

1 Department of Real Estate
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FILED

MAY 18 2012

DEPARTMENT OF REAL ESTATE

By *P. Jones*

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

10 * * *

11 In the Matter of the Accusation of)
12)
13 WESLEY JERALD LECKNER,)
Respondent.)

No. H-11268 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between WESLEY JERALD LECKNER
16 (Respondent) and the Complainant, acting by and through Truly Sughrue, Counsel for the
17 Department of Real Estate (Department), as follows for the purpose of settling and disposing
18 the Accusation filed on December 19, 2011 in this matter:

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

24 2. Respondent has received, read, and understands the Statement to
25 Respondent, and the Discovery Provisions of the APA filed by the Department in this
26 proceeding.
27

1 3. Respondent 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 Respondent hereby freely and voluntarily withdraw said Notice of Defense. Respondent
4 acknowledges that Respondent understands that by withdrawing said Notice of Defense
5 Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA, and that Respondent will waive other rights afforded
8 to Respondent in connection with the hearing such as the right to present evidence in defense of
9 the allegations in the Accusation and the right to cross-examine witnesses.

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

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

20 6. Respondent understands that by agreeing to this Stipulation and
21 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and
22 Professions Code (Code), the cost of the audit which resulted in the determination that
23 Respondent committed the trust fund violation(s) found in the Determination of Issues. The
24 amount of said costs is \$3,461.36.

25 7. Respondent further understands that by agreeing to this Stipulation and
26 Agreement in Settlement, the findings set forth below in the Determination Of Issues become
27 final, and that the Commissioner may charge said Respondent for the costs of any audit

1 conducted pursuant to Section 10148 of the Code to determine if the violations have been
2 corrected. The maximum costs of said audit shall not exceed \$2,500.00.

3 8. It is understood by the parties that the Commissioner may adopt the
4 Stipulation and Agreement as the Commissioner's decision in this matter thereby imposing the
5 penalty and sanctions on the real estate licenses and license rights of Respondent as set forth in
6 the below "Order". In the event that the Commissioner in the Commissioner's discretion does
7 not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall
8 retain the right to a hearing and proceeding on the Accusation under all the provisions of the
9 APA and shall not be bound by any admission or waiver made herein.

10 9. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Department with respect to any matters which were not
13 specifically alleged to be causes for accusation in this proceeding.

14 * * *

15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations and waivers and solely for the purpose of
17 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
18 following determination of issues shall be made:

19 I

20 The acts and omissions of Respondent as described in the Accusation are
21 grounds for the suspension or revocation of Respondent's licenses and license rights under the
22 following sections of the Code and Title 10 of the California Code of Regulations (Regulations):

23 (1) As to Paragraphs 7(a) under Section 10177(d) of the Code in conjunction
24 with Section 10145 of the Code and Section 2832.1 of the Regulations;

25 (2) As to Paragraph 7(b), under Section 10177(d) of the Code in conjunction
26 with Section 2831.1 of the Regulations;

1 (3) As to Paragraph 7(c), under Section 10177(d) of the Code in conjunction
2 with Section 2831.2 of the Regulations;

3 (4) As to Paragraph 7(d), under Section 10177(d) of the Code in conjunction
4 with Section 2731 of the Regulations;

5 (5) As to Paragraph 7(e), under Section 10177(d) of the Code in conjunction
6 with Section 2715 of the Regulations; and

7 (6) As to Paragraph 7(f), under Section 10177(d) of the Code in conjunction
8 with Section 2773 of the Regulations.

9 * * *

10 ORDER

11 I

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

15 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the following
16 terms and conditions:

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

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

24 2. All licenses and licensing rights of Respondent are indefinitely suspended unless or until
25 Respondent provides proof satisfactory to the Commissioner, of having taken and successfully
26 completed the continuing education course on trust fund accounting and handling specified in
27 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this

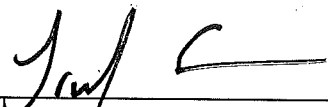
1 requirement includes evidence that respondent has successfully completed the trust fund account
2 and handling continuing education course within 120 days prior to the effective date of the
3 Decision in this matter.

4 3. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of \$3,461.34 for the
5 Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such
6 cost within sixty (60) days of receiving an invoice therefor from the Commissioner. The
7 Commissioner may suspend the Respondent's license pending a hearing held in accordance with
8 Section 11500, et seq., of the Government Code, if payment is not timely made as provided for
9 herein, or as provided for in a subsequent agreement between the Respondent and the
10 Commissioner. The suspension shall remain in effect until payment is made in full or until
11 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or
12 until a decision providing otherwise is adopted following a hearing held pursuant to this
13 condition.

14 4. Pursuant to Section 10148 of the Code, Respondent shall pay the Commissioner's
15 reasonable cost, not to exceed \$2,500.00, for an audit to determine if Respondent has corrected
16 the trust fund violation(s) found the Determination of Issues. In calculating the amount of the
17 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
18 for all persons performing audits of real estate brokers, and shall include an allocation for travel
19 time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60)
20 days of receiving an invoice therefor from the Commissioner detailing the activities performed
21 during the audit and the amount of time spent performing those activities. The Commissioner
22 may suspend Respondent's license pending a hearing held in accordance with Section 11500, et
23 seq., of the Government Code, if payment is not timely made as provided for herein, or as
24 provided for in a subsequent agreement between Respondent and the Commissioner. The
25 suspension shall remain in effect until payment is made in full or until Respondent enters into an
26 agreement satisfactory to the Commissioner to provide for payment, or until a decision providing
27 otherwise is adopted following a hearing held pursuant to this condition.

1
2 15-March-12

3 DATED

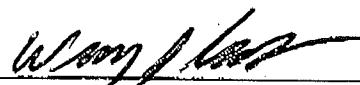

4 TRULY SUGHRUE
Counsel for Complainant

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6 I have read the Stipulation and Agreement, and its terms are understood by me
7 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the
8 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive
9 those 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 3-15-12

13 DATED


14 WESLEY JERALD LECKNER
Respondent

15 ***

16 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
shall become effective at 12 o'clock noon on JUN 07 2012

17
18 IT IS SO ORDERED April 25, 2012.

19
20
21 Real Estate Commissioner

22 
23 By WAYNE S. BELL
24 Chief Counsel