

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED

AUG 8 2013

BUREAU OF REAL ESTATE

By *L. Frost*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-5817 SAC
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15 It is hereby stipulated by and between Respondent CARL WHITE FAIR,
16 (“Respondent”), acting by and through Christopher Hanson, Esq., Counsel for Respondent, and
17 the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for the Department of
18 Real Estate (“Department”), as follows for the purpose of settling and disposing of the
19 Accusation filed on May 18, 2012, in this matter:

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

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

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

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

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

20 6. It is understood by the parties that the Commissioner may adopt the
21 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and
22 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 of the provisions of the APA and shall not be bound
26 by any admission or waiver made herein.
27

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

5 8. Respondent understands that by agreeing to this Stipulation and
6 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business
7 and Professions Code (“the Code”), the costs of the audit which resulted in the determination
8 that Respondent committed the trust fund violation(s) found in the Determination of Issues.
9 The amount of such costs is \$5,006.39.

10 9. Respondent further understands that by agreeing to this Stipulation and
11 Agreement, the findings set forth below in the Determination of Issues become final, and that
12 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant
13 to Section 10148 of the Code to determine if the violations have been corrected. The
14 maximum costs of said audit shall not exceed \$5,006.39.

15 10. Respondent understands that by agreeing to this Stipulation and
16 Agreement, Respondent agrees to pay, pursuant to Section 10106 of the Code, the costs of the
17 investigation and enforcement of this case which resulted in the determination that Respondent
18 committed the violation(s) found in the Determination of Issues. The amount of such cost is
19 \$2,461.55.

20 DETERMINATION OF ISSUES

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

24 I.

25 The acts and omissions of Respondent CARL WHITE FAIR (herein “Respondent”)
26 as described in the Accusation are grounds for the suspension or revocation of the licenses and

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1 license rights of Respondent under the provisions of Sections 10145, 10176(e), 10177(d), and
2 10177(g) of the Code, and Sections 2831(a)(6), 2831.1, 2831.2, 2832, 2832.1, and 2835 of Title
3 10 of the California Code of Regulations.

4 ORDER

5 All licenses and licensing rights of Respondent CARL WHITE FAIR (herein
6 “Respondent”) under the Real Estate Law are suspended for a period of sixty (60) days from the
7 effective date of this Order; provided, however, that:

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

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

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

18 2. Thirty (30) days of said suspension shall be stayed, upon the condition
19 that Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
20 pursuant to Section 10175.2 of the Code at a rate of \$30.00 for each day of the suspension for a
21 total monetary penalty of \$900.00.

22 a. Said payment shall be in the form of a cashier's check or certified
23 check made payable to the Department of Real Estate. Said check must be delivered to the
24 Department prior to the effective date of the Decision in this matter.

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

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

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

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

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

22 5. 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 Risk Management specified in Section 10170.5(a)(5) of the Code. The course must have been
26 completed no earlier than one hundred twenty (120) days prior to the effective date of this Order,

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1 and proof must be submitted prior to the effective date of this Order, to prevent suspension of
2 Respondent's license pursuant to this condition.

3 6. Respondent shall pay the sum of \$5,006.39 for the Commissioner's cost
4 of the audit which led to this disciplinary action. Respondent shall pay such cost within sixty
5 (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may
6 indefinitely suspend all licenses and licensing rights of Respondent pending a hearing held in
7 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
8 made as provided for herein, or as provided for in a subsequent agreement between Respondent
9 and the Commissioner. The suspension shall remain in effect until payment is made in full or
10 until Respondent enters into an agreement satisfactory to the Commissioner to provide for
11 payment, or until a decision providing otherwise is adopted following a hearing held pursuant
12 to this condition.

13 7. Respondent shall pay the Commissioner's costs, not to exceed
14 \$5,006.39, of any audit conducted pursuant to Section 10148 of the Code to determine if
15 Respondent has corrected the violations described in the Determination of Issues, above, and
16 any other violations found in the audit which led to this disciplinary action. In calculating the
17 amount of 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 shall include
19 an allocation for travel time to and from the auditor's place of work. Respondent shall pay
20 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner
21 detailing the activities performed during the audit and the amount of time spent performing
22 those activities. If Respondent fails to pay such cost within the sixty (60) days, the
23 Commissioner may indefinitely suspend all licenses and licensing rights of Respondent under
24 the Real Estate Law until payment is made in full or until Respondent enters into an agreement
25 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
26 suspension provided for in this paragraph shall be stayed.

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1 8. All licenses and licensing rights of Respondent are indefinitely
2 suspended unless or until Respondent pays the sum of \$2,461.55 for the Commissioner's
3 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
4 payment shall be in the form of a cashier's check or certified check made payable to the
5 Department of Real Estate.

6
7 2/11/13
8 DATED



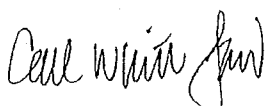
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10 Annette E. Ferrante, Counsel
11 Department of Real Estate

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I have read the Stipulation and Agreement 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 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation 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. Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondent, to the Department at fax number (916) 227-9458. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

2-11-2013

DATED

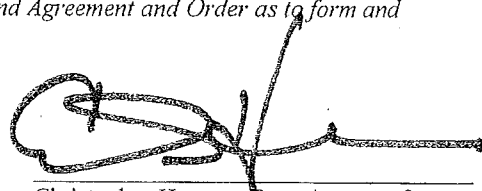


CARL WHITE FAIR,
Respondent

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

2-11-13

DATED



Christopher Hanson, Esq., Attorney for
Respondent CARL WHITE FAIR

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The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter as to Respondent CARL WHITE FAIR, and shall become effective at 12
o'clock noon on **AUG 28 2013**

IT IS SO ORDERED 3/10/2013

Real Estate Commissioner



WAYNE S. BELL