DEPARTMENT OF REAL ESTATE
P. O. Box 187007
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FILED
DEC 10 2010
DEPARTMENT OF REAL ESTATE
By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JOHN BURTON HOWARD, Respondent.	DRE No. H-2464 FR STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

It is hereby stipulated by and between JOHN BURTON HOWARD (Respondent), his attorney, David Hamerslough and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on March 18, 2010, in this matter:

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

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate in this proceeding.

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3. On April 5, 2010, Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he will thereby waive his right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. Respondent, pursuant to the limitations set forth below, hereby admits that the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are true and correct and the Real Estate Commissioner shall not be required to provide further evidence of such allegations.

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

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

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7. Respondent understands that by agreeing to this Stipulation and Agreement In Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the Business and Professions Code, the cost of the audit which led to this disciplinary action. The amount of said cost is $5,339.52.

8. Respondent has received, read and understands the "Notice Concerning Costs of Subsequent Audits". Respondent understands that by agreeing to this Stipulation and Agreement in Settlement and Order, the findings set forth below in the DETERMINATION OF ISSUES become final, and that the Commissioner may charge Respondent for the cost of any audit conducted pursuant to Section 10148 of the Business and Professions Code to determine if the violations have been corrected. The maximum costs of said audit will not exceed $5,339.52.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers, and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of Sections 2832 and 2834 of Title 10, California Code of Regulations, and Sections 10137, 10148 and 10177(d) of the Business and Professions Code (the Code).

ORDER

1. All licenses and license rights of Respondent JOHN BURTON HOWARD under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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

(b) That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in his

discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2. The remaining thirty (30) days of said 60 day suspension shall be stayed upon the condition that Respondent petition pursuant to Section 10175.2 of the Business and Professions Code and pay a monetary penalty pursuant to Section 10175.2 of the Code at the rate of $100.00 for each day of thirty (30) days of the suspension for a total monetary penalty of $3,000.00.

(a) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

(b) No further cause for disciplinary action against the real estate license of Respondent occurs within two years from the effective date of the Decision in this matter.

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

(d) If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of the Decision, the remaining thirty (30) days of said sixty (60) day suspension will be stayed and the stay hereby granted shall become permanent.

3. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay for the cost of audits No. OK 08-0044 in the amount of $5,339.52 for the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the

Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition, the stay imposed herein shall become permanent.

4. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay for the cost of the follow up audit which shall be less than or equal to $5,339.52 for the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition, the stay imposed herein shall become permanent.

6. That Respondent shall, prior to the effective date of the Decision in this matter, provide certified proof that any shortages revealed in the audit have been cured and the source of funds to cure such shortages, by a letter from his counsel.

10/20/10
DATED

RICHARD K. UNO, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement In Settlement and Order, have discussed it with my attorney, 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 Administrative Procedure Act (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.

10/18/10
DATED

JOHN BURTON HOWARD
Respondent

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

10/18/10
DATED

Dave Hamerslough
DAVID HAMERSLOUGH
Attorney for Respondent

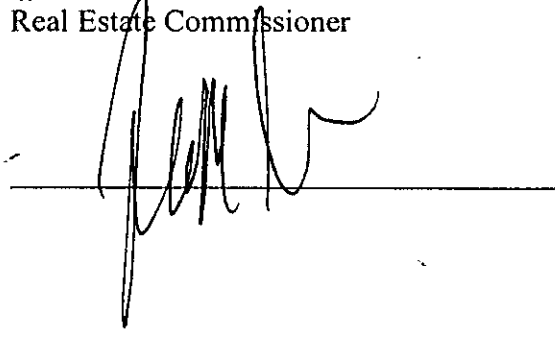
* * *

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on

DEC 31 2010

IT IS SO ORDERED 12/8/2010.

JEFF DAVI
Real Estate Commissioner



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FILED
MAR 18 2010
DEPARTMENT OF REAL ESTATE
By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JOHN BURTON HOWARD, Respondent.	NO. H-2464 FR ACCUSATION

The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent JOHN BURTON HOWARD (HOWARD), is informed and alleges as follows:

1

The Complainant makes this Accusation against Respondent in his official capacity.

2

HOWARD is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real estate broker dba J. B. Howard & Associates.

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At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation. Respondent leased or rented or offered to lease or rent, or places for rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rents from tenants.

FIRST CAUSE OF ACTION

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Beginning on December 16, 2008, and continuing intermittently through January 26, 2009, an audit was conducted at HOWARD's main office located at 4 San Benito Street, Hollister, California, where the auditor examined records for the period of October 1, 2007 through October 31, 2008 (the audit period).

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While acting as a real estate broker as described in Paragraph 3, above, and within the audit period, HOWARD accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with the property management activities, deposited or caused to be deposited those funds into a bank account maintained by HOWARD, including: a) Rabobank, N. A., 491 Tres Pinos Road, Hollister, California 95023, Account No.0230288502, entitled "Judith Marie Counts, Edna Martin" (Bank Account #1); b) Rabobank, N. A., 491 Tres Pinos Road, Hollister, California 95023, Account No. 0874021485, entitled "Karl Schilinger Jr., Edna Martin" (Bank Account #2); c) San Benito Bank, 300 Tres Pinos Road, Hollister, California 95023, Account No. 0120265015, entitled "Brian T. Curtis or Gloria Curtis or Edna B. Martin" (Bank Account #3); d) Rabobank, N. A., 491 Tres Pinos Road, Hollister, California 95023, Account No.00322-09506, entitled "Marc

Lewis, Edna Martin" (Bank Account #4) and e) Rabobank, N. A., 491 Tres Pinos Road, Hollister, California 95023, Account No.0075159068, entitled "Mary Edmondson, Gary Edmondson (rental account)", (Bank Account #5), and thereafter from time to time made disbursement of said trust funds.

6

In the course of the activities described in Paragraph 3, in connection with the collection and disbursement of trust funds, HOWARD:

(a) Failed to designate Bank Account #1, Bank Account #2, Bank Account #3, Bank Account #4 and Bank Account #5 as trust accounts as required by Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);

(b) Allowed unlicensed and unbonded individuals to withdraw funds from trust accounts, as follows, in violation of 2834 of the Regulations;

Bank Account	Signatories
#1	Judith Count, Edna Martin
#2	Karl Schilinger, Jr., Edna Martin
#3	Brian Curtis, Gloria Curtis, Edna Martin
#4	Marc Lewis, Edna Martin
#5	Mary Edmondson, Gary Edmondson, Joan Moore, Edna Martin

(c) An examination of bank balances as of September 31, 2008 showed a combined balance of $28,005.10, while HOWARD had bond coverage of only $25,000.00, which is failure to have adequate fidelity bond coverage as required by Section 2834 of Regulations and

(d) Failed to reconcile and maintain records for at least three years, in that HOWARD maintained copies of only the front sides of cancelled checks in violation of Section 10148 of the Code.

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The acts and/or omissions described above constitute violations of Sections 2832 and 2834 of the Regulations and of Section 10148 of the Code and are grounds for discipline under Section 10177(d) of the Code.

SECOND CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 7, above, and incorporates them herein by reference.

9

At no time within the last three years did the Department license Edna Martin (MARTIN), either as a real estate broker or as a real estate salesperson.

10

Within the three year period prior to the filing of this Accusation, Respondent HOWARD employed and compensated MARTIN to perform the activities requiring a real estate license as alleged in Paragraph 3, above.

11

Within the last three years before the filing of this Accusation, MARTIN showed properties to prospective tenants, screened prospective tenants, collected and deposited rents, ordered repairs, corresponded with property owners, signed checks and management agreements for or in expectation of compensation, acts which require a real estate license under Section 10131(b) of the Code.

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The facts alleged above constitute cause for the suspension or revocation of the licenses and license rights of Respondent HOWARD under Section 10137 of the Code.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

LUKE MARTIN
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 29th day of January, 2010.