

FILED

OCT 5 2011

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By J. Jones

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

11 In the Matter of the Accusation of
12 DAVID FREDRICK LANDON,
13 Respondent.

No. H-5672 SAC
STIPULATION AND
AGREEMENT

14 It is hereby stipulated by and between DAVID FREDRICK LANDON
15 (Respondent), and Respondent's attorney Richard Watts, and the Complainant, acting by and
16 through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose
17 of settling and disposing the Accusation filed on August 22, 2011 in this matter:

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

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

26 3. Respondent filed a Notice of Defense pursuant to Section 11505 of the
27 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

1 acknowledges that he understands that by withdrawing said Notice of Defense he will thereby
2 waive his rights to require the Commissioner to prove the allegations in the Accusation at a
3 contested hearing held in accordance with the provisions of the APA, and that he will waive
4 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..

5 4. Respondent, pursuant to the limitations set forth below, hereby admits that
6 the factual allegations in the Accusation filed in this proceeding are true and correct and the Real
7 Estate Commissioner shall not be required to provide further evidence to prove such allegations.

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

14 6. The Order or any subsequent Order of the Real Estate Commissioner made
15 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any
16 further administrative or civil proceedings by the Department of Real Estate with respect to any
17 matters which were not specifically alleged to be causes for accusation in this proceeding.

18 7. Respondent understands that by agreeing to this Stipulation and
19 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and
20 Professions Code (Code), the cost of the audit which resulted in the determination that
21 Respondent committed the trust fund violation(s) found below in the Determination of Issues.
The amount of said costs is \$5,010.60.

22 8. Respondent further understands that by agreeing to this Stipulation and
23 Agreement in Settlement, the findings set forth below in the Determination Of Issues become
24 final, and that the Commissioner may charge said Respondent for the costs of any audit
25 conducted pursuant to Section 10148 of the Code to determine if the violations have been
corrected. The maximum costs of said audit shall not exceed \$5,010.60.

26 * * *

DETERMINATION OF ISSUES

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

I

4
5 The acts and omissions of Respondent as described in the First Cause of Action
6 of the Accusation are grounds for the suspension or revocation of Respondent's licenses and
7 license rights under Section 10130 of the Code in conjunction with Section 10177(d) of the
8 Code.

II

9
10 The acts and omissions of Respondent as described in the Second Cause of
11 Action of the Accusation are grounds for the suspension or revocation of Respondent's licenses
12 and license rights under the following sections of the Code and Regulations:

13 (a) As to Paragraph 15(a), under Section 10145 of the Code in conjunction
14 with Section 10177(d) of the Code;

15 (b) As to Paragraph 15(b), under Section 2832.1 of Title 10 of the California
16 Code of Regulations (Regulations) in conjunction with Section 10177(d) of the Code;

17 (c) As to Paragraphs 15(c) and 15(e), under Section 10145 of the Code and
18 Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code; and

19 (d) As to Paragraph 15(d), under Section 2834 of the Regulations in
20 conjunction with Section 10177(d) of the Code.

21 * * *

ORDER**I**

22 All licenses and licensing rights of Respondent under the Real Estate Law are suspended
23 for a period of sixty (60) days from the effective date of this Order, provided, however, that:

- 24 1) Thirty (30) days of said suspension shall be stayed, upon the condition that Respondent
25 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to
26 Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total
27 monetary penalty of \$3,000.

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- a) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Order in this matter.
 - b) No further cause for disciplinary action against the Real Estate licenses of Respondent occurs within two (2) years from the effective date of the decision in this matter.
 - c) If Respondent 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 and the order of suspension shall be immediately executed, in which event Respondent 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 Respondent 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 Respondent occurs within two (2) years from the effective date of this Order, the entire stay hereby as to Respondent only, shall become permanent.
- 2) The remaining thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:
- a) Respondent 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 such determination be made, the stay imposed herein shall become permanent.
- 3) All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

1 4) Respondent shall jointly and severally with RNB Property Management Inc. (see case H-
 2 5674 SAC) pay the sum of \$5,010.60 for the Commissioner's cost of audit SC10-0091/SC10-
 3 0131. Respondent shall pay such cost within sixty (60) days of receiving an invoice from the
 4 Commissioner. The Commissioner may suspend the Respondent's license pending a hearing
 5 held in accordance with Section 11500, et seq., of the Government Code, if payment is not
 6 timely made as provided for herein, or as provided for in a subsequent agreement between the
 7 Respondent and the Commissioner. The suspension shall remain in effect until payment is
 8 made in full or until Respondent enters into an agreement satisfactory to the Commissioner to
 9 provide for payment, or until a decision providing otherwise is adopted following a hearing
 10 held pursuant to this condition.

11 5) Respondent shall jointly and severally with RNB Property Management Inc. (see case H-
 12 5674 SAC) pay the Commissioner's reasonable cost, not to exceed \$5,010.60, for an audit to
 13 determine if Respondent and Landon have corrected the violations found in audit SC10-
 14 0091/SC10-0131. In calculating the amount of the Commissioner's reasonable cost, the
 15 Commissioner may use the estimated average hourly salary for all persons performing audits
 16 of real estate brokers, and shall include an allocation for travel time to and from the auditor's
 17 place of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice
 18 from the Commissioner detailing the activities performed during the audit and the amount of
 19 time spent performing those activities. The Commissioner may suspend Respondent's
 20 license pending a hearing held in accordance with Section 11500, et seq., of the Government
 21 Code, if payment is not timely made as provided for herein, or as provided for in a
 22 subsequent agreement between Respondent and the Commissioner. The suspension shall
 23 remain in effect until payment is made in full or until Respondent enters into an agreement
 24 satisfactory to the Commissioner to provide for payment, or until a decision providing
 25 otherwise is adopted following a hearing held pursuant to this condition.

26 31-Aug-11
 27 DATED

TRULY SUGHRUE
 Counsel for Complainant

I have read the Stipulation and Agreement, have discussed it with my counsel, 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 Accousation 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.

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8-30-2011

DATED



DAVID FREDRICK LANDON
Respondent

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

8-30-2011

DATED



RICHARD WATTS
Attorney for Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on OCT 25 2011, 2011.

IT IS SO ORDERED 9/16/11, 2011.

BARBARA J. BIGBY
Acting Real estate Commissioner



August 22, 2011

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By *[Signature]*

6 Telephone: (916) 227-0789
7 (916) 227-0781 (Direct)

8
9 **BEFORE THE DEPARTMENT OF REAL ESTATE**

10 **STATE OF CALIFORNIA**

11 * * *

12 In the Matter of the Accusation of)

No. H-5672 SAC

13 DAVID FREDRICK LANDON,)

ACCUSATION

14 Respondent.)

15
16 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against DAVID FREDRICK LANDON, (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
22 State of California, makes this Accusation in her official capacity.

23 2

24 Respondent is presently licensed and/or have license rights under the Real Estate
25 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

26 3

27 At all times mentioned Respondent was and is licensed by the State of California
Department of Real Estate (hereinafter "the Department") individually as a real estate broker.

1 4

2 At no times mentioned was RNB Property Management, Inc, (hereinafter
3 "RNB") licensed by the Department in any capacity. At all times mentioned, Respondent was
4 and is officer, director, and shareholder of RNB.

5 5

6 At all times mentioned, Respondent and RNB engaged in the business of, acted
7 in the capacity of, advertised, or assumed to act as real estate brokers in the State of California,
8 within the meaning of Section 10131(b) of the Code, for or in expectation of compensation, and
9 leased or rented, offered to lease or rent, solicited prospective tenants, collected rents on, and/or
10 managed certain real properties in California.

11 FIRST CAUSE OF ACTION

12 6

13 Each and every allegation in Paragraphs 1 through 5, inclusive, above, are
14 incorporated by this reference as if fully set forth herein.

15 7

16 Beginning about June 2010, Respondent willfully caused, suffered, permitted,
17 and/or disregarded the real estate law by allowing RNB to perform the acts and conduct the real
18 estate activities described in Paragraph 5, above, including but not limited to, the activities
19 described in Paragraphs 8 and 9, below.

20 8

21 Beginning about June 2010, in the course of the employment and activities
22 described in Paragraph 7, above, Respondent and/or other agents or employees of RNB whose
23 identities are unknown at this time, on behalf of RNB, solicited prospective tenants for,
24 negotiated rental agreements for, and/or collected rents from real properties owned by another or
25 others, including but not limited to the property located at 3900 Avante Way, Sacramento,
26 California.
27

1
2 On or about March 23, 2011, in the course of the employment and activities
3 described in Paragraph 7, above, Bethany Landon, on behalf of RNB, solicited Deputy
4 Commissioners Shannon M. and Debra B. for property management services including collecting
5 of rents and negotiating contracts for rents/leases.

7 In acting as described in paragraphs 7 through 9, above, Respondent willfully
8 caused, suffered, and/or permitted RNB to willfully disregard Section 10130 of the Code.

10 The facts described above constitute cause to suspend or revoke all licenses and
11 license rights of Respondent pursuant to the provisions of Section 10130 of the Code in
12 conjunction with Section 10177(d) of the Code.

13 SECOND CAUSE OF ACTION

15 Each and every allegation in Paragraphs 1 through 11, inclusive, above are
16 incorporated by this reference as if fully set forth herein.

18 In connection with the operation and conduct of the real estate activities
19 described in Paragraph 5, Respondent and/or other agents or employees of RNB whose
20 identities are unknown at this time, on behalf of RNB, accepted or received funds in trust
21 (hereinafter "trust funds") from or on behalf of owners and tenants in connection with the
22 leasing, renting, and collection of rents on real property or improvements thereon, as alleged
23 herein, and thereafter from time to time made disbursements of said trust funds.

25 The aforesaid trust funds accepted or received by Respondent and/or other agents
26 or employees of RNB whose identities are unknown at this time, on behalf of RNB were
27 deposited or caused to be deposited into one or more bank accounts (hereinafter "trust funds

1 accounts") maintained by Respondent for the handling of trust funds, including but not limited
2 to the following:

<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
RNB Property Management, Inc Trust Management Account Account No. xxxxx-69117 (Trust #1)	Bank of America P.O. Box 37176 San Francisco, CA 94137-0176
RNB Property Management, Inc Trust Account Account No. xxxx-xxxxxx0683-3 (Trust #1)	Washington Mutual/JP Morgan Chase P.O. Box 659754 San Antonio, TX 78265-9754

12 15

13 In the course of activities described in Paragraph 6 and for each of the trust funds
14 accounts identified in Paragraph 14, Respondent willfully caused, suffered, permitted, and/or
15 disregarded the real estate law by allowing RNB:

16 (a) Failed to deposit and maintain trust funds in Trust #1 in such manner that
17 as of April 28, 2011, there was a shortage of \$2,577.22 of trust funds.

18 (b) Failed to obtain prior written consent from each of the principals for the
19 reduction of the aggregate balance of trust funds in Trust #1 to an amount less than the existing
20 aggregate trust fund liability to the owners of said funds in violation of Section 2832.1 of Title
21 10 of the California Code of Regulations (hereinafter "the Regulations").

22 (c) Failed to deposit trust funds into one or more trust fund accounts in the
23 name of a real estate broker as trustee at a bank or other financial institution, in conformance
24 with Section 10145 of the Code and Section 2832 of the Regulations.

25 (d) Caused, permitted, and/or allowed, the possible withdrawal of trust funds
26 from the trust funds accounts by a person who was not licensed by the Department and not
27 covered by a fidelity bond in violation of Section 2834 of the Regulations.

1 (e) Failed to deposit collected trust funds into a trust account within three
2 business days in conformance with Section 10145 of the Code and Section 2832 of the
3 Regulations.

4 16

5 The acts and/or omissions of Respondent willfully caused, suffered, and/or
6 permitted RNB to willfully disregard the real estate law as alleged in the Second Cause of Action
7 constitute grounds for disciplinary action under the following provisions:

8 (a) As to Paragraph 15(a), under Section 10145 of the Code in conjunction
9 with Section 10177(d) of the Code;

10 (b) As to Paragraph 15(b), under Section 2832.1 of the Regulations in
11 conjunction with Section 10177(d) of the Code;

12 (c) As to Paragraphs 15(c) and 15(e), under Section 10145 of the Code and
13 Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;

14 (d) As to Paragraph 15(d), under Section 2834 of the Regulations in
15 conjunction with Section 10177(d) of the Code;

16 WHEREFORE, Complainant prays that a hearing be conducted on the
17 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
18 disciplinary action against all licenses and license rights of Respondent under the Real Estate
19 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
20 relief as may be proper under other provisions of law.

21 
22 TRICIA SOMMERS
23 Deputy Real Estate Commissioner

24 Dated at Sacramento, California,
25 this 16th day of July, 2011

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DISCOVERY DEMAND

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2
3 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of
4 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
5 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real
6 Estate may result in the exclusion of witnesses and documents at the hearing or other
7 sanctions that the Office of Administrative Hearings deems appropriate.
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