

FILED

NOV 30 2012

1 Department of Real Estate  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

4 Telephone: (916) 227-0781

By J. Jones

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7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of

12 SCOT ANTHONY LEVESQUE, and  
13 RUSSELL CHARLES MCGARRY JR.,

14 Respondents.

No. H-2710 FR

STIPULATION AND  
AGREEMENT

15 It is hereby stipulated by and between RUSSELL CHARLES MCGARRY JR.,  
16 (Respondent), and the Complainant, acting by and through Truly Sughrue, Counsel for the  
17 Department of Real Estate (Department), as follows for the purpose of settling and disposing the  
18 Accusation filed on January 17, 2012 in this matter:

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

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

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

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

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

24                   7.       Respondent understands that by agreeing to this Stipulation and  
25 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and  
26 Professions Code (Code), the cost of the audit which resulted in the determination that  
27 Respondent committed the violation(s) found in the Determination of Issues. The amount of

1 said costs is \$5,064.96.

2 8. Respondent further understands that by agreeing to this Stipulation and  
3 Agreement in Settlement, the findings set forth below in the Determination Of Issues become  
4 final, and that the Commissioner may charge said Respondent for the costs of any audit  
5 conducted pursuant to Section 10148 of the Code to determine if the violations have been  
6 corrected. The maximum costs of said audit shall not exceed \$5,064.96.

7  
8 \* \* \*

9 **DETERMINATION OF ISSUES**

10 By reason of the foregoing stipulations and waivers and solely for the purpose of  
11 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the  
12 following determination of issues shall be made:

13 I

14 The acts and omissions of Respondent as described in the Accusation are  
15 grounds for the suspension or revocation of Respondent licenses and license rights under  
16 Section 10177(d) of the Code in conjunction with Sections 10130 and 10137 of the Code.

17 \* \* \*

18 **ORDER**

19 I

20 All licenses and licensing rights of Respondent under the Real Estate Law are  
21 revoked; provided, however, a restricted real estate salesperson license shall be issued to  
22 Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefore  
23 and pays to the Department the appropriate fee for the restricted license within 90 days from the  
24 effective date of this Decision. The restricted license issued to Respondent shall be subject to all  
25 of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and  
26 restrictions imposed under authority of Section 10156.6 of that Code:  
27

1           1. The restricted license issued to Respondent may be suspended prior to  
2 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo  
3 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real  
4 estate licensee.

5           2. The restricted license issued to Respondent may be suspended prior to  
6 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that  
7 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
8 Law, Regulations of the Commissioner or conditions attaching to the restricted license.

9           3. Respondent shall not be eligible to apply for the issuance of an  
10 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions  
11 of a restricted license until four (4) years have elapsed from the effective date of this Decision.

12           4. Respondent shall submit with any application for license under an  
13 employing broker, or any application for transfer to a new employing broker, a statement signed  
14 by the prospective employing real estate broker on a form approved by the Department which  
15 shall certify:

16           (a) That the employing broker has read the Decision of the Commissioner  
17 which granted the right to a restricted license; and

18           (b) That the employing broker will exercise close supervision over the  
19 performance by the restricted licensee relating to activities for which a real  
20 estate license is required.

21           5. Respondent shall, within nine (9) months from the effective date of this  
22 Order, present evidence satisfactory to the Commissioner that Respondent has, since the most  
23 recent issuance of an original or renewal real estate license, taken and successfully completed the  
24 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
25 of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order  
26 the suspension of the restricted license until Respondent presents such evidence. The

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1 Commissioner shall afford Respondent the opportunity for hearing pursuant to the APA to  
2 present such evidence.

3 6. Respondent shall, within six (6) months from the effective date of this  
4 Decision, take and pass the Professional Responsibility Examination administered by the  
5 Department including the payment of the appropriate examination fee. If Respondent fails to  
6 satisfy this condition, the Commissioner may order suspension of the restricted license until  
7 Respondent passes the examination.

8 7. Pursuant to Section 10148 of the Code, Respondent, jointly and severally  
9 with Scot Anthony Levesque, shall pay the sum of \$5,064.96 for the Commissioner's cost of the  
10 audit which led to this disciplinary action (audit #FR100026). Respondent shall pay such cost  
11 within sixty (60) days of receiving an invoice therefor from the Commissioner. The  
12 Commissioner may suspend the Respondent's license pending a hearing held in accordance with  
13 Section 11500, et seq., of the Government Code, if payment is not timely made as provided for  
14 herein, or as provided for in a subsequent agreement between the Respondent and the  
15 Commissioner. The suspension shall remain in effect until payment is made in full or until  
16 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or  
17 until a decision providing otherwise is adopted following a hearing held pursuant to this  
18 condition.

19 8. Pursuant to Section 10148 of the Code, Respondent, jointly and severally  
20 with Scot Anthony Levesque, shall pay the Commissioner's reasonable cost, not to exceed  
21 \$5,064.96, for an audit to determine if Respondent has corrected the trust fund violation(s) found  
22 the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost,  
23 the Commissioner may use the estimated average hourly salary for all persons performing audits  
24 of real estate brokers, and shall include an allocation for travel time to and from the auditor's  
25 place of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice  
26 therefor from the Commissioner detailing the activities performed during the audit and the  
27 amount of time spent performing those activities. The Commissioner may suspend Respondent's

1 license pending a hearing held in accordance with Section 11500, et seq., of the Government  
2 Code, if payment is not timely made as provided for herein, or as provided for in a subsequent  
3 agreement between Respondent and the Commissioner. The suspension shall remain in effect  
4 until payment is made in full or until Respondent enters into an agreement satisfactory to the  
5 Commissioner to provide for payment, or until a decision providing otherwise is adopted  
6 following a hearing held pursuant to this condition.

7  
8 26 Sept 12  
DATED

  
TRULY SUGHRUE  
Counsel for Complainant

9 \*\*\*

10 I have read the Stipulation and Agreement, and its terms are understood by me  
11 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the  
12 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive  
13 those rights, including the right of requiring the Commissioner to prove the allegations in the  
14 Accusation at a hearing at which I would have the right to cross-examine witnesses against me  
15 and to present evidence in defense and mitigation of the charges.

16  
17 9-26-12  
DATED

  
RUSSELL CHARLES MCGARRY JR.  
Respondent

18 \*\*\*

19 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
20 shall become effective at 12 o'clock noon on DEC 20 2012, 2012.

21  
22 IT IS SO ORDERED 11 / 9, 2012.

23  
24 Real Estate Commissioner

25   
26 By WAYNE S. BELL  
27 Chief Counsel

FILED

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By P. Jones

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12 SCOT ANTHONY LEVESQUE, and  
13 RUSSELL CHARLES MCGARRY JR.,

14 Respondents.

No. H-2710 FR

STIPULATION AND  
AGREEMENT

15 It is hereby stipulated by and between SCOT ANTHONY LEVESQUE,  
16 (Respondent), and the Complainant, acting by and through Truly Sughrue, Counsel for the  
17 Department of Real Estate (Department), as follows for the purpose of settling and disposing the  
18 Accusation filed on January 17, 2012 in this matter:  
19

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.

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

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

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

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

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

24           7.     Respondent understands that by agreeing to this Stipulation and  
25 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and  
26 Professions Code (Code), the cost of the audit which resulted in the determination that  
27 Respondent committed the violation(s) found in the Determination of Issues. The amount of



1 said costs is \$5,064.96.

2 8. Respondent further understands that by agreeing to this Stipulation and  
3 Agreement in Settlement, the findings set forth below in the Determination Of Issues become  
4 final, and that the Commissioner may charge said Respondent for the costs of any audit  
5 conducted pursuant to Section 10148 of the Code to determine if the violations have been  
6 corrected. The maximum costs of said audit shall not exceed \$5,064.96.

7 \* \* \*

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations and waivers and solely for the purpose of  
10 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the  
11 following determination of issues shall be made:

12 I

13 The acts and omissions of Respondent as described in the Second Cause of  
14 Action of the Accusation are grounds for the suspension or revocation of Respondent licenses  
15 and license rights under Section 10177(d) of the Code in conjunction with Sections 10130 and  
16 10137 of the Code.

17 II

18 The acts and omissions of Respondent as described in the Third Cause of Action  
19 of the Accusation are grounds for the suspension or revocation of Respondent's licenses and  
20 license rights under the following sections of the Code and Regulations:

21 (1) As to Paragraph 20(a), under Section 10177(d) of the Code in conjunction  
22 with Section 2831.1 of the Regulations;

23 (2) As to Paragraph 20(b), under Section 10177(d) of the Code in  
24 conjunction with Section 2831.2 of the Regulations;

25 (3) As to Paragraph 20(c), under Section 10177(d) of the Code in conjunction  
26 with Section 2832 of the Regulations and Section 10145 of the Code;

27

1 (4) As to Paragraph 20(d), under Section 10177(d) of the Code in  
2 conjunction with Section 2834 of the Regulations;

3 (5) As to Paragraph 20(e), under Section 10177(d) of the Code in conjunction  
4 with Section 10145(d) of the Code; and

5 (6) As to Paragraphs 20(f), under Section 10177(d) of the Code in  
6 conjunction with Section 10176(e) of the Code.

7 III

8 The acts and omissions of Respondent as described in the Fourth Cause of  
9 Action of the Accusation are grounds for the suspension or revocation of Respondent licenses  
10 and license rights under Section 10177(h) of the Code.

11 \* \* \*

12 ORDER

13 I

14 All licenses and licensing rights of Respondent under the Real Estate Law are  
15 revoked; provided, however, a restricted real estate broker license shall be issued to Respondent  
16 pursuant to Section 10156.5 of the Code if Respondent makes application therefore and pays to  
17 the Department the appropriate fee for the restricted broker license within 90 days from the  
18 effective date of this Decision. The restricted broker license issued to Respondent shall be  
19 subject to all of the provisions of Section 10156.7 of the Code and to the following limitations,  
20 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

21 1. The restricted license issued to Respondent may be suspended prior to  
22 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo  
23 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real  
24 estate licensee.

25 2. The restricted license issued to Respondent may be suspended prior to  
26 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that  
27

1 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
2 Law, Regulations of the Commissioner or conditions attaching to the restricted license.

3 3. Respondent shall not be eligible to apply for the issuance of an  
4 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions  
5 of a restricted license until four (4) years have elapsed from the effective date of this Decision.

6 4. Any restricted license issued to Respondent pursuant to this Decision shall  
7 be suspended for a period of one hundred and twenty (120) days from the issuance of the  
8 restricted license; provided, however, that said suspension shall be stayed, upon the condition  
9 that Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty  
10 pursuant to Section 10175.2 of the Code at a rate of \$41.67 for each day of the suspension for a  
11 total monetary penalty of \$5,000.

12 a) Said payment shall be in the form of a cashier's check or certified check made  
13 payable to the Consumer Recovery Account of the Real Estate Fund. Said check  
14 must be delivered to the Department prior to the effective date of the Order in this  
15 matter.

16 b) No further cause for disciplinary action against the Real Estate licenses of  
17 Respondent occurs within two (2) years from the effective date of the decision in  
18 this matter.

19 c) If Respondent fails to pay the monetary penalty as provided above prior to the  
20 effective date of this Order, the stay of the suspension shall be vacated as to that  
21 Respondent and the order of suspension shall be immediately executed, under this  
22 Order, in which event the said Respondent shall not be entitled to any repayment  
23 nor credit, prorated or otherwise, for the money paid to the Department under the  
24 terms of this Order.

25 d) If said Respondent pays the monetary penalty and any other moneys due under this  
26 Stipulation and Agreement and if no further cause for disciplinary action against the  
27 real estate license of said Respondent occurs within two (2) years from the effective

1 date of this Order, the entire stay hereby granted this Order, as to said Respondent  
2 only, shall become permanent.

3 5. Respondent shall, within nine (9) months from the effective date of this  
4 Order, present evidence satisfactory to the Commissioner that Respondent has, since the most  
5 recent issuance of an original or renewal real estate license, taken and successfully completed the  
6 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
7 of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order  
8 the suspension of the restricted license until Respondent presents such evidence. The  
9 Commissioner shall afford Respondent the opportunity for hearing pursuant to the APA to  
10 present such evidence.

11 6. Respondent shall, within six (6) months from the effective date of this  
12 Decision, take and pass the Professional Responsibility Examination administered by the  
13 Department including the payment of the appropriate examination fee. If Respondent fails to  
14 satisfy this condition, the Commissioner may order suspension of the restricted license until  
15 Respondent passes the examination.

16 7. Pursuant to Section 10148 of the Code, Respondent, jointly and severally  
17 with Russell Charles McGarry, Jr., shall pay the sum of \$5,064.96 for the Commissioner's cost of  
18 the audit which led to this disciplinary action (audit #FR100026). Respondent shall pay such  
19 cost within sixty (60) days of receiving an invoice therefor from the Commissioner. The  
20 Commissioner may suspend the Respondent's license pending a hearing held in accordance with  
21 Section 11500, et seq., of the Government Code, if payment is not timely made as provided for  
22 herein, or as provided for in a subsequent agreement between the Respondent and the  
23 Commissioner. The suspension shall remain in effect until payment is made in full or until  
24 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or  
25 until a decision providing otherwise is adopted following a hearing held pursuant to this  
26 condition.

27 8. Pursuant to Section 10148 of the Code, Respondent, jointly and severally

1 with Russell Charles McGarry, Jr., shall pay the Commissioner's reasonable cost, not to exceed  
 2 \$5,064.96, for an audit to determine if Respondent has corrected the trust fund violation(s) found  
 3 the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost,  
 4 the Commissioner may use the estimated average hourly salary for all persons performing audits  
 5 of real estate brokers, and shall include an allocation for travel time to and from the auditor's  
 6 place of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice  
 7 therefor from the Commissioner detailing the activities performed during the audit and the  
 8 amount of time spent performing those activities. The Commissioner may suspend Respondent's  
 9 license pending a hearing held in accordance with Section 11500, et seq., of the Government  
 10 Code, if payment is not timely made as provided for herein, or as provided for in a subsequent  
 11 agreement between Respondent and the Commissioner. The suspension shall remain in effect  
 12 until payment is made in full or until Respondent enters into an agreement satisfactory to the  
 13 Commissioner to provide for payment, or until a decision providing otherwise is adopted  
 14 following a hearing held pursuant to this condition.

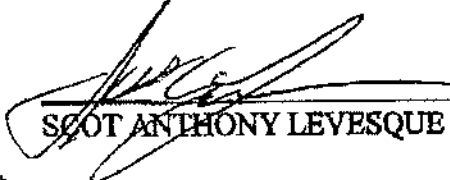
15  
 16 26-Sept-12  
 DATED

  
 TRULY SUGHRUE  
 Counsel for Complainant

\*\*\*

18 I have read the Stipulation and Agreement, and its terms are understood by me  
 19 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the  
 20 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive  
 21 those rights, including the right of requiring the Commissioner to prove the allegations in the  
 22 Accusation at a hearing at which I would have the right to cross-examine witnesses against me  
 23 and to present evidence in defense and mitigation of the charges.

24  
 25 9.26-12  
 DATED

  
 SCOT ANTHONY LEVESQUE

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The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on DEC 20 2012, 2012.

IT IS SO ORDERED Nov. 9, 2012.

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel