code, the cost
21 of the audit which resulted in the determination that Respondent committed the trust fund
22 violations found in the Determination of Issues, above. The amount of said cost is \$8,322.00.
23 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
24 Commissioner. If Respondent fails to pay such cost within the sixty (60) days, Respondent's real
25 estate license shall automatically be suspended until Respondent's payment is made in full or
26 until Respondent enters into an agreement satisfactory to the Commissioner to provide for
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1 payment. Upon payment in full, the indefinite suspension provided for in this paragraph shall be
2 stayed.

3 6. Respondent shall pay the Commissioner's costs, not to exceed \$8,322.00, of
4 any audit conducted pursuant to Section 10148 of the Code to determine if Respondent has
5 corrected the violations described in the Determination of Issues, above. In calculating the
6 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average
7 hourly salary for all persons performing audits of real estate brokers, and shall include an
8 allocation for travel time to and from the auditor's place of work. Respondent shall pay such
9 cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing
10 the activities performed during the audit and the amount of time spent performing those
11 activities. If Respondent fails to pay such cost within the sixty (60) days, Respondent's real estate
12 license shall automatically be suspended until Respondent's payment is made in full or until
13 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment.
14 Upon payment in full, the indefinite suspension provided for in this paragraph shall be stayed.

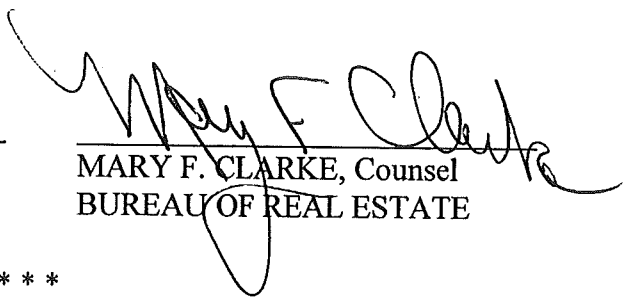
15 7. Respondent shall pay the sum of \$5,905.65 for the Commissioner's
16 investigative and enforcement costs, pursuant to Section 10106(a) of the Code, for the
17 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
18 form of a cashier's check or certified check made payable to the Real Estate Fund. Said check
19 must be received by the Bureau prior to the effective date of this Order. If Respondent fails to
20 satisfy this condition, Respondent's real estate license shall automatically be suspended until
21 Respondent's payment is made in full.

22 8. 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,
24 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
25 condition Respondent's real estate license shall automatically be suspended until Respondent
26 passes the examination.

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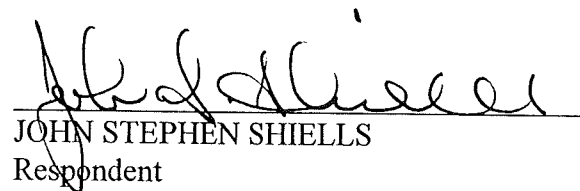
DATED


MARY F. CLARKE, 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 and to present evidence in defense and mitigation of the charges.

3-20-14

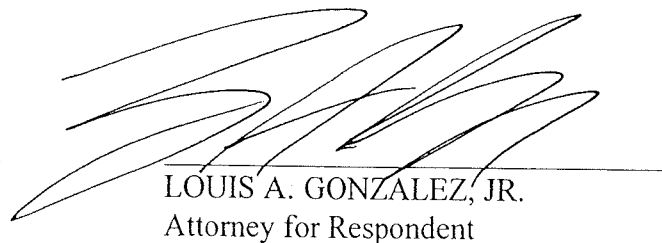
DATED


JOHN STEPHEN SHIELLS
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

3-20-14

DATED


LOUIS A. GONZALEZ, JR.
Attorney for Respondent

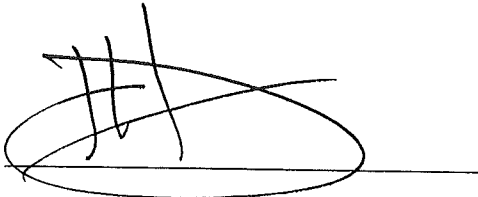
The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

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JUN 23 2014

IT IS SO ORDERED MAY 21, 2014.

REAL ESTATE COMMISSIONER

A handwritten signature in black ink, consisting of several overlapping loops and vertical strokes, positioned above a horizontal line.

JEFFREY MASON
Chief Deputy Commissioner