

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

4 Telephone: (916) 227-0789

FILED

DEC - 7 2012

DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

12 In the Matter of the Accusation of)
13 JAMES HOWARD JOHNSTON,) NO. H-2675 FR
14 Respondent.) STIPULATION AND AGREEMENT
15 _____)

17 It is hereby stipulated by and between Respondent JAMES HOWARD
18 JOHNSTON, ("Respondent"), acting by and through Roy C. Gunter, III, Counsel for
19 Respondent, and the Complainant, acting by and through John W. Barron, Counsel for the
20 Department of Real Estate, as follows for the purpose of settling and disposing of the
21 Accusation filed on September 1, 2011, in this matter:

22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondent 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
26 of this Stipulation and Agreement.

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H-2675 FR

JAMES HOWARD JOHNSTON

1 2. Respondent has received, read and understands 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. On September 12, 2011, Respondent filed a Notice of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that Respondent understands that by withdrawing said
8 Notice of Defense, Respondent will thereby waive Respondent's right to require the
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that Respondent will waive other rights
11 afforded to Respondent in connection with the hearing such as the right to present evidence in
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

19 5. This Stipulation and Respondent's decision not to contest the
20 Accusation are made for the purpose of reaching an agreed disposition of this proceeding
21 and are expressly limited to this proceeding and any other proceeding or case in which the
22 Department of Real Estate, the State or the federal government, an agency of this State, or an
23 agency of another state is involved.

24 6. It is understood by the parties that the Real Estate Commissioner may
25 adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the
26 penalty and sanctions on Respondent's real estate license and license rights as set forth in the

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1 "Order" below. In the event that the Commissioner in his discretion does not adopt the
2 Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the
3 right to a hearing and proceeding on the Accusation under all the provisions of the APA and
4 shall not be bound by any admission or waiver made herein.

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

9 DETERMINATION OF ISSUES

10 By reason of the foregoing stipulations, admissions and waivers and solely for
11 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
12 that the acts and omissions of Respondent described in the Accusation are grounds for the
13 suspension or revocation of the licenses and license rights of Respondent for violation of
14 Sections 490 (conviction of crime) and 10177(b) (conviction of crime substantially related to
15 qualifications, functions or duties of real estate licensee) of the California Business and
16 Professions Code ("the Code").

17 ORDER

18 All licenses and licensing rights of Respondent under the Real Estate Law are
19 suspended for a period of sixty (60) days from the effective date of the Decision herein, with
20 30 days stayed; provided, however, the remaining thirty (30) days of said suspension shall also
21 be stayed upon the condition that:

22 1. Thirty (30) days of said suspension shall be stayed, upon the condition that
23 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
24 pursuant to Section 10175.2 of the Code at a rate of \$25 for each day of the suspension for a
25 total monetary penalty of \$750.

26 a. Said payment shall be in the form of a cashier's check or certified check
27 made payable to the Consumer Recovery Account of the Real Estate

1 Fund. Said check must be delivered to the Department prior to the
2 effective date of the Order in this matter.

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

6 c. If Respondent fails to pay the monetary penalty as provided above prior to
7 the effective date of this Order, the stay of suspension shall be vacated as
8 to the Respondent and the order of suspension shall be immediately
9 executed, under this Order, in which event the said Respondent shall not
10 be entitled to any repayment nor credit, prorated or otherwise, for the
11 money paid to the Department under the terms of this Order.

12 d. If Respondent pays the monetary penalty and any other moneys due under
13 this Stipulation and Agreement and if no further cause for disciplinary
14 action against the real estate license of said Respondent occurs within two
15 (2) years from the effective date of this Order, the entire stay hereby
16 granted in this Order, as to said Respondent only, shall become
17 permanent.

18 2. Thirty (30) days of said suspension shall be stayed for two (2) years upon
19 the following terms and conditions:

20 a. Respondent shall obey all laws, rules and regulations governing the rights,
21 duties and responsibilities of a real estate licensee in the State of
22 California; and

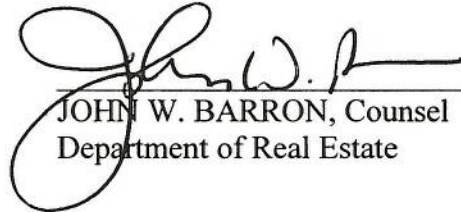
23 b. That no final subsequent determination be made, after hearing or upon
24 stipulation, that cause for disciplinary action occurred within two (2)
25 years from the effective date of this Order. Should such a determination
26 be made, the Commissioner may, at his discretion, vacate and set aside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

Should no such determination be made, the stay imposed herein shall become permanent.

3. All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent pays the sum of \$700.00 for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check or certified check made payable to the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Order in this matter.

4. Respondent shall, within six (6) months from the effective date of this Order, take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of all licenses and licensing rights until Respondent passes the examination.

10/15/12
DATED


JOHN W. BARRON, Counsel
Department of Real Estate

* * *

I have read the Stipulation and Agreement 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

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1 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
2 allegations in the Accusation at a hearing at which I would have the right to cross-examine
3 witnesses against me and to present evidence in defense and mitigation of the charges.

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5 9/6/2012
6 DATED

7
8 
9 JAMES HOWARD JOHNSTON
10 Respondent

11 ***

12 I have reviewed this Stipulation and Agreement and Order as to form and
13 content and have advised my client accordingly.

14 9/6/2012
15 DATED

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17 ROY C. GUNTER, III
18 Attorney for Respondent

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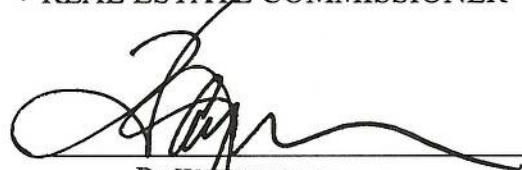
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The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter as to Respondent JAMES HOWARD JOHNSTON and shall become
effective at 12 o'clock noon on DEC 28 2012.

IT IS SO ORDERED

12/3/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel