

FILED

JUN 17 2014

BUREAU OF REAL ESTATE

By S. B. C.

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
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)	
)	NO. H-5774 SAC
13 JKB FINANCIAL, INC.,)	
14 JASON BARTLETT and)	<u>STIPULATION AND AGREEMENT</u>
ERIC MERCER)	
)	
15 Respondents.)	
)	

16
17 It is hereby stipulated by and between Respondent ERIC MERCER
18 (“Respondent”) acting by and through Mary E. Work, Esq., Counsel for Respondent, and the
19 Complainant, acting by and through Jason D. Lazark, Esq., Counsel for the Department of Real
20 Estate (“Department”), as follows for the purpose of settling and disposing of the Accusation
21 filed on January 23, 2012, in this matter:

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

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H-5774 SAC

JKB FINANCIAL, INC.
JASON BARTLETT, and
ERIC MERCER

1 2. Respondent has received, read and understands the Statement to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
3 in this proceeding.

4 3. Respondent filed a Notice of Defense pursuant to section 11505 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges and understands that by withdrawing said Notice of Defense, Respondent will
8 thereby waive Respondent's right to require the Real Estate Commissioner ("Commissioner")
9 to prove the allegations in the Accusation at a contested hearing held in accordance with the
10 provisions of the APA and that Respondent will waive other rights afforded to Respondent in
11 connection with the hearing such as the right to present evidence in defense of the allegations
12 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, Respondent choose not to contest these
15 factual allegations, but to remain silent and understand that, as a result thereof, these factual
16 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
17 forth below. The Commissioner shall not be required to provide further evidence to prove such
18 allegations.

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

23 6. It is understood by the parties that the Commissioner may adopt the
24 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and
25 sanctions on Respondent's real estate licenses and license rights as set forth in the "Order"
26 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and
27 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing

1 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound
2 by any admission or waiver made herein.

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

7 DETERMINATION OF ISSUES

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

11 The acts and omissions of Respondent, as described in the Accusation, are
12 grounds for the suspension or revocation of the licenses and license rights of Respondent under
13 the provisions of sections 10145, 10146, 10159.2, 10159.5, 10177(d) and 10177(h) of the Code,
14 and sections 2970, 2972, 2830.1, 2831, 2831.2, 2832, 2835, 2840 and 2731 of title 10 of the
15 California Code of Regulations ("the Regulations") as they pertain to the first, second, fourth and
16 fifth causes of action in the Accusation filed on January 23, 2012 in this matter.

17 ORDER

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

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

23 a. Respondent shall obey all laws, rules and regulations governing the rights,
24 duties and responsibilities of a real estate licensee in the State of California; and

25 b. That no final subsequent determination be made, after hearing or upon
26 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
27 date of this Order. Should such a determination be made, the Commissioner may, in his

1 discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
2 suspension. Should no such determination be made, the stay imposed herein shall become
3 permanent.

4 2. Thirty (30) days of said suspension shall be stayed, upon the condition
5 that Respondent petitions pursuant to section 10175.2 of the Code and pays a monetary penalty
6 pursuant to section 10175.2 of the Code at a rate of \$100.00 for each day of the suspension for
7 a total monetary penalty of \$3,000.00.

8 a. Said payment shall be in the form of a cashier's check or certified check
9 made payable to the Consumer Recovery Account of the Real Estate Fund. Said check must be
10 delivered to the Department prior to the effective date of the Decision in this matter.

11 b. No further cause for disciplinary action against the real estate license of
12 Respondent occurs within two (2) years from the effective date of the decision in this matter.

13 c. If Respondent fails to pay the monetary penalty in accordance with the
14 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
15 immediate execution of all or any part of the stayed suspension, in which event, Respondent
16 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
17 Department under the terms of this decision.

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

22 3. Notwithstanding any other provision of this Order, all licenses and
23 licensing rights of Respondent are suspended unless and until he provides proof satisfactory to
24 the Commissioner that he has taken and successfully completed the continuing education course
25 on Trust Fund Accounting and Handling specified in section 10170.5(a)(3) of the Code. The
26 course must have been completed no earlier than one hundred twenty (120) days prior to the
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1 effective date of this Order, and proof must be submitted prior to the effective date of this
2 Order, to prevent suspension of Respondent's license pursuant to this condition.

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4 2-4-13

5 DATED

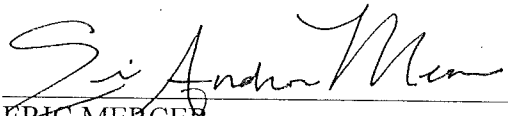
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7 JASON D. LAZARK, Counsel
8 Department of Real Estate

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10 I have read the Stipulation and Agreement and its terms are understood by me
11 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
12 the California Administrative Procedure Act (including but not limited to sections 11506,
13 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
14 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
15 allegations in the Accusation at a hearing at which I would have the right to cross-examine
16 witnesses against me and to present evidence in defense and mitigation of the charges.
17 Respondent can signify acceptance and approval of the terms and conditions of this Stipulation
18 and Agreement by faxing a copy of the signature page, as actually signed by Respondent, to
19 the Department at fax number (916) 227-9458. Respondent agrees, acknowledges and
20 understands that by electronically sending to the Department a fax copy of Respondent's actual
21 signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by
22 the Department shall be as binding on Respondent as if the Department had received the
23 original signed Stipulation and Agreement.

24 1/24/2013

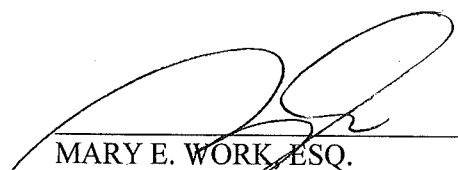
25 DATED

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27 ERIC MERCER,
Respondent

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I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my clients accordingly.

1/24/13
DATED



MARY E. WORK, ESQ.
Attorney for Respondents
ERIC MERCER

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter as to Respondent ERIC MERCER, and shall become effective at 12 o'clock noon on **JUL 08 2014**

IT IS SO ORDERED JUN 03 2014



REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner