

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

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FILED

DEC 09 2022

DEPARTMENT OF REAL ESTATE

By B. A. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)	Case No. H-12580 SF
)	
12 JOHN STEWART COMPANY,)	<u>STIPULATION AND AGREEMENT</u>
13 and MARI TUSTIN,)	<u>IN SETTLEMENT AND ORDER</u>
)	
14 Respondents.)	
)	

16 It is hereby stipulated by and between Respondent JOHN STEWART
17 COMPANY ("JS COMPANY") and MARI TUSTIN ("TUSTIN") (collectively referred to as
18 "Respondents"), acting by and through Joshua A. Rosenthal, counsel for Respondents, and the
19 Complainant, acting by and through Jason D. Lazark, Counsel for the Department of Real
20 Estate, as follows for the purpose of settling and disposing of the Accusation filed on May 5,
21 2022, 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 at a formal hearing on the Accusation, which
24 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
25 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of
26 this Stipulation and Agreement In Settlement and Order ("Stipulation and Agreement").

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1 2. Respondents have received, read and understand the Statement 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 Real Estate Commissioner ("Commissioner") to prove
9 the allegations in the Accusation at a contested hearing held in accordance with the provisions
10 of the APA, and that they will waive other rights afforded to them in connection with the
11 hearing, such as the right to present evidence in defense of the allegations in the Accusation
12 and the right to cross-examine witnesses.

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

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

23 6. It is understood by the parties that the Real Estate Commissioner may adopt
24 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalties
25 and sanctions on Respondents' real estate licenses and license rights as set forth in the below
26 "Order." In the event that the Commissioner in his discretion does not adopt the Stipulation
27 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a

1 hearing and proceeding on the Accusation under all the provisions of the APA and shall not be
2 bound by any admission or waiver made herein.

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

8 8. Respondents understand that by agreeing to this Stipulation and Agreement,
9 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10148
10 of the California Business and Professions Code ("the Code"), the costs of the audit which
11 resulted in the determination that Respondents committed the trust fund violation(s) found in the
12 Determination of Issues. The amount of such costs is \$5,342.00.

13 9. Respondents further understand that by agreeing to this Stipulation and
14 Agreement, the findings set forth below in the Determination of Issues become final, and that the
15 Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
16 Section 10148 of the Code to determine if the violations have been corrected and hold
17 Respondents jointly and severally responsible for paying the costs of the follow up audit. The
18 maximum costs of said audit shall not exceed \$6,677.50.

19 10. Respondents further understand that by agreeing to this Stipulation and
20 Agreement, Respondents agree to be responsible for jointly and severally paying, pursuant to
21 Section 10106 of the Code, the costs of the investigation and enforcement of this case which
22 resulted in the determination that Respondents committed the violation(s) found in the
23 Determination of Issues. The amount of such cost is \$2,833.70.

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations, admissions, and waivers, and solely for
26 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
27 and agreed that the following Determination of Issues shall be made:

1 immediate execution of all or any part of the stayed suspension, in which event, JS COMPANY
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 JS COMPANY pays the monetary penalty, and if no further cause
5 for disciplinary action against the real estate license of JS COMPANY 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 be stayed for two (2)
9 years upon the following terms and conditions:

10 a. JS COMPANY 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 II.

19 AS TO TUSTIN

20 All licenses and licensing rights of TUSTIN under the Real Estate Law are
21 suspended for a period of sixty (60) days from the effective date of this Order; provided,
22 however, that:

23 1. Thirty (30) days of said suspension shall be stayed upon the condition that
24 TUSTIN petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
25 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
26 total monetary penalty of \$1,500.

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

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

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

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

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

17 a. TUSTIN shall obey all laws, rules and regulations governing the
18 rights, duties and responsibilities of a real estate licensee in the State of California, and

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

25 3. TUSTIN shall, within nine (9) months from the effective date of this Order,
26 take and pass the Professional Responsibility Examination administered by the Department,
27 including the payment of the appropriate examination fee. If TUSTIN fails to satisfy this

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

3 4. All licenses and licensing rights of TUSTIN are indefinitely suspended unless
4 or until TUSTIN 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 Code. Proof of
7 satisfaction of these requirements includes evidence that TUSTIN has successfully completed the
8 trust fund accounting and handling continuing education course, no earlier than one hundred
9 twenty (120) days prior to the effective date of the Order in this matter. Proof of completion of
10 the trust fund accounting and handling course must be delivered to the Department of Real
11 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date
12 of this Order.

13 III.

14 AS TO JS COMPANY AND TUSTIN JOINTLY AND SEVERALLY

15 1. Pursuant to Section 10148 of the Code, Respondents, jointly and severally,
16 shall pay the sum of \$5,342.00 for the Commissioner's cost of the audit which led to this
17 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
18 invoice therefore from the Commissioner. The Commissioner shall indefinitely suspend all
19 licenses and licensing rights of Respondents pending a hearing held in accordance with Section
20 11500, et seq., of the Government Code, if payment is not timely made as provided for herein,
21 or as provided for in a subsequent agreement between Respondents and the Commissioner.
22 The suspension shall remain in effect until payment is made in full or until Respondents enter
23 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision
24 providing otherwise is adopted following a hearing held pursuant to this condition.

25 2. Respondents, jointly and severally, shall pay the Commissioner's costs, not
26 to exceed \$6,677.50, of any audit conducted pursuant to Section 10148 of the Code to
27 determine if Respondents have corrected the violations described in the Determination of

1 Issues, above, and any other violations found in the audit which led to this disciplinary action.
2 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
3 the estimated average hourly salary for all persons performing audits of real estate brokers, and
4 shall include an allocation for travel time to and from the auditor's place of work. Respondents
5 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
6 Commissioner detailing the activities performed during the audit and the amount of time spent
7 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
8 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents under
9 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
10 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
11 suspension provided for in this paragraph shall be stayed.

12 3. All licenses and licensing rights of Respondents, are indefinitely suspended
13 unless or until Respondents, jointly and severally, pay the sum of \$2,833.70 for the
14 Commissioner's reasonable cost of the investigation and enforcement which led to this
15 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
16 made payable to the Real Estate Fund. The investigative and enforcement costs must be
17 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
18 95813-7013, prior to the effective date of this Order.

19
20 10/4/2022
21 DATED

20 Jason Lazark
21 JASON D. LAZARK, Counsel
22 Department of Real Estate

22 * * *


23 I have read the Stipulation and Agreement in Settlement and Order and its terms
24 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
25 rights given to me by the California Administrative Procedure Act (including but not limited to
26 Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
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I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

10/4/22

DATED



Joshua A. Rosenthal,
Attorney for Respondents,
JOHN STEWART COMPANY,
and MARI TUSTIN

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on DEC 30 2022

IT IS SO ORDERED 11-15-22, 2022.

REAL ESTATE COMMISSIONER



DOUGLAS R. McCAULEY