

FILED

JAN - 8 2014

BUREAU OF REAL ESTATE

By *K. Contreras*

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )  
) NO. H-2622 FR  
)  
JOHN RAYMOND NEWTON, and )  
VICKI DENESE PURCELL, )  
) STIPULATION AND AGREEMENT  
Respondents. ) IN SETTLEMENT AND ORDER  
)  
)

It is hereby stipulated by and between JOHN RAYMOND NEWTON (herein "NEWTON"), and VICKI DENESE PURCELL (herein "PURCELL") (herein collectively "Respondents") individually and jointly, by and through Howard J. Stagg IV, attorney of record herein for Respondents, and the Complainant, acting by and through Stephanie K. Sese, Counsel for the Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing of the Second Amended Accusation (herein "Accusation") filed on January 25, 2013 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents 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. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA, and the Accusation filed by the Bureau in this proceeding.

1                   3. Notices of Defense were filed on June 14, 2011 by Respondents pursuant to Section  
2 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the  
3 Accusation. Respondents hereby freely and voluntarily withdraw said Notices of Defense.  
4 Respondents acknowledge that they understand that by withdrawing said Notices of Defense, they will  
5 thereby waive their rights to require the Real Estate Commissioner (herein "Commissioner") to prove  
6 the allegations in the Accusation at a contested hearing held in accordance with the provisions of the  
7 APA and that they will waive other rights afforded to them in connection with the hearing such as the  
8 right to present evidence in defense of the allegations in the Accusation and the right to cross-examine  
9 witnesses.

10                   4. Respondents, pursuant to the limitations set forth below, hereby admit that the  
11 factual allegations pertaining to them in the Accusation filed in this proceeding are true and correct and  
12 the Real Estate Commissioner shall not be required to provide further evidence of such allegations.

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

20                   6. The Order or any subsequent Order of the Commissioner made pursuant to this  
21 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar to any  
22 further administrative or civil proceedings by the Bureau with respect to any matters which were not  
23 specifically alleged to be causes for Accusation in this proceeding.

24                   7. Respondents understand that by agreeing to this Stipulation and Agreement in  
25 Settlement and Order, Respondents jointly and severally agree to pay, pursuant to Section 10148 of the

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1 California Business and Professions Code (herein "Code"), the cost of the audit which resulted in the  
2 determination that Respondents committed the trust fund violations found in Paragraph I, below, of the  
3 Determination of Issues. The amount of said costs is \$6,836.00. Respondents and Complainant agree  
4 to the division of these costs to be paid on a quarterly basis, the terms of which shall include payment  
5 of \$2,500.00 quarterly, and pursuant to the provisions of the present Order, below.

6 8. Respondents understand that by agreeing to this Stipulation and Agreement in  
7 Settlement and Order, the findings set forth below in the Determination of Issues become final, and  
8 that the Commissioner may charge said Respondents, jointly and severally, for the costs of any audit  
9 conducted pursuant to Section 10148 of the Code to determine if the trust fund violation(s) found in  
10 Paragraph I, below, of the Determination of Issues have been corrected. The maximum costs of said  
11 audit shall not exceed \$6,836.00.

12 DETERMINATION OF ISSUES

13 I

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

- 18 (a) as to Paragraphs 10 (a-h) and Respondents NEWTON and PURCELL  
19 under Section 10145 of the Code in conjunction with Sections 2731, 2831,  
20 2832, 2832.1, and 2834 of the Regulations;  
21 (b) as to Paragraphs 18 (a-d) and Respondents NEWTON and PURCELL  
22 under Section 10177 of the Code in conjunction with Section 2742 of the  
23 Regulations;  
24 (c) as to Paragraph 23 (a) and Respondent PURCELL under Sections 10130  
25 and 10131 of the Code in conjunction with Section 2740 of the

- 1 Regulations; and,  
2 (d) as to Paragraph 26 and Respondent NEWTON under Section 10159.2 of  
3 the Code in conjunction with Section 2725 of the Regulations.

4 ORDER

5 1

6 All licenses and licensing rights of Respondents NEWTON and PURCELL under the Real  
7 Estate Law are suspended for a period of sixty (60) days from the effective date of this Order;  
8 provided, however, that:

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

11 (i) Respondents NEWTON and PURCELL shall obey all laws, rules and  
12 regulations governing the rights, duties and responsibilities of real  
13 estate licensees in the State of California; and,

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

21 (b) Respondents NEWTON and PURCELL understand that by agreeing to this Stipulation and  
22 Agreement in Settlement and Order, Respondents NEWTON and PURCELL, jointly and  
23 severally agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which  
24 resulted in the determination that Respondents NEWTON and PURCELL committed the real  
25 estate violation(s) found in Paragraph 1, above, of the Determination of Issues. The amount of  
26 said cost is \$6,836.00. Respondents NEWTON and PURCELL shall make incremental  
27

1 payment of \$2,500.00 on a continuous quarterly basis, and the first payment shall be made  
2 within sixty (60) days of receiving an invoice therefore from the Commissioner.

3 (c) Respondents NEWTON and PURCELL, jointly and severally, shall pay the Commissioner's  
4 costs, not to exceed \$6,836.00, of any audit conducted pursuant to Section 10148 of the Code to  
5 determine if Respondents NEWTON and PURCELL have corrected the violations described in  
6 Paragraph I of the Determination of Issues, above. In calculating the amount of the  
7 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly  
8 salary for all persons performing audits of real estate brokers, and shall include an allocation for  
9 travel time to and from the auditor's place of work. Respondents NEWTON and PURCELL  
10 shall pay such cost within sixty (60) days of receiving an invoice therefore from the  
11 Commissioner detailing the activities performed during the audit and the amount of time spent  
12 performing those activities. If Respondents NEWTON and PURCELL fail to pay such cost  
13 within the sixty (60) days, the Commissioner may in his discretion indefinitely suspend all  
14 licenses and licensing rights of Respondents NEWTON and PURCELL under the Real Estate  
15 Law until payment is made in full or until Respondents NEWTON and PURCELL enter into an  
16 agreement satisfactory to the Commissioner to provide for payment. Upon payment in full, the  
17 indefinite suspension provided in this paragraph shall be stayed.

18 i. If Respondents NEWTON and PURCELL fail to pay the first installment payment as  
19 noted in Paragraph (b), above, of the Order, within the sixty (60) days, the  
20 Commissioner may in his discretion indefinitely suspend all licenses and licensing  
21 rights of Respondents NEWTON and PURCELL under the Real Estate Law until  
22 payment is made in full or until Respondents NEWTON and PURCELL enter into an  
23 agreement satisfactory to the Commissioner to provide for payment. Upon payment in  
24 full, the indefinite suspension provided in this paragraph shall be stayed.

25 ii. If Respondents NEWTON and PURCELL fail to make remaining payments on at least a  
26 quarterly basis as indicated in Paragraph (b), above, of the Order, the Commissioner  
27 may in his discretion indefinitely suspend all licenses and licensing rights of

1 Respondents NEWTON and PURCELL under Real Estate Law until payment is made  
2 in full or until Respondents NEWTON and PURCELL enter into an agreement  
3 satisfactory to the Commissioner to provide for alternate payment arrangements. Upon  
4 payment in full, the indefinite suspension provided in this paragraph shall be stayed.

5 II

6 1. All licenses and licensing rights of Respondents are indefinitely suspended unless or  
7 until Respondents provide proof satisfactory to the Commissioner of having taken and  
8 successfully completed the continuing education course on trust fund accounting and  
9 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code.  
10 Proof of satisfaction of this requirement includes evidence that Respondents have  
11 successfully completed the trust fund account and handling continuing education course  
12 within six (6) months prior to the effective date of the Decision in this matter.

13 i. The failure of one Respondent to provide proof satisfactory to the Commissioner  
14 of having taken and successfully completed the continuing education course on  
15 trust fund account and handling as provided in paragraph (1), above, shall apply  
16 severally as to that individual Respondent and shall not affect the license or  
17 licensing rights of the other Respondent.

18 2. Respondents shall, within six (6) months from the effective date of this Decision, take  
19 and pass the Professional Responsibility Examination administered by the Bureau  
20 including the payment of the appropriate examination fee. If Respondents fail to satisfy  
21 this condition, the Commissioner may order suspension of the licenses until  
22 Respondents pass the examination.

23 i. The failure of one Respondent to take and pass the Professional Responsibility  
24 Examination administered by the Bureau as provided in paragraph (2), above,  
25 shall apply severally as to that individual Respondent and shall not affect the  
26 license or licensing right of the other Respondent.

9/26/13

DATED

By:

STEPHANIE K. SESE, Counsel  
Bureau of Real Estate

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I have read the Stipulation and Agreement in Settlement and Order and 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 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.

9/26/13

DATED

By:

JOHN RAYMOND NEWTON  
Respondent Real Estate Broker

9/26/13

DATED

By:

VICKI DENESE PURCELL  
Respondent Real Estate Salesperson

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

September 24, 2013

DATED

HOWARD J. STAGG IV  
Attorney for Respondents

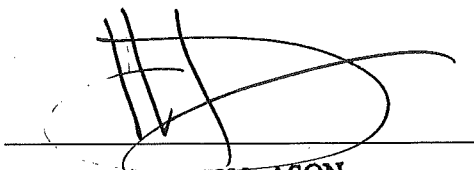
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1                    The foregoing Stipulation and Agreement in Settlement and Order is hereby  
2 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

3                    JAN 28 2014

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5                    IT IS SO ORDERED DEC 23 2013

6  
7                    REAL ESTATE COMMISSIONER

8  
9                      
10                    By: JEFFREY MASON  
11                    Chief Deputy Commissioner