

FILED

MAY 21 2014

BUREAU OF REAL ESTATE

By K. Contreras

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670
5 Fax: (916) 263-3767

6 BEFORE THE BUREAU OF REAL ESTATE

7 STATE OF CALIFORNIA

8 * * *

8 In the Matter of the Accusation of)
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NO. H-2810 FR

STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

STERLING PACIFIC LENDING, INC.,
a Corporation, and
CHARLES ROY FISCHER,
Respondents.

14 It is hereby stipulated by and between Respondents STERLING PACIFIC
15 LENDING, INC. (herein "STERLING") and CHARLES ROY FISCHER (herein "FISCHER")
16 (herein collectively "Respondents"), individually and jointly, by and through Joshua A.
17 Rosenthal, attorney of record herein for Respondents, and the Complainant, acting by and
18 through Mary F. Clarke, Counsel for the Bureau of Real Estate (herein "the Bureau"), as follows
19 for the purpose of settling and disposing of the First Amended Accusation filed on December 10,
20 2013 in this matter (herein "the Accusation"):

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondents at a formal hearing on the First Amended Accusation
23 which hearing was to be held in accordance with the provisions of the Administrative Procedure
24 Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of
25 this Stipulation and Agreement in Settlement and Order.
26

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

4 3. Notices of Defense were filed on March 13, 2013, by Respondents pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation and First Amended Accusation. Respondents hereby freely and voluntarily
7 withdraw said Notices of Defense. Respondents acknowledge that they understand that by
8 withdrawing said Notices of Defense, they will thereby waive their rights to require the Real
9 Estate Commissioner (herein "Commissioner") to prove the allegations in the First Amended
10 Accusation at a contested hearing held in accordance with the provisions of the APA and that
11 they will waive other rights afforded to them in connection with the hearing such as the right to
12 present evidence in defense of the allegations in the First Amended Accusation and the right to
13 cross-examine witnesses.

14 4. Respondents hereby admit that the factual allegations pertaining to them in the
15 First Amended Accusation filed in this proceeding are true and correct and the Commissioner
16 shall not be required to provide further evidence of such allegations.

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

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

3 7. Respondents understand that by agreeing to this Stipulation and Agreement in
4 Settlement and Order, Respondents agree to pay, jointly and severally, pursuant to Section 10148
5 of the California Business and Professions Code (herein "Code"), the cost of the audit which
6 resulted in the determination that Respondents committed the violations found in the
7 Determination of Issues. The amount of said costs is \$10,983.01.

8 8. Respondents understand that by agreeing to this Stipulation and Agreement in
9 Settlement and Order, the findings set forth below in the Determination of Issues become final,
10 and that the Commissioner may charge said Respondents, jointly and severally, for the costs of
11 any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund
12 violations found in the Determination of Issues, below, have been corrected. The maximum
13 costs of said audit shall not exceed \$10,983.01.

14 9. Respondents further understand that by agreeing to this Stipulation and
15 Agreement in Settlement and Order, Respondents agree to pay, jointly and severally, pursuant to
16 Section 10106(a) of the Code, investigative and enforcement costs of \$2,795.45 which led to this
17 disciplinary action.

18 DETERMINATION OF ISSUES

19 The acts and omissions of Respondents as described in the First Amended
20 Accusation are grounds for the suspension or revocation of the licenses and license rights of
21 Respondents under the following provisions of the Code and/or Chapter 6, Title 10, California
22 Code of Regulations (herein "the Regulations"):

- 23 (a) as to Paragraph 7(a) under Section 2832.1 of the Regulations in
24 conjunction with Section 10177(d) of the Code;
25 (b) as to Paragraph 7(b) under Section 2831 of the Regulations in
26 conjunction with Section 10177(d) of the Code;

- 1 (c) as to Paragraph 7(c) under Section 2831.2 of the Regulations in
2 conjunction with Section 10177(d) of the Code;
- 3 (d) as to Paragraph 7(d) under Sections 10232.25(a), 10232.2(a), and
4 10238(k)(3) of the Code in conjunction with Section 10177(d) of the
5 Code;
- 6 (e) as to Paragraph 7(e) under Section 10232.25(a) of the Code in
7 conjunction with Section 10177(d) of the Code;
- 8 (f) as to Paragraph 7(f) under Section 10140.6 of the Code and Section 2733
9 of the Regulations in conjunction with Section 10177(d) of the Code.

10 ORDER

11 I

12 All licenses and licensing rights of Respondent STERLING under the Real Estate
13 Law are suspended for a period of ninety (90) days from the effective date of this Order;
14 provided, however, that:

15 1. Sixty (60) days of said ninety (90) day said suspension shall be stayed for two
16 (2) years upon the following terms and conditions:

17 (a) Respondent shall obey all laws, rules and regulations governing the
18 rights, duties and responsibilities of a real estate licensee in the
19 State of California; and,

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

1 2. The remaining thirty (30) days of said ninety (90) day suspension shall be
2 stayed upon the condition that Respondent petitions, pursuant to Section 10175.2 of the Code,
3 and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00 for
4 each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

5 (a) Said payment shall be in the form of a cashier's check or certified
6 check made payable to the Recovery Account of the Real Estate Fund.
7 Said check must be received by the Bureau prior to the effective date
8 of this Order.

9 (b) No further cause for disciplinary action against the Real Estate license
10 of Respondent occurs within two (2) years from the effective date of
11 this Order.

12 (c) If Respondent fails to pay the monetary penalty as provided above prior
13 to the effective date of this Order, the suspension shall go into effect
14 automatically and remain in effect until Respondent pays the monetary
15 penalty in full, in which event Respondent shall not be entitled to any
16 repayment nor credit, prorated or otherwise, for the money paid to the
17 Bureau under the terms of this Order.

18 (d) If Respondent pays the monetary penalty and any other moneys due
19 under this Stipulation and Agreement in Settlement and if no further
20 cause for disciplinary action against the real estate license of
21 Respondent occurs within two (2) years from the effective date of this
22 Order, the entire stay hereby granted under this Order shall become
23 permanent.
24

25 3. Respondent understands that by agreeing to this Stipulation and Agreement in
26 Settlement and Order, Respondent agrees to pay, jointly and severally with Respondent

1 FISCHER, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
2 determination that Respondent committed the trust fund violations found in the Determination of
3 Issues, above. The amount of said cost is \$10,983.01. Respondent shall pay such cost within
4 sixty (60) days of receiving an invoice therefore from the Commissioner. If Respondent fails to
5 pay such cost within the sixty (60) days, Respondent's real estate license shall automatically be
6 suspended until Respondent's payment is made in full. Upon payment in full, the indefinite
7 suspension provided for in this paragraph shall be stayed.

8 4. Respondent shall pay, jointly and severally with Respondent FISCHER, the
9 Commissioner's costs, not to exceed \$10,983.01, of any audit conducted pursuant to Section
10 10148 of the Code to determine if Respondent has corrected the violations described in the
11 Determination of Issues, above. In calculating the amount of the Commissioner's reasonable
12 cost, the Commissioner may use the estimated average hourly salary for all persons performing
13 audits of real estate brokers, and shall include an allocation for travel time to and from the
14 auditor's place of work. Respondent shall pay such cost within sixty (60) days of receiving an
15 invoice therefore from the Commissioner detailing the activities performed during the audit and
16 the amount of time spent performing those activities. If Respondent fails to pay such cost within
17 the sixty (60) days, Respondent's real estate license shall automatically be suspended until
18 Respondent's payment is made in full. Upon payment in full, the indefinite suspension provided
19 for in this paragraph shall be stayed.

20 5. Respondent shall pay, jointly and severally with Respondent FISCHER, the
21 sum of \$2,795.45 for the Commissioner's investigative and enforcement costs, pursuant to
22 Section 10106(a) of the Code, for the investigation and enforcement which led to this
23 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
24 made payable to the Real Estate Fund. Said check must be received by the Bureau prior to the
25 effective date of this Order. If Respondent fails to satisfy this condition, Respondent's real
26 estate license shall automatically be suspended until Respondent's payment is made in full.

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II

All licenses and licensing rights of Respondent FISCHER under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Order; provided, however, that:

1. All licenses and licensing rights of Respondent under the Real Estate Law are suspended until such time as Respondent provides proof satisfactory to the Commissioner that Respondent has, within one hundred twenty (120) days prior to the effective date of the Order herein completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Code.

2. Sixty (60) days of said ninety (90) day said suspension shall be stayed for two (2) years upon the following terms and conditions:

(a) Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,

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

3. The remaining thirty (30) days of said ninety (90) day suspension shall be stayed upon the condition that Respondent petitions, pursuant to Section 10175.2 of the Code, and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00 for each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

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(a) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Bureau prior to the effective date of this Order.

(b) No further cause for disciplinary action against the Real Estate license of Respondent occurs within two (2) years from the effective date of this Order.

(c) If Respondent fails to pay the monetary penalty as provided above prior to the effective date of this Order, the suspension shall go into effect automatically and remain in effect until Respondent pays the monetary penalty in full, in which event Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Bureau under the terms of this Order.

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

4. Respondent understands that by agreeing to this Stipulation and Agreement in

Settlement and Order, Respondent agrees to pay, jointly and severally with Respondent STERLING, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the determination that Respondent committed the trust fund violations found in the Determination of Issues, above. The amount of said cost is \$10,983.01. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. If Respondent fails to

1 pay such cost within the sixty (60) days, Respondent's real estate license shall automatically be
2 suspended until Respondent's payment is made in full. Upon payment in full, the indefinite
3 suspension provided for in this paragraph shall be stayed.

4 5. Respondent shall pay, jointly and severally with Respondent STERLING, the
5 Commissioner's costs, not to exceed \$10,983.01, of any audit conducted pursuant to Section
6 10148 of the Code to determine if Respondent has corrected the violations described in the
7 Determination of Issues, above. In calculating the amount of the Commissioner's reasonable
8 cost, the Commissioner may use the estimated average hourly salary for all persons performing
9 audits of real estate brokers, and shall include an allocation for travel time to and from the
10 auditor's place of work. Respondent shall pay such cost within sixty (60) days of receiving an
11 invoice therefore from the Commissioner detailing the activities performed during the audit and
12 the amount of time spent performing those activities. If Respondent fails to pay such cost within
13 the sixty (60) days, Respondent's real estate license shall automatically be suspended until
14 Respondent's payment is made in full. Upon payment in full, the indefinite suspension provided
15 for in this paragraph shall be stayed.

16 6. Respondent shall pay, jointly and severally with Respondent STERLING, the
17 sum of \$2,795.45 for the Commissioner's investigative and enforcement costs, pursuant to
18 Section 10106(a) of the Code, for the investigation and enforcement which led to this
19 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
20 made payable to the Real Estate Fund. Said check must be received by the Bureau prior to the
21 effective date of this Order. If Respondent fails to satisfy this condition, Respondent's real
22 estate license shall automatically be suspended until Respondent's payment is made in full.

23 7. Respondent shall, within six (6) months from the effective date of this Order,
24 take and pass the Professional Responsibility Examination administered by the Bureau,
25 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
26

1 condition Respondent's real estate license shall automatically be suspended until Respondent
2 passes the examination.

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4
5 3-18-14

6 DATED

7 
8 MARY F. CLARKE, Counsel
9 BUREAU OF REAL ESTATE

10 * * *

11 I have read the Stipulation and Agreement in Settlement and Order and its terms
12 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
13 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
14 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
15 those rights, including the right of requiring the Commissioner to prove the allegations in the
16 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
17 and to present evidence in defense and mitigation of the charges.

18 2-28-14

19 DATED

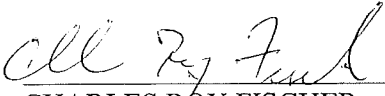
20 STERLING PACIFIC LENDING, INC.
21 Respondent

22 By: 

23 CHARLES ROY FISCHER
24 Designated Officer - Broker

25 2-28-14

26 DATED


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28 CHARLES ROY FISCHER
29 Respondent

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

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DATED



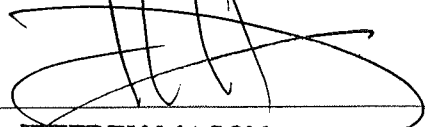
JOSHUA A. ROSENTHAL
Attorney for Respondent

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

JUN 20 2014

IT IS SO ORDERED MAY 16, 2014.

REAL ESTATE COMMISSIONER



JEFFREY MASON
Chief Deputy Commissioner