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BUREAU OF REAL ESTATE

By B. Contreras

BUREAU OF REAL ESTATE
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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

NO. H-5936 SAC

WEBER HOME SERVICES, INC, and
NOEL LOUISE WEBER,

Respondents.

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

It is hereby stipulated by and between WEBER HOME SERVICES (herein "WHS"), and NOEL LOUISE WEBER (herein "WEBER") (herein collectively "Respondents") individually and jointly, by and through Frank M. Buda, attorney of record herein for Respondents, and the Complainant, acting by and through Stephanie K. Sese, Counsel for the Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing of the Accusation filed on December 28, 2012 in this matter:

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

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

1 3. Notices of Defense were filed on January 11, 2013 and February 8, 2013, by
2 Respondents pursuant to Section 11505 of the Government Code for the purpose of requesting a
3 hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
4 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said Notices
5 of Defense, they will thereby waive their rights to require the Real Estate Commissioner (herein
6 "Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance
7 with the provisions of the APA and that they will waive other rights afforded to them in connection
8 with the hearing such as the right to present evidence in defense of the allegations in the Accusation
9 and the right to cross-examine witnesses.

10 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
11 factual allegations pertaining to them in the Accusation filed in this proceeding are true and correct and
12 the Real Estate Commissioner shall not be required to provide further evidence of such allegations.

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

20 6. The Order or any subsequent Order of the Commissioner made pursuant to this
21 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar to any
22 further administrative or civil proceedings by the Bureau with respect to any matters which were not
23 specifically alleged to be causes for Accusation in this proceeding.

24 7. Respondents understand that by agreeing to this Stipulation and Agreement in
25 Settlement and Order, Respondents jointly and severally agree to pay, pursuant to Section 10148 of the
26 California Business and Professions Code (herein "Code"), the cost of the audit which resulted in the
27

1 determination that Respondents committed the trust fund violations found in Paragraph I, below, of the
2 Determination of Issues. The amount of said costs is \$2,850.00.

3 8. Respondents understand that by agreeing to this Stipulation and Agreement in
4 Settlement and Order, the findings set forth below in the Determination of Issues become final, and
5 that the Commissioner may charge said Respondents, jointly and severally, for the costs of any audit
6 conducted pursuant to Section 10148 of the Code to determine if the trust fund violation(s) found in
7 Paragraph I, below, of the Determination of Issues have been corrected. The maximum costs of said
8 audit shall not exceed \$2,850.00.

9 9. Respondents understand that by agreeing to this Stipulation and Agreement in
10 Settlement and Order, the findings set forth below in the Determination of Issues become final, and
11 that the Commissioner may charge said Respondents, jointly and severally, and pursuant to Section
12 10106 of the Code, the costs of the investigation and enforcement of this case which resulted in the
13 determination that Respondents committed the violation(s) found in the Determination of Issues. The
14 amount of such cost is \$3,610.66.

15 DETERMINATION OF ISSUES

16 I

17 The acts and omissions of Respondents as described in the Accusation are grounds for
18 the suspension or revocation of the licenses and license rights of Respondents under the following
19 provisions of the Code and/or Chapter 6, Title 10, California Code of Regulations (herein "the
20 Regulations"):

- 21 1) As to Paragraph 10(a), under Section 10145(a) of the Code and
22 Section 2832.1 of the Regulations;
- 23 2) As to Paragraph 10(b), under Section 10176(e) of the Code and Section
24 2835 of the Regulations;
- 25 3) As to Paragraph 10(c), under Section 10176(e) of the Code and
26 Section 2835 of the Regulations;

- 1 4) As to Paragraph 10(d), under Section 10145(a)(1) of the Code and Section
2 2832 of the Regulations;
3 5) As to Paragraph 10(e), under Section 10145(g) of the Code and Section
4 2831 of the Regulations;
5 6) As to Paragraph 10(f), under Section 10145 of the Code and Section
6 2831.2 of the Regulations;
7 7) As to Paragraph 10(g), under Section 10085 of the Code and Section 2970
8 of the Regulations; and,
9 8) As to Paragraph 10(h), under Section 2731 of the Regulations.

10 ORDER

11 I

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

14 (a) Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms
15 and conditions:

16 (i) Respondents shall obey all laws, rules and regulations governing the rights, duties
17 and responsibilities of real estate licensees in the State of California; and,

18 (ii) That no final subsequent determination be made, after hearing or upon stipulation,
19 that cause for disciplinary action occurred within two (2) years from the effective date of
20 this Order. Should such a determination be made, the Commissioner may, in his
21 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
22 suspension. Should no such determination be made, the stay imposed herein shall
23 become permanent.

24 (b) Respondents understand that by agreeing to this Stipulation and Agreement in Settlement and
25 Order, Respondents, jointly and severally agree to pay, pursuant to Section 10106 of the Code, the
26 costs of the investigation and enforcement of this case which resulted in the determination that
27 Respondents committed the violation(s) found in Paragraph I, above, of the Determination of

1 Issues. The amount of such cost is \$3,610.66.

2 (i) If Respondents fail to make payment as noted in Paragraph (b), above, of the Order,
3 within sixty (60) days, the Commissioner may in his discretion indefinitely suspend all
4 licenses and licensing rights of Respondents under Real Estate Law until payment is
5 made in full or until Respondents enter into an agreement satisfactory to the
6 Commissioner to provide for alternate payment arrangements.

7 (c) Respondents understand that by agreeing to this Stipulation and Agreement in Settlement and
8 Order, Respondents, jointly and severally agree to pay, pursuant to Section 10148 of the Code, the
9 cost of the audit which resulted in the determination that Respondents committed the real estate
10 violation(s) found in Paragraph I, above, of the Determination of Issues. The amount of said cost is
11 \$2,850.00.

12 (i) If Respondents fail to make payment as noted in Paragraph (c), above, of the Order,
13 within sixty (60) days, the Commissioner may in his discretion indefinitely suspend all
14 licenses and licensing rights of Respondents under Real Estate Law until payment is
15 made in full or until Respondents enter into an agreement satisfactory to the
16 Commissioner to provide for alternate payment arrangements.

17 (d) Respondents, jointly and severally, shall pay the Commissioner's costs, not to exceed
18 \$2,850.00, of any audit conducted pursuant to Section 10148 of the Code to determine if
19 Respondents have corrected the violations described in Paragraph I of the Determination of Issues,
20 above. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may
21 use the estimated average hourly salary for all persons performing audits of real estate brokers, and
22 shall include an allocation for travel time to and from the auditor's place of work. Respondents
23 shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner
24 detailing the activities performed during the audit and the amount of time spent performing those
25 activities.

26 (i) If Respondents fail to make payment as noted in Paragraph (d), above, of the Order,
27 within sixty (60) days, the Commissioner may in his discretion indefinitely suspend all

1 licenses and licensing rights of Respondents under the Real Estate Law until payment is
2 made in full or until Respondents enter into an agreement satisfactory to the
3 Commissioner to provide for payment. Upon payment in full, the indefinite suspension
4 provided in this paragraph shall be stayed.

5 II

6 1. All licenses and licensing rights of Respondent WEBER are indefinitely suspended
7 unless or until Respondent WEBER provides proof satisfactory to the Commissioner of
8 having taken and successfully completed the continuing education course on trust fund
9 accounting and handling specified in paragraph (3) of subdivision (a) of Section
10 10170.5 of the Code. Proof of satisfaction of this requirement includes evidence that
11 Respondent WEBER has successfully completed the trust fund account and handling
12 continuing education course within six (6) months prior to the effective date the
13 Decision in this matter.

14 2. Respondent WEBER shall, within six (6) months from the effective date of this
15 Decision, take and pass the Professional Responsibility Examination administered by
16 the Bureau, including the payment of the appropriate examination fee. If Respondent
17 WEBER fails to satisfy this condition, the Commissioner may order suspension of the
18 license and license rights of Respondent WEBER until Respondent WEBER passes the
19 examination.

20
21 Oct. 22, 2013

22 DATED

23 By:

24 SKS

25 STEPHANIE K. SESE, Counsel
26 Bureau of Real Estate

27 * * *

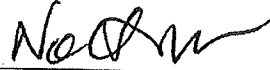
28 I have read the Stipulation and Agreement in Settlement and Order and have discussed
29 it with my attorney and its terms are understood by me and are agreeable and acceptable to me. I
30 understand that I am waiving rights given to me by the California APA (including but not limited to

1 Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
2 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
3 allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses
4 against me and to present evidence in defense and mitigation of the charges.

5
6 10-11-13

7 DATED

8 By:



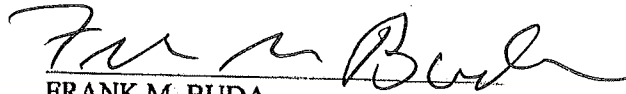
9 NOEL LOUISE WEBER

10 Respondent Real Estate Broker and
11 Weber Home Services, Inc.
12 ***

13 I have reviewed the Stipulation and Agreement in Settlement and Order as to form and
14 content and have advised my clients accordingly.

15
16 10-11-13

17 DATED



18 FRANK M. BUDA

19 Attorney for Respondents

20 ***

21 The foregoing Stipulation and Agreement in Settlement and Order is hereby
22 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

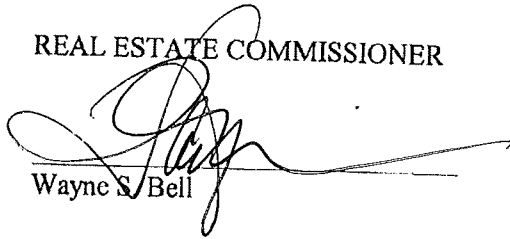
23 DEC 20 2013

24 , 2013.

25 IT IS SO ORDERED

26 November 15, 2013.

27 REAL ESTATE COMMISSIONER


Wayne S. Bell

File No. NO. H-5936 SAC

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WEBER HOME SERVICES
NOEL LOUISE WEBER