

1 DEPARTMENT OF REAL ESTATE
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FILED

MAY 20 2013

DEPARTMENT OF REAL ESTATE

By H. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

12 In the Matter of the Accusation of)
13) NO. H-2608 FR
14 CONWAY & CONWAY, INC.)
15 and IRENE J. CONWAY,) STIPULATION AND AGREEMENT
16 Respondents.) IN SETTLEMENT AND ORDER

17 It is hereby stipulated by and between Respondents CONWAY & CONWAY,
18 INC. ("CCI") and IRENE J. CONWAY ("CONWAY"), (collectively "Respondents"), acting by
19 and through Brett L. Dickerson, Counsel for Respondents, and the Complainant, acting by and
20 through John W. Barron, Counsel for the Department of Real Estate ("the Department"), as
21 follows for the purpose of settling and disposing of the Accusation filed on April 6, 2011, in this
22 matter ("the Accusation"):

23 1. All issues which were to be contested and all evidence which was to be
24 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
25 was 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.

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

4 3. A Notice of Defense was filed on April 19, 2011, by Respondents, pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice
7 of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of
8 Defense, they will thereby waive their right to require the Commissioner to prove the
9 allegations in the Accusation at a contested hearing held in accordance with the provisions of
10 the APA and that they will waive other rights afforded to them in connection with the hearing
11 such as the right to present evidence in defense of the allegations in the Accusation and the
12 right to cross-examine witnesses.

13 4. This Stipulation and Agreement in Settlement and Order is based on the
14 factual allegations contained in the Accusation. In the interests of expedience and economy,
15 Respondents chose not to contest these allegations at hearing, but rather understand that, as a
16 result thereof, these allegations, without being admitted or denied, will serve as a prima facie
17 basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not
18 be required to provide further evidence to prove said factual allegations.

19 5. This Stipulation and Respondents' decision not to contest the Accusation are
20 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
21 limited to this proceeding and any other proceeding or case in which the Department, the state
22 or federal government, an agency of 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 in Settlement and Order as his decision in this matter thereby
25 imposing the penalty and sanctions on Respondents' real estate licenses and license rights as
26 set forth in the below "Order". In the event that the Commissioner in his discretion does not
27 adopt the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect,

1 and Respondents shall retain the right to a hearing and proceeding on the Accusation under all
2 the provisions of the APA and shall not be 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 in Settlement and Order shall not constitute an
5 estoppel, merger, or bar to any further administrative or civil proceedings by the Department
6 with respect to any matters which were not specifically alleged to be causes for accusation in
7 this proceeding.

8 8. Respondents understand that by agreeing to this Stipulation and
9 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and
10 Professions Code ("the Code"), the cost of the audit which resulted in the determination that
11 Respondents committed the violation(s) found in the Determination of Issues. The amount of
12 such costs is \$5,962.00.

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 Commission 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. The maximum
17 cost of said audit shall not exceed \$5,962.00.

18 DETERMINATION OF ISSUES

19 By reason of the foregoing stipulations, admissions and waivers and solely for the
20 purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that
21 the acts and omissions of Respondents described in the Accusation are grounds for the
22 suspension or revocation of the licenses and license rights of CCI under the provisions of
23 Sections 10145 (handling of trust funds), 10176(i) (fraud/dishonest dealing), and 10177(d)
24 (willful disregard of real estate law) and/or 10177(g) (negligence) of the Code, and Sections 2831
25 (maintenance of trust fund records), 2831.2 (trust fund reconciliation requirement), 2832.1 (trust
26 fund handling for multiple beneficiaries), and 2834 (trust fund withdrawal requirements) of the
27 California Code of Regulations; and are grounds for the suspension or revocation of the licenses

1 and license rights of CONWAY under provisions of Sections 10145, 10159.2 (responsibility of
2 corporate officer), 10176(i), 10177(h) (reasonable supervision responsibility of broker), and
3 10177(d) and/or 10177(g) of the Code, and Section 2725 (broker supervision) of the Regulations.

4 ORDER

5 1

6 All licenses and licensing rights of CCI under the Real Estate Law are suspended
7 for a period of sixty (60) days from the effective date of this Order; provided, however, that sixty
8 (60) days of said suspension shall be stayed for two (2) years upon the following terms and
9 conditions:

10 a. CCI shall obey all laws, rules and regulations governing the rights, duties
11 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 upon
13 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
14 date of this Order. Should such a determination be made, the Commissioner may, in his
15 discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
16 suspension. Should no such determination be made, the stay imposed herein shall become
17 permanent.

18 2

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

22 1. Thirty (30) days of said suspension shall be stayed, upon the condition
23 that CONWAY petitions pursuant to Section 10175.2 of the Business and Professions Code and
24 pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a
25 rate of \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00.

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

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

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

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

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

17 a. CONWAY shall obey all laws, rules and regulations governing the rights,
18 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 upon
20 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
21 date of this Order. Should such a determination be made, the Commissioner may, in his
22 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. CONWAY shall, within six (6) months from the effective date of this
26 Order, take and pass the Professional Responsibility Examination administered by the
27 Department, including the payment of the appropriate examination fee. If CONWAY fails to

1 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
2 rights of CONWAY until CONWAY passes the examination.

3 4. Notwithstanding any other provision of this Order, all licenses and
4 licensing rights of CONWAY are suspended unless and until she provides proof satisfactory to
5 the Commissioner that she has taken and successfully completed the continuing education
6 course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code.
7 The course must have been completed no earlier than one hundred twenty (120) days prior to
8 the effective date of this Order, and proof must be submitted prior to the effective date of this
9 Order, to prevent suspension of CONWAY's license pursuant to this condition.

10 3

11 1. Respondents CCI and CONWAY, jointly and severally, shall pay the
12 sum of \$5,962.00 for the Commissioner's cost of the audit which led to this disciplinary action.
13 Respondents CCI and CONWAY shall pay such cost within sixty (60) days of receiving an
14 invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all
15 licenses and licensing right of Respondents CCI and CONWAY pending a hearing held in
16 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
17 made as provided for herein, or as provided for in a subsequent agreement between
18 Respondents and the Commissioner. The suspension shall remain in effect until payment is
19 made in full or until Respondents CCI and CONWAY enter into an agreement satisfactory to
20 the Commissioner to provide for payment, or until a decision providing otherwise is adopted
21 following a hearing held pursuant to this condition.

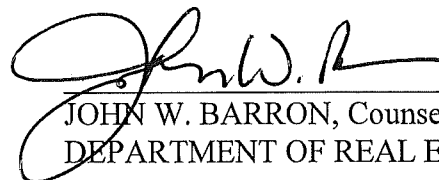
22 2. Respondents CCI and CONWAY, jointly and severally, shall pay the
23 Commissioner's costs, not to exceed \$5,962.00, of any audit conducted pursuant to Section
24 10148 of the Code to determine if Respondents CCI and CONWAY have corrected the
25 violations described in the Determination of Issues, above, and any other violations found in
26 the audit which led to this disciplinary action. In calculating the amount of the
27 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly

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

11 3. Respondents CCI and CONWAY, jointly and severally, shall, prior to
12 the effective date of this Order submit proof satisfactory to the Commissioner of having cured
13 the shortage alleged in Paragraph 9(a) of the Accusation. If Respondents fail to satisfy this
14 condition, the Commissioner may order the suspension of Respondents' licenses until
15 Respondents submit proof that Respondents have cured the trust fund shortage.

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17 4/2/13

18 DATED

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18 JOHN W. BARRON, Counsel
19 DEPARTMENT OF REAL ESTATE

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1 I have read the Stipulation and Agreement in Settlement and Order and its terms
2 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
3 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
4 11509 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
5 those rights, including the right of requiring the Commissioner to prove the allegations in the
6 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
7 and to present evidence in defense and mitigation of the charges.

8
9 3-21-13

10 DATED



11 IRENE J. CONWAY

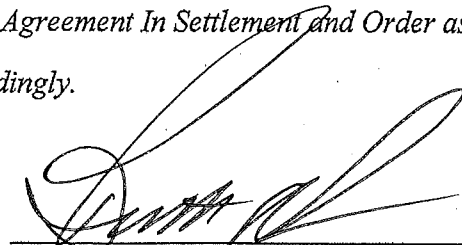
12 Respondent, individually and on behalf of
13 CONWAY & CONWAY, INC.

14 * * *

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

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19 3-25-13

20 DATED



21 BRETT L. DICKERSON

22 Attorney for Respondents

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JUN 19 2013

APR. 30, 2013



CONWAY & CONWAY, INC.
and IRENE J. CONWAY