

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
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FILED

FEB 17 2017

BUREAU OF REAL ESTATE

By B. Nicholas

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8
9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

BRE No. H-6411 SAC

13 JOHN CHING KWONG,)

14 Respondent.)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

15
16 It is hereby stipulated by and between JOHN CHING KWONG (Respondent), and
17 the Complainant, acting by and through Richard K. Uno, Counsel for the Bureau of Real Estate
18 (Bureau); as follows for the purpose of settling and disposing of the Accusation filed on July 16,
19 2016, 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 hearing
22 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
23 shall instead and in place thereof be submitted solely on the basis of the provisions of this
24 Stipulation and Agreement In Settlement and Order (Stipulation).

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 Bureau of Real
27 Estate 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 he understands that by withdrawing said Notice of Defense he will thereby
5 waive his right to require the Real Estate Commissioner (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 to
8 present evidence in defense of the allegations in the Accusation and the right to cross-examine
9 witnesses.

10 4. This Stipulation is based on the factual allegations contained in the
11 Accusation. In the interest of expediency and economy, Respondent choses not to contest these
12 factual allegations, but to remain silent and understands that, as a result thereof, these factual
13 statements will serves 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. It is understood by the parties that the Commissioner may adopt the
17 Stipulation as his Decision and Order in this matter, thereby imposing the penalty and sanctions
18 on Respondent's real estate licenses and license rights as set forth in the below "Order". In the
19 event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and
20 of no effect, and Respondent shall retain the rights to a hearing and proceeding on the Accusation
21 under all the provisions of the APA and shall not be bound by any admission or waiver made
22 herein.

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

1 7. Respondent understands that by agreeing to this Stipulation, Respondent
2 agrees to pay, pursuant to Section 10106 of the Business and Professions Code (Code), the cost
3 of the investigation and enforcement which resulted in the determination that Respondent
4 committed the violations found in the Determination of Issues. The amount of said costs is
5 \$1,755.12.

6 8. Respondent understands that by agreeing to this Stipulation, Respondent
7 agrees to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
8 violation(s) found in the Determination of Issues. The amount of such costs is \$3,904.05.

9 9. Respondent further understands that by agreeing to this Stipulation, the
10 findings set forth below in the "Determination of Issues" become final, and that the
11 Commissioner may charge said Respondent for the costs of any audit conducted pursuant to
12 Section 10148 of the Code to determine if the violations have been corrected. The maximum
13 cost of said audit shall not exceed \$4,880.06.

14 DETERMINATION OF ISSUES

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

20 ORDER

21 All licenses and licensing rights of Respondent, under the Real Estate Law are
22 revoked; provided, however, a restricted real estate broker license shall be issued to Respondent,
23 pursuant to Section 10156.5 of the Code, if Respondent makes application therefore and pays to
24 the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the
25 effective date of this Stipulation. The restricted license issued to Respondent shall be subject to
26 all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions,
27 and restrictions imposed under authority of Section 10156.6 of the Code:

1 1. The restricted license issued to Respondent may be suspended prior to
2 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo
3 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real
4 estate licensee.

5 2. The restricted license issued to Respondent may be suspended prior to
6 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
7 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
8 Law, Regulations of the Commissioner or conditions attaching to the restricted license.

9 3. Respondent shall not be eligible to apply for the issuance of any
10 unrestricted real estate license nor the removal of any of the conditions, limitations, or
11 restrictions of a restricted until two (2) years have elapsed from the effective date of this
12 Stipulation. Respondent shall not be eligible to apply for any unrestricted licenses until all
13 restrictions attaching to the license have been removed.

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

24 5. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
25 \$3,904.05 for the Commissioner's cost of the audit which led to this disciplinary action.
26 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
27 Commissioner. Payment of audit costs should not be made until Respondent receives the

1 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
2 Respondent's real estate licenses shall automatically be suspended until payment is made in full,
3 or until a decision providing otherwise is adopted following a hearing held pursuant to this
4 condition.

5 6. Pursuant to Section 10148 of the Code, Respondent shall pay the
6 Commissioner's reasonable cost, not to exceed \$4,880.06, for an audit to determine if
7 Respondent has corrected the violation(s) found in the "Determination of Issues". In calculating
8 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
9 average hourly salary for all persons performing audits of real estate brokers, and shall include an
10 allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost
11 within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the
12 audit costs should not be made until Respondent receives the invoice. If Respondent fails to
13 satisfy this condition in a timely manner as provided for herein, Respondent's real estate licenses
14 shall automatically be suspended until payment is made in full, or until a decision providing
15 otherwise is adopted following a hearing held pursuant to this condition.

16 7. All licenses and licensing rights of Respondent are indefinitely suspended
17 unless or until Respondent pays the sum of \$1,755.12 for the Commissioner's reasonable cost
18 of the investigation and enforcement which led to this disciplinary action. Said payment shall
19 be in the form of a cashier's check made payable to the Bureau of Real Estate. The investigative
20 and enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
21 137013, Sacramento, CA 95813-7013, prior to the effective date of this Stipulation.

23 10/18/16

24 DATED

25 Richard K. Uno
26 RICHARD K. UNO, Counsel III
27 BUREAU OF REAL ESTATE

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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. I understand that I must sign and return this Stipulation by fax to (916) 263-3767 or by email to Richard.Uno@dre.ca.gov. I further agree to mail the original Stipulation no later than five days after signing it to: Bureau of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007. I understand that failure to mail the original back may result in this matter going to hearing.

DATED

10/16/2016

JOHN CHING KWONG

The foregoing Stipulation and Agreement In Settlement and Order is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on **MAR 10 2017**

IT IS SO ORDERED

2/12/2017

WAYNE S. BELL
REAL ESTATE COMMISSIONER