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MAR 29 2021

DEPARTMENT OF REAL ESTATE

By *Adew*

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

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In the Matter of the Accusation of:

JACK ALAN FRANKLIN,
Respondent

No. H-3283 FR

**STIPULATION AND
AGREEMENT IN
SETTLEMENT AND ORDER**

It is hereby stipulated by and between JACK ALAN FRANKLIN ("Respondent") and Complainant, acting by and through Adriana Z. Badilas, Real Estate Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on January 16, 2020, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent 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. Respondent has received, read, and understand the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department in this proceeding.

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3. Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that Respondent will waive his right to require the Real Estate Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that Respondent will waive other rights afforded to him in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

6. This Decision and Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department with respect to any matters, which were not specifically alleged in Accusation H-3283 FR.

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DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions, and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following Determination of Issues shall be made:

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The acts and/or omissions of Respondent, as described in the Accusation, are grounds for the suspension or revocation of the licenses and license rights of Respondent under Business and Professions Code ("Code") Sections 10145(a), 10177(d), and 10177(g), in conjunction with the California Code of Regulations ("Regulations"), Title 10, Sections 2832, 2832.1, and 2834.

ORDER

All licenses and licensing rights of Respondent under the Real Estate Law are suspended for a period of one hundred and twenty (120) days from the effective date of this Order; provided, however, that:

1. Sixty (60) days of said 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 \$50 for each day of the suspension, for a total monetary penalty of \$3,000.00.

a. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate and 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 license of Respondent occurs within two (2) years from the effective date of the Order in this matter.

c. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension, in which event, Respondent shall

1 not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
2 Department under the terms of this decision.

3 d. If Respondent pays the monetary penalty, and if no further cause for
4 disciplinary action against the real estate license of Respondent occurs within two (2) years
5 from the effective date of the Decision herein, then the stay hereby granted shall become
6 permanent.

7 2. The remaining sixty (60) days of said suspension shall also be stayed for two
8 (2) years upon the following terms and conditions:

9 a. Respondent shall obey all laws, rules and regulations governing the
10 rights, 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
12 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
13 effective date of this Order. Should such a determination be made, the Commissioner may, in
14 his discretion, vacate and set aside the stay order and re-impose 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. Respondent shall, within six (6) months from the effective date of this Order,
18 take and pass the Professional Responsibility Examination administered by the Department,
19 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
20 condition, Respondent's real estate license shall automatically be suspended until Respondent
21 passes the examination.

22 4. All licenses and licensing rights of Respondent are indefinitely suspended
23 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
24 successfully completed the continuing education course on trust fund accounting and handling
25 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction
26 of these requirements includes evidence that Respondent has successfully completed the trust
27 fund accounting and handling continuing education course, no earlier than one hundred twenty

1 (120) days prior to the effective date of the Order in this matter. Proof of completion of the trust
2 fund accounting and handling course must be delivered to the Department of Real Estate, Flag
3 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8785, prior to the
4 effective date of this Order.

5 5. All licenses and licensing rights of Respondents are indefinitely suspended
6 unless or until Respondent pays the sum of \$1,969.50 for the Commissioner's reasonable costs of
7 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
8 the form of a cashier's check or certified check made payable to the Department of Real Estate.
9 The investigative and enforcement costs must be delivered to the Department of Real Estate, Flag
10 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
11 Order.

12 6. Respondent shall pay the sum of \$3,066.43 for the Commissioner's cost of
13 the audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60)
14 days of receiving an invoice therefore from the Commissioner. The Commissioner shall
15 indefinitely suspend all licenses and licensing rights of Respondent pending a hearing held in
16 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
17 made as provided for herein, or as provided for in a subsequent agreement between
18 Respondents and the Commissioner. The suspension shall remain in effect until payment is
19 made in full or until Respondent enters into an agreement satisfactory to the Commissioner to
20 provide for payment, or until a decision providing otherwise is adopted following a hearing
21 held pursuant to this condition.

22 7. Respondent shall pay the Commissioner's costs, not to exceed \$3,833.03, of
23 any follow-up audit conducted pursuant to Section 10148 of the Code to determine if
24 Respondent has corrected the violations described in the Determination of Issues, above, and
25 any other violations found in the audit which led to this disciplinary action. In calculating the
26 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
27 average hourly salary for all persons performing audits of real estate brokers, and shall include

1 an allocation for travel time to and from the auditor's place of work. Respondent shall pay such
2 cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing
3 the activities performed during the audit and the amount of time spent performing those
4 activities. If Respondent fails to pay such cost within the sixty (60) days, the Commissioner
5 shall indefinitely suspend all licenses and licensing rights of Respondent under the Real Estate
6 Law until payment is made in full or until Respondent enter into an agreement satisfactory to
7 the Commissioner to provide for payment. Upon full payment, the indefinite suspension
8 provided for in this paragraph shall be stayed.

9
10 10/28/2020



11 DATED

ADRIANA Z. BADILAS, Counsel
Department of Real Estate

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15 I have read the Stipulation and Agreement, have discussed it with my counsel,
16 and its terms are understood by me and are agreeable and acceptable to me. I understand that I
17 am waiving rights given to me by the APA (including but not limited to Sections 11506,
18 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
19 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
20 allegations in the Accusation at a hearing at which I would have the right to cross-examine
21 witnesses against me and to present evidence in defense and mitigation of the charges.

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1 Respondent can signify acceptance and approval of the terms and conditions of
2 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
3 Respondent, to the Department at fax number (916) 263-3767 or by e-mail to
4 adriana.badilas@DRE.ca.gov. Respondents agree, acknowledge, and understand that by
5 electronically sending to the Department a fax copy of Respondents' actual signature as it
6 appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department
7 shall be as binding on Respondents as if the Department had received the original signed
8 Stipulation and Agreement.

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11 10/27/2020 | 11:25 AM PDT

DocuSigned by:
Jack Alan Franklin
87FB133360C249D...

12 DATED _____

JACK ALAN FRANKLIN
Respondent

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16 The foregoing Stipulation and Agreement in Settlement and Order is hereby
17 adopted by the Real Estate Commissioner as her Decision and Order and shall become
18 effective at 12 o'clock noon on APR 19 2021.

19 IT IS SO ORDERED 1.7.21.

20 DOUGLAS R. McCAULEY
21 REAL ESTATE COMMISSIONER

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23 *Douglas R. McCauley*
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