

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

MAR 27 2013

DEPARTMENT OF REAL ESTATE
By R. M. [Signature]

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of

13 CERTIFIED ESCROW, INC.
14 and BRIAN WILLIAM WHITE,

15 Respondents.

) NO. H-4217 SD

) STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between Respondents CERTIFIED ESCROW,
17 INC. ("CEI") and BRIAN WILLIAM WHITE ("WHITE"), (collectively "Respondents"),
18 acting by and through Frank M. Buda, Counsel for Respondents, and the Complainant, acting
19 by and through John W. Barron, Counsel for the Department of Real Estate, as follows for the
20 purpose of settling and disposing of the Accusation filed on August 10, 2011, 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
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
24 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions
25 of this Stipulation and Agreement.

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H-4217 SD

CERTIFIED ESCROW, INC.
and BRIAN WILLIAM WHITE

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 Department
3 of Real Estate in this proceeding.

4 3. On September 12, 2011, Respondents filed a Notice of Defense 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 Notice
7 of Defense. Respondents acknowledge that Respondents understand that by withdrawing said
8 Notice of Defense, Respondents will thereby waive Respondents' rights to require 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 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 is based on the factual allegations contained in the
14 Accusation. In the interest of expedience and economy, Respondents choose not to contest
15 these factual allegations, but to remain silent and understand that, as a result thereof, these
16 factual statements will serve as a prima facie basis for the "Determination of Issues" and
17 "Order" set forth below. The Real Estate Commissioner shall not be required to provide further
18 evidence to prove such allegations.

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

24 6. It is understood by the parties that the Real Estate Commissioner may
25 adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty
26 and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"
27 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and

1 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
2 and proceeding on the Accusation under all the provisions of the APA and shall not be bound
3 by any admission or waiver made herein.

4 7. This Stipulation and Agreement shall not constitute an estoppel, merger
5 or bar to any further administrative or civil proceedings by the Department of Real Estate with
6 respect to any matters which were not specifically alleged to be causes for accusation in this
7 proceeding.

8 8. In lieu of proceeding in this matter in accordance with the provisions of
9 the APA, CEI wishes to voluntarily surrender their corporate real estate licenses and license
10 rights issued by the Department, pursuant to Business and Professions Code Section 10100.2.
11 WHITE is an officer and director of CEI, and is authorized to sign this declaration on behalf of
12 CEI. Respondents are represented by counsel, Frank M. Buda.

13 9. WHITE understands that by so voluntarily surrendering the licenses and
14 license rights of CEI, CEI may be relicensed as a corporate real estate broker only by
15 petitioning for reinstatement pursuant to Section 11522 of the Government Code. WHITE also
16 understands that by so voluntarily surrendering the license and license rights of CEI,
17 Respondents agree to the following:

- 18 a. The filing of this Stipulation and Agreement shall be deemed as a
19 declaration and petition for voluntary surrender by CEI.
- 20 b. It shall also be deemed to be an understanding and agreement by CEI that
21 it waives all rights CEI has to require the Commissioner to prove the
22 allegations contained in the Accusation filed in this matter at a hearing
23 held in accordance with the provisions of the APA, and that CEI also
24 waives other rights afforded to it in connection with the hearing such as
25 the right to discovery, the right to present evidence in defense of the
26 allegations in the Accusation and the right to cross-examine witnesses.

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1 10. WHITE, on behalf of CEI, further agrees that upon acceptance by the
2 Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence
3 obtained by the Department in this matter prior to the Commissioner's acceptance, and all
4 allegations contained in the Accusation filed in the Department Case No. H-4217 SD, may be
5 considered by the Department to be true and correct for the purpose of deciding whether to
6 grant re-licensure or reinstatement pursuant to Government Code Section 11522.

7 11. WHITE on behalf of CEI freely and voluntarily surrenders all licenses
8 and license rights of CEI under the Real Estate Law.

9 12. WHITE understands that by agreeing to this Stipulation and Agreement,
10 WHITE agrees to pay, pursuant to Section 10148 of the California Business and Professions
11 Code ("the Code"), the cost of the audit which resulted in the determination that Respondents
12 committed the violation(s) found in the Determination of Issues. The amount of such costs is
13 \$5,641.00.

14 13. WHITE further understands that by agreeing to this Stipulation and
15 Agreement, the findings set forth below in the Determination of Issues become final, and that
16 the Commission may charge WHITE for the costs of any audit conducted pursuant to Section
17 10148 of the Code to determine if the violations have been corrected. The maximum cost of
18 said audit shall not exceed \$5,641.00.

19 14. WHITE understands that by agreeing to this Stipulation and Agreement,
20 WHITE agrees to pay, pursuant to Section 10106 of the Code, the cost of the investigation and
21 enforcement which resulted in the determination that Respondents committed the violation(s)
22 found in the Determination of Issues. The amount of said costs is \$338.44.

23 DETERMINATION OF ISSUES

24 By reason of the foregoing stipulations, admissions and waivers and solely for
25 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
26 that the acts and omissions of Respondents described in the Accusation are grounds for the
27 suspension or revocation of the licenses and license rights of CEI under the provisions of

1 Sections 10145 (handling of trust funds), 10148 (record retention requirements), 10176(e)
2 (commingling) and 10177(g) (negligence) of the Code, and Sections 2832.1 (trust fund
3 handling), 2834 (trust fund withdrawals), 2835 (commingling) and 2951 (recordkeeping and
4 trust fund handling by escrow holder) of Title 10 of the California Code of Regulations ("the
5 Regulations"); and are grounds for the suspension or revocation of the licenses and license
6 rights of WHITE under provisions of Sections 10159.2 (broker supervision), 10177(g) and
7 10177(h) (reasonable supervision responsibility of broker) of the Code, and Section 2725
8 (broker supervision) of the Regulations.

9 ORDER

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11 CEI's petition for voluntary surrender of its corporate real estate broker license
12 is accepted as of the effective date of this Order as set forth below, based upon the
13 understanding and agreement expressed in Respondents' Declaration incorporated herein as
14 part of this Stipulation and Agreement. CEI's license certificates, pocket cards, and any branch
15 office license certificates shall be sent to the below listed address so that they reach the
16 Department on or before the effective date of this Order:

17 DEPARTMENT OF REAL ESTATE
18 Attn: Licensing Flag Section
19 P. O. Box 187000
Sacramento, CA 95818-7000

20 2

21 All licenses and licensing rights of WHITE under the Real Estate Law are
22 suspended for a period of thirty (30) days from the effective date of this Order; provided,
23 however, that:

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

26 a. WHITE shall obey all laws, rules and regulations governing the rights,
27 duties and responsibilities of a real estate licensee in the State of California; and

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

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

12 d. Notwithstanding any other provision of this Order, all licenses and
13 licensing rights of WHITE are indefinitely suspended unless and until he provides proof
14 satisfactory to the Commissioner that he has taken and successfully completed the continuing
15 education course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3)
16 of the Code. The course must have been completed no earlier than one hundred twenty (120)
17 days prior to the effective date of this Order, and proof must be submitted prior to the effective
18 date of this Order, to prevent suspension of WHITE's license pursuant to this condition.

19 e. WHITE shall pay the sum of \$5,641.00 for the Commissioner's cost of
20 the audit which led to this disciplinary action. WHITE shall pay such cost within sixty (60)
21 days of receiving an invoice therefore from the Commissioner. The Commissioner may
22 indefinitely suspend all licenses and licensing right of WHITE pending a hearing held in
23 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
24 made as provided for herein, or as provided for in a subsequent agreement between WHITE
25 and the Commissioner. The suspension shall remain in effect until payment is made in full or

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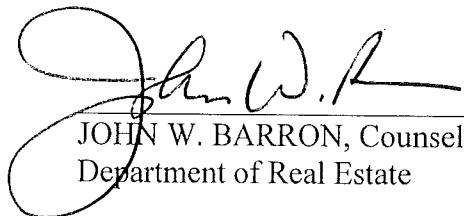
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1 until WHITE enters into an agreement satisfactory to the Commissioner to provide for
2 payment, or until a decision providing otherwise is adopted following a hearing held pursuant
3 to this condition.

4 2. WHITE shall pay the Commissioner's costs, not to exceed \$5,641.00, of
5 any audit conducted pursuant to Section 10148 of the Code to determine if WHITE has
6 corrected the violations described in the Determination of Issues, above, and any other
7 violations found in the audit which led to this disciplinary action. In calculating the amount of
8 the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
9 salary for all persons performing audits of real estate brokers, and shall include an allocation
10 for travel time to and from the auditor's place of work. WHITE shall pay such cost within
11 sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities
12 performed during the audit and the amount of time spent performing those activities. If
13 WHITE fails to pay such cost within the sixty (60) days, the Commissioner may indefinitely
14 suspend all licenses and licensing rights of WHITE under the Real Estate Law until payment is
15 made in full or until WHITE enters into an agreement satisfactory to the Commissioner to
16 provide for payment. Upon full payment, the indefinite suspension provided for in this
17 paragraph shall be stayed.

18 3. All licenses and licensing rights of WHITE are indefinitely suspended
19 unless or until WHITE pays the sum of \$338.44 for the Commissioner's reasonable cost of the
20 investigation and enforcement which led to this disciplinary action. Said payment shall be in
21 the form of a cashier's check or certified check made payable to the Department of Real Estate.
22 Said check must be received by the Department prior to the effective date of the Order in this
23 matter.

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25 1/29/13
26 DATED

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JOHN W. BARRON, Counsel
Department of Real Estate

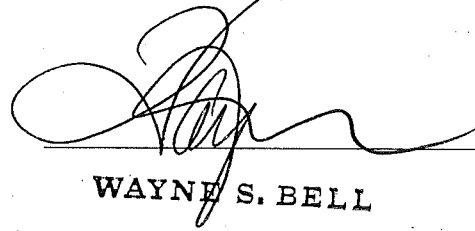
1 The foregoing Stipulation and Agreement is hereby adopted by me as my
2 Decision in this matter as to Respondents CERTIFIED ESCROW, INC. and BRIAN
3 WILLIAM WHITE, and shall become effective at 12 o'clock noon on

4 APR 17 2013

5 IT IS SO ORDERED

3/25/2013

6 REAL ESTATE COMMISSIONER

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8
9 WAYNE S. BELL

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 TO:

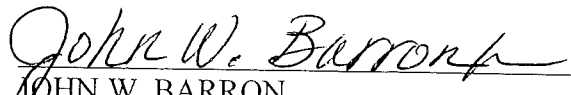
13 BRIAN WILLIAM WHITE.

14) NO. H-4217 SD

15) NOTICE CONCERNING
16) COSTS OF AUDITS

17 The attached Decision contains a determination by the Real Estate Commissioner
18 that you have either violated Section 10145 of the Business and Professions Code or a
19 regulation of the Commissioner interpreting Section 10145, or both. Section 10148 of the
20 Business and Professions Code provides that if this finding(s) becomes final, the Commissioner
21 may charge you for the costs of any audits conducted as a result of the violations found herein.
22 Enclosed for your reference is a copy of the provisions of Section 10148 of the Business and
23 Professions Code.

24 DATED: March 27, 2013

25 
26 JOHN W. BARRON
27 Real Estate Counsel