

FILED

MAR 26 2019

DEPARTMENT OF REAL ESTATE
By 

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
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5 Telephone: (916) 263-8670
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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of:)	Case No. H-12187 SF
)	
13 THEODORE AUGUST LASCOLA and)	<u>STIPULATION AND AGREEMENT</u>
14 LINDA SUE MCCHESENEY)	<u>IN SETTLEMENT AND ORDER</u>
)	
15 Respondents.)	

16 It is hereby stipulated by and between Respondents THEODORE AUGUST
17 LASCOLA ("LASCOLA"), acting by a through LASCOLA'S counsel, David Hamerslough,
18 LINDA SUE MCCHESENEY ("MCCHESENEY"), acting by and through MCCHESENEY's
19 counsel, David Hamerslough, and the Complainant, acting by and through Jason D. Lazark,
20 Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing
21 of the Accusation filed on October 17, 2018, in this matter:

22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondents LASCOLA and MCCHESENEY (collectively
24 referred to herein as "Respondents") at a formal hearing on the Accusation, which hearing was
25 to be held in accordance with the provisions of the Administrative Procedure Act ("APA"),
26 shall instead and in place thereof be submitted solely on the basis of the provisions of this
27 Stipulation and Agreement In Settlement and Order ("Stipulation and Agreement").

1 2. Respondents have received, read and understand the Statements to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
3 of Real Estate in this proceeding.

4 3. Respondents filed Notices of Defense pursuant to Section 11505 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondents hereby freely and voluntarily withdraw said Notices of Defense. Respondents
7 acknowledge that they understand that by withdrawing said Notices of Defense they will
8 thereby waive their rights to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that
10 they will waive other rights afforded to them in connection with the hearing such as the right to
11 present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that
14 the factual allegations as set forth in the Accusation filed in this proceeding are true and correct
15 and the Commissioner shall not be required to provide further evidence of such allegations.

16 5. This Stipulation and Agreement is made for the purpose of reaching an
17 agreed disposition of this proceeding and is expressly limited to this proceeding and any other
18 proceeding or case in which the Department, the state or federal government, any agency of
19 this state, or an agency of another state is involved.

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

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1 7. The Order or any subsequent Order of the Real Estate Commissioner made
2 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to
3 any further administrative or civil proceedings by the Department of Real Estate with respect
4 to any matters which were not specifically alleged to be causes for accusation in this
5 proceeding.

6 8. LASCOLA understands that by agreeing to this Stipulation and Agreement,
7 LASCOLA agrees to be responsible for paying, pursuant to Section 10148 of the California
8 Business and Professions Code ("the Code"), the costs of the audit which resulted in the
9 determination that LASCOLA committed the trust fund violation(s) found in the Determination
10 of Issues. The amount of such costs is \$3,683.98.

11 9. LASCOLA further understand that by agreeing to this Stipulation and
12 Agreement, the findings set forth below in the Determination of Issues become final, and that the
13 Commissioner may charge LASCOLA for the costs of any audit conducted pursuant to Section
14 10148 of the Code to determine if the violations have been corrected and hold LASCOLA
15 responsible for paying the costs of the follow up audit. The maximum costs of said audit shall
16 not exceed \$4,604.97.

17 10. LASCOLA understands that by agreeing to this Stipulation and Agreement,
18 LASCOLA agrees to be responsible for paying, pursuant to Section 10106 of the Code, the costs
19 of the investigation and enforcement of this case which resulted in the determination that
20 Respondents committed the violation(s) found in the Determination of Issues. The amount of
21 such costs is \$1,779.70.

22 DETERMINATION OF ISSUES

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

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1 I.

2 The acts and omissions of LASCOLA, as described in the Accusation, are
3 grounds for the suspension or revocation of the licenses and license rights of LASCOLA under
4 the provisions of Sections 10177(d) and 10177(g) of the Code, in conjunction with Sections
5 10137, 10145, and 10176(e), of the Code, and Sections 2831.2, 2832, 2832.1, and 2834 of Title
6 10 of the California Code of Regulations (“the Regulations”).

7 II.

8 The acts and omissions of MCCHESENEY, as described in the Accusation, are
9 grounds for the suspension or revocation of the licenses and license rights of MCCHESENEY
10 under the provisions of Sections 10177(d) and 10177(g) of the Code, in conjunction with
11 Sections 10130 and 10137 of the Code.

12 ORDER

13 I. AS TO LASCOLA

14 All licenses and licensing rights of LASCOLA under the Real Estate Law are
15 suspended for a period of ninety (90) days from the effective date of this Order; provided,
16 however, that:

17 1. Thirty (30) days of said suspension shall be stayed upon the condition that
18 LASCOLA petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
19 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
20 total monetary penalty of \$1,500.00.

21 a. Said payment shall be in the form of a cashier’s check made payable to
22 the Department of Real Estate. Said check must be delivered to the Department of Real Estate,
23 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
24 Order.

25 b. No further cause for disciplinary action against the real estate license
26 of LASCOLA occurs within two (2) years from the effective date of the Order in this matter.

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1 c. If LASCOLA fails to pay the monetary penalty in accordance with the
2 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
3 immediate execution of all or any part of the stayed suspension, in which event, LASCOLA shall
4 not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
5 Department under the terms of this decision.

6 d. If LASCOLA pays the monetary penalty, and if no further cause for
7 disciplinary action against the real estate license of LASCOLA occurs within two (2) years
8 from the effective date of the Decision herein, then the stay hereby granted shall become
9 permanent.

10 2. The remaining sixty (60) days of said suspension shall also be stayed for two
11 (2) years upon the following terms and conditions:

12 a. LASCOLA shall obey all laws, rules and regulations governing the
13 rights, duties and responsibilities of a real estate licensee in the 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 two (2) years from the
16 effective date of this Order. Should such a determination be made, the Commissioner may, in
17 his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
18 suspension. Should no such determination be made, the stay imposed herein shall become
19 permanent.

20 3. All licenses and licensing rights of LASCOLA are indefinitely suspended
21 unless or until LASCOLA pays the sum of \$1,779.70 for the Commissioner's reasonable costs
22 of the investigation and enforcement which led to this disciplinary action. Said payment shall
23 be in the form of a cashier's check or certified check made payable to the Department of Real
24 Estate. The investigative and enforcement costs must be delivered to the Department of Real
25 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
26 date of this Order.

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1 4. LASCOLA shall pay the sum of \$3,683.98 for the Commissioner's cost of
2 the audit which led to this disciplinary action. LASCOLA shall pay such cost within sixty (60)
3 days of receiving an invoice therefore from the Commissioner. The Commissioner shall
4 indefinitely suspend all licenses and licensing rights of LASCOLA pending a hearing held in
5 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
6 made as provided for herein, or as provided for in a subsequent agreement between LASCOLA
7 and the Commissioner. The suspension shall remain in effect until payment is made in full or
8 until LASCOLA enters into an agreement satisfactory to the Commissioner to provide for
9 payment, or until a decision providing otherwise is adopted following a hearing held pursuant
10 to this condition.

11 5. LASCOLA shall pay the Commissioner's costs, not to exceed \$4,604.97, of
12 any audit conducted pursuant to Section 10148 of the Code to determine if LASCOLA has
13 corrected the violations described in the Determination of Issues, above, and any other
14 violations found in the audit which led to this disciplinary action. 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
17 for travel time to and from the auditor's place of work. LASCOLA shall pay such cost within
18 sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities
19 performed during the audit and the amount of time spent performing those activities. If
20 LASCOLA fails to pay such cost within the sixty (60) days, the Commissioner shall
21 indefinitely suspend all licenses and licensing rights of LASCOLA under the Real Estate Law
22 until payment is made in full or until LASCOLA enter into an agreement satisfactory to the
23 Commissioner to provide for payment. Upon full payment, the indefinite suspension provided
24 for in this paragraph shall be stayed.

25 6. LASCOLA shall, within six (6) months from the effective date of this
26 Decision and Order, take and pass the Professional Responsibility Examination administered by
27 the Department including the payment of the appropriate examination fee. If LASCOLA fails to

1 satisfy this condition, LASCOLA's real estate license shall automatically be suspended until
2 LASCOLA passes the examination.

3 7. All licenses and licensing rights of LASCOLA are indefinitely suspended
4 unless or until LASCOLA provides proof satisfactory to the Commissioner, of having taken and
5 successfully completed the continuing education course on trust fund accounting and handling
6 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
7 Code. Proof of satisfaction of this requirement includes evidence that LASCOLA has
8 successfully completed the trust fund account and handling continuing education course, no
9 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of
10 completion of this continuing education course must be delivered to the Department of Real
11 Estate, Flag Section, at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-
12 8785 prior to the effective date of this Decision and Order.

13 II. AS TO MCCHESENEY

14 All licenses and licensing rights of MCCHESENEY under the Real Estate Law are
15 suspended for a period of forty-five (45) days from the effective date of this Order; provided,
16 however, that:

17 1. Fifteen (15) days of said suspension shall be stayed upon the condition that
18 MCCHESENEY petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
19 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
20 total monetary penalty of \$750.00.

21 a. Said payment shall be in the form of a cashier's check made payable to
22 the Department of Real Estate. Said check must be delivered to the Department of Real Estate,
23 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
24 Order.

25 b. No further cause for disciplinary action against the real estate license
26 of MCCHESENEY occurs within two (2) years from the effective date of the Order in this matter.

27 c. If MCCHESENEY fails to pay the monetary penalty in accordance with
the terms and conditions of the Decision, the Commissioner may, without a hearing, order the

1 immediate execution of all or any part of the stayed suspension, in which event, MCCCHESNEY
2 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
3 Department under the terms of this decision.

4 d. If MCCCHESNEY pays the monetary penalty, and if no further cause
5 for disciplinary action against the real estate license of MCCCHESNEY occurs within two (2)
6 years from the effective date of the Decision herein, then the stay hereby granted shall become
7 permanent.

8 2. The remaining thirty (30) days of said suspension shall also be stayed for two
9 (2) years upon the following terms and conditions:

10 a. MCCCHESNEY shall obey all laws, rules and regulations governing
11 the rights, duties and responsibilities of a real estate licensee in the State of California, and

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

18 3. MCCCHESNEY shall, within six (6) months from the effective date of this
19 Order, take and pass the Professional Responsibility Examination administered by the
20 Department, including the payment of the appropriate examination fee. If MCCCHESNEY
21 fails to satisfy this condition, MCCCHESNEY's real estate license shall automatically be
22 suspended until MCCCHESNEY passes the examination.

23 4. All licenses and licensing rights of MCCCHESNEY are indefinitely suspended
24 unless or until MCCCHESNEY provides proof satisfactory to the Commissioner, of having taken
25 and successfully completed the continuing education course on trust fund accounting and
26 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
27 satisfaction of these requirements includes evidence that MCCCHESNEY has successfully

1 completed the trust fund accounting and handling continuing education course, no earlier than
2 one hundred twenty (120) days prior to the effective date of the Order in this matter. Proof of
3 completion of the trust fund accounting and handling course must be delivered to the Department
4 of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-
5 263-8785, prior to the effective date of this Order.

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8 3-3-19

9 DATED

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JASON D. LAZARK, Counsel
Department of Real Estate

Respondents have read the Stipulation and Agreement in Settlement and Order and its terms are understood by Respondents and are agreeable and acceptable to Respondents. Respondents understand that Respondents are waiving rights given to them by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and Respondents 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 Respondents would have the right to cross-examine witnesses against them and to present evidence in defense and mitigation of the charges.

Respondents and Respondents' attorney further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:

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1 Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-
2 7007. Respondents and Respondents' attorney understand and agree that if they fail to return the
3 original signed Stipulation and Agreement by the due date, Complainant retains the right to set
4 this matter for hearing.

5
6 2-20-19

DATED

7 Theodore August Lascola
THEODORE AUGUST LASCOLA

Respondent

8
9 2/20/19

DATED

10 Linda Sue McClesney
LINDA SUE MCCHESEY

Respondent

11 * * *

12 *I have reviewed the Stipulation and Agreement as to form and content and*
13 *have advised my client accordingly.*

14
15 DATED

16 DAVID HAMERSLOUGH

Attorney for Respondents

17 THEODORE AUGUST LASCOLA and

LINDA SUE MCCHESEY

18 * * *

19 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
20 this matter and shall become effective at 12 o'clock noon on _____.

21 IT IS SO ORDERED _____.


22
23 ACTING REAL ESTATE COMMISSIONER

24
25
26
27 DANIEL J. SANDRI

1 Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-
2 7007. Respondents and Respondents' attorney understand and agree that if they fail to return the
3 original signed Stipulation and Agreement by the due date, Complainant retains the right to set
4 this matter for hearing.

5
6 2-20-19

DATED

7 
THEODORE AUGUST LASCOLA
Respondent

8
9 2/20/19

DATED


10 
LINDA SUE MCCLESNEY
Respondent

11 * * *

12 *I have reviewed the Stipulation and Agreement as to form and content and*
13 *have advised my client accordingly.*

14
15 2/27/19

DATED


16 
DAVID HAMERSLOUGH
Attorney for Respondents
THEODORE AUGUST LASCOLA and
LINDA SUE MCCLESNEY

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18 * * *

19
20 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
21 this matter and shall become effective at 12 o'clock noon on APR 16 2019.

22 IT IS SO ORDERED March 26, 2019.

23 ACTING REAL ESTATE COMMISSIONER

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26 

27 DANIEL J. SANDRI