

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED
MAR - 5 2004

DEPARTMENT OF REAL ESTATE

Laurie G. Z...

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6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 JACK CARTER REALTY, INC. and)
14 JOHN MACDONALD CARTER,)
15 Respondents.)

NO. H-2894 SD

STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

16 It is hereby stipulated by and between JACK CARTER
17 REALTY, INC. and JOHN MACDONALD CARTER (hereinafter
18 "Respondents") and their attorney of record, David S. Bright, of
19 White and Bright, and the Complainant, acting by and through
20 David B. Seals, Counsel for the Department of Real Estate, 'as
21 follows for the purpose of settling and disposing of the
22 Accusation filed on September 12, 2003, in this matter:

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondents
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27 Procedure Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement in Settlement.

3 2. Respondents have received, read and understand the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. A Notice of Defense was filed on September 30,
8 2003 by Respondents, pursuant to Section 11505 of the Government
9 Code for the purpose of requesting a hearing on the allegations
10 in the Accusation. Respondents hereby freely and voluntarily
11 withdraw said Notice of Defense. Respondents acknowledge that
12 they understand that by withdrawing said Notice of Defense they
13 will thereby waive their right to require the Commissioner to
14 prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA and that they
16 will waive other rights afforded to them in connection with the
17 hearing such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondents choose not to contest these
23 allegations, but to remain silent and understand that, as a
24 result thereof, these factual allegations, without being admitted
25 or denied, will serve as a prima facie basis for the disciplinary
26 action stipulated to herein. The Real Estate Commissioner shall

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1 not be required to provide further evidence to prove said factual
2 allegations.

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

14 6. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement in Settlement shall not constitute an estoppel, merger
17 or bar to any further administrative or civil proceedings by the
18 Department of Real Estate with respect to any matters which were
19 not specifically alleged to be causes for accusation in this
20 proceeding.

21 7. Respondents have received, read and understand the
22 "Notice Concerning Costs of Subsequent Audits". Respondents
23 understand that by agreeing to this Stipulation and Agreement in
24 Settlement, the findings set forth below in the DETERMINATION OF
25 ISSUES become final, and that the Commissioner may charge
26 Respondents for the costs of any audit for which they are charged
27 pursuant to Section 10148 of the Business and Professions Code
(hereinafter the "Code"). The reasonable cost of the audit which

1 led to this disciplinary action is \$4,982. The maximum cost of
2 the subsequent audit will not exceed \$4,982.

3 DETERMINATION OF ISSUES

4 I

5 By reason of the foregoing stipulations, admissions
6 and waivers and solely for the purpose of settlement of the
7 pending Accusation without a hearing, it is stipulated and agreed
8 that the facts alleged above are grounds for the suspension or
9 revocation of the licenses and license rights of Respondent JOHN
10 MACDONALD CARTER under Section 10177(h) of the Code and, as to
11 Respondent JACK CARTER REALTY, INC. under Section 10177(d) of the
12 Code in conjunction with Section 10145 of the Code.

13 ORDER

14 I

15 All licenses and licensing rights of Respondents JACK
16 CARTER REALTY, INC. and JOHN MACDONALD CARTER under the Real
17 Estate Law are suspended for a period of thirty (30) days from
18 the effective date of this Order; provided, however, that:

19 1. Fifteen (15) days of said suspension shall be
20 stayed for one (1) year upon the following terms and conditions:

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

25 B. That no final subsequent determination
26 be made, after hearing or upon stipulation, that cause
27 for disciplinary action occurred within one (1) year

1 from the effective date of this Order. Should such a
2 determination be made, the Commissioner may, in his
3 discretion, vacate and set aside the stay order and
4 reimpose all or a portion of the stayed suspension.
5 Should no such determination be made, the stay imposed
6 herein shall become permanent.

7 2. The remaining fifteen (15) days of said 30-day
8 suspension shall be stayed, as to each Respondent individually,
9 upon the condition that each Respondent petition pursuant to
10 Section 10175.2 of the Business and Professions Code and each
11 pays a monetary penalty pursuant to Section 10175.2 of the
12 Business and Professions Code at a rate of \$150 for each day of
13 the suspension for a total monetary penalty of \$2,250 for each
14 Respondent:

15 A. Said payment shall be in the form of a
16 cashier's check or certified check made payable to the
17 Recovery Account of the Real Estate Fund. Said check
18 must be delivered to the Department prior to the
19 effective date of the Order in this matter.

20 B. No further cause for disciplinary action
21 against the Real Estate licenses of said Respondent
22 occurs within one (1) year from the effective date of
23 the decision in this matter.

24 C. If any Respondent fails to pay the
25 monetary penalty as provided above prior to the
26 effective date of this Order, the stay of the
27 suspension shall be vacated as to that Respondent and

1 the order of suspension shall be immediately executed,
2 under this Paragraph 2 of this Order, in which event
3 the said Respondent shall not be entitled to any
4 repayment nor credit, prorated or otherwise, for the
5 money paid to the Department under the terms of this
6 Order.

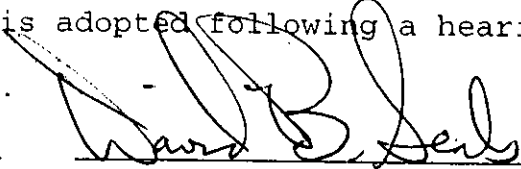
7 D. If said Respondents pay the monetary
8 penalty and any other moneys due under this Stipulation
9 and Agreement and if no further cause for disciplinary
10 action against the real estate licenses of said
11 Respondents occurs within one (1) year from the
12 effective date of this Order, the entire stay hereby
13 granted under Paragraphs 1 and 2 of this Order, as to
14 said Respondent only, shall become permanent.

15 3. Respondent JOHN MACDONALD CARTER shall, prior to
16 the date this Stipulation becomes effective, submit proof
17 satisfactory to the Commissioner of having taken and successfully
18 completed the continuing education course on trust fund
19 accounting and handling specified in subdivision (a) of Section
20 10170.5 of the Business and Professions Code. Proof of
21 satisfaction of this requirement includes evidence that
22 Respondent JOHN MACDONALD CARTER has successfully completed the
23 trust fund account and handling continuing education course
24 within 120 days prior to the effective date of the Stipulation in
25 this matter.

26 4. Pursuant to Section 10148 of the Business and
27 Professions Code, Respondents JOHN MACDONALD CARTER and JACK

1 CARTER REALTY, INC. shall pay the Commissioner's reasonable cost
2 for the audit which led to this disciplinary action and a
3 subsequent audit to determine if Respondent JACK CARTER REALTY,
4 INC. has corrected the trust fund violation(s) found in paragraph
5 I of the Determination of Issues. In calculating the amount of
6 the Commissioner's reasonable cost, the Commissioner may use the
7 estimated average hourly salary for all persons performing audits
8 of real estate brokers, and shall include an allocation for
9 travel time to and from the auditor's place of work. Respondents
10 JOHN MACDONALD CARTER and JACK CARTER REALTY, INC. shall pay such
11 cost within 60 days of receiving an invoice from the Commissioner
12 detailing the activities performed during the audit and the
13 amount of time spent performing those activities. The
14 Commissioner may suspend the license issued to Respondents JOHN
15 MACDONALD CARTER and JACK CARTER REALTY, INC. pending a hearing
16 held in accordance with Section 11500, et seq., of the Government
17 Code, if payment is not timely made as provided for herein, or as
18 provided for in a subsequent agreement between Respondents JOHN
19 MACDONALD CARTER and JACK CARTER REALTY, INC. and the
20 Commissioner. The suspension shall remain in effect until
21 payment is made in full or until Respondents JOHN MACDONALD
22 CARTER and JACK CARTER REALTY, INC. enter into an agreement
23 satisfactory to the Commissioner to provide for payment, or until
24 a decision providing otherwise is adopted following a hearing
25 held pursuant to this condition.

26 DATED: Jan. 27, 2004

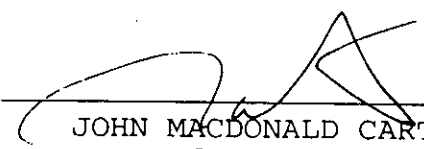


DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, 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 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.

DATED: 1/19/04


JOHN MACDONALD CARTER
Respondent

DATED: 1/19/04


JACK CARTER REALTY, INC.
Respondent

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

1/21/04

David S. Bright
Attorney for Respondents

The foregoing Stipulation and Agreement in Settlement
is hereby adopted by the Real Estate Commissioner as his Decision
and Order and shall become effective at 12 o'clock noon on

MARCH 26, 2004.

IT IS SO ORDERED February 10, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
OCT 22 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JACK CARTER REALTY, INC. and
JOHN MacDONALD CARTER,

Case No. H-2894 SD

OAH No. L-2003100176

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101** on **MONDAY--DECEMBER 22, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: OCTOBER 22, 2003

DEPARTMENT OF REAL ESTATE
By 
DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED

SEP 12 2003

DEPARTMENT OF REAL ESTATE

By Jean Quach

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JACK CARTER REALTY, INC. and)
13 JOHN MACDONALD CARTER,)
14 Respondents.)

NO. H-2894 SD

ACCUSATION

15
16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California for cause of Accusation
18 against JOHN MACDONALD CARTER (hereinafter "Respondent CARTER")
19 and JACK CARTER REALTY, INC. (hereinafter "Respondent JCR") is
20 informed and alleges as follows:

21 I

22 The Complainant, J. Chris Graves, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

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1 II

2 Respondent JCR is presently licensed and/or has license
3 rights under the Real Estate Law, Part 1 of Division 4 of the
4 California Business and Professions Code (hereinafter "Code"), as
5 a corporate real estate broker with Respondent CARTER as its
6 designated officer.

7 III

8 Respondent CARTER at all times mentioned herein was
9 licensed and/or has license rights under the Real Estate Law,
10 Part 1 of Division 4 of the Code, as a real estate broker.
11 Respondent CARTER at all times mentioned herein was the
12 designated officer of Respondent JCR.

13 IV

14 At all times mentioned herein, as the designated
15 officer of Respondent JCR, Respondent CARTER was responsible for
16 the supervision and control of the activities conducted on behalf
17 of Respondent JCR by its officers and employees as necessary to
18 secure full compliance with the provisions of the Real Estate
19 Law.

20 V

21 Whenever reference is made in an allegation in this
22 Accusation to an act or omission of Respondent JCR, such
23 allegation shall be deemed to mean that the officers, directors,
24 employees, agents and real estate licensees employed by or
25 associated with Respondent JCR committed such act or omissions
26 while engaged in furtherance of the business or operation of

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1 Respondent JCR and while acting within the course and scope of
2 their corporate authority and employment.

3 VI

4 That at all times herein mentioned, Respondent JCR and
5 Respondent CARTER, and both of them, engaged in the business of,
6 acted in the capacity of, advertised, or assumed to act as real
7 estate brokers in the State of California within the meaning of
8 Sections 10131(b) of the Code, for or in expectation of
9 compensation, by leasing or renting or offering to lease or rent,
10 or placing for rent, or soliciting listings of places for rent,
11 or soliciting for prospective tenants, or negotiating the sale,
12 purchase or exchange of leases on real property, or on a business
13 opportunity, or collecting rents from real property, or
14 improvements thereon, or from business opportunities.

15 VII

16 That at all times mentioned herein, Respondent JCR and
17 Respondent CARTER accepted or received funds in trust (hereafter
18 trust funds) from and on behalf of their principals placing them
19 in bank accounts and at times thereafter made disbursements of
20 such funds.

21 VIII

22 From July 10 through August 14, 2002 an investigative
23 audit (SD010050) was performed by the Department of the records
24 and bank records of Respondent JCR for the period from May 1,
25 2000 through June 30, 2002, as said records related to its
26 property management activities as a real estate broker.

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IX

Respondent JCR maintained two trust accounts, as follows:

Account #4261064811 (hereinafter TA1) at California Bank & Trust, 11717 Bernardo Plaza Court, San Diego, CA 92128.

Account #4260002761 (hereinafter TA2) at California Bank & Trust, 11717 Bernardo Plaza Court, San Diego, CA 92128.

X

The adjusted balance of TA2 as of June 30, 2002 was Ninety-Three Thousand Nine Hundred Twenty-Nine and 72/100 Dollars (\$93,929.72) and the trust fund accountability in the account as of June 30, 2002 was Ninety-Four Thousand One Hundred Twenty-Two and 50/100 Dollars (\$94,122.50). Therefore, Respondent, as of June 30, 2002, had a trust fund shortage of One Hundred Ninety-Two and 78/100 Dollars (\$192.78).

XI

In TA2 Respondent JCR caused the disbursement of trust funds from the trust account without the written consent of every principal who was an owner of the funds, causing the balance of the funds in the account to be an amount less than the existing aggregate trust fund liability of Respondent JCR to all owners of said funds in TA5 in violation of Section 10145 of the Code and Section 2832.1, Title 10, California Code of Regulations (hereinafter the "Regulations").

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1 XII

2 For the greater part of the period from May 1, 2001
3 through June 30, 2002, Respondent JCR had in excess of \$200.00 of
4 its own funds in TA1 and TA2 for longer than 25 days in violation
5 of Section 2835 of the Regulations and Section 10176(e) of the
6 Code.

7 XIII

8 The control records for both TA1 and TA2 did not
9 include the dates on which trust funds were received in violation
10 of Section 2831 of the Regulations.

11 XIV

12 The separate records for TA1 did not reflect the
13 amounts of security deposits transferred from TA2 and the
14 separate records for TA2 did not include the check numbers or
15 payees for related disbursements in violation of Section 2831.1
16 of the Regulations.

17 XV

18 Respondent JCR failed to reconcile on a monthly basis
19 the total of all separate records with the control record for TA2
20 in violation of Section 2831.2 of the Regulations.

21 XVI

22 Diane Carter and Jack Richard Carter were signatories
23 on TA1 and TA2. However, neither Diane Carter nor Jack Richard
24 Carter were licensed by the Department, during the time covered
25 by the audit, nor did they have fidelity bond coverage at least
26 equal to the minimum amount of trust funds to which they had
27

1 access at the time, in violation of Section 2834 of the
2 Regulations.

3 XVII

4 At all times mentioned herein, Respondent CARTER failed
5 to exercise reasonable supervision over the activities of
6 Respondent JCR, and permitted, ratified and/or caused the conduct
7 described above. Respondent CARTER failed to reasonably or
8 adequately review, oversee, inspect and manage the personnel and
9 activities of Respondent JCR, and/or to establish reasonable
10 policies, rules, procedures and systems for such review,
11 oversight, inspection and management.

12 XVIII

13 The acts and/or omissions of Respondents described
14 above are grounds for the revocation or suspension of
15 Respondents' licenses under the following sections of the
16 Business and Professions Code and the Regulations:

- 17 (a) As to Respondent JCR under Sections 10176(e) of
18 the Code and Section 10177(d) of the Code in
19 conjunction with Section 10145 of the Code and
20 Sections 2831, 2831.1, 2831.2, 2832.1, 2834 and
21 2835 of the Regulations; and
22 (b) As to Respondent CARTER only, under Section
23 10177(h) of the Code and Section 2725 of the
24 Regulations in conjunction with Section 10177(d)
25 of the Code.

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27 ///

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

J. Chris Graves
J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 28th day of May, 2003.