

FILED

MAR 29 2017

BUREAU OF REAL ESTATE
By B. Nicholas

Bureau of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007
Telephone: (916) 227-0781

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ACTION ONE PROPERTY MANAGEMENT,
INC. and CARL GENE GWALTNEY,

Respondents.)

No. H-3028 FR

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between ACTION ONE PROPERTY
MANAGEMENT, INC. (ACTION) and CARL GENE GWALTNEY (GWALTNEY)
(collectively "Respondents"), represented by Steven C. Vondran, and the Complainant, acting
by and through Truly Sughme, Counsel for the Bureau of Real Estate (Bureau), as follows for
the purpose of settling and disposing the Accusation filed on August 2, 2016, in this matter:

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

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

1 3. Respondents 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 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
4 acknowledge that Respondents understand that by withdrawing said Notice of Defense
5 Respondents will thereby waive Respondents' rights to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA, and that Respondents will waive other rights
8 afforded to Respondents in connection with the hearing such as the right to present evidence in
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

10 4. This Stipulation and Agreement is based on the factual allegations
11 contained in the Accusation. In the interest of expediency and economy, Respondents choose not
12 to contest these factual allegations, but to remain silent and understand that, as a result thereof,
13 these factual statements will serve as a prima facie basis for the "Determination of Issues" and
14 "Order" set forth below. The Commissioner shall not be required to provide further evidence to
15 prove such allegations.

16 5. This Stipulation and Agreement and Respondents' decision not to contest
17 the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and
18 are expressly limited to this proceeding and any other proceeding or case in which the Bureau,
19 the state or federal government, an agency of this state, or an agency of another state is involved.

20 6. Respondents understand that by agreeing to this Stipulation and
21 Agreement, Respondents agrees to pay, pursuant to Section 10148 of the California Business
22 and Professions Code (Code), the cost of the audit, which resulted in the determination that
23 Respondents committed the trust fund handling violation(s) found in the Determination of
24 Issues. The amount of said costs is \$4,983.14.

25 7. Respondents further understand that by agreeing to this Stipulation and
26 Agreement, the findings set forth below in the Determination of Issues become final, and that
27 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to

1 Section 10148 of the Code to determine if the violations have been corrected. The maximum
2 costs of said audit shall not exceed \$6,228.93.

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

10 9. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Bureau with respect to any matters which were not
13 specifically alleged to be causes for action in Accusation H-3028 FR.

14 * * *

15 DETERMINATION OF ISSUES

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

19 I

20 The acts and omissions of Respondents as described in the First Cause of Action
21 of the Accusation are grounds for the suspension or revocation of Respondents' licenses and
22 license rights under the following sections of the Code and Title 10 of the California Code of:

23 As to Paragraph 11(a), under Section 10177(d) of the Code in conjunction with
24 Section 10145 of the Code and Section 2832 of the Regulations;

25 As to Paragraph 11(b), under Section 10176(e) of the Code;

26 As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with
27 Section 2834 of the Regulations;

1 As to Paragraph 11(d), under Section 10177(d) of the Code in conjunction with
2 Section 2831.1 of the Regulations;

3 As to Paragraph 11(e), under Section 10177(d) of the Code in conjunction with
4 Section 2831.2 of the Regulations; and

5 As to Paragraph 11(f), under Section 10177(d) of the Code in conjunction with
6 Section 2831 of the Regulations.

7 II

8 The acts and/or omissions of GWALTNEY as described in the Second Cause of
9 Action of the Accusation is cause for the suspension or revocation of Respondent's license
10 and/or license rights under Section 10177(h) of the Code.

11 * * *

12 ORDER

13 I

14 All licenses and licensing rights of Respondent ACTION under the Real Estate
15 Law are revoked; provided, however, a restricted real estate corporate broker license shall be
16 issued to Respondent pursuant to Section 10156.5 of the Code if ACTION makes application
17 therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days from
18 the effective date of this Decision and Order. The restricted license issued to ACTION 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 ACTION may be suspended prior to
22 hearing by Order of the Commissioner in the event of ACTION's conviction or plea of nolo
23 contendere to a crime which is substantially related to ACTION's fitness or capacity as a real
24 estate licensee.

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

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

3 3. ACTION shall not be eligible to apply for the issuance of an unrestricted
4 real estate license nor for removal of any of the conditions, limitations, or restrictions of a
5 restricted license until two (2) years have elapsed from the effective date of this Decision and
6 Order. ACTION shall not be eligible to apply for any unrestricted licenses until all restrictions
7 attaching to the license have been removed.

8 II

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

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

20 2. The restricted license issued to GWALTNEY may be suspended prior to
21 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
22 GWALTNEY has violated provisions of the California Real Estate Law, the Subdivided Lands
23 Law, Regulations of the Commissioner or conditions attaching to the restricted license.

24 3. GWALTNEY shall not be eligible to apply for the issuance of an
25 unrestricted real estate license nor for removal of any of the conditions, limitations, or
26 restrictions of a restricted license until two (2) years have elapsed from the effective date of this
27

1 Decision and Order. GWALTNEY shall not be eligible to apply for any unrestricted licenses
2 until all restrictions attaching to the license have been removed.

3 4. GWALTNEY shall, within nine (9) months from the effective date of this
4 Decision and Order, present evidence satisfactory to the Commissioner that GWALTNEY has,
5 since the most recent issuance of an original or renewal real estate license, taken and successfully
6 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
7 Law for renewal of a real estate license. If GWALTNEY fails to satisfy this condition,
8 GWALTNEY's real estate license shall automatically be suspended until GWALTNEY presents
9 evidence satisfactory to the Commissioner of having taken and successfully completed the
10 continuing education requirements. Proof of completion of the continuing education courses
11 must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento,
12 CA 95813-7013.

13 5. All licenses and licensing rights of GWALTNEY are indefinitely
14 suspended unless or until GWALTNEY provides proof satisfactory to the Commissioner, of
15 having taken and successfully completed the continuing education course on trust fund
16 accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the
17 Code. Proof of satisfaction of these requirements includes evidence that GWALTNEY has
18 successfully completed the trust fund account and handling continuing education courses, no
19 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of
20 completion of the trust fund accounting and handling course must be delivered to the Bureau of
21 Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-
22 263-8758, prior to the effective date of this Decision and Order.

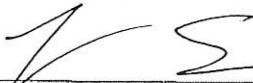
23 III

24 1. Pursuant to Section 10148 of the Code, Respondents shall jointly and
25 severally pay the sum of \$4,983.14 for the Commissioner's cost of the audit which led to this
26 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
27 invoice therefore from the Commissioner. Payment of audit costs should not be made until

1 Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner
2 as provided for herein, Respondents' real estate license shall automatically be suspended until
3 payment is made in full, or until a decision providing otherwise is adopted following a hearing
4 held pursuant to this condition.

5 2. Pursuant to Section 10148 of the Code, Respondents shall pay the
6 Commissioner's reasonable cost, not to exceed \$6,228.93, for an audit to determine if
7 Respondents have corrected the violation(s) found in the Determination of Issues. In calculating
8 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
9 average hourly salary for all persons performing audits of real estate brokers, and shall include an
10 allocation for travel time to and from the auditor's place of work. Respondents shall pay such
11 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of
12 the audit costs should not be made until Respondents receive the invoice. If Respondents fail to
13 satisfy this condition in a timely manner as provided for herein, Respondents' real estate license
14 shall automatically be suspended until payment is made in full, or until a decision providing
15 otherwise is adopted following a hearing held pursuant to this condition.

16 15-Dec-16
17 DATED


18 TRULY SUGHRUE
Counsel for Complainant

19 * * *

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

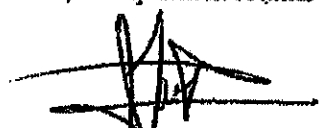
1 Respondents and Respondents' attorney further agree to send the original signed
2 Stipulation and Agreement by mail to the following address no later than one (1) week from the
3 date the Stipulation and Agreement is signed by Respondents and Respondents' attorney;

4 *Bureau of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.*

5 Respondents and Respondents' attorney understand and agree that if they fail to return the
6 original signed Stipulation and Agreement by the due date, Complainant retains the right to set
7 this matter for hearing.

8 12/14/16

9 DATED



Jackeline P. Price, for
ACTION ONE PROPERTY MANAGEMENT,
INC.
Respondent

13 DATED

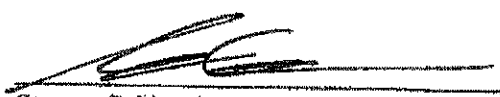
CARL GENE GWALTNEY
Respondent

15 ***

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

18 12/15/16

19 DATED



Steven C. Vondran
Attorney for Respondents

20 ***

21 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
22 Order and shall become effective at 12 o'clock noon on _____.

23 IT IS SO ORDERED _____

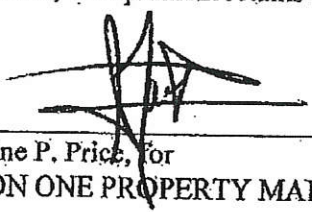
24
25 WAYNE S. BELL
26 REAL ESTATE COMMISSIONER
27 _____

1 Respondents and Respondents' attorney further agree to send the original signed
2 Stipulation and Agreement by mail to the following address no later than one (1) week from the
3 date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:
4 Bureau of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.

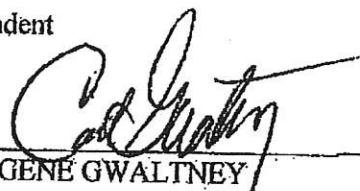
5 Respondents and Respondents' attorney understand and agree that if they fail to return the
6 original signed Stipulation and Agreement by the due date, Complainant retains the right to set
7 this matter for hearing.

8 12/14/16

9 DATED


10 Jackeline P. Price, for
11 ACTION ONE PROPERTY MANAGEMENT,
12 INC.
13 Respondent

12 12/14/2016
13 DATED


14 CARL GENE GWALTNEY
15 Respondent

15 ***

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

18 DATED

19 Steven C. Vondran
20 Attorney for Respondents

20 ***

21 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
22 Order and shall become effective at 12 o'clock noon on APR 19 2017

23 IT IS SO ORDERED 3/27/2017

24
25 WAYNE S. BELL
26 REAL ESTATE COMMISSIONER
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