

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

FILED

DEC 14 2011

4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 JAMES MICHAEL DUKE,)
14 Respondent.)

NO. H-2641 FR

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between Respondent JAMES MICHAEL DUKE
16 (herein "Respondent"), individually, by and through Michael P. Slater, attorney of record herein
17 for Respondent, and the Complainant, acting by and through Mary F. Clarke, Counsel for the
18 Department of Real Estate (herein "the Department"), as follows for the purpose of settling and
19 disposing of the Accusation filed on June 16, 2011, in this matter:

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

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

1 3. A Notice of Defense was filed on June 30, 2011 by Respondent, pursuant to
2 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
3 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
4 Respondent acknowledges that he understands that by withdrawing said Notice of Defense,
5 he will thereby waive his right to require the Real Estate Commissioner (herein "the
6 Commissioner") to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA and that he will waive other rights afforded to him in
8 connection with the hearing such as the right to present evidence in defense of the allegations in
9 the Accusation and the right to cross-examine witnesses.

10 4. Respondent, pursuant to the limitations set forth below, hereby admits that
11 the factual allegations pertaining to him in the Accusation filed in this proceeding are true and
12 correct and the Real Estate Commissioner (herein the "Commissioner") shall not be required
13 to provide further evidence of such allegations.

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

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

25 7. Respondent understands that by agreeing to this Stipulation and Agreement in
26 Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the California
27 Business and Professions Code (herein "Code"), the cost of the audit which resulted in the

1 determination that Respondent committed the trust fund violations found in Paragraph I, below,
2 of the Determination of Issues. The amount of said costs is \$6,068.50.

3 8. Respondent further understands that by agreeing to this Stipulation and
4 Agreement in Settlement and Order, the findings set forth below in the Determination of Issues
5 become final, and that the Commissioner may charge Respondent for the reasonable costs of any
6 audit conducted pursuant to Section 10148 of the Code to determine if the trust fund violations
7 found in Paragraph I, below, of the Determination of Issues have been corrected. The maximum
8 costs of said audit shall not exceed \$6,068.50.

9 DETERMINATION OF ISSUES

10 I

11 The acts and omissions of Respondent as described in the Accusation are grounds
12 for the suspension or revocation of the license and license rights of Respondent as follows:

- 13 (a) as to Paragraph 7(a) under Section 10145 of the Code and Section
14 2831.1, of Title 10, Chapter 6 of the California Code of Regulations
15 (herein the "Regulations"), in conjunction with Section 10177(d) of
16 the Code;
- 17 (b) as to Paragraph 7(b) under Section 10145 of the Code and Section
18 2831.2 of the Regulations, in conjunction with Section 10177(d) of
19 the Code;
- 20 (c) as to Paragraph 7(c) under Section 10148 of the Code, in conjunction
21 with Section 10177(d) of the Code;
- 22 (d) as to Paragraph 8(a) under Section 10238(f) of the Code, in
23 conjunction with Section 10177(d) of the Code;
- 24 (e) as to Paragraph 8(b) under Sections 10238(g) and 10234(a) and (c)
25 of the Code, in conjunction with Section 10177(d) of the Code;
- 26 (f) as to Paragraph 8(c) under Section 10238(h)3 of the Code, in
27 conjunction with Section 10177(d) of the Code;

- 1 (g) as to Paragraph 8(d) under Section 10238(h)(4)(A) of the Code, in
2 conjunction with Section 10177(d) of the Code;
- 3 (h) as to Paragraph 8(e) under Section 10238(h)(4)(B) of the Code, in
4 conjunction with Section 10177(d) of the Code;
- 5 (i) as to Paragraph 8(f) under Section 10238(h)(4)(C) of the Code, in
6 conjunction with Section 10177(d) of the Code;
- 7 (j) as to Paragraph 8(g) under Section 10238(h)(4)(D) of the Code, in
8 conjunction with Section 10177(d) of the Code;
- 9 (k) as to Paragraph 8(h) under Section 10238(h)(4)(E) of the Code, in
10 conjunction with Section 10177(d) of the Code;
- 11 (l) as to Paragraph 8(i) under Section 10238(h)(4)(F) of the Code, in
12 conjunction with Section 10177(d) of the Code;
- 13 (m) as to Paragraph 8(j) under Sections 10176(a) and (i), and/or 10177(g)
14 of the Code;
- 15 (n) as to Paragraph 8(k) under Sections 10176(a) and (i), and/or
16 10177(g) of the Code;
- 17 (o) as to Paragraph 8(l) under Sections 10176(a) and (i), and/or 10177(g)
18 of the Code;
- 19 (p) as to Paragraph 9(a) under Section 10160 of the Code and Section
20 2753 of the Regulations, in conjunction with Section 10177(d) of the
21 Code; and,
- 22 (q) as to Paragraph 9(b) under Section 2726 of the Regulations in
23 conjunction with Section 10177(d) of the Code.

24 ORDER

25 1. All licenses and licensing rights of Respondent JAMES MICHAEL DUKE
26 under the Real Estate Law are revoked; provided, however, a restricted real estate broker license
27 shall be issued to Respondent JAMES MICHAEL DUKE pursuant to Section 10156.5 of the

1 Code if, within 90 days from the effective date of the Decision entered pursuant to this Order,
2 Respondent JAMES MICHAEL DUKE, prior to, and as a condition of issuance of said restricted
3 real estate broker license:

- 4 A. makes application for the restricted real estate broker license
5 and pays to the Department the appropriate fee therefor; and,
6 B. submits proof satisfactory to the Commissioner of having taken
7 and completed at an accredited institution the continuing
8 education course on Trust Fund Accounting and Handling
9 specified in Paragraph (3) of subdivision (a) of Section 10170.5
10 of the Code. Said course must have been completed within
11 120 days prior to the effective date of the Order. Credit
12 against the continuing education condition set forth in
13 Paragraph 6, below, will be given for completion of this Trust
14 Fund Accounting and Handling course during the 120 days
15 prior to the effective date of the Order.

16 2. The restricted license issued to Respondent JAMES MICHAEL DUKE shall
17 be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations,
18 conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

- 19 A. The restricted license issued to Respondent JAMES MICHAEL
20 DUKE may be suspended prior to hearing by Order of the
21 Commissioner in the event of Respondent's conviction or plea
22 of nolo contendere to a crime which is substantially related to
23 Respondent's fitness or capacity as a real estate licensee.
24 B. The restricted license issued to Respondent JAMES MICHAEL
25 DUKE may be suspended prior to hearing by Order of the
26 Commissioner on evidence satisfactory to the Commissioner
27 that Respondent has violated provisions of the California Real

1 Estate Law, the Subdivided Lands Law, Regulations of the
2 Real Estate Commissioner or conditions attaching to the
3 restricted license.

4 3. Respondent JAMES MICHAEL DUKE shall not be eligible to apply for the
5 issuance of an unrestricted real estate license, or for the removal of any of the conditions,
6 limitations, or restrictions of a restricted license until two (2) years have elapsed from the
7 effective date of this Order.

8 4. Pursuant to Section 10148 of the Code, Respondent JAMES MICHAEL DUKE
9 shall pay the sum of \$6,068.50 for the Commissioner's cost of the audit which led to this
10 disciplinary action. Respondent shall pay such cost within 60 days of receiving an invoice
11 therefor from the Commissioner. The Commissioner may suspend the restricted license issued to
12 Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government
13 Code, if payment is not timely made as provided for herein, or as provided for in a subsequent
14 agreement between Respondent and the Commissioner. The suspension shall remain in effect
15 until payment is made in full or until Respondent enters into an agreement satisfactory to the
16 Commissioner to provide for payment, or until a decision providing otherwise is adopted
17 following a hearing held pursuant to this condition.

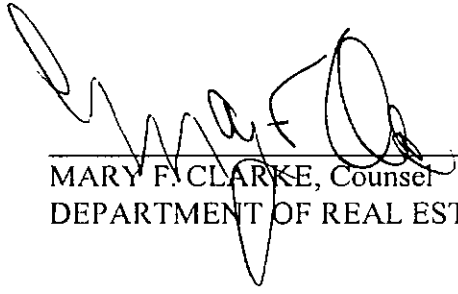
18 5. Pursuant to Section 10148 of the Code, Respondent JAMES MICHAEL
19 DUKE shall pay the Commissioner's reasonable cost, not to exceed \$6,068.50, for an audit to
20 determine if Respondent has corrected the trust fund violations found in Paragraph I of the
21 Determination of Issues, above. In calculating the amount of the Commissioner's reasonable
22 cost, the Commissioner may use the estimated average hourly salary for all persons performing
23 audits of real estate brokers, and shall include an allocation for travel time to and from the
24 auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice
25 therefor from the Commissioner detailing the activities performed during the audit and the
26 amount of time spent performing those activities. The Commissioner may suspend the restricted
27 license issued to Respondent pending a hearing held in accordance with Section 11500, et seq.,

1 of the Government Code, if payment is not timely made as provided for herein, or as provided for
2 in a subsequent agreement between Respondent and the Commissioner. The suspension shall
3 remain in effect until payment is made in full or until Respondent enters into an agreement
4 satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise
5 is adopted following a hearing held pursuant to this condition.

6 6. Respondent JAMES MICHAEL DUKE shall, within **nine (9) months** from
7 the effective date of the Order, present evidence satisfactory to the Commissioner that
8 Respondent has, since the most recent issuance of an original or renewal real estate license,
9 taken and successfully completed the continuing education requirements of Article 2.5 of
10 Chapter 3 of the Real Estate Law for renewal of a real estate license, which must include the
11 following two courses: 1) a three-hour course in risk management that will include practices and
12 procedures calculated to avoid errors; and, 2) omissions in the practice of real estate licensed
13 activities and forms of real estate financing relevant to serving consumers in the marketplace. If
14 Respondent fails to satisfy this condition, the Commissioner may order the suspension of the
15 restricted license until Respondent presents such evidence. The Commissioner shall afford
16 Respondent the opportunity for a hearing pursuant to the APA to present such evidence.

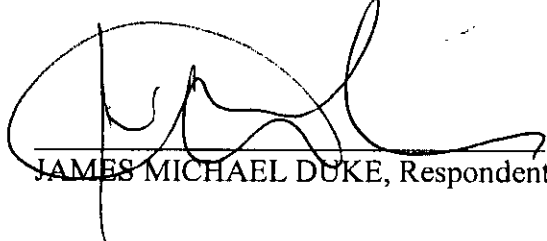
17 7. Respondent JAMES MICHAEL DUKE shall, within **six (6) months** from
18 the issuance of the restricted real estate broker license, take and pass the Professional
19 Responsibility Examination administered by the Department, including the payment of the
20 appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner
21 may order the suspension of the restricted license until Respondent passes the examination.

22
23
24 November 1, 2011
DATED

25 
MARY F. CLARKE, Counsel
26 DEPARTMENT OF REAL ESTATE
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1 I have read the Stipulation and Agreement in Settlement and Order and have
2 discussed it with my attorney and its terms are understood by me and are agreeable and
3 acceptable to me. I understand that I am waiving rights given to me by the California APA
4 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government
5 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of
6 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I
7 would have the right to cross-examine witnesses against me and to present evidence in defense
8 and mitigation of the charges.

9
10 10/28/11
DATED

11 
12 JAMES MICHAEL DUKE, Respondent

13 ***

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

16 10/28/2011
DATED

17 
MICHAEL P. SLATER
Attorney for Respondent

18 ***

19 The foregoing Stipulation and Agreement in Settlement and Order is hereby
20 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
21 January 13, 2012

22 IT IS SO ORDERED 12/7, 2011.

23
24 BARBARA J. BIGBY
Acting Real Estate Commissioner

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1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0780 (Direct)
6 -or- (916) 227-0789 (Main Office)
7 -or- (916) 227-9458 (Fax)

FILED

JUN 16 2011

DEPARTMENT OF REAL ESTATE

By *K. Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JAMES MICHAEL DUKE,) NO. H-2641 FR
13 Respondent.) ACCUSATION
14)

15 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the State
16 of California, for cause of Accusation against JAMES MICHAEL DUKE (herein "Respondent")
17 dba Heritage Investments, also dba Precision Mortgage, is informed and alleges as follows:

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19 The Complainant makes this Accusation in his official capacity.

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21 At all times herein mentioned, Respondent was and now is licensed and has
22 license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
23 Code) (herein "the Code").

24 3

25 At all times herein mentioned, Respondent was and now is licensed by the State
26 of California Department of Real Estate (herein the "Department") as a real estate broker with a
27 mortgage loan originator (MLO) license endorsement.

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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 on behalf of others, for compensation or in expectation of compensation within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage wherein Respondent solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

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In so acting as a real estate broker, as described in Paragraph 4 above, Respondent accepted or received funds in trust (herein "trust funds") from or on behalf of borrowers, lenders, and others in connection with the mortgage loan brokerage activities, and thereafter from time to time made disbursements of said trust funds.

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The aforesaid trust funds accepted or received by Respondent were deposited or caused to be deposited by Respondent into one or more bank accounts (herein "trust fund accounts") maintained by Respondent for the handling of trust funds at the Merced, California, branch of County Bank (presently Westamerica Bank), including but not necessarily limited to:

- (a) "James Michael Duke DBA Heritage Investments Funding Trust Account", account number 95050xxxx (herein "Trust #1"); and,
- (b) "James Michael Duke DBA Heritage Investments Loan Servicing Trust Account", account number 95050xxxx (herein "Trust #2").

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Between about July 1, 2006 and December 31, 2008, in connection with the collection and disbursement of said trust funds, Respondent:

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- (a) failed to keep a separate record for each beneficiary or transaction for Trusts #1 and #2 containing all the information required by Section 10145 of the Code and Section 2831.1 of Title 10, Chapter 6 of the California Code of Regulations (herein "the Regulations");
- (b) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Trusts #1 and #2, as required by Section 2831.2 of the Regulations; and
- (c) failed to retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed in connection with Trusts #1 and #2, in violation of Section 10148 of the Code.

8

Between about August 9, 2006 and August 20, 2008, in connection with the activities described in Paragraph 4, above, specifically a construction loan in the amount of about \$1,200,000.00; Construction Loan/Escrow #44073573-761, for a project on real property identified as APN #136-360-04, Respondent:

- (a) failed to qualify, or retain documentation of having qualified, the following investors from investing more than 10 percent of their assets or 10 percent of adjusted gross income, as required by Section 10238(f) of the Code:

<u>Investors</u>	<u>Date</u>	<u>Funds Received</u>
Shrewsbury	8/9/06	\$26,000
	9/11/06	\$35,000
G.W. Bean	8/10/06	\$120,000
Engelauf	11/26/06	\$100,000
Visveshwara	4/1/07	\$100,000
	9/7/07	\$40,000
	12/4/07	\$25,000
	4/10/08	\$50,000

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<u>Investors</u>	<u>Date</u>	<u>Funds Received</u>
Ramirez	8/7/07	\$55,000
	8/17/07	\$45,000
	12/10/07	\$25,000
	3/12/08	\$25,000
	4/11/08	\$55,000
	4/11/08	\$20,000
Norwood	9/1/07	\$100,000
Ellsworth	4/1/08	\$25,000
Arlen K. Bean	4/10/08	\$25,000
Brohard	4/24/08	\$175,000;

- (b) failed to record the interest of each purchaser/investor, above, as required by Section 10234(a) and (c), in violation of Section 10238(g) of the Code;
- (c) failed to deliver to each purchaser/investor, above, a copy of the appraisal or broker evaluation for the property securing the note, in violation of Section 10238(h)(3) of the Code;
- (d) failed to place construction funds with a neutral third party escrow holder, in violation of Section 10238(h)(4)(A) of the Code;
- (e) failed to fully fund the loan, with the entire loan amount deposited in said escrow prior to recording the deed or deeds of trust, in violation of Section 10238(h)(4)(B) of the Code;
- (f) failed to use a comprehensive, detailed draw schedule, in violation of Section 10238(h)(4)(C) of the Code;
- (g) failed to verify construction draws by an independent qualified person, in violation of Section 10238(h)(4)(D) of the Code;
- (h) failed to obtain an appraisal completed by a qualified and licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice, in violation of Section 10328(h)(4)(E) of the Code;

- 1 (i) failed to provide each purchaser/investor with a detailed description of
2 actions to be taken in the event of a failure to complete the project, in
3 violation of Section 10238(h)(4)(F) of the Code;
- 4 (j) failed to timely record a deed trust or in the alternative an assignment of a
5 deed of trust for each purchaser/investor, above, as represented on the
6 Lender Purchase Disclosure Statement, in violation of Sections 10176(a)
7 and (i), and/or 10177(g) of the Code;
- 8 (k) misrepresented the property's APN number as "APN: 136-350-004" on
9 Assignment of Deeds of Trust recorded on April 23, 2008 (DOC-2008-
10 0059064); June 30, 2008 (DOC-2008-0093922); and August 30, 2008
11 (DOC-2008-0118831), in violation of Sections 10176(a) and (i), and/or
12 10177(g) of the Code; and,
- 13 (l) caused, suffered, or permitted Heritage Investments to grant, assign, or
14 transfer two (2) percent more interest (the equivalent of about \$24,000.00)
15 than it actually owned in the Assignment of Deed of Trust, dated
16 August 20, 2008 (DOC-2008-0118831), in violation of Sections 10176(a)
17 and (i), and/or 10177(g) of the Code.

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19 Between about July 1, 2006 and December 31, 2008, in connection with
20 Respondent's mortgage loan brokerage activities, described in Paragraph 4, Respondent:

- 21 (a) failed to retain in its possession and make available for inspection to
22 the Commissioner, the real estate salesperson license for Edwin
23 Garcia (license #1050764), in violation of Section 10160 of the Code
24 and Section 2753 of the Regulations; and,
- 25 (b) failed to obtain a written agreement with real estate salesperson
26 Edwin Garcia, in violation of Section 2726 of the Regulations.

27 ///

- 1 (j) as to Paragraph 8(g) under Section 10238(h)(4)(D) of the Code, in
2 conjunction with Section 10177(d) of the Code;
- 3 (k) as to Paragraph 8(h) under Section 10238(h)(4)(E) of the Code, in
4 conjunction with Section 10177(d) of the Code;
- 5 (l) as to Paragraph 8(i) under Section 10238(h)(4)(F) of the Code, in
6 conjunction with Section 10177(d) of the Code;
- 7 (m) as to Paragraph 8(j) under Sections 10176(a) and (i), and/or 10177(g) of
8 the Code;
- 9 (n) as to Paragraph 8(k) under Sections 10176(a) and (i), and/or 10177(g) of
10 the Code;
- 11 (o) as to Paragraph 8(l) under Section 10176(a) and (i), and/or 10177(g) of
12 the Code;
- 13 (p) as to Paragraph 9(a) under Section 10160 of the Code and Section 2753
14 of the Regulations, in conjunction with Section 10177(d) of the Code;
15 and,
- 16 (q) as to Paragraph 9(b) under Section 2726 of the Regulations in
17 conjunction with Section 10177(d) of the Code.

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

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25 _____
LUKE MARTIN
Deputy Real Estate Commissioner

26 Dated at Fresno, California
27 this 8th day of June, 2011.