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BUREAU OF REAL ESTATE

By L. Jones

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	DRE No. H-5954 SAC
	)	
MICHAEL PATRICK GUINDON,	)	<u>STIPULATION AND AGREEMENT</u>
	)	<u>IN SETTLEMENT AND ORDER</u>
	)	
	)	
Respondent.	)	
	)	

It is hereby stipulated by and between MICHAEL PATRICK GUINDON (GUINDON), and his counsel, Robert O. Hardwick, and the Complainant, acting by and through Richard K. Uno, Counsel for the Bureau of Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on February 6, 2013, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent 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. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in this proceeding.

1 3. On February 13, 2013, Respondent filed a Notice of Defense pursuant to
2 Section 11505 of the Government Code for the purpose of requesting a hearing on the
3 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
4 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
5 Defense he will thereby waive his rights to require the Commissioner to prove the allegations
6 in the Accusation at a contested hearing held in accordance with the provisions of the APA and
7 that he will waive other rights afforded to him in connection with the hearing such as the right
8 to present evidence in defense of the allegations in the Accusation and the right to cross-
9 examine witnesses.

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

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

23 6. The Order or any subsequent Order of the Real Estate Commissioner made
24 pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an
25 estoppel, merger or bar to any further administrative or civil proceedings by the Bureau of
26 Real Estate with respect to any matters which were not specifically alleged to be causes for
27 accusation in this proceeding.

1 7. Respondent understands that by agreeing to this Stipulation and Agreement
2 In Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the Business
3 and Professions Code (Code), the cost of the audit which led to this disciplinary action. The
4 amount of said cost is \$5,566.70.

5 8. Respondent has received, read and understands the "Notice Concerning
6 Costs of Subsequent Audits". Respondent understands that by agreeing to this Stipulation and
7 Agreement in Settlement and Order, the findings set forth below in the "DETERMINATION
8 OF ISSUES" become final, and that the Commissioner may charge Respondent for the cost of
9 any audit conducted pursuant to Section 10148 of the Code to determine if the violations have
10 been corrected. The maximum costs of said audit will not exceed \$5,566.70.

11
12 DETERMINATION OF ISSUES

13 By reason of the foregoing stipulations, admissions and waivers, and solely for
14 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
15 agreed that the acts and/or omissions of Respondent, as described in the Accusation, constitute
16 grounds for the suspension or revocation of the licenses and license rights of Respondent
17 under the provisions of Sections 10145 and 10177(g) of the Code.

18 ORDER

19 The real estate broker license and license rights of Respondent under the Real
20 Estate Law are suspended for a period of sixty (60) days from the effective date of this Order;
21 provided, however, that:

22 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the
23 following terms and conditions:

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

26 b) That no final subsequent determination be made, after hearing or upon
27 stipulation that cause for disciplinary action occurred within two (2) years from the effective

1 date of this Order. Should such a determination be made, the Commissioner may, in his
2 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
3 suspension. Should no such determination be made, the stay imposed herein shall become
4 permanent.

5 2. Pursuant to Section 10148 of the Business and Professions Code,

6 Respondent shall pay for: a) the Commissioner's reasonable cost of the audit which led to this
7 disciplinary action in the amount of \$5,566.70 and b) a subsequent audit to determine if
8 Respondent has corrected the trust fund violations found in the Determination of Issues in an
9 amount that shall be no more than \$5,566.70. In calculating the amount of the Commissioner's
10 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
11 performing audits of real estate brokers, and shall include an allocation for travel costs,
12 including mileage, time to and from the auditor's place of work and per diem. Respondent
13 shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner
14 detailing the activities performed during the audit and the amount of time spent performing
15 those activities. The Commissioner may, in his discretion, vacate and set aside the stay order if
16 payment is not timely made as provided for herein, or as provided for in a subsequent
17 agreement between the Respondent and the Commissioner. The vacation and the set aside of
18 the stay shall remain in effect until payment is made in full, or until Respondent enter into an
19 agreement satisfactory to the Commissioner to provide for payment. Should no order vacating
20 the stay be issued in accordance with this condition, the stay imposed herein shall become
21 permanent.

22 3. All licenses and licensing rights of Respondent under the Real Estate Law are

23 suspended until such time as Respondent provides proof satisfactory to the Commissioner that
24 Respondent has completed the continuing education course on real estate trust fund accounting
25 and handling specified in subdivision (a) of Section 10170.5 of the Code. The course must have
26 been completed no earlier than one hundred twenty (120) days prior to the effective date of this
27

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

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4 8/1/13

5 DATED

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RICHARD K. UNO, Counsel III
BUREAU OF REAL ESTATE

I have read the Stipulation and Agreement in Settlement and Order 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.

7-29-13

DATED

MICHAEL GUINDON,

Respondent

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

7/29/2013

DATED

ROBERT O. HARDWICK

Attorney for Respondent

OCT 22 2013

WAYNE S. BELL
Real Estate Commissioner

- 6 -