

1 BUREAU OF REAL ESTATE  
2 P. O. Box 137007  
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670

**FILED**

MAY 29 2014

BUREAU OF REAL ESTATE

By K. Contreras

7 BEFORE THE BUREAU OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \*

10  
11 In the Matter of the Accusation of

12 MARK ARTHUR ROSS,

13  
14 Respondent.

) NO. H-4159 SD

) STIPULATION AND AGREEMENT  
)  
)  
)

15 It is hereby stipulated by and between Respondent MARK ARTHUR ROSS  
16 ("Respondent") and the Complainant, acting by and through John W. Barron, Counsel for the  
17 Bureau of Real Estate, as follows for the purpose of settling and disposing of the Accusation  
18 filed on December 15, 2010, in this matter:

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

24 2. Respondent has received, read and understands the Statement to  
25 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of  
26 Real Estate in this proceeding.

27 3. On December 28, 2010, Respondent filed a Notice of Defense pursuant

H-4159 SD

MARK ARTHUR ROSS

1 to Section 11505 of the Government Code for the purpose of requesting a hearing on the  
2 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice  
3 of Defense. Respondent acknowledges that Respondent understands that by withdrawing said  
4 Notices of Defense, Respondent will thereby waive Respondent's right to require the  
5 Commissioner to prove the allegations in the Accusation at a contested hearing held in  
6 accordance with the provisions of the APA and that Respondent will waive other rights  
7 afforded to Respondent in connection with the hearing such as the right to present evidence in  
8 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

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

27           7.       This Stipulation and Agreement shall not constitute an estoppel, merger

1 or bar to any further administrative or civil proceedings by the Bureau of Real Estate with  
2 respect to any matters which were not specifically alleged to be causes for accusation in this  
3 proceeding.

4 8. Respondent further understands that by agreeing to this Stipulation and  
5 Agreement, the findings set forth below in the Determination of Issues become final, and that  
6 the Commission may charge said Respondent for the costs of the investigation herein. The  
7 amount of such costs is \$2,174.00.

#### 8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions and waivers and solely for  
10 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed  
11 that the acts and omissions of Respondent described in the Accusation are grounds for the  
12 suspension or revocation of the licenses and license rights of Respondent under the provisions  
13 of Sections 10085 (prior approval of advance fee agreement materials), 10085.5 (collection of  
14 advance fees by someone other than real estate broker), 10085.6 (collection of unauthorized  
15 advance fees), 10130 (license requirement to act as real estate broker), 10131(d) (performing  
16 services for borrowers and/or lenders in connection with loans secured by real property),  
17 10131.2 (real estate broker license for participation in activities alleged), 10137 (acceptance of  
18 compensation from someone other than employing broker), 10177(d) (willful violation of Real  
19 Estate Law) and 10177(j) (other conduct which constitutes fraud or dishonest dealing) of the  
20 Code, and Section 2970 (submission of advance fee materials) and 2872 (content verification)  
21 of Title 10, California Code of Regulations.

#### 22 ORDER

23 1. The real estate salesperson license and license rights of Respondent MARK  
24 ARTHUR ROSS are hereby revoked; provided, however, a restricted real estate salesperson's  
25 license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent  
26 makes application therefore and pays to the Bureau the appropriate fee for the restricted license  
27 within ninety (90) days from the effective date of this Decision.

1                    2. The restricted license issued to Respondent shall be subject to all of the  
2 provisions of Section 10156.7 of the Code as to the following limitations, conditions and  
3 restrictions imposed under authority of Section 10156.6 of that Code:

4                    (a) The restricted license issued to Respondent shall be suspended prior to  
5                    hearing by Order of the Commissioner in the event of Respondent's  
6                    conviction (including by plea of guilty or nolo contendere) to a crime  
7                    which is substantially related to Respondent's fitness or capacity as a real  
8                    estate licensee; and,

9                    (b) The restricted license issued to Respondent shall be suspended prior to  
10                    hearing by Order of the Commissioner on evidence satisfactory to the  
11                    Commissioner that Respondent has violated provisions of the California  
12                    Real Estate Law, the Subdivided Lands Law, Regulations of the Real  
13                    Estate Commissioner, or conditions attaching to the restricted license.

14                    3. Respondent shall not be eligible to apply for the issuance of an  
15 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions  
16 of a restricted license until two (2) years have elapsed from the effective date of this Decision.

17                    4. With the application for license, or with the application for transfer to a  
18 new employing broker, Respondent shall submit a statement signed by the prospective  
19 employing real estate broker on a form approved by the Bureau which shall certify as follows:

20                    (a) That the employing broker has read the Decision which is the basis  
21                    for the issuance of the restricted license; and,

22                    (b) That the employing broker will carefully review all transaction documents  
23                    prepared by the restricted licensee and otherwise exercise close  
24                    supervision over the licensee's performance of acts for which a license is  
25                    required.

26                    5. All licenses and licensing rights of Respondent are indefinitely suspended  
27 unless or until Respondent pays the sum of \$2,174.00 for the Commissioner's reasonable cost of

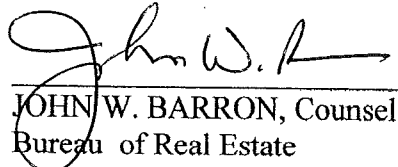
1 the investigation and enforcement which led to this disciplinary action. Said payment shall be in  
2 the form of a cashier's check or certified check made payable to the Real Estate Fund. Said  
3 check must be received by the Bureau prior to the effective date of the Order in this matter.

4 6. All licenses and licensing rights of Respondent are indefinitely suspended  
5 unless or until Respondent provides evidence to the Commissioner sufficient to demonstrate  
6 that he has repaid to estate of Billy Clayburn the funds collected by Respondent from Billy  
7 Clayburn as an advance fee, as set forth in the Accusation (remaining unpaid total of  
8 \$1,475.00).

9 7. Respondent shall, within six (6) months from the effective date of this  
10 Order, take and pass the Professional Responsibility Examination administered by the Bureau,  
11 including the payment of the appropriate examination fee. If Respondent fails to satisfy this  
12 condition, the Commissioner may order the suspension of all licenses and licensing rights of  
13 Respondent until Respondent passes the examination.

14 8. Respondent shall, within nine (9) months from the effective date of this  
15 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the  
16 most recent issuance of an original or renewal real estate license, taken and successfully  
17 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate  
18 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the  
19 Commissioner may order the suspension of the restricted license until the Respondent presents  
20 such evidence. The Commissioner shall afford Respondent the opportunity for hearing  
21 pursuant to the APA to present such evidence.

22  
23 5/8/14  
24 DATED

25   
26 JOHN W. BARRON, Counsel  
27 Bureau of Real Estate

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I have read the Stipulation and Agreement and its terms are understood by me

1 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by  
2 the California Administrative Procedure Act (including but not limited to Sections 11506,  
3 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and  
4 voluntarily waive those rights, including the right of requiring the Commissioner to prove the  
5 allegations in the Accusation at a hearing at which I would have the right to cross-examine  
6 witnesses against me and to present evidence in defense and mitigation of the charges.

7  
8 4/15/14  
9 DATED

Mark Arthur Ross  
MARK ARTHUR ROSS  
Respondent

10 \* \* \*

11 The foregoing Stipulation and Agreement is hereby adopted by me as my  
12 Decision in this matter as to Respondent MARK ARTHUR ROSS and shall become effective at  
13 12 o'clock noon on JUN 30 2014.

14 IT IS SO ORDERED MAY 23 2014  
15

16 Real Estate Commissioner

17 [Signature]  
18

19 By: JEFFREY MASON  
20 Chief Deputy Commissioner