

1 BUREAU OF REAL ESTATE
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FILED

FEB 17 2016

BUREAU OF REAL ESTATE

By L. Johnson

6 BEFORE THE BUREAU OF REAL ESTATE
7 STATE OF CALIFORNIA

8 * * *

9 In the Matter of the Accusation of)
10 A C O N, INC.,) NO. H-6099 SAC
11 a Corporation, and) STIPULATION AND AGREEMENT
12 DAVID ALBERT NOVELO,) IN SETTLEMENT AND ORDER
13 Respondents.)

14 It is hereby stipulated by and between A C O N, INC. (herein "A C O N") and
15 DAVID ALBERT NOVELO (herein "NOVELO") (collectively "Respondents") by and through
16 Lindsay M. Johnson, attorney of record herein for Respondents, and through the Complainant,
17 acting by and through Mary F. Clarke, Counsel for the Bureau of Real Estate (herein "Bureau"),
18 as follows for the purpose of settling and disposing the Accusation filed on March 28, 2014, in
19 this matter (herein "Accusation"):

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

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

27 3) Notices of Defense were filed on April 25, 2014, by Respondents pursuant to

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

9 4) Respondents, pursuant to the "Determination of Issues" set forth below,
10 hereby admit that the factual allegations, in the Accusation filed in this proceeding are true and
11 correct and the Commissioner shall not be required to provide further evidence of such
12 allegations.

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

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

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

1 the violations found in the "Determination of Issues" below. The amount of said cost is
2 \$4,222.09.

3 8) Respondents understand that by agreeing to this Stipulation, the findings set
4 forth below in the "Determination of Issues" become final, and that the Commissioner may
5 charge Respondents for the cost of any audit conducted pursuant to Section 10148 of the Code to
6 determine if the trust fund violations found in the "Determination of Issues," below, have been
7 corrected. The maximum cost of said audit shall not exceed \$4,222.09.

8 9) Respondents further understand that by agreeing to this Stipulation,
9 Respondents agree to pay, pursuant to Section 10106(a) of the Code, investigative and
10 enforcement costs of \$6,066.25 which led to this disciplinary action.

11 DETERMINATION OF ISSUES

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

- 16 (a) as to Paragraph 8(a) under Section 2832.1 of the Regulations in conjunction
17 with Section 10177(d) of the Code;
18 (b) as to Paragraph 8(b) under Section 2831 of the Regulations in conjunction
19 with Section 10177(d) of the Code;
20 (c) as to Paragraph 8(c) under Section 10145 of the Code and Section 2831.1 of
21 the Regulations in conjunction with Section 10177(d) of the Code;
22 (d) as to Paragraph 8(d) under Section 2831.2 of the Regulations in conjunction
23 with Section 10177(d) of the Code;
24 (e) as to Paragraph 8(e) under Section 10148 of the Code in conjunction with
25 Section 10177(d) of the Code;
26 (f) as to Paragraph 9 under Section 10140.6 of the Code and Section 2773 of
27 the Regulations in conjunction with Section 10177(d) of the Code;

- 1 (g) as to Paragraph 10 under Section 2742(c) of the Regulations in conjunction
2 with Section 10177(d) of the Code;
- 3 (h) as to Paragraph 11 under Section 10140.6 of the Code and Section 2773 of
4 the Regulations in conjunction with Section 10177(d) of the Code and
- 5 (i) as to Paragraph 12 under Sections 10176(a) and (i) and/or 10177(g) and/or
6 10177(j) of the Code.

7 ORDER

8 I

9 1. All licenses and licensing rights of Respondent A C O N under the Real Estate
10 Law are revoked; provided, however, a restricted real estate corporate broker license shall be
11 issued to Respondent pursuant to Section 10156.5 of the Code if, within 90 days from the
12 effective date of the Decision entered pursuant to this Order, Respondent, prior to and as a
13 condition of the issuance of said restricted license makes application for the restricted license and
14 pays to the Bureau the appropriate fee therefor. The restricted license issued to Respondent shall
15 be subject to all of the provisions of Section 10156.7 of the Code and to the following
16 limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

17 (a) The restricted license issued to Respondent may be suspended prior to
18 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
19 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
20 Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted
21 license.

22 (b) Respondent shall not be eligible to apply for the issuance of an
23 unrestricted real estate license or for the removal of any of the conditions, limitations or
24 restrictions of a restricted license until two (2) years have elapsed from the effective date of this
25 Order.

26 2. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
27 severally with Respondent NOVELO, the sum of \$4,222.09 for the Commissioner's cost of the

1 audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60) days
2 of receiving an invoice therefore from the Commissioner. Payment of audit costs should not be
3 made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a
4 timely manner as provided for herein, Respondent's real estate license shall automatically be
5 suspended until payment is made in full, or until a decision providing otherwise is adopted
6 following a hearing held pursuant to this condition.

7 3. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
8 severally with Respondent NOVELO, the Commissioner's reasonable cost, not to exceed
9 \$4,222.09, for an audit to determine if Respondent has corrected the violation(s) found in the
10 Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the
11 Commissioner may use the estimated average hourly salary for all persons performing audits of
12 real estate brokers, and shall include an allocation for travel time to and from the auditor's place
13 of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore
14 from the Commissioner. Payment of the audit costs should not be made until Respondent
15 receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided
16 for herein, Respondent's real estate license shall automatically be suspended until payment is
17 made in full, or until a decision providing otherwise is adopted following a hearing held pursuant
18 to this condition.

19 4. All licenses and licensing rights of Respondent are indefinitely suspended
20 unless or until Respondent, jointly and severally with Respondent NOVELO, pays the sum of
21 \$6,066.25 for the Commissioner's reasonable cost of the investigation and enforcement which
22 led to this disciplinary action. Said payment shall be in the form of a cashier's check made
23 payable to the Bureau of Real Estate. The investigative and enforcement costs must be delivered
24 to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,
25 prior to the effective date of this Order.

26 II
27

1 1. All licenses and licensing rights of Respondent NOVELO are indefinitely
2 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having
3 taken and successfully completed the continuing education course on trust fund accounting and
4 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and
5 Professions Code. Proof of satisfaction of these requirements includes evidence that Respondent
6 has successfully completed the trust fund account and handling continuing education courses, no
7 earlier than 120 days prior to the effective date of the Order in this matter. Proof of completion
8 of the trust fund accounting and handling course must be delivered to the Bureau of Real Estate,
9 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior
10 to the effective date of this Order.

11 2. All licenses and licensing rights of Respondent under the Real Estate Law are
12 revoked; provided, however, a restricted real estate designated officer broker license (herein
13 “restricted license”) shall be issued to Respondent pursuant to Section 10156.5 of the Code if,
14 within 90 days from the effective date of the Decision entered pursuant to this Order,
15 Respondent, prior to and as a condition of the issuance of said restricted license makes
16 application for the restricted license and pays to the Bureau the appropriate fee therefor. The
17 restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7
18 of the Code and to the following limitations, conditions, and restrictions imposed under authority
19 of Section 10156.6 of that Code:

20 (a) The restricted license issued to Respondent may be suspended prior to
21 hearing by Order of the Commissioner in the event of Respondent’s conviction or plea of nolo
22 contendere to a crime which is substantially related to Respondent’s fitness or capacity as a real
23 estate licensee.

24 (b) The restricted license issued to Respondent may be suspended prior to
25 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
26 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
27 Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted

1 license.

2 (c) Respondent shall not be eligible to apply for the issuance of an
3 unrestricted real estate license or for the removal of any of the conditions, limitations or
4 restrictions of a restricted license until two (2) years have elapsed from the effective date of this
5 Order.

6 3. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
7 severally with Respondent A C O N, the sum of \$4,222.09 for the Commissioner's cost of the
8 audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60) days
9 of receiving an invoice therefore from the Commissioner. Payment of audit costs should not be
10 made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a
11 timely manner as provided for herein, Respondent's real estate license shall automatically be
12 suspended until payment is made in full, or until a decision providing otherwise is adopted
13 following a hearing held pursuant to this condition.

14 4. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
15 severally with Respondent A C O N, the Commissioner's reasonable cost, not to exceed
16 \$4,222.09, for an audit to determine if Respondent has corrected the violations found in the
17 Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the
18 Commissioner may use the estimated average hourly salary for all persons performing audits of
19 real estate brokers, and shall include an allocation for travel time to and from the auditor's place
20 of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore
21 from the Commissioner. Payment of the audit costs should not be made until Respondent
22 receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided
23 for herein, Respondent's real estate license shall automatically be suspended until payment is
24 made in full, or until a decision providing otherwise is adopted following a hearing held pursuant
25 to this condition.

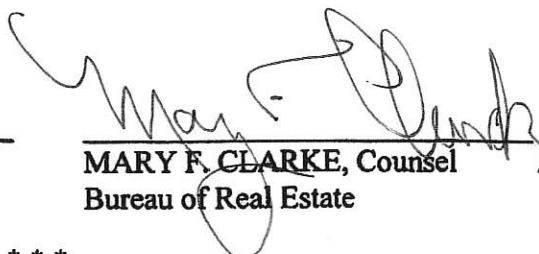
26 5. All licenses and licensing rights of Respondent are indefinitely suspended
27 unless or until Respondent, jointly and severally with Respondent A C O N, pays the sum of

1 \$6,066.25 for the Commissioner's reasonable cost of the investigation and enforcement which
2 led to this disciplinary action. Said payment shall be in the form of a cashier's check made
3 payable to the Bureau of Real Estate. The investigative and enforcement costs must be delivered
4 to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,
5 prior to the effective date of this Order.

6 6. Respondent shall, within nine (9) months from the effective date of this
7 Order, present evidence satisfactory to the Commissioner that Respondent has, since the most
8 recent issuance of an original or renewal real estate license, taken and successfully completed the
9 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
10 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate
11 license shall automatically be suspended until Respondent presents evidence satisfactory to the
12 Commissioner of having taken and successfully completed the continuing education
13 requirements. Proof of completion of the continuing education courses must be delivered to the
14 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

15 7. Respondent shall, within six (6) months from the effective date of this Order,
16 take and pass the Professional Responsibility Examination administered by the Bureau including
17 the payment of the appropriate examination fee. If Respondent fails to satisfy this condition,
18 Respondent's real estate license shall automatically be suspended until Respondent passes the
19 examination.

20
21 12-15-15
22 _____
23 DATED

24
25 
26 MARY F. CLARKE, Counsel
27 Bureau of Real Estate

28 Respondents can signify acceptance and approval of the terms and conditions of
29 this Stipulation and Agreement to Citation and Fine by faxing or electronically e-mailing a copy
30 of the signature page, as actually signed by Respondents, to the Bureau at fax number (916) 263-

1 3767. Respondents agree, acknowledge and understand that by electronically sending to the
2 Bureau a fax or other electronic copy of Respondents' actual signature as it appears on the
3 Stipulation and Agreement to Citation and Fine, that receipt of the faxed or e-mailed copy by the
4 Bureau shall be as binding on Respondents as if the Bureau had received the original signed
5 Stipulation.

6 I have read this Stipulation and its terms are understood by me and are agreeable
7 and acceptable to me. I understand that I am waiving rights given to me by the California APA
8 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government
9 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of
10 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I
11 would have the right to cross-examine witnesses against me and to present evidence in defense
12 and mitigation of the charges.

13
14 12/15/2015
DATED

ACON, INC.
Respondent

15
16 By: 

17 DAVID ALBERT NOVELO
Designated Officer - Broker

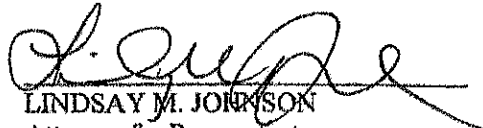
18
19 12/15/2015
DATED

20 
DAVID ALBERT NOVELO
Respondent

21
22 I have reviewed the Stipulation and Agreement as to form and content and have
23 advised my clients accordingly.

24
25 12-5-2015

DATED

26 
LINDSAY M. JOHNSON
Attorney for Respondent

27 * * *

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

3 MAR 08 2016

4 IT IS SO ORDERED February 5, 2016

7 WAYNE S. BELL
8 REAL ESTATE COMMISSIONER

9 

10 By: JEFFREY MASON
11 Chief Deputy Commissioner