

1 BUREAU OF REAL ESTATE
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FILED

MAY - 8 2015

BUREAU OF REAL ESTATE

By K. Contreras

6
7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation of)

11 REAL COMMERCIAL PROPERTY, INC.,)
12 a Corporation, and)
13 LIJUN TONG,)

NO. H-11704 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

14 Respondents.)
15)

16 It is hereby stipulated by and between Respondents REAL COMMERCIAL
17 PROPERTY, INC. (herein "RCPI") and LIJUN TONG (herein "TONG") (herein collectively
18 "Respondents"), by and through Edward O. Lear, attorney of record herein for Respondents, and
19 the Complainant, acting by and through Mary F. Clarke, Counsel for the Bureau of Real Estate
20 (herein "the Bureau"), as follows for the purpose of settling and disposing of the Accusation filed
21 on May 23, 2014, in this matter (herein "Accusation"):

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

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

3 3. Notices of Defense were filed on June 2, 2014, by Respondents pursuant to
4 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
5 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices of Defense.
6 Respondents acknowledge that they understand that by withdrawing said Notices of Defense,
7 they will thereby waive their rights to require the Real Estate Commissioner (herein
8 "Commissioner") to prove the allegations in the Accusation at a contested hearing held in
9 accordance with the provisions of the APA and that they will waive other rights afforded to them
10 in connection with the hearing such as the right to present evidence in defense of the allegations
11 in the Accusation and the right to cross-examine witnesses.

12 4. Respondents hereby admit that the factual allegations pertaining to them in the
13 Accusation filed in this proceeding are true and correct and the Commissioner shall not be
14 required to provide further evidence of such allegations.

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

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

1 7. Respondents understand that by agreeing to this Stipulation and Agreement in
2 Settlement and Order, Respondents agree to pay, jointly and severally, pursuant to Section 10148
3 of the California Business and Professions Code (herein "Code"), the cost of the audit which
4 resulted in the determination that Respondents committed the violations found in the
5 Determination of Issues. The amount of said costs is \$6,519.75.

6 8. Respondents understand that by agreeing to this Stipulation and Agreement in
7 Settlement and Order, the findings set forth below in the Determination of Issues become final,
8 and that the Commissioner may charge said Respondents, jointly and severally, for the costs of
9 any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund
10 violations found in the Determination of Issues, below, have been corrected. The maximum
11 costs of said audit shall not exceed \$6,519.75.

12 9. Respondents further understand that by agreeing to this Stipulation and
13 Agreement in Settlement and Order, Respondents agree to pay, jointly and severally, pursuant to
14 Section 10106(a) of the Code, investigative and enforcement costs of \$1,618.80 which led to this
15 disciplinary action.

16 DETERMINATION OF ISSUES

17 The acts and omissions of Respondents as described in the Accusation are
18 grounds for the suspension or revocation of the licenses and license rights of Respondents under
19 the following provisions of the Code and/or Chapter 6, Title 10, California Code of Regulations
20 (herein "the Regulations"):

- 21 (a) as to Paragraph 8(a), under Section 10145 of the Code and Section 2832
22 of the Regulations in conjunction with Section 10177(d) of the Code;
23 (b) as to Paragraph 8(b), under Section 2831 of the Regulations in
24 conjunction with Section 10177(d) of the Code;
25 (c) as to Paragraph 8(c), under 10145 of the Code and Section 2831.1 of the
26 Regulations in conjunction with Section 10177(d) of the Code;
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- 1 (d) as to Paragraph 8(d), under Section 2831.2 of the Regulations in
2 conjunction with Section 10177(d) of the Code;
3 (e) as to Paragraph 8(e), under Section 2834 of the Regulations in conjunction
4 with Section 10177(d) of the Code;
5 (f) as to Paragraph 8(f), under Section 10145(d) of the Code in conjunction
6 with 10177(d) of the Code;
7 (g) as to Paragraph 8(g), under Section 10176(e) of the Code;
8 (h) as to Paragraph 8(h), under Section 10176(g) of the Code;
9 (i) as to Paragraph 8(i), under Section 10176(g) of the Code; and,
10 (j) as to Paragraph 8(j), under Section 10148 of the Code in conjunction with
11 10177(d) of the Code.
12

13 ORDER

14 I

15 All licenses and licensing rights of Respondent RCPI under the Real Estate Law
16 are suspended for a period of ninety (90) days from the effective date of this Order; provided,
17 however, that:

18 1. Sixty (60) days of said ninety (90) day said suspension shall be stayed for two
19 (2) years upon the following terms and conditions:

- 20 (a) Respondent shall obey all laws, rules and regulations governing the
21 rights, duties and responsibilities of a real estate licensee in the
22 State of California; and,
23 (b) That no final subsequent determination be made, after hearing or
24 upon stipulation, that cause for disciplinary action occurred within
25 two (2) years from the effective date of this Order. Should such a
26 determination be made, the Commissioner may, in his discretion,
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1 vacate and set aside the stay order and reimpose all or a portion of
2 the stayed suspension. Should no such determination be made, the
3 stay imposed herein shall become permanent.

4 2. The remaining thirty (30) days of said ninety (90) day suspension shall be
5 stayed upon the condition that Respondent RCPI petitions, pursuant to Section 10175.2 of the
6 Code, and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00
7 for each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

8 a) Said payment shall be in the form of a cashier's check made payable
9 to the Bureau of Real Estate. Said check must be delivered to the
10 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento,
11 CA 95813-7013, prior to the effective date of this Order.

12 b) No further cause for disciplinary action against the Real Estate licenses of
13 Respondent occurs within two (2) years from the effective date of the
14 Order in this matter.

15 c) If Respondent fails to pay the monetary penalty in accordance with the
16 terms and conditions of this Order, the suspension shall go into effect
17 automatically and remain in effect until Respondent pays the monetary
18 penalty in full.

19 d) If Respondent pays the monetary penalty and any other moneys due under
20 this Stipulation and Agreement in Settlement and Order and if no further
21 cause for disciplinary action against the real estate license of said
22 Respondent occurs within two (2) years from the effective date of this
23 Order, the entire stay hereby granted pursuant to this Order, as to said
24 Respondent only, shall become permanent.

25 3. Respondent RCPI understands that by agreeing to this Stipulation and
26 Agreement in Settlement and Order, Respondent agrees to pay, jointly and severally with
27

1 Respondent TONG, pursuant to Section 10148 of the Code, the cost of the audit which resulted
2 in the determination that Respondent committed the trust fund violations found in the
3 Determination of Issues, above. The amount of said cost is \$6,519.75. Respondent shall pay
4 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
5 If Respondent fails to pay such cost within the sixty (60) days, Respondent's real estate license
6 shall automatically be suspended until Respondent's payment is made in full. Upon payment in
7 full, the indefinite suspension provided for in this paragraph shall be stayed.

8 4. Respondent RCPI shall pay, jointly and severally with Respondent TONG, the
9 Commissioner's costs, not to exceed \$6,519.75, of any audit conducted pursuant to Section
10 10148 of the Code to determine if Respondent has corrected the violations described in the
11 Determination of Issues, above. In calculating the amount of the Commissioner's reasonable
12 cost, the Commissioner may use the estimated average hourly salary for all persons performing
13 audits of real estate brokers, and shall include an allocation for travel time to and from the
14 auditor's place of work. Respondent shall pay such cost within sixty (60) days of receiving an
15 invoice therefore from the Commissioner detailing the activities performed during the audit and
16 the amount of time spent performing those activities. If Respondent fails to pay such cost within
17 the sixty (60) days, Respondent's real estate license shall automatically be suspended until
18 Respondent's payment is made in full. Upon payment in full, the indefinite suspension provided
19 for in this paragraph shall be stayed.

20 5. Respondent RCPI shall pay, jointly and severally with Respondent TONG,
21 the sum of \$1,618.80 for the Commissioner's investigative and enforcement costs, pursuant to
22 Section 10106(a) of the Code, for the investigation and enforcement which led to this
23 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
24 made payable to the Real Estate Fund. Said check must be received by the Bureau prior to the
25 effective date of this Order. If Respondent fails to satisfy this condition, Respondent's real
26 estate license shall automatically be suspended until Respondent's payment is made in full.

1 II

2 All licenses and licensing rights of Respondent TONG under the Real Estate Law
3 are suspended for a period of ninety (90) days from the effective date of this Order; provided,
4 however, that:

5 1. All licenses and licensing rights of Respondent TONG are indefinitely
6 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having
7 taken and successfully completed the continuing education course on trust fund accounting and
8 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and
9 Professions Code. Proof of satisfaction of these requirements includes evidence that Respondent
10 has successfully completed the trust fund account and handling continuing education courses, no
11 earlier than 120 days prior to the effective date of the Order in this matter. Proof of completion
12 of the trust fund accounting and handling course must be delivered to the Bureau of Real Estate,
13 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior
14 to the effective date of this Order.

15 2. Sixty (60) days of said ninety (90) day said suspension shall be stayed for two
16 (2) years upon the following terms and conditions:

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

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

1 3. The remaining thirty (30) days of said ninety (90) day suspension shall be
2 stayed upon the condition that Respondent TONG petitions, pursuant to Section 10175.2 of the
3 Code, and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00
4 for each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

5 d) Said payment shall be in the form of a cashier's check made payable

6 to the Bureau of Real Estate. Said check must be delivered to the

7 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento,

8 CA 95813-7013, prior to the effective date of this Order.

9 e) No further cause for disciplinary action against the Real Estate licenses of

10 Respondent occurs within two (2) years from the effective date of the

11 Order in this matter.

12 f) If Respondent fails to pay the monetary penalty in accordance with the

13 terms and conditions of this Order, the suspension shall go into effect

14 automatically and remain in effect until Respondent pays the monetary

15 penalty in full.

16 d) If Respondent pays the monetary penalty and any other moneys due under

17 this Stipulation and Agreement in Settlement and Order and if no further

18 cause for disciplinary action against the real estate license of said

19 Respondent occurs within two (2) years from the effective date of this

20 Order, the entire stay hereby granted pursuant to this Order, as to said

21 Respondent only, shall become permanent.

22 4. Respondent TONG understands that by agreeing to this Stipulation and

23 Agreement in Settlement and Order, Respondent agrees to pay, jointly and severally with

24 Respondent RCPI, pursuant to Section 10148 of the Code, the cost of the audit which resulted in

25 the determination that Respondent committed the trust fund violations found in the

26 Determination of Issues, above. The amount of said cost is \$6,519.75. Respondent shall pay

1 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.

2 If Respondent fails to pay such cost within the sixty (60) days, Respondent's real estate license
3 shall automatically be suspended until Respondent's payment is made in full. Upon payment in
4 full, the indefinite suspension provided for in this paragraph shall be stayed.

5 5. Respondent TONG shall pay, jointly and severally with Respondent RCPI, the
6 Commissioner's costs, not to exceed \$6,519.75, of any audit conducted pursuant to Section
7 10148 of the Code to determine if Respondent has corrected the violations described in the
8 Determination of Issues, above. In calculating the amount of the Commissioner's reasonable
9 cost, the Commissioner may use the estimated average hourly salary for all persons performing
10 audits of real estate brokers, and shall include an allocation for travel time to and from the
11 auditor's place of work. Respondent shall pay such cost within sixty (60) days of receiving an
12 invoice therefore from the Commissioner detailing the activities performed during the audit and
13 the amount of time spent performing those activities. If Respondent fails to pay such cost within
14 the sixty (60) days, Respondent's real estate license shall automatically be suspended until
15 Respondent's payment is made in full. Upon payment in full, the indefinite suspension provided
16 for in this paragraph shall be stayed.

17 6. Respondent TONG shall pay, jointly and severally with Respondent RCPI,
18 the sum of \$1,618.80 for the Commissioner's investigative and enforcement costs, pursuant to
19 Section 10106(a) of the Code, for the investigation and enforcement which led to this
20 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
21 made payable to the Real Estate Fund. Said check must be received by the Bureau prior to the
22 effective date of this Order. If Respondent fails to satisfy this condition, Respondent's real
23 estate license shall automatically be suspended until Respondent's payment is made in full.

24 7. Respondent TONG shall, within six (6) months from the effective date of this
25 Order, take and pass the Professional Responsibility Examination administered by the Bureau,
26 including the payment of the appropriate examination fee. If Respondent fails to satisfy this

1 condition Respondent's real estate license shall automatically be suspended until Respondent
2 passes the examination.

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5 3-11-15

6 DATED

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MARY F. CLARKE, Counsel
BUREAU OF REAL ESTATE

9 We have read the Stipulation and Agreement in Settlement and Order and its
10 terms are understood by us and are agreeable and acceptable to us. We understand that we are
11 waiving rights given to us by the California APA (including but not limited to Sections 11506,
12 11508, 11509, and 11513 of the Government Code), and we willingly, intelligently, and
13 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
14 allegations in the Accusation at a hearing at which we would have the right to cross-examine
15 witnesses against us and to present evidence in defense and mitigation of the charges.

17 2/19/2015

18 DATED

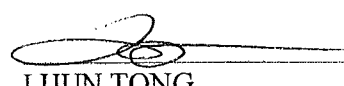
REAL COMMERCIAL PROPERTY, INC.
Respondent

19
20 By: 

LIJUN TONG
Designated Officer - Broker

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23 2/19/2015

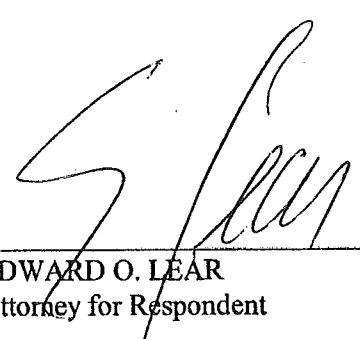
24 DATED


LIJUN TONG
Respondent

26 I have reviewed the Stipulation and Agreement in Settlement and Order as to form

1 and content and have advised my client accordingly.

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4 2/19/15
5 DATED



EDWARD O. LEAR
Attorney for Respondent

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9 The foregoing Stipulation and Agreement in Settlement and Order is hereby
10 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
11 MAY 29 2015.

12 IT IS SO ORDERED APRIL 28, 2015.

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14 REAL ESTATE COMMISSIONER

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17 By: JEFFREY MASON
18 Chief Deputy Commissioner
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