

**FILED**

**JUL 15 2019**

**DEPARTMENT OF REAL ESTATE**

By           *pdw*          

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 137007  
3 Sacramento, CA 95813-7007

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7

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) DRE No. H-6604 SAC  
12 )  
13 JUDY DAVIS and ) STIPULATION AND AGREEMENT  
14 CLIFFORD MCGAHEY, ) IN SETTLEMENT AND ORDER  
15 )  
16 Respondents. )

17 It is hereby stipulated by and between JUDY DAVIS (DAVIS) and CLIFFORD  
18 MCGAHEY (MCGAHEY), collectively Respondents, represented by Terry A. Duree, and the  
19 Complainant, acting by and through Megan Lee Olsen, Counsel for the Department of Real  
20 Estate (Department); as follows for the purpose of settling and disposing of the Accusation filed  
21 on August 9, 2018, in this matter:

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

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

1           3.       Respondents 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 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents  
4 acknowledge and understand that by withdrawing said Notice of Defense they will thereby waive  
5 their right to require the Real Estate Commissioner (Commissioner) to prove the allegations in  
6 the Accusation at a contested hearing held in accordance with the provisions of the APA and that  
7 they will waive other rights afforded to them 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, Respondents choose not to contest these  
12 factual allegations, but to remain silent and understand that, as a result thereof, these factual  
13 statements will serve 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 Respondents' 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 Respondents shall retain the right 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 Department of Real Estate with respect to any matters which were not  
26 specifically alleged to be causes for accusation in this proceeding.

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1           7.     Respondent DAVIS understands that by agreeing to this Stipulation,  
2 Respondent DAVIS agrees to pay, pursuant to Section 10148 of the Business and Professions  
3 Code (Code), the cost of the audit which resulted in the violation found in the Determination of  
4 Issues. The amount of such costs is \$4,825.17.

5           8.     Respondent DAVIS further understands that by agreeing to this  
6 Stipulation, the findings set forth below in the "Determination of Issues" become final, and that  
7 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to  
8 Section 10148 of the Code to determine if the violations have been corrected. The maximum  
9 cost of said audit shall not exceed \$6,031.46.

10                                   DETERMINATION OF ISSUES

11                                   JUDY DAVIS

12                   By reason of the foregoing stipulations, admissions and waivers, and solely for  
13 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed  
14 that the acts and/or omissions of Respondent DAVIS, as described in the Accusation, constitute  
15 grounds for the suspension or revocation of the licenses and license rights of Respondent DAVIS  
16 under the provisions of Sections 10177 (d), 10177 (g) and 10177 (h) of the Code, in conjunction  
17 with Sections 10145, 10159.5, 10159.6 of the Code, and Sections 2725, 2731, 2831.1, 2831.2 of  
18 Title 10 of the California Code of Regulations.

19                                   CLIFFORD MCGAHEY

20                   By reason of the foregoing stipulations, admissions and waivers, and solely for  
21 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed  
22 that the acts and/or omissions of Respondent MCGAHEY, as described in the Accusation,  
23 constitute grounds for the suspension or revocation of the licenses and license rights of  
24 Respondent MCGAHEY under the provisions of Sections 10130, 10177(d) and 10177 (g) of the  
25 Code.

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1 having taken and successfully completed the continuing education requirements. Proof of  
2 completion of the continuing education courses must be delivered to the Department of Real  
3 Estate, Flag Section, at P.O. Box 137013, Sacramento, CA 95813-7013.

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

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

19 7. DAVIS shall notify the Commissioner in writing within 72 hours of any  
20 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post  
21 Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of DAVIS'  
22 arrest, the crime for which DAVIS was arrested and the name and address of the arresting law  
23 enforcement agency. DAVIS' failure to timely file written notice shall constitute an independent  
24 violation of the terms of the restricted license and shall be grounds for the suspension or  
25 revocation of that license.

26 8. Pursuant to Section 10148 of the Code, DAVIS shall pay the sum of  
27 \$4,825.17 for the Commissioner's cost of the audit which led to this disciplinary action. DAVIS



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

6 9. Pursuant to Section 10148 of the Code, DAVIS shall pay the  
7 Commissioner's reasonable cost, not to exceed \$6,031.46 for an audit to determine if DAVIS has  
8 corrected the violations found in the "Determination of Issues". In calculating the amount of the  
9 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary  
10 for all persons performing audits of real estate brokers, and shall include an allocation for travel  
11 time to and from the auditor's place of work. DAVIS shall pay such cost within sixty (60) days  
12 of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not  
13 be made until DAVIS receives the invoice. If DAVIS fails to satisfy this condition in a timely  
14 manner as provided for herein, DAVIS' real estate licenses shall automatically be suspended  
15 until payment is made in full, or until a decision providing otherwise is adopted following a  
16 hearing held pursuant to this condition.

17 CLIFFORD MCGAHEY

18 All licenses and licensing rights of MCGAHEY under the Real Estate Law are  
19 revoked; provided, however, a restricted real estate salesperson license shall be issued to  
20 MCGAHEY pursuant to Section 10156.5 of the Code if MCGAHEY makes application therefore  
21 and pays to the Department the appropriate fee for the restricted license within 90 days from the  
22 effective date of this Decision and Order. The restricted license issued to MCGAHEY shall be  
23 subject to all of the provisions of Section 10156.7 of the Code and to the following limitations,  
24 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

25 1. The restricted salesperson license issued to MCGAHEY may be suspended  
26 prior to hearing by Order of the Commissioner in the event of MCGAHEY's conviction or plea

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1 of nolo contendere to a crime which is substantially related to MCGAHEY's fitness or capacity  
2 as a real estate licensee.

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

8 3. MCGAHEY shall not be eligible to apply for the issuance of an  
9 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions  
10 of a restricted license until two (2) years have elapsed from the effective date of this Decision  
11 and Order.

12 4. MCGAHEY shall submit with any application for license under an  
13 employing broker, or any application for transfer to a new employing broker, a statement signed  
14 by the prospective employing real estate broker on a form approved by the Department which  
15 shall certify:

16 (a) That the employing broker has read the Decision and Order of the  
17 Commissioner which granted the right to a restricted license; and

18 (b) That the employing broker will exercise close supervision over the  
19 performance by the restricted licensee relating to activities for which a real  
20 estate license is required.

21 5. MCGAHEY shall, within nine (9) months from the effective date of  
22 This Decision and Order, present evidence satisfactory to the Commissioner that MCGAHEY  
23 has, since the most recent issuance of an original or renewal real estate license, taken and  
24 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the  
25 Real Estate Law for renewal of a real estate license. If MCGAHEY fails to satisfy this condition,  
26 MCGAHEY's real estate license shall automatically be suspended until MCGAHEY presents

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1 evidence satisfactory to the Commissioner of having taken and successfully completed the  
2 continuing education requirement.


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

8 7. MCGAHEY shall notify the Commissioner in writing within seventy-two  
9 (72) hours of any arrest by sending a certified letter to the Commissioner at the Department of  
10 Real Estate, P.O. Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of  
11 MCGAHEY's arrest, the crime for which MCGAHEY was arrested and the name and address of  
12 the arresting law enforcement agency. MCGAHEY's failure to timely file written notice shall  
13 constitute an independent violation of the terms of the restricted license and shall be grounds for  
14 the suspension or revocation of that license.

15 JUDY DAVIS AND CLIFFORD MCGAHEY

16 All licenses and licensing rights of Respondents are indefinitely suspended  
17 unless or until Respondents, jointly and severally, pay the sum of \$2,290.95 for the  
18 Commissioner's reasonable cost of the investigation and enforcement which led to this  
19 disciplinary action. Said payment shall be in the form of a cashier's check made payable to the  
20 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior  
21 to the effective date of this Stipulation.

22  
23  
24 5/28/2019  
25 DATED

26   
27 MEGAN LEE OLSEN, Counsel III  
DEPARTMENT OF REAL ESTATE

\* \* \*




1 I have read the Stipulation and Agreement in Settlement and Order and its terms  
2 are understood by me and are agreeable and acceptable to me. I understand that I am waiving  
3 rights given to me by the California Administrative Procedure Act (including but not limited  
4 to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,  
5 intelligently, and voluntarily waive those rights, including the right of requiring the  
6 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the  
7 right to cross-examine witnesses against me and to present evidence in defense and mitigation  
8 of the charges. I understand that I must sign and return this Stipulation by fax to (916) 263-  
9 3767 or by email to Megan.Olsen@dre.ca.gov. I further agree to mail the original Stipulation  
10 no later than five days after signing it to: Department of Real Estate, Legal Section, P.O. Box  
11 137007, Sacramento, California 95813-7007. I understand that failure to mail the original back  
12 may result in this matter going to hearing.

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15 5-21-2019  
16 DATED

  
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JUDY DAVIS  
Respondent

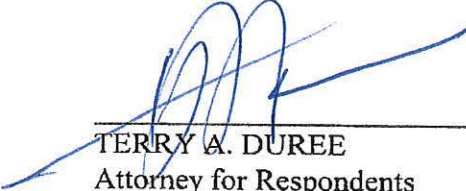
18  
19 5-21-2019  
20 DATED

  
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CLIFFORD MCGAHEY  
Respondent

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

25  
26 5/21/19  
27 DATED

  
TERRY A. DUREE  
Attorney for Respondents

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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 AUG 05 2019.

IT IS SO ORDERED July 9, 2019.

DANIEL J. SANDRI  
ACTING REAL ESTATE COMMISSIONER

*Daniel J. Sandri*