## FILED

## MAR 1 6 2021

DEPARTMENT OF REAL ESTATE

By Au

 BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of:	) No. H-6909 SAC
FRANKLIN CREDIT MANAGEMENT CORPORATION and DONALD EDWARD WATSON,	) ) STIPULATION AND ) AGREEMENT IN SETTLEMENT AND ORDER
Respondents.	)

It is hereby stipulated by and between FRANKLIN CREDIT
MANAGEMENT CORPORATION ("FCMC"), represented by Lauren Frank and James R.
McGuire of the Buckley Law Firm, and the Department of Real Estate ("Department"), acting by and through Adriana Z. Badilas, Counsel for the Department, as follows for the purpose of settling and disposing of the Accusation filed on March 5, 2020, in this matter:

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

- 3. FCMC filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. FCMC hereby freely and voluntarily withdraws said Notice of Defense. FCMC acknowledges that FCMC will waive its right to require the Real Estate Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that FCMC will waive other rights afforded to FCMC in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.
- 4. This Stipulation and Agreement and FCMC's decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this proceeding and any other proceeding or case in which the Department, the state or federal government, an agency of this state, or an agency of another state is involved.
- 5. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement as his Decision and Order in this matter thereby imposing the penalty and sanctions on FCMC's real estate license and license rights as set forth in the below "Order." In the event the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and FCMC shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.
- 6. This Decision and Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department with respect to any matters, which were not specifically alleged in Accusation H-6909 SAC.

## **DETERMINATION OF ISSUES**

By reason of the foregoing stipulations, admissions, and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following Determination of Issues shall be made: The acts and/or omissions of FCMC, as described in the Accusation, are grounds for the suspension or revocation of the license and license rights of FCMC under Business and Professions Code ("Code") Sections 10145, 10166.051, 10166.07, 10176(e), 10177(d), 10177(g), 10231.1, 10232(e), 10232.25(a), and 10232.2(a) and (c), in conjunction with the California Code of Regulations ("Regulations"), Title 10, Sections 2831.1, 2834, 2835, 2832(e), 2846.5, 2846.7, 2846.8, 2945.1, and 2945.4.

## **ORDER**

All licenses and licensing rights of FCMC under the Real Estate Law are suspended for a period of one-hundred twenty (120) days from the effective date of this Order; provided, however, that:

- 1. Sixty (60) days of said suspension shall be stayed upon the condition that FCMC 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 \$150 for each day of the suspension, for a total monetary penalty of \$9,000.00.
- a. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate and must be delivered to the Department 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 FCMC occurs within two (2) years from the effective date of the Order in this matter.
- c. If FCMC 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, FCMC shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this decision.

///

- d. If FCMC pays the monetary penalty, and if no further cause for disciplinary action against the real estate license of FCMC occurs within two (2) years from the effective date of the Decision herein, then the stay hereby granted shall become permanent.
- 2. The remaining sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:
- a. FCMC shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California, and
- b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in her discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.
- 3. The license and licensing rights of FCMC are indefinitely suspended unless or until FCMC pays the sum of \$1,414.94 for the Commissioner's reasonable costs of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check or certified check made payable to the Department of Real Estate. The investigative and enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.
- 4. FCMC shall pay the sum of \$4,714.00 for the Commissioner's cost of the audit that led to this disciplinary action. FCMC shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner. The Commissioner shall indefinitely suspend the license and licensing rights of FCMC pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between FCMC and the Commissioner. The suspension shall remain in effect until payment is made in full or until FCMC enters into an agreement

satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. FCMC shall pay the Commissioner's costs, not to exceed \$5,892.5 of any audit conducted pursuant to Section 10148 of the Code to determine if FCMC has corrected the violations described in the Determination of Issues, above, and any other violations found in the audit that led to this disciplinary action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. FCMC shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. If FCMC fails to pay such cost within the sixty (60) days, the Commissioner shall indefinitely suspend the license and licensing rights of FCMC under the Real Estate Law until payment is made in full or until FCMC enters into an agreement satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite suspension provided for in this paragraph shall be stayed.

12/0	7/2	020
------	-----	-----

DATED

ADRIANA Z. BADILAS, Counsel Department of Real Estate

\* \* \*

I have read the Stipulation and Agreement, have discussed it with my counsel, 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 APA (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.

1	FCMC can signify acceptance and approval of the terms and conditions of this		
2	Stipulation and Agreement by faxing a copy of the signature page, as actually signed by a		
3	lawful representative of FCMC, to the Department at fax number (916) 263-3767 or by e-mail		
4	to adriana.badilas@DRE.ca.gov. FCMC agrees, acknowledges, and understands that by		
5	electronically sending to the Department a fax copy of FCMC's actual signature as it appears		
6	on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as		
7	binding on FCMC as if the Department had received the original signed Stipulation and		
8	Agreement.		
9	DATED DONALD KNIGHT		
11	Corporate Counsel for Respondent FCMC		
	12 * * * *		
13	I have reviewed this Stipulation and Agreement as to form and content and have advised my clients accordingly.		
14 15	11/13/20 In p. MM		
16	DATED AMES R. MCGUIRE BUCKLEY LLP		
17	Attorney for FCMC		
18	* * *		
19	The foregoing Stipulation and Agreement In Settlement and Order is hereby		
20	adopted by the Real Estate Commissioner as her Decision and Order and shall become  APR 0 6 2021		
21	effective at 12 o'clock noon on		
22	IT IS SO ORDERED FEB 1 2 2021		
23	DOUGLAS McCAULEY		
24	REAL ESTATE COMMISSIONER		
25			
26	Dough P. Mechen		
	/		