

1 DEPARTMENT OF REAL ESTATE
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 620-2072

FILED

DEC 15 2021

DEPT. OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation against

DRE No. H-05225 SD

12 MERCER INVESTMENTS, INC. and
13 OLEN WOODSON MERCER, as designated
14 officer for Mercer Investments, Inc.,

15 Respondents.

STIPULATION AND
AGREEMENT IN SETTLEMENT
AND ORDER

16 It is hereby stipulated by and between Respondents MERCER INVESTMENTS, INC.
17 and OLEN WOODSON MERCER (collectively "Respondents"), represented by attorney Walter
18 A. Taylor, Esq., and the Complainant, acting by and through Lissete Garcia, Counsel for the
19 Department of Real Estate ("Department"), as follows for the purpose of settling and disposing
20 the Accusation filed on August 19, 2021, with Department Case No. H-05225 SD ("Accusation")
21 in this matter:

22 1. All issues which were to be contested and all evidence which was to be presented by
23 Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall

Stipulation and Agreement
H-05225 SD

1 instead and in place thereof be submitted on the basis of the provisions of this Stipulation and
2 Agreement in Settlement and Order ("Stipulation").

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

5 3. Respondents filed a Notice of Defense pursuant to Section 11506 of the Government
6 Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents
7 hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge and
8 understand that by withdrawing said Notice of Defense, Respondents will thereby waive
9 Respondents' rights to require the Real Estate Commissioner ("Commissioner") to prove the
10 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
11 APA and that Respondents will waive other rights afforded to Respondents in connection with
12 the hearing such as the right to present evidence in defense of the allegations in the Accusation
13 and the right to cross-examine witnesses.

14 4. This Stipulation is based on the factual allegations contained in the Accusation filed in
15 this proceeding. In the interest of expedience and economy, Respondents choose not to contest
16 these factual allegations, but to remain silent and understand that, as a result thereof, these
17 factual statements, will serve as a prima facie basis for the disciplinary action stipulated to
18 herein. The Real Estate Commissioner shall not be required to provide further evidence to prove
19 such allegations.

20 5. This Stipulation and Respondents' decision not to contest the Accusation are made for
21 the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this
22 proceeding and any other proceeding or case in which the Department, or another licensing
23 agency of this state, another state or if the federal government is involved and otherwise shall not
24 be admissible in any other criminal or civil proceedings.

6. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as the Commissioner's Decision in this matter, thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the below "Order." In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondents 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.

7. The Order or any subsequent Order of the Real Estate 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 of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

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

I.

The conduct, acts and/or omissions of Respondent MERCER INVESTMENTS, INC. as set forth herein above in Paragraph 4, constitute cause for the suspension or revocation of all real estate licenses and license rights of Respondent MERCER INVESTMENTS, INC. pursuant to the provisions of Code section 10177, subdivision (d), for violation of Code section 10145 and Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations ("Regulations") 2831, 2831.1, 2831.2, and 2832.1.

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1 II.

2 The conduct, acts and/or omissions of Respondent OLEN WOODSON MERCER as set
3 forth herein above in Paragraph 4, constitute cause for the suspension or revocation of all real
4 estate licenses and license rights of Respondent OLEN WOODSON MERCER pursuant to the
5 provisions of Code section 10177, subdivision (h), for violation of Code section 10159.2 and
6 Regulation 2725.

7 ORDER

8 I.

9 All licenses and licensing rights of Respondent MERCER INVESTMENTS, INC.
10 ("MII") under the Real Estate Law are suspended for a period of sixty (60) days from the
11 effective date of this Decision and Order; provided, however, that:

- 12 1. Said 60-day suspension shall be stayed for two (2) years upon the following terms
13 and conditions:
- 14 2. Respondent shall obey all laws, rules and regulations governing the rights, duties
15 and responsibilities of a real estate licensee in the State of California; and,
- 16 3. That no final subsequent determination be made, after hearing or upon stipulation,
17 that cause for disciplinary action occurred within two (2) years from the effective
18 date of this Decision and Order. Should such a determination be made, the
19 Commissioner may, in his discretion, vacate and set aside the stay order and
20 reimpose all or a portion of the stayed suspension. Should no such determination
21 be made, the stay imposed herein shall become permanent.
- 22 4. Respondent MII shall pay, severally or jointly with Respondent OLEN
23 WOODSON MERCER, the total sum of \$2,779.15 for the Commissioner's
24 reasonable cost of the investigation and enforcement which led to this disciplinary

1 action. Said payment shall be in the form of a cashier's check made payable to
2 the Department of Real Estate. **The investigative and enforcement costs must**
3 **be delivered to the Department of Real Estate, Flag Section at P.O. Box**
4 **137013, Sacramento, CA 95813-7013, within 180 days of the effective date.**
5 **Payment of investigation and enforcement costs should not be made until the**
6 **Stipulation has been approved by the Commissioner.** If Respondents fail to
7 satisfy this condition in a timely manner as provided for herein, Respondents' real
8 estate licenses shall automatically be suspended until payment is made in full, or
9 until a decision providing otherwise is adopted following a hearing held pursuant
10 to this condition.

11 5. Pursuant to Section 10148 of the Code, Respondent MII shall pay, severally or
12 jointly with Respondent OLEN WOODSON MERCER, the total sum of
13 \$9,388.50 for the Commissioner's cost of the audit which led to this disciplinary
14 action. **Respondents shall pay such cost within sixty (60) days of receiving an**
15 **invoice therefore from the Commissioner. Payment of audit costs should not**
16 **be made until Respondents receive the invoice.** If Respondents fail to satisfy
17 this condition in a timely manner as provided for herein, Respondents' real estate
18 licenses shall automatically be suspended until payment is made in full, or until a
19 decision providing otherwise is adopted following a hearing held pursuant to this
20 condition.

21 6. Pursuant to Section 10148 of the Code, Respondents shall pay the
22 Commissioner's reasonable costs for any subsequent audit (said costs may not to
23 exceed a maximum of \$11,735.63) to determine if Respondents have corrected
24 the violations found in the Determination of Issues. In calculating the amount of

1 the Commissioner's reasonable cost, the Commissioner may use the estimated
2 average hourly salary for all persons performing audits of real estate brokers, and
3 shall include an allocation for travel time to and from the auditor's place of work.
4 **Respondents shall pay such cost within sixty (60) days of receiving an invoice**
5 **therefore from the Commissioner. Payment of the audit costs should not be**
6 **made until Respondents receive the invoice.** If Respondents fail to satisfy this
7 condition in a timely manner as provided for herein, Respondents' real estate
8 licenses shall automatically be suspended until payment is made in full, or until a
9 decision providing otherwise is adopted following a hearing held pursuant to this
10 condition.

11 II.

12 All licenses and licensing rights of Respondent OLEN WOODSON MERCER ("O.
13 MERCER") under the Real Estate Law are suspended for a period of sixty (60) days from the
14 effective date of this Decision and Order; provided, however, that:

- 15 1. Said 60-day suspension shall be stayed for two (2) years upon the following terms
16 and conditions:
- 17 2. Respondent shall obey all laws, rules and regulations governing the rights, duties
18 and responsibilities of a real estate licensee in the State of California; and,
- 19 3. That no final subsequent determination be made, after hearing or upon stipulation,
20 that cause for disciplinary action occurred within two (2) years from the effective
21 date of this Decision and Order. Should such a determination be made, the
22 Commissioner may, in his discretion, vacate and set aside the stay order and
23 reimpose all or a portion of the stayed suspension. Should no such determination
24 be made, the stay imposed herein shall become permanent.

- 1 4. All licenses and licensing rights of Respondent O. MERCER are indefinitely
2 suspended unless or until Respondent O. MERCER provides proof satisfactory to
3 the Commissioner, of having taken and successfully completed the continuing
4 education course on trust fund accounting and handling specified in paragraph (3)
5 of subdivision (a) of Section 10170.5 of the Business and Professions Code.
6 Proof of satisfaction of this requirement includes evidence that Respondent has
7 successfully completed the trust fund account and handling continuing education
8 course, no earlier than 120 days prior to the effective date of the Decision and
9 Order in this matter. **Proof of completion of the trust fund accounting and**
10 **handling course must be delivered to the Department of Real Estate, Flag**
11 **Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-**
12 **263-8758, prior to the effective date of this Decision and Order.**
- 13 5. Respondent O. MERCER shall pay, severally or jointly with Respondent MII, the
14 total sum of \$2,779.15 for the Commissioner's reasonable cost of the
15 investigation and enforcement which led to this disciplinary action. Said payment
16 shall be in the form of a cashier's check made payable to the Department of Real
17 Estate. **The investigative and enforcement costs must be delivered to the**
18 **Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento,**
19 **CA 95813-7013, within 180 days of the effective date. Payment of**
20 **investigation and enforcement costs should not be made until the Stipulation**
21 **has been approved by the Commissioner.** If Respondents fail to satisfy this
22 condition in a timely manner as provided for herein, Respondents' real estate
23 licenses and shall automatically be suspended until payment is made in full, or
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1 until a decision providing otherwise is adopted following a hearing held pursuant
2 to this condition.

- 3 6. Pursuant to Section 10148 of the Code, Respondent O. MERCER shall pay,
4 severally or jointly with Respondent MII, the total sum of \$9,388.50 for the
5 Commissioner's cost of the audit which led to this disciplinary action.
6 **Respondents shall pay such cost within sixty (60) days of receiving an invoice**
7 **therefore from the Commissioner. Payment of audit costs should not be**
8 **made until Respondents receive the invoice.** If Respondents fail to satisfy this
9 condition in a timely manner as provided for herein, Respondents' real estate
10 licenses shall automatically be suspended until payment is made in full, or until a
11 decision providing otherwise is adopted following a hearing held pursuant to this
12 condition.

- 13 7. Pursuant to Section 10148 of the Code, Respondents shall pay the
14 Commissioner's reasonable costs for any subsequent audit (said costs may not to
15 exceed a maximum of \$11,735.63) to determine if Respondents have corrected
16 the violations found in the Determination of Issues. In calculating the amount of
17 the Commissioner's reasonable cost, the Commissioner may use the estimated
18 average hourly salary for all persons performing audits of real estate brokers, and
19 shall include an allocation for travel time to and from the auditor's place of work.
20 **Respondents shall pay such cost within sixty (60) days of receiving an invoice**
21 **therefore from the Commissioner. Payment of the audit costs should not be**
22 **made until Respondents receive the invoice.** If Respondents fail to satisfy this
23 condition in a timely manner as provided for herein, Respondents' real estate
24 licenses shall automatically be suspended until payment is made in full, or until a

1 decision providing otherwise is adopted following a hearing held pursuant to this
2 condition.

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4 DATED: 10/28/2021


Lissete Garcia, Counsel
Department of Real Estate

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7 * * *

8 **EXECUTION OF THE STIPULATION**

9 We have read this Stipulation and its terms are understood by us and are agreeable and
10 acceptable to us. We understand that we are waiving rights given to us by the California APA
11 (including, but not limited to, sections 11506, 11508, 11509, and 11513 of the Government
12 Code), and we willingly, intelligently, and voluntarily waive those rights, including the right of
13 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we
14 would have the right to cross-examine witnesses against us and to present evidence in defense
15 and mitigation of the charges.

16 Respondents can signify acceptance and approval of the terms and conditions of this
17 Stipulation and Agreement by electronically e-mailing a copy of the signature pages, as actually
18 signed by Respondents, to the Department. Respondents agree, acknowledge, and understand
19 that by electronically sending to the Department an electronic copy of Respondents' actual
20 signatures, as they appear on the Stipulation, that receipt of the emailed copy by the Department
21 shall be as binding on Respondents as if the Department had received the original signed
22 Stipulation. By signing this Stipulation, Respondents understand and agree that Respondents
23 may not withdraw their agreement or seek to rescind the Stipulation prior to the time the
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1 Commissioner considers and acts upon it or prior to the effective date of the Stipulation and
2 Order.1

31 MAILING

4 Respondents and their counsel shall, within five (5) business days from signing the
5 Stipulation, mail the original signed signature page(s) of the Stipulation herein to Lissete Garcia,
6 Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Room 350, Los
7 Angeles, California 90013-1105.1

8 Respondents' signatures below constitute acceptance and approval of the terms and
9 conditions of this Stipulation. Respondents agree, acknowledge, and understand that by signing
10 this Stipulation Respondents are bound by its terms as of the date of such signature and that this
11 agreement is not subject to rescission or amendment at a later date except by a separate Decision
12 and Order of the Real Estate Commissioner.1

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14 DATED: 10/27/21 Olen W. Mercer, President
151 Respondent MERCER INVESTMENTS, INC.1

161 By (Printed Name): Olen W. Mercer
171 Title: President

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19 DATED: 10/27/21 Olen W. Mercer
20 Respondent OLEN WOODSON MERCER1

21 DATED: 10/27/21 Walter A. Taylor, Esq.
221 Walter A. Taylor, Esq., Attorney for Respondents
23 Approved as to Form
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The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by
me as my Decision in this matter and shall become effective at 12 o'clock noon

on 1/14/2022

IT IS SO ORDERED 12.8.21

REAL ESTATE COMMISSIONER


DOUGLAS R. McCAULEY