

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670

FILED

APR 28 2017

BUREAU OF REAL ESTATE
By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:) Case No. H-6461 SAC
12)
13 ARR CAPITAL LENDING CA,) STIPULATION AND AGREEMENT
GREENBRIAR HOLDINGS,) IN SETTLEMENT AND ORDER
14 ADAM JOSEPH REHFELDT)
CRAIG ANTHONY COX, and)
15 MARK WILLIAM AUSSIEKER,)
16 Respondents.)
17)

18 It is hereby stipulated by and between Respondents ARR CAPITAL LENDING
19 CA ("ARR CAPITAL"), GREENBRIAR HOLDINGS ("GREENBRIAR"), ADAM JOSEPH
20 REHFELDT ("REHFELDT"), CRAIG ANTHONY COX ("COX"), and MARK WILLIAM
21 AUSSIEKER ("AUSSIEKER"), collectively referred to herein as ("Respondents"), acting by
22 and through Frank M. Buda, counsel for Respondents, and the Complainant, acting by and
23 through Jason D. Lazark, Counsel for the Bureau of Real Estate, as follows for the purpose of
24 settling and disposing of the Accusation filed on October 28, 2016, in this matter:

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

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

9 3. On November 4, 2016, Respondents filed Notices of Defense pursuant to
10 Section 11505 of the Government Code for the purpose of requesting a hearing on the
11 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
12 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
13 Notices of Defense they will thereby waive their rights to require the Commissioner to prove
14 the allegations in the Accusation at a contested hearing held in accordance with the provisions
15 of the APA and that they will waive other rights afforded to them in connection with the
16 hearing such as the right to present evidence in defense of the allegations in the Accusation and
17 the right to cross-examine witnesses.

18 4. Respondents, pursuant to the limitations set forth below, hereby admit that
19 the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding
20 are true and correct and the Real Estate Commissioner shall not be required to provide further
21 evidence of such allegations.

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

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

7 7. Respondents understand that by agreeing to this Stipulation and Agreement,
8 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10148
9 of the California Business and Professions Code ("the Code"), the costs of the audit which
10 resulted in the determination that Respondents committed the trust fund violation(s) found in the
11 Determination of Issues. The amount of such costs is \$3,807.02.

12 8. Respondents further understand that by agreeing to this Stipulation and
13 Agreement, the findings set forth below in the Determination of Issues become final, and that the
14 Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
15 Section 10148 of the Code to determine if the violations have been corrected and hold
16 Respondents jointly and severally responsible for paying the costs of the follow up audit. The
17 maximum costs of said audit shall not exceed \$4,758.78.

18 9. Respondents understand that by agreeing to this Stipulation and Agreement,
19 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10106
20 of the Code, the costs of the investigation and enforcement of this case which resulted in the
21 determination that Respondent committed the violation(s) found in the Determination of Issues.
22 The amount of such cost is \$3,499.60.

23 DETERMINATION OF ISSUES

24 By reason of the foregoing stipulations, admissions, and waivers, and solely for
25 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
26 and agreed that the following Determination of Issues shall be made:
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1 The acts and/or omissions of ARR CAPITAL as described in the Accusation are
2 grounds for the suspension or revocation of the licenses and license rights of ARR CAPITAL
3 under the provisions of Sections 10130, 10166.02(a); 10166.02(f), 10166.07, 10177(d) and
4 10177(g) of the Code, in conjunction with Sections 10232.3(a)(3), 10232.3(b), 10232.45,
5 10232.5, 10236.7, 10238, 10238(f)(1), 10238(h)(3), and 10238(l) of the Code.

6 The acts and/or omissions of GREENBRIAR as described in the Accusation are
7 grounds for the suspension or revocation of the licenses and license rights of GREENBRIAR
8 under the provisions of Sections 10177(d) and 10177(g) of the Code, in conjunction with
9 Sections 10162 of the Code.

10 The acts and/or omissions of REHFELDT as described in the Accusation are
11 grounds for the suspension or revocation of the licenses and license rights of REHFELDT under
12 the provisions of Sections 10130, 10166.02(a), 10166.02(f), 10166.07, 10177(d) and 10177(g) of
13 the Code, in conjunction with Sections 10232.3(a)(3), 10232.3(b), 10232.45, 10232.5, 10236.7,
14 10238(f)(1), 10238(h)(3), 10238(l), and 10162 of the Code.

15 The acts and/or omissions of COX as described in the Accusation are grounds for
16 the suspension or revocation of the licenses and license rights of COX under the provisions of
17 Sections 10130, 10166.02(a), 10166.02(f), 10166.07, 10177(d) and 10177(g) of the Code, in
18 conjunction with Sections 10232.3(a)(3), 10232.3(b), 10232.45, 10232.5, 10236.7, 10238(f)(1),
19 10238(h)(3), and 10238(l) of the Code.

20 The acts and/or omissions of AUSSIEKER as described in the Accusation are
21 grounds for the suspension or revocation of the licenses and license rights of AUSSIEKER under
22 the provisions of Sections 10145, 10145(g), 10166.02(a), 10166.02(f), 10166.07, 10176(e),
23 10177(d), 10177(g) of the Code, in conjunction with Section 10176(e) and 10232(e) of the Code,
24 and Sections 2831.1, 2831.2, and 2832 of Title 10 of the California Code of the Regulations.

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ORDER

I.

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

1. Fifteen (15) days of said suspension shall be stayed upon the condition that ARR CAPITAL petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code, at a rate of \$100 for each day of the suspension, for a total monetary penalty of \$1,500.00.

a. Said payment shall be in the form of a cashier's check made payable to the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

b. No further cause for disciplinary action against the real estate license of ARR CAPITAL occurs within two (2) years from the effective date of the Order in this matter.

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

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

2. The remaining fifteen (15) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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

5 2. The remaining fifteen (15) days of said suspension shall be stayed for two (2)
6 years upon the following terms and conditions:

7 a. GREENBRIAR shall obey all laws, rules and regulations governing
8 the rights, duties and responsibilities of a real estate licensee in the State of California.

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

15 III.

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

19 1. Fifteen (15) days of said suspension shall be stayed upon the condition that
20 REHFELDT petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
21 pursuant to Section 10175.2 of the Code, at a rate of \$100 for each day of the suspension, for a
22 total monetary penalty of \$1,500.00.

23 a. Said payment shall be in the form of a cashier's check made payable to
24 the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
25 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
26 Order.

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1 b. No further cause for disciplinary action against the real estate license
2 of REHFELDT occurs within two (2) years from the effective date of the Order in this matter.

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

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

12 2. The remaining fifteen (15) days of said suspension shall be stayed for two (2)
13 years upon the following terms and conditions:

14 a. REHFELDT shall obey all laws, rules and regulations governing the
15 rights, duties and responsibilities of a real estate licensee in the State of California.

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

22 3. REHFELDT shall, within six (6) months from the effective date of this
23 Decision and Order, take and pass the Professional Responsibility Examination administered by
24 the Bureau, including the payment of the appropriate examination fee. If REHFELDT fails to
25 satisfy this condition, REHFELDT's real estate license shall automatically be suspended until
26 REHFELDT passes the examination.

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IV.

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

1. Fifteen (15) days of said suspension shall be stayed upon the condition that
COX petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to
Section 10175.2 of the Code, at a rate of \$100 for each day of the suspension, for a total
monetary penalty of \$1,500.00.

a. Said payment shall be in the form of a cashier's check made payable to
the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
Order.

b. No further cause for disciplinary action against the real estate license
of COX occurs within two (2) years from the effective date of the Order in this matter.

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

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

2. The remaining fifteen (15) days of said suspension shall be stayed for two (2)
years upon the following terms and conditions:

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

b. That no final subsequent determination be made, after hearing or
upon stipulation, that cause for disciplinary action against COX occurred within two (2) years

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

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

9 V.

10 All licenses and licensing rights of AUSSIEKER under the Real Estate Law are
11 suspended for a period of ninety (90) days from the effective date of this Order; provided,
12 however, that:

13 1. Forty five (45) days of said suspension shall be stayed upon the condition that
14 AUSSIEKER petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
15 pursuant to Section 10175.2 of the Code, at a rate of \$100 for each day of the suspension, for a
16 total monetary penalty of \$4,500.00.

17 a. Said payment shall be in the form of a cashier's check made payable to
18 the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
19 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
20 Order.

21 b. No further cause for disciplinary action against the real estate license
22 of AUSSIEKER occurs within two (2) years from the effective date of the Order in this matter.

23 c. If AUSSIEKER fails to pay the monetary penalty in accordance with
24 the terms and conditions of the Decision, the Commissioner may, without a hearing, order the
25 immediate execution of all or any part of the stayed suspension, in which event, AUSSIEKER
26 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
27 Bureau under the terms of this decision.

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

5 2. The remaining forty five (45) days of said suspension shall be stayed for two
6 (2) years upon the following terms and conditions:

7 a. AUSSIEKER shall obey all laws, rules and regulations governing the
8 rights, duties and responsibilities of a real estate licensee in the State of California.

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

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

20 4. All licenses and licensing rights of AUSSIEKER are indefinitely suspended
21 unless or until AUSSIEKER provides proof satisfactory to the Commissioner, of having taken
22 and successfully completed the continuing education course on trust fund accounting and
23 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
24 satisfaction of these requirements includes evidence that AUSSIEKER has successfully
25 completed the trust fund accounting and handling continuing education course, no earlier than
26 one hundred twenty (120) days prior to the effective date of the Decision and Order in this
27 matter. Proof of completion of the trust fund accounting and handling course must be delivered

1 to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or
2 by fax at 916-263-8785, prior to the effective date of this Decision and Order.

3 VI.

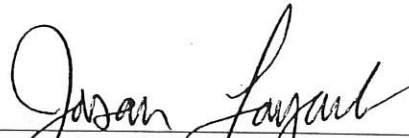
4 1. Respondents, jointly and severally, shall pay the sum of \$3,807.02 for the
5 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay
6 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The
7 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents
8 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
9 payment is not timely made as provided for herein, or as provided for in a subsequent
10 agreement between Respondents and the Commissioner. The suspension shall remain in effect
11 until payment is made in full or until Respondents enter into an agreement satisfactory to the
12 Commissioner to provide for payment, or until a decision providing otherwise is adopted
13 following a hearing held pursuant to this condition.

14 2. Respondents, jointly and severally, shall pay the Commissioner's costs, not
15 to exceed \$4,758.78, of any audit conducted pursuant to Section 10148 of the Code to
16 determine if Respondents have corrected the violations described in the Determination of
17 Issues, above, and any other violations found in the audit which led to this disciplinary action.
18 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
19 the estimated average hourly salary for all persons performing audits of real estate brokers, and
20 shall include an allocation for travel time to and from the auditor's place of work. Respondents
21 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
22 Commissioner detailing the activities performed during the audit and the amount of time spent
23 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
24 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents under
25 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
26 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
27 suspension provided for in this paragraph shall be stayed.

1 3. All licenses and licensing rights of Respondents, are indefinitely suspended
2 unless or until Respondents, jointly and severally, pay the sum of \$3,499.60 for the
3 Commissioner's reasonable cost of the investigation and enforcement which led to this
4 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
5 made payable to the Real Estate Fund.

6 4-2-17

7 _____ DATED

8 
9 _____ JASON D. LAZARK, Counsel
10 Bureau of Real Estate

11 * * *

12 I have read the Stipulation and Agreement in Settlement and Order, discussed it
13 with my counsel, Frank M. Buda, and its terms are understood by me and are agreeable and
14 acceptable to me. I understand that I am waiving rights given to me by the California
15 Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and
16 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those
17 rights, including the right of requiring the Commissioner to prove the allegations in the
18 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
19 and to present evidence in defense and mitigation of the charges.

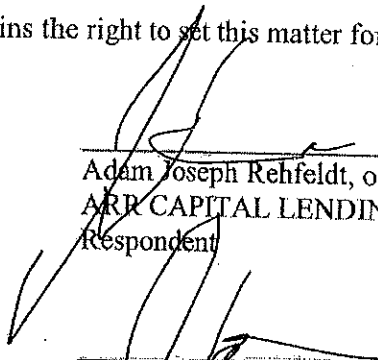
20 I have read the Stipulation and Agreement in Settlement and Order, and its
21 terms are understood by me and are agreeable and acceptable to me. I understand that I am
22 waiving rights given to me by the California Administrative Procedure Act (including but not
23 limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
24 intelligently, and voluntarily waive those rights, including the right of requiring the
25 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
26 right to cross-examine witnesses against me and to present evidence in defense and mitigation
27 of the charges.

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1 Respondents and their attorney further agree to send the original signed
2 Stipulation and Agreement by mail to the following address no later than one (1) week from the
3 date the Stipulation and Agreement is signed by Respondents and their attorney: *Bureau of Real*
4 *Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondents and
5 their attorney understand and agree that if they fail to return the original signed Stipulation and
6 Agreement by the due date, Complainant retains the right to set this matter for hearing.

7 3-30-17

8 DATED

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Adam Joseph Rehfeldt, on behalf of
ARR CAPITAL LENDING CA,
Respondent

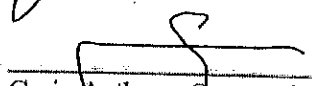
10 3-30-17

11 DATED

12 
ADAM JOSEPH REHFELDT,
Respondent

13 3/30/17

14 DATED

15 
Craig Anthony Cox, on behalf of
GREENBRIAR HOLDINGS,
Respondent

16 3/30/17

17 DATED

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CRAIG ANTHONY COX,
Respondent

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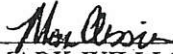
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3-30-2017


DATED


MARK WILLIAM AUSSIEKER,
Respondent

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

3-31-17

DATED


Frank M. Buda,
Attorney for all Respondents

The foregoing Stipulation and Agreement is hereby adopted as my Decision in
this matter and shall become effective at 12 o'clock noon on MAY 19 2017

IT IS SO ORDERED

4/21/2017

WAYNE S. BELL
REAL ESTATE COMMISSIONER

