

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

4 Telephone: (916) 576-7843

FILED

OCT 01 2021

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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

10 * * *

11 In the Matter of the Accusation of:) Case No. H-6991 SAC
12)
13 WELTON REALTY, INC. and,)
14 TIMOTHY JAMES HELTON,) STIPULATION AND AGREEMENT
Respondents.) IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between Respondent WELTON REALTY, INC.
16 ("WELTON INC.") and TIMOTHY JAMES HELTON ("HELTON") (collectively referred to
17 as "Respondents"), acting by and through Frank M. Buda, counsel for Respondents, and the
18 Complainant, acting by and through Jason D. Lazark, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of the Accusation filed on December
20 17, 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 and Agreement").

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

1 of Real Estate in this proceeding.

2 3. Respondents filed Notices 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 Notices of Defense. Respondents
5 acknowledge that they understand that by withdrawing said Notices of Defense they will
6 thereby waive their rights to require the Real Estate Commissioner ("Commissioner") to prove
7 the allegations in the Accusation at a contested hearing held in accordance with the provisions
8 of the APA, and that they will waive other rights afforded to them in connection with the
9 hearing such as the right to present evidence in defense of the allegations in the Accusation and
10 the right to cross-examine witnesses.

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

17 5. This Stipulation and Agreement and Respondents' decision not to contest the
18 Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are
19 expressly limited to this proceeding and not any other proceeding or case in which the
20 Department, the state or federal government, an agency of this state, or an agency of another
21 state is involved.

22 6. 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 7. 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 Department of Real Estate with respect
6 to any matters which were not specifically alleged to be causes for accusation in this
7 proceeding.

8 8. Respondents understand that by agreeing to this Stipulation and Agreement,
9 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10148
10 of the California Business and Professions Code ("the Code"), the costs of the audit which
11 resulted in the determination that Respondents committed the trust fund violation(s) found in the
12 Determination of Issues. The amount of such costs is \$6,152.87.

13 9. Respondents further understand that by agreeing to this Stipulation and
14 Agreement, the findings set forth below in the Determination of Issues become final, and that the
15 Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
16 Section 10148 of the Code to determine if the violations have been corrected and hold
17 Respondents jointly and severally responsible for paying the costs of the follow up audit. The
18 maximum costs of said audit shall not exceed \$7,691.09.

19 10. Respondents further understand that by agreeing to this Stipulation and
20 Agreement, Respondents agree to be responsible for jointly and severally paying, pursuant to
21 Section 10106 of the Code, the costs of the investigation and enforcement of this case which
22 resulted in the determination that Respondent committed the violation(s) found in the
23 Determination of Issues. The amount of such cost is \$2,422.60.

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations, admissions, and waivers, and solely for
26 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
27 and agreed that the following Determination of Issues shall be made:

1 The acts and/or omissions of WELTON INC., as described in the Accusation, are
2 grounds for the suspension or revocation of the licenses and license rights of WELTON INC.
3 under the provisions of Sections 10145, 10159.5, and 10177(d), of the Code, and Sections 2731,
4 2831.1, 2831.2, 2832, and 2832.1 of Title 10 of the California Code of the Regulations ("the
5 Regulations").

6 The acts and/or omissions of HELTON as described in the Accusation are
7 grounds for the suspension or revocation of the licenses and license rights of HELTON under the
8 provisions of Sections 10145, 10177(d), 10177(g), 10177(h), 10159.2, and 10159.5 of the Code,
9 and Sections 2725, 2731, 2831.1, 2831.2, 2832, and 2832.1 of the Regulations.

10 ORDER

11 I.

12 AS TO WELTON INC.

13 All licenses and licensing rights of WELTON INC. under the Real Estate Law are
14 suspended for a period of ninety (90) days from the effective date of this Order; provided,
15 however, that:

16 1. Thirty (30) days of said suspension shall be stayed upon the condition that
17 WELTON INC. petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
18 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
19 total monetary penalty of \$1,500.00.

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

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

26 c. If WELTON INC. fails to pay the monetary penalty in accordance
27 with the terms and conditions of the Decision, the Commissioner may, without a hearing, order

1 the immediate execution of all or any part of the stayed suspension, in which event, WELTON
2 INC. shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to
3 the Department under the terms of this decision.

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

8 2. The remaining sixty (60) days of said suspension shall also be stayed for two
9 (2) years upon the following terms and conditions:

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

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

18 II.

19 AS TO HELTON

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

23 1. Thirty (30) days of said suspension shall be stayed upon the condition that
24 HELTON petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
25 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
26 total monetary penalty of \$1,500.00.

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

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

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

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

15 2. The remaining sixty (60) days of said suspension shall also be stayed for two
16 (2) years upon the following terms and conditions:

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

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

25 3. Notwithstanding any other provision of this Order, all licenses and license
26 rights of HELTON are suspended unless and until he provides proof satisfactory to the
27 Commissioner that he has taken and successfully completed the continuing education course on

1 Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code. The
2 course must have been completed no earlier than one hundred twenty (120) days prior to the
3 effective date of this Order, and proof must be submitted prior to the effective date of this
4 Order, to prevent suspension of his license pursuant to this condition.

5 4. HELTON shall, within nine (9) months from the issuance of the Order, take
6 and pass the Professional Responsibility Examination administered by the Department,
7 including the payment of the appropriate examination fee. All licenses and licensing rights of
8 HELTON shall be indefinitely suspended unless or until HELTON passes the examination. In
9 the event that access to the location for taking the Professional Responsibility Examination is
10 closed during normal business hours, the Department shall extend the time for taking and
11 passing the Professional Responsibility Examination by the same amount of time that access to
12 the test location was closed.

13 III.

14 AS TO WELTON INC. AND HELTON JOINTLY AND SEVERALLY

15 1. Respondents, jointly and severally, shall pay the sum of \$6,152.87 for the
16 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay
17 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The
18 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents
19 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
20 payment is not timely made as provided for herein, or as provided for in a subsequent
21 agreement between Respondents and the Commissioner. The suspension shall remain in effect
22 until payment is made in full or until Respondents enter into an agreement satisfactory to the
23 Commissioner to provide for payment, or until a decision providing otherwise is adopted
24 following a hearing held pursuant to this condition.

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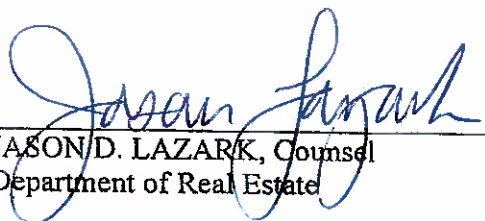
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1 2. Respondents, jointly and severally, shall pay the Commissioner's costs, not
2 to exceed \$7,691.09, of any audit conducted pursuant to Section 10148 of the Code to
3 determine if Respondents have corrected the violations described in the Determination of
4 Issues, above, and any other violations found in the audit which led to this disciplinary action.
5 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
6 the estimated average hourly salary for all persons performing audits of real estate brokers, and
7 shall include an allocation for travel time to and from the auditor's place of work.
8 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from
9 the Commissioner detailing the activities performed during the audit and the amount of time
10 spent performing those activities. If Respondents fail to pay such cost within the sixty (60)
11 days, the Commissioner shall indefinitely suspend all licenses and licensing rights of
12 Respondents under the Real Estate Law until payment is made in full or until Respondents
13 enter into an agreement satisfactory to the Commissioner to provide for payment. Upon full
14 payment, the indefinite suspension provided for in this paragraph shall be stayed.

15 3. All licenses and licensing rights of Respondents, are indefinitely suspended
16 unless or until Respondents, jointly and severally, pay the sum of \$2,422.60 for the
17 Commissioner's reasonable cost of the investigation and enforcement which led to this
18 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
19 made payable to the Real Estate Fund.

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21 8/10/2021
22 DATED

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24 JASON D. LAZARK, Counsel
25 Department 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 further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by me and my attorney: *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007*. I understand and agrees that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

8/10/21

DATED

TIMOTHY JAMES HELTON
Designated Officer for Respondent
WELTON REALTY, INC.

8/10/21

DATED

TIMOTHY JAMES HELTON
Respondent

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

3
4 8-10-21

5 DATED

6 Frank M. Buda

7 FRANK M. BUDA
8 Attorney for Respondents
9 WELTON REALTY, INC., and
10 TIMOTHY JAMES HELTON

11 * * *

12 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
13 this matter and shall become effective at 12 o'clock noon on OCT 22 2021

14 IT IS SO ORDERED 9.21.21, 2021.

15 REAL ESTATE COMMISSIONER

16 Douglas R. McCauley
17 DOUGLAS R. McCAULEY