

FILED

AUG 27 2015

BUREAU OF REAL ESTATE

By S. Black

BUREAU OF REAL ESTATE
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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

GREGORY ELIOTT MENKEN,)

Respondent.)

NO. H-11832 SF

STIPULATION AND AGREEMENT IN
SETTLEMENT AND ORDER

It is hereby stipulated by and between Respondent GREGORY ELIOTT MENKEN, (Respondent), acting by and through Christopher Hanson, Esq., Counsel for Respondent, and the Complainant, acting by and through Richard K. Uno, Esq., Counsel for the Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing of the Accusation filed on March 26, 2015, in this matter:

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

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

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

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

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

23 6. It is understood by the parties that the Commissioner may adopt this
24 Stipulation and Order as his decision in this matter, thereby imposing the penalty and sanctions
25 on Respondent's real estate licenses and license rights as set forth in the "Order" below. In the
26 event that the Commissioner in his discretion does not adopt this Stipulation and Order, it shall

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1 be void and of no effect, and Respondent shall retain the right to a hearing and proceeding on
2 the Accusation under all of the provisions of the APA and shall not be bound by any admission
3 or waiver made herein.

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

8 8. Respondent understands that by agreeing to this Stipulation and Order,
9 Respondent agrees to pay, pursuant to Section 10148 of the California Business and
10 Professions Code (the Code), the cost of the audit which resulted in the violation(s) found in
11 the Determination of Issues. The amount of such costs is \$4,731.00.

12 9. Respondent further understand that by agreeing to this Stipulation and
13 Order, the findings set forth below in the "Determination of Issues" become final, and that the
14 Commissioner may charge said Respondent for the costs of any audit conducted pursuant to
15 Section 10148 of the Code to determine if the violations have been corrected. The maximum
16 cost of said audit shall not exceed \$4,731.00.

17 DETERMINATION OF ISSUES

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

21 1. The acts and omissions of Respondent as described in the Accusation,
22 are grounds for the suspension or revocation of the licenses and license rights of Respondent
23 under the provisions of Section 10177(g) of the Code.

24 ORDER

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

1 a. Thirty (30) days of said suspension shall be stayed, upon the
2 condition that Respondent petitions pursuant to Section 10175.2 of the Code and pays a
3 monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$30.00 for each day of
4 the suspension for a total monetary penalty of \$900.00.

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

9 ii. No further cause for disciplinary action against the Real
10 Estate licenses of Respondent occurs within two (2) years from the effective date of the Order
11 in this matter.

12 iii. If Respondent fails to pay the monetary penalty as
13 provided above prior to the effective date of this Order, the stayed suspension shall go into
14 effect automatically. Respondent shall not be entitled to any repayment nor credit, prorated or
15 otherwise, for money paid to the Bureau under the terms of this Order.

16 iv. If Respondent timely pays the monetary penalty and any
17 other moneys due under this Stipulation and Order; and if no further cause for disciplinary
18 action against the real estate license of Respondent occurs within two (2) years from the
19 effective date of this Order, the entire stay hereby granted pursuant to this Order shall become
20 permanent.

21 2. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
22 \$4,731.00 for the Commissioner's cost of the audit which led to this disciplinary action.
23 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
24 Commissioner. Payment of audit costs should not be made until Respondent receives the
25 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
26 Respondent's real estate licenses shall automatically be suspended until payment is made in full,
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1 or until a decision providing otherwise is adopted following a hearing held pursuant to this
2 condition.

3 3. Pursuant to Section 10148 of the Code, Respondent shall pay the
4 Commissioner's reasonable cost, not to exceed \$4,731.00, for an audit to determine if
5 Respondent has corrected the violation(s) found in the "Determination of Issues". In calculating
6 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
7 average hourly salary for all persons performing audits of real estate brokers, and shall include
8 an allocation for travel time to and from the auditor's place of work. Respondent shall pay such
9 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of
10 the audit costs should not be made until Respondent receives the invoice. If Respondent fails to
11 satisfy this condition in a timely manner as provided for herein, Respondent's real estate licenses
12 shall automatically be suspended until payment is made in full, or until a decision providing
13 otherwise is adopted following a hearing held pursuant to this condition.

14 4. All licenses and licensing rights of Respondent are indefinitely suspended
15 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
16 successfully completed the continuing education course on trust fund accounting and handling
17 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
18 Code. Proof of satisfaction of these requirements includes evidence that Respondent has
19 successfully completed the trust fund account and handling continuing education courses, no
20 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of
21 completion of the trust fund accounting and handling course must be delivered to the Bureau of
22 Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-
23 263-8758, prior to the effective date of this Decision and Order.

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25 7/15/15

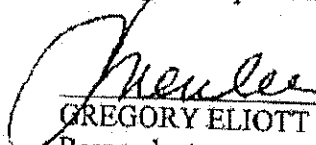
26 DATED

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27 Richard K. Uno, Esq., Counsel
Bureau of Real Estate

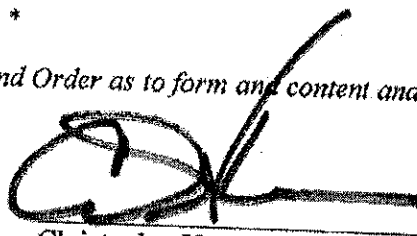
I have read the Stipulation and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), 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. Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Order by faxing a copy of the signature page, as actually signed by Respondent, to the Bureau at fax number (916) 263-3767. Respondent agrees, acknowledge and understand that by electronically sending to the Bureau a fax copy of Respondent's actual signature as it appears on the Stipulation and Order, that receipt of the faxed copy by the Bureau shall be as binding on Respondent as if the Bureau had received the original signed Stipulation and Order.

July 14, 2015
DATED


GREGORY ELIOTT MENKEN,
Respondent

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

July 15, 2015
DATED

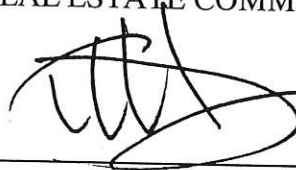

Christopher Hanson, Esq.,
Attorney for Respondent

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The foregoing Stipulation and Agreement In Settlement and Order is hereby
adopted by me as my Decision in this matter as to Respondent GREGORY ELIOTT MENKEN,
and shall become effective at 12 o'clock noon on SEP 17 2015.

IT IS SO ORDERED August 26, 2015.

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner