

FILED

AUG 16 2016

BUREAU OF REAL ESTATE

By B dew

1 BUREAU OF REAL ESTATE

2 P. O. Box 137007

3 Sacramento, CA 95813-7007

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

10 * * *

11 In the Matter of the Accusation of)

12 W P WESSON & CO INC. and)
13 WALTER PERRIN WESSON, III,)

NO. H-2994 FR

14) STIPULATION AND AGREEMENT
15) IN SETTLEMENT AND ORDER

16 Respondents.)

17 It is hereby stipulated by and between Respondents W P WESSON & CO INC.
18 (herein "WESSON INC") and WALTER PERRIN WESSON, III (herein "WESSON") (herein
19 collectively "Respondents") and the Complainant, acting by and through Mary F. Clarke,
20 Counsel for the Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of
21 settling and disposing the Accusation filed on February 23, 2016, in this matter (herein
22 "Accusation"):

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

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

4 3) Notices of Defense were filed on March 2, 3016, by Respondents pursuant
5 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices
7 of Defense. Respondents acknowledge they understand that by withdrawing said Notices of
8 Defense they will thereby waive their rights to require the Real Estate Commissioner (herein "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 they will waive other rights afforded to them
11 in connection with the hearing such as the right to present evidence in defense of the allegations
12 in the Accusation and the right to cross-examine witnesses.

13 4) Respondents, pursuant to the "Determination of Issues" set forth below,
14 hereby admit that the factual allegations in the Accusation filed in this proceeding are true and
15 correct and the Commissioner shall not be required to provide further evidence of such
16 allegations.

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

24 6) The "Order" or any subsequent Order of the Commissioner made pursuant
25 to this Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or
26 civil proceedings by the Bureau with respect to any matters which were not specifically alleged to
27 be causes for accusation in this proceeding.

1 7) Respondents understand that by agreeing to this Stipulation, Respondents
2 agree to pay, pursuant to Section 10148 of the California Business and Professions Code (herein
3 "Code"), the cost of the audit which resulted in the determination that Respondents committed
4 the violations found in the "Determination of Issues" below. The amount of said cost is
5 \$4,191.02.

6 8) Respondents understand that by agreeing to this Stipulation, the findings
7 set forth below in the "Determination of Issues" become final, and that the Commissioner may
8 charge Respondents for the cost of any audit conducted pursuant to Section 10148 of the Code to
9 determine if the trust fund violations found in the "Determination of Issues," below, have been
10 corrected. The maximum cost of said audit shall not exceed \$4,191.02.

11 9) Respondents further understand that by agreeing to this Stipulation,
12 Respondents agree to pay, pursuant to Section 10106(a) of the Code, investigative and
13 enforcement costs of \$4,229.10 which led to this disciplinary action.

14 DETERMINATION OF ISSUES

15 The acts and/or omissions of Respondents as described in the Accusation are
16 grounds for the suspension or revocation of the licenses and license rights of Respondents under
17 the following provisions of the Code and/or Chapter 6, Title 10, of the California Code of
18 Regulations (herein "the Regulations"):

- 19 (a) as to Paragraph 8(a) and WESSON INC under Section 2832.1 of the
20 Regulations in conjunction with Section 10177(d) of the Code;
21 (b) as to Paragraph 8(b) and WESSON INC under Section 10145 of the
22 Code and Section 2832 of the Regulations in conjunction with
23 Section 10177(d) of the Code;
24 (c) as to Paragraph 8(c) and WESSON INC under Section 10145(g) of
25 the Code and Section 2831.1 of the Regulations in conjunction with
26 Section 10177(d) of the Code;
27 (d) as to Paragraph 8(d) and WESSON INC under Section 2831.2 of the

- 1 Regulations in conjunction with Section 10177(d) of the Code;
- 2 (e) as to Paragraph 8(e) and WESSON INC under Section 2834 of the
- 3 Regulations in conjunction with Section 10177(d) of the Code;
- 4 (f) as to Paragraph 8(f) and WESSON INC under Section 10159.5 of the
- 5 Code and Section 2731 of the Regulations in conjunction with
- 6 Section 10177(d) of the Code;
- 7 (g) as to Paragraph 8(g) and WESSON INC under Sections 10163 of the
- 8 Code in conjunction with Section 10177(d) of the Code; and
- 9 (h) as to Paragraph 8(h) and WESSON INC under Section 2742(c) of the
- 10 Regulations in conjunction with Section 10177(d) of the Code.

11 ORDER

12 I

13 All licenses and licensing rights of Respondent WESSON INC under the Real

14 Estate Law are suspended for a period of 60 days from the effective date of this Decision;

15 provided, however, that:

16 1) 30 days of said suspension shall be stayed, upon the condition that

17 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty

18 pursuant to Section 10175.2 of the Code at a rate of \$50.00 per day for a total monetary penalty

19 of \$1,500.00.

20 a) Said payment shall be in the form of a cashier's check made payable

21 to the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate,

22 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of

23 this Decision.

24 b) No further cause for disciplinary action against the Real Estate license of

25 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

26 c) If Respondent fails to pay the monetary penalty in accordance with the

27 terms and conditions of this Decision, the suspension shall go into effect automatically.

1 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money
2 paid to the Bureau under the terms of this Decision

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

7 2) 30 days of said suspension shall be stayed for two (2) years upon the
8 following terms and conditions:

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

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

17 3) Pursuant to Section 10148 of the Code, Respondent WESSON INC,
18 jointly and severally with Respondent WESSON, shall pay the sum of \$4,191.02 for the
19 Commissioner's cost of the audit which led to this disciplinary action. **Respondent shall pay**
20 **such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.**
21 Payment of audit costs should not be made until Respondent receives the invoice. If Respondent
22 fails to satisfy this condition in a timely manner as provided for herein, Respondent's real estate
23 license shall automatically be suspended until payment is made in full, or until a decision
24 providing otherwise is adopted following a hearing held pursuant to this condition.

25 4) Pursuant to Section 10148 of the Code, Respondent WESSON INC,
26 jointly and severally with Respondent WESSON, shall pay the Commissioner's reasonable cost,
27 not to exceed \$4,191.02, for an audit to determine if Respondent has corrected the violations

1 found in the "Determination of Issues." In calculating the amount of the Commissioner's
2 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
3 performing audits of real estate brokers, and shall include an allocation for travel time to and
4 from the auditor's place of work. **Respondent shall pay such cost within sixty (60) days of**
5 **receiving an invoice therefore from the Commissioner.** Payment of the audit costs should not
6 be made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a
7 timely manner as provided for herein, Respondent's real estate license shall automatically be
8 suspended until payment is made in full, or until a decision providing otherwise is adopted
9 following a hearing held pursuant to this condition.

10 5) All licenses and licensing rights of Respondent WESSON INC are
11 indefinitely suspended unless or until Respondent WESSON INC, jointly and severally with
12 Respondent WESSON, pays the sum of \$4,229.10 for the Commissioner's reasonable cost of
13 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
14 the form of a cashier's check made payable to the Bureau of Real Estate. **The investigative and**
15 **enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box**
16 **137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision.**

17 II

18 All licenses and licensing rights of Respondent WESSON under the Real Estate
19 Law are suspended for a period of 60 days from the effective date of this Decision; provided,
20 however, that:

21 1) 30 days of said suspension shall be stayed, upon the condition that
22 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
23 pursuant to Section 10175.2 of the Code at a rate of \$50.00 per day for a total monetary penalty
24 of \$1,500.00.

25 a) Said payment shall be in the form of a cashier's check made payable
26 to the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate,
27

1 **Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of**
2 **this Decision.**

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 Decision in this matter.

5 c) If Respondent fails to pay the monetary penalty in accordance with the
6 terms and conditions of this Decision, the suspension shall go into effect automatically.

7 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money
8 paid to the Bureau under the terms of this Decision

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

13 2) 30 days of said suspension shall be stayed for two (2) years upon the
14 following terms and conditions:

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

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

23 3) All licenses and licensing rights of Respondent WESSON are indefinitely
24 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having
25 taken and successfully completed the continuing education course on trust fund accounting and
26 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and
27 Professions Code. Proof of satisfaction of these requirements includes evidence that Respondent

1 has successfully completed the trust fund account and handling continuing education courses, no
2 earlier than 120 days prior to the effective date of the Decision in this matter. **Proof of**
3 **completion of the trust fund accounting and handling course must be delivered to the**
4 **Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by**
5 **fax at 916-263-8758, prior to the effective date of this Decision.**

6 4) Pursuant to Section 10148 of the Code, Respondent WESSON, jointly and
7 severally with Respondent WESSON INC, shall pay the sum of \$4,191.02 for the
8 Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay
9 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
10 Payment of audit costs should not be made until Respondent receives the invoice. If Respondent
11 fails to satisfy this condition in a timely manner as provided for herein, Respondent's real estate
12 license shall automatically be suspended until payment is made in full, or until a decision
13 providing otherwise is adopted following a hearing held pursuant to this condition.

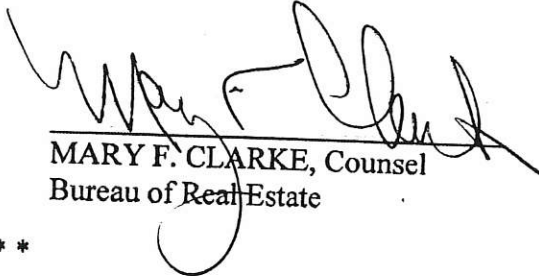
14 5) Pursuant to Section 10148 of the Code, Respondent WESSON, jointly and
15 severally with Respondent WESSON INC, shall pay the Commissioner's reasonable cost, not to
16 exceed \$4,191.02, for an audit to determine if Respondent has corrected the violations found in
17 the "Determination of Issues." In calculating the amount of the Commissioner's reasonable cost,
18 the Commissioner may use the estimated average hourly salary for all persons performing audits
19 of real estate brokers, and shall include an allocation for travel time to and from the auditor's
20 place of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice
21 therefore from the Commissioner. Payment of the audit costs should not be made until
22 Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner
23 as provided for herein, Respondent's real estate license shall automatically be suspended until
24 payment is made in full, or until a decision providing otherwise is adopted following a hearing
25 held pursuant to this condition.

26 6) All licenses and licensing rights of Respondent WESSON are indefinitely
27 suspended unless or until Respondent WESSON, jointly and severally with Respondent

1 WESSON INC, pays the sum of \$4,229.10 for the Commissioner's reasonable cost of the
2 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
3 form of a cashier's check made payable to the Bureau of Real Estate. **The investigative and**
4 **enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box**
5 **137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision.**

6 7) Respondent WESSON shall, within six (6) months from the effective
7 date of this Decision, take and pass the Professional Responsibility Examination administered
8 by the Bureau including the payment of the appropriate examination fee. If Respondent fails to
9 satisfy this condition, Respondent's real estate license shall automatically be suspended until
10 Respondent passes the examination.

11
12 6-22-16
13 DATED

14 
15 MARY F. CLARKE, Counsel
16 Bureau of Real Estate

17 * * *

18 Respondent can signify acceptance and approval of the terms and conditions of
19 this Stipulation by faxing or electronically e-mailing a copy of the signature page, as actually
20 signed by Respondent, to the Bureau at fax number (916) 263-3767. Respondent agrees,
21 acknowledges and understands that by electronically sending to the Bureau a fax or other
22 electronic copy of Respondent's actual signature as it appears on the Stipulation, that receipt of
23 the faxed or e-mailed copy by the Bureau shall be as binding on Respondent as if the Bureau had
24 received the original signed Stipulation.

25 I have read this Stipulation and its terms are understood by me and are agreeable
26 and acceptable to me. I understand that I am waiving rights given to me by the California APA
27 (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 the witnesses against me and to present evidence in defense

1 and mitigation of the charges.

3 W P WESSON & CO INC.
4 Respondent

5 June 21, 2016

6 DATED

By:

7 
WALTER PERRIN WESSON, III
8 Designated Officer Broker

9 June 21, 2016

10 DATED

11 
WALTER PERRIN WESSON, III
12 Respondent

13 The foregoing Stipulation and Agreement in Settlement and Order is hereby
14 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
15 SEP 06 2016

16 IT IS SO ORDERED

17 8/13/2016

18 WAYNE S. BELL
19 REAL ESTATE COMMISSIONER

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