

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

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FILED

APR 30 2021

DEPARTMENT OF REAL ESTATE
By L. Knapp

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)

DRE No. H-6957 SAC

13 A C O N, INC. and,)

14 DAVID ALBERT NOVELO,)

Respondents.)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

15
16 It is hereby stipulated by and between A C O N, INC. (ACON), and DAVID
17 ALBERT NOVELO (NOVELO), collectively Respondents, their counsel Mary E. Work, and
18 the Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real
19 Estate (Department); as follows for the purpose of settling and disposing of the Accusation filed
20 on June 5, 2020, in this matter:

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

26 2. Respondents have received, read, and understand the Statement to
27 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of

1 Real Estate in this proceeding.

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

11 4. This Stipulation is based on the factual allegations contained in the
12 Accusation. In the interest of expediency and economy, Respondents chose not to contest these
13 factual allegations, but to remain silent and understand that, as a result thereof, these factual
14 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
15 forth below. The Commissioner shall not be required to provide further evidence to prove such
16 allegations.

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

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

1 7. Respondent understands that by agreeing to this Order, Respondent agrees
2 to pay, pursuant to Section 10106 of the Business and Professions Code (Code), the cost of the
3 investigation and enforcement which resulted in the determination that Respondent committed
4 the violations found in the Determination of Issues. The amount of said costs is \$2,247.20.

5 8. Respondents understand that by agreeing to this Stipulation, Respondents
6 agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
7 violation(s) found in the Determination of Issues. The amount of such costs is \$4,222.09, which
8 is the capped amount in the Stipulation and Agreement for Case No. H-6099 SAC.

9 9. Respondents further understand 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 Respondents 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 \$5,277.61.

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 Respondents, as described in the Accusation, constitute grounds
18 for the suspension or revocation of the licenses and license rights of Respondents under the
19 provisions of Sections 10177(d) of the Code.

20 ORDER

21 ACON, INC.

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

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

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

12 DAVID ALBERT NOVELO

13 All licenses and licensing rights of NOVELO, under the Real Estate Law are
14 revoked; provided, however, a restricted real estate broker license shall be issued to NOVELO,
15 pursuant to Section 10156.5 of the Code, if NOVELO makes application therefore and pays to
16 the Department of Real Estate the appropriate fee for the restricted license within 90 days
17 from the effective date of this Stipulation. The restricted license issued to NOVELO shall be
18 subject to all of the provisions of Section 10156.7 of the Code and to the following limitations,
19 conditions, and restrictions imposed under authority of Section 10156.6 of the Code:

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

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

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

6 A C O N, INC. AND DAVID ALBERT NOVELO

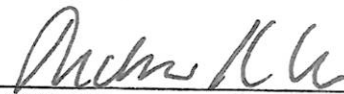
7 1. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
8 severally, pay the sum of \$4,222.09 for the Commissioner's cost of the audit which led to this
9 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
10 invoice therefore from the Commissioner.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

15 2. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
16 severally, pay the Commissioner's reasonable cost, not to exceed \$5,277.61, for an audit to
17 determine if Respondents have corrected the violation(s) found in the "Determination of Issues".
18 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
19 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
20 include an allocation for travel time to and from the auditor's place of work. Respondents shall
21 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
22 Payment of the audit costs should not be paid until Respondents receive the invoice. If
23 Respondents fails to satisfy this condition in a timely manner as provided for herein,
24 Respondents' real estate licenses shall automatically be suspended until payment is paid in full,
25 or until a decision providing otherwise is adopted following a hearing held pursuant to this
26 condition.

1 3. All licenses and licensing rights of Respondents are indefinitely
2 suspended unless or until Respondents pay the sum of \$2,247.20 for the Commissioner's
3 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
4 payment shall be in the form of a cashier's check made payable to the Department of Real
5 Estate. The investigative costs must be delivered to the Department of Real Estate, Flag Section
6 at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Stipulation.
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9 1/28/21

10 DATED

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12 RICHARD K. UNO, Counsel III
13 DEPARTMENT OF REAL ESTATE

14 * * *

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

23 January 25, 2021

24 DATED

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26 A C O N, INC.
27 BY: DAVID ALBERT NOVELO

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January 25, 2021
DATED

DAVID ALBERT NOVELO

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

1/25/2021
DATED

MARY E. WORK
Attorney for Respondents

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 MAY 21 2021

IT IS SO ORDERED 3.9.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

DOUGLAS R. McCAULEY