

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED

DEC 19 2012

~~Department of Real Estate~~
BY:

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of) Case No. H-10885 SF
11)
12 ERNEST HARRY WONG)
13) STIPULATION AND AGREEMENT
14 Respondent.) IN SETTLEMENT AND
ORDER

15
16 It is hereby stipulated by and between Respondent ERNEST HARRY WONG
17 (herein "WONG"), and the Complainant, acting by and through Kenneth C. Espell, Counsel for
18 the Department of Real Estate (herein "the Department"), as follows for the purpose of settling
19 and disposing of the Accusation filed on or about March 26, 2010, in this matter:

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

1 2. Respondent has have received, read and understand the Statement to
2 Respondent, the Discovery Provisions of the APA, and the Accusation filed by the Department
3 in this proceeding.

4 3. A Notice of Defense was filed on April 6, 2010, by Respondent, pursuant to
5 Section 11505 of the Government Code, for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledge that they understand that by withdrawing said Notice of
8 Defense they will thereby waive their right to require the Commissioner to prove the allegations
9 in the Accusation at a contested hearing held in accordance with the provisions of the APA and
10 that they will waive other rights afforded to them in connection with the hearing such as the right
11 to present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. This Stipulation is based on the factual allegations contained in the
14 Accusation. In the interest of expedience and economy, Respondent choose not to contest these
15 allegations, but to remain silent and understand that, as a result thereof, these allegations, without
16 being admitted or denied, will serve as a prima facial basis for the disciplinary action stipulated
17 to herein. The Real Estate Commissioner shall not be required to provide further evidence to
18 prove said factual allegations.

19 5. This Stipulation is made for the purpose of reaching an agreed disposition of
20 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
21 which the Department, the state or federal government, or any agency of this state, another state
22 or federal government is involved.

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

27 

1 7. Respondent understands that by agreeing to this Stipulation and Agreement in
2 Settlement, Respondent agrees to pay, pursuant to Section 10148 of the Business and Professions
3 Code ("herein the Code"), the cost of the audit which resulted in the determination that
4 Respondent committed the violation(s) found in Paragraph I, below, of the Determination of
5 Issues. The amount of said costs is \$5,630.94.

6 8. Respondent further understands that by agreeing to this Stipulation and
7 Agreement in Settlement, the findings set forth below in the Determination of Issues become
8 final, and that the Commissioner may charge said Respondent for the costs of any audit
9 conducted pursuant to Section 10148 of the Code to determine if the violation(s) found in
10 Paragraph I, below, of the Determination of Issues have been corrected. The maximum costs of
11 said audit shall not exceed \$5,630.94.

12 9. Respondent expressly agrees that for purposes of any subsequent proceedings
13 in bankruptcy, the payments made pursuant to this agreement are penalties and fines pursuant to
14 Statute and that such penalties and fines are not compensation for an actual pecuniary loss.
15 Respondent therefore agrees that their liability under this Stipulation and Agreement in
16 Settlement is non-dischargeable in a bankruptcy pursuant to 11 U.S.C. § 523(a) (7). The parties
17 agree that the Department's claim in any bankruptcy proceeding shall be for the full amount of
18 the Department's claim. In the event of any filing for protection under bankruptcy, liquidation,
19 receivership or other insolvency law, Respondent agrees not to contest or oppose any motion
20 filed by the Department seeking relief from the automatic stay imposed by 11 U.S.C. § 362(a), or
21 to seek relief under 11 U.S.C. § 105 to enjoin or restrain the Department from recovering monies
22 owed arising out of this Stipulation and Agreement in Settlement or through offset. Respondent
23 recognizes that this express waiver is in consideration for the final settlement of the claims
24 addressed herein. The parties further agree that, in the event of default or bankruptcy, the
25 Department is entitled to declare this Stipulation and Agreement in Settlement void and to pursue
26 the full amount of its claim.

[Handwritten signature]

1 DETERMINATION OF ISSUES

2 I

3 The following acts and omissions of Respondent as described in the Accusation
4 are grounds for the suspension or revocation of the license and license rights of Respondent
5 under the following provisions of the Code, and/or Chapter 6, Title 10, California Code of
6 Regulations (herein "the Regulations"):

7 (a) Wong failed to designate Bank #1 as a trust account in violation of
8 Section 10145(d) of the Code and Section 2832 of Title 10, California
9 Code of Regulations ("Regulations"); and

10 (b) Wong comingled personal funds with trust funds deposited in Trust #2
11 when WONG failed to disburse funds belonging to him within 25 days
12 after deposit in violation of Section 10176(e) of the Code;

13 ORDER

14 I

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

18 1. The entire thirty (30) days of said suspension shall be stayed for two (2) years
19 upon the following terms and conditions:

20 (a) Respondents shall obey all laws, rules and regulations governing the
21 rights, duties and responsibilities of a real estate licensee in the State of California; and,

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



1 2. The thirty (30) day suspension shall be stayed upon the condition that
2 Respondent petition pursuant to Section 10175.2 of the Code and Respondent, shall pay a total
3 monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the
4 suspension for a total monetary penalty of \$3,000;

5 (a) Said payment shall be in the form of a cashier's check or certified check
6 made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered
7 to the Department prior to the effective date of the Order in this matter.

8 (b) No further cause for disciplinary action against the real estate licenses of
9 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

10 (c) If Respondent fails to pay the monetary penalty as provided above prior
11 to the effective date of this Order, the stay of the suspension shall be vacated as to Respondent
12 and the order of suspension shall be immediately executed, under this Paragraph I of this Order,
13 in which event Respondent shall not be entitled to any repayment nor credit, prorated or
14 otherwise, for the money paid to the Department under the terms of this Order.

15 (d) If Respondent pays the monetary penalty and any other monies due
16 under this Stipulation and Agreement in Settlement and if no further cause for disciplinary
17 action against the real estate licenses of Respondent occurs within two (2) years from the
18 effective date of this Order, the entire stay hereby granted under Paragraph 1 of this Order as to
19 Respondent shall become permanent.

20 3. Pursuant to Section 10148 of the Code, Respondent, shall pay the sum of
21 \$5,630.94 for the Commissioner's cost of the audit which led to this disciplinary action.
22 Respondent shall contact the Department to make payment arraignments for a payment plan
23 which is acceptable to the Department within thirty (30) days of receiving an invoice therefore
24 from the Commissioner. An agreeable payment plan notwithstanding, full payment of the
25 audit costs shall be received by the Department no later than two (2) years from the effective
26 date of the Commissioner's Order. The Commissioner may indefinitely suspend all licenses
27 and licensing rights of Respondent pending a hearing held in accordance with Section 11500, et

1 seq., of the Government Code, if Respondent fails to comply the terms and conditions of the
2 payment plan as provided for herein, or as provided for in a subsequent agreement between
3 Respondent and the Commissioner. The suspension shall remain in effect until payment is
4 made in full or until Respondent enters into an agreement satisfactory to the Commissioner to
5 provide for payment, or until a decision providing otherwise is adopted following a hearing
6 held pursuant to this condition.

7 4. Respondent shall pay the Commissioner's costs, not to exceed \$5,630.94, for
8 any audit conducted pursuant to Section 10148 of the Code to determine if Respondent has
9 corrected the violations described in Paragraph I of the Determination of Issues, above. In
10 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
11 estimated average hourly salary for all persons performing audits of real estate brokers, and
12 shall include an allocation for travel time to and from the auditor's place of work. Respondent
13 shall contact the Department to make payment arrangements for a payment plan which is
14 acceptable to the Department within thirty (30) days of receiving an invoice therefore from the
15 Commissioner detailing the activities performed during the audit and the amount of time spent
16 performing those activities. An agreeable payment plan notwithstanding, full payment of the
17 audit costs shall be received by the Department no later than two (2) years from the effective
18 date of the Commissioner's Order.

19 5. If Respondent fails to pay such cost within the sixty (60) days, the
20 Commissioner may indefinitely suspend all licenses and licensing rights of Respondent under
21 the Real Estate Law until payment is made in full or until Respondent enters into an agreement
22 satisfactory to the Commissioner to provide for payment. Upon payment in full, the indefinite
23 suspension provided in this paragraph shall be stayed.

24 II

25 1. Respondent shall, within six (6) months from the effective date of the
26 decision, take and pass the Professional Responsibility Examination administered by the
27 Department, including the payment of the appropriate examination fee. If Respondent fails to

JVD
my Consent
12-15-12

ghw

1 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
2 rights until Respondent passes the examination.

3 2. Notwithstanding any other provision of this Order, all licenses and license
4 rights of Respondent are indefinitely suspended unless or until he provides proof satisfactory to
5 the Commissioner that she has taken and successfully completed the continuing education
6 course on trust fund accounting and handling specified in Section 10170.5(a)(3) of the Code.
7 Proof of satisfaction of this requirement includes evidence that Respondent has successfully
8 completed the trust fund accounting and handling continuing education course within 120 days
9 prior to the effective date of Commissioner's Order.

10 9/30/2010

11 DATED

12 

KENNETH C. ESPELL, Counsel
DEPARTMENT OF REAL ESTATE

13 * * *

14 FACSIMILE TRANSMISSION

15 Respondent can signify acceptance and approval of the terms and conditions of
16 this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by
17 Respondent, to the Department at the following telephone/fax number: Attention: Kenneth C.
18 Espell at (916) 227-9458. Respondent agrees, acknowledge and understand that by
19 electronically sending to the Department a fax copy of Respondent's actual signature as it
20 appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall
21 be as binding on Respondent as if the Department had received the original signed Stipulation
22 and Agreement.

23 ////

24 ////

25 ////

26 ////



1 ////

2 ////

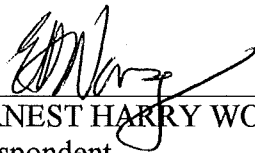
3 ////

4 * * *

5 I have read the Stipulation and Agreement in Settlement and its terms are
6 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights
7 given to me by the California APA (including but not limited to Sections 11506, 11508, 11509,
8 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those
9 rights, including the right of requiring the Commissioner to prove the allegations in the
10 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
11 and to present evidence in defense and mitigation of the charges.

12
13 8-18-2010

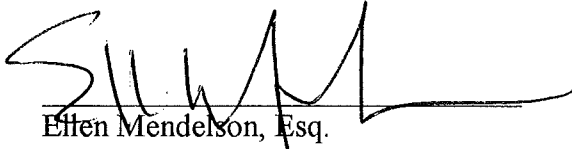
14 DATED

15
16 
17 ERNEST HARRY WONG,
18 Respondent

19 I have reviewed the Stipulation and Agreement as to form and content and have
20 advised my client accordingly.

21 8/18/10

22 DATED

23 
24 Ellen Mendelson, Esq.
25 Attorney for Respondent

26 The foregoing Stipulation and Agreement is hereby adopted by me as my
27 Decision in this matter and shall become effective at 12 o'clock noon on JAN 21 2013

28 IT IS SO ORDERED

29 12/19/2012

30 Real Estate Commissioner

31 