

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

4 Telephone: (916) 227-0781

FILED

JAN 09 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

5
6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 MERCED OLD 99 REALTY, INC., RUSSELL)
13 CHARLES McGARRY JR., JOHN HENRY)
14 SCHWALBACH III, and ESTHER)
15 VALENCIA,)

15 Respondents.)

DRE No. H-3143 FR

OAH No. 2019060393

STIPULATION AND
AGREEMENT

16 It is hereby stipulated by and between MERCED OLD 99 REALTY, INC.
17 (MERCED 99), and RUSSELL CHARLES McGARRY JR. (McGARRY) (collectively
18 "Respondents"), and the Complainant, acting by and through Truly Sughrue, Counsel for the
19 Department of Real Estate (Department), as follows for the purpose of settling and disposing
20 the Accusation filed on November 2, 2018, in this matter:

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 Accusation, which hearing
23 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
24 shall instead and in place thereof be submitted solely on the basis of the provisions of this
25 Stipulation and Agreement.

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

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

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

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

24 6. MERCED 99 understands that by agreeing to this Stipulation and
25 Agreement, MERCED 99 agrees to pay, pursuant to Section 10106 of the Business and
26 Professions Code (Code), the reasonable costs of the investigation and enforcement of these
27 cases. The amount of said costs is \$5,000.00.

1) Thirty (30) days of said suspension shall be stayed, upon the condition that
MERCED 99 petition 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 \$50 for each day of the suspension for a total
monetary penalty of \$1,500.

a) Said payment shall be in the form of a cashier's check made payable to the
Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
Order.

b) No further cause for disciplinary action against the Real Estate licenses of
MERCED 99 occurs within two (2) years from the effective date of the decision in this matter.

c) If MERCED 99 fails to pay the monetary penalty as provided above prior to the
effective date of this Order, the stay of the suspension shall be vacated as to that MERCED 99
and the order of suspension shall be immediately executed, under this Order, in which event the
said MERCED 99 shall not be entitled to any repayment nor credit, prorated or otherwise, for the
money paid to the Department under the terms of this Order.

d) If MERCED 99 pays the monetary penalty and any other moneys due under this
Stipulation and Agreement and if no further cause for disciplinary action against the real estate
license of said MERCED 99 occurs within two (2) years from the effective date of this Order, the
entire stay hereby granted this Order, as to said MERCED 99 only, shall become permanent.

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

a) MERCED 99 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

1 such determination be made, the stay imposed herein shall become permanent.

2 3) All licenses and licensing rights of MERCED 99 are indefinitely suspended unless
3 or until MERCED 99 pays the sum of \$5,000.00 for the Commissioner's reasonable cost of the
4 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
5 form of a cashier's check made payable to the Department of Real Estate. The investigative and
6 enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box
7 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.

8 II

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

12 1) Forty-five (45) days of said suspension shall be stayed, upon the condition that
13 McGARRY petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
14 pursuant to Section 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total
15 monetary penalty of \$2,250.

16 a) Said payment shall be in the form of a cashier's check made payable to the
17 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
18 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
19 Order.

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

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

27

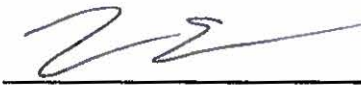
1 d) If McGARRY pays the monetary penalty and any other moneys due under this
2 Stipulation and Agreement and if no further cause for disciplinary action against the real estate
3 license of said McGARRY occurs within two (2) years from the effective date of this Order, the
4 entire stay hereby granted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

5 2) Forty-five (45) days of said suspension shall be stayed for two (2) years upon the
6 following terms and conditions:

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

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

14
15 2-Nov-19
16 DATED

15 
16 TRULY SUGHRUE
17 Counsel for Complainant

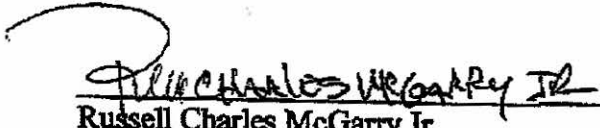
18 * * *

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

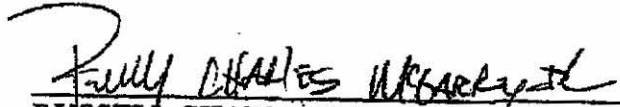
25 Respondents further agree to send the original signed Stipulation and Agreement
26 by mail to the following address no later than one (1) week from the date the Stipulation and
27 Agreement is signed by Respondents: *Department of Real Estate, Legal Section, P.O. Box*

1 137007, Sacramento, California 95813-7007. Respondents understand and agree that if they fail
2 to return the original signed Stipulation and Agreement by the due date, Complainant retains the
3 right to set this matter for hearing.

4
5 11-1-19
6 DATED


7 Russell Charles McGarry Jr.,
8 Director and Chief Financial Officer, on behalf of
9 MERCED OLD 99 REALTY, INC.,
10 Respondent

11
12 11-1-19
13 DATED


14 RUSSELL CHARLES MCGARRY JR.
15 Respondent

16 ***

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

19
20 11-1-19
21 DATED

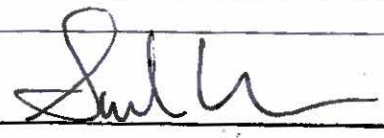

22 JONATHON TURNER
23 Attorney for Respondents

24 ***

25 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
26 Order and shall become effective at 12 o'clock noon on JAN 30 2020

27 IT IS SO ORDERED 12/22/19

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



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

4 Telephone: (916) 227-0781

FILED

JAN 09 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

5
6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

12 MERCED OLD 99 REALTY, INC., RUSSELL
13 CHARLES McGARRY JR., JOHN HENRY
14 SCHWALBACH III, and ESTHER
15 VALENCIA,

Respondents.

DRE No. H-3143 FR

OAH No. 2019060393

STIPULATION AND
AGREEMENT

16 It is hereby stipulated by and between JOHN HENRY SCHWALBACH III
17 (Respondent), and the Complainant, acting by and through Truly Sughrue, Counsel for the
18 Department of Real Estate (Department), as follows for the purpose of settling and disposing
19 the Accusation filed on November 2, 2018, in this matter:

20 1. All issues which were to be contested and all evidence which was to be
21 presented by Complainant and Respondents 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 understand 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 Respondent understands that by withdrawing said Notice of Defense
5 Respondent will thereby waive Respondent's 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 Respondent will waive other rights afforded
8 to Respondent in connection with the hearing such as the right to present evidence in defense of
9 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, Respondent chooses 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 Respondent's 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
19 Department, the state or federal government, an agency of this state, or an agency of another state
20 is involved.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

2-Nov-19

DATED



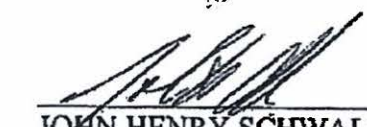
TRULY SUGHRUE
Counsel for Complainant

I have read the Stipulation and Agreement, 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, 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.

Respondents further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by Respondents: *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007*. Respondents understand and agree that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

11/1/19

DATED

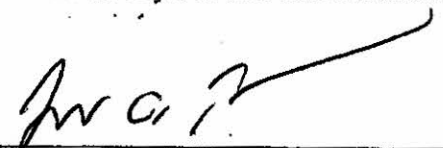


JOHN HENRY SCHWALBACH III
Respondent

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

11-1-19

DATED



JONATHON TURNER
Attorney for Respondents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

The foregoing Stipulation and Agreement is hereby adopted as my Decision and
Order and shall become effective at 12 o'clock noon on JAN 30 2020.

IT IS SO ORDERED 12/27/19.

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER

