

FILED

FEB 02 2016

BUREAU OF REAL ESTATE

By S. Black

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
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9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12	In the Matter of the Accusation of)	
13)	NO. H-11853 SF
14	M & C ASSOCIATION MANAGEMENT)	<u>STIPULATION AND AGREEMENT</u>
15	SERVICES INC., a Corporation, and)	<u>IN SETTLEMENT AND ORDER</u>
16	MICHAEL EARL PACKARD,)	<u>AS TO M & C ASSOCIATION</u>
17)	<u>MANAGEMENT SERVICES, INC.</u>
18	Respondents.)	<u>ONLY</u>

19 It is hereby stipulated by and between Respondent M & C ASSOCIATION
20 MANAGEMENT SERVICES, INC. ONLY (herein "Respondent") acting by and through Denis
21 F. Shanagher, attorney of record herein for Respondent and the Complainant, acting by and
22 through Mary F. Clarke, Counsel for the Bureau of Real Estate (herein "the Bureau"), as follows
23 for the purpose of settling and disposing the Accusation filed on June 10, 2015, in this matter
24 (herein "Accusation"):

25 1) All issues which were to be contested and all evidence which was to be
26 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing
27 was to be held in accordance with the provisions of the Administrative Procedure Act (herein

1 "APA"), shall instead and in place thereof be submitted on the basis of the provisions of this
2 Stipulation and Agreement in Settlement and Order (herein "Stipulation").

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

5 3) A Notice of Defense was filed on June 22, 2015, by Respondent pursuant to
6 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
7 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
8 Respondent acknowledges it understands that by withdrawing said Notice of Defense it will
9 thereby waive its rights to require the Real Estate Commissioner (herein "the Commissioner") to
10 prove the allegations in the Accusation at a contested hearing held in accordance with the
11 provisions of the APA and that its will waive other rights afforded to it in connection with the
12 hearing such as the right to present evidence in defense of the allegations in the Accusation and
13 the right to cross-examine witnesses.

14 4) Respondent, pursuant to the "Determination of Issues" set forth below, hereby
15 admits that the factual allegations, in the Accusation filed in this proceeding are true and correct
16 and the Commissioner shall not be required to provide further evidence of such allegations.

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

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

27

1 7) Respondent understands that by agreeing to this Stipulation, Respondent
2 agrees to pay, pursuant to Section 10148 of the California Business and Professions Code (herein
3 "Code"), one half of the cost of the audit which resulted in the determination that Respondent
4 committed the violations found in the "Determination of Issues" below. The amount of one half
5 of said cost is \$2,298.88.

6 8) Respondent understands that by agreeing to this Stipulation, the findings set
7 forth below in the "Determination of Issues" become final, and that the Commissioner may
8 charge Respondent for the full cost of any audit conducted pursuant to Section 10148 of the Code
9 to determine if the trust fund violations found in the "Determination of Issues," below, have been
10 corrected. The maximum full cost of said audit shall not exceed \$4,597.75.

11 9) Respondent further understands that by agreeing to this Stipulation,
12 Respondent agrees to pay, pursuant to Section 10106(a) of the Code, investigative and
13 enforcement costs of \$1,145.73 which led to this disciplinary action.

14 DETERMINATION OF ISSUES

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

19 (a) as to Paragraph 8(a) under Section 2832.1 of the Regulations in conjunction
20 with Section 10177(d) of the Code;

21 (b) as to Paragraph 8(b) under Section 10145 of the Code and Section 2832 of
22 the Regulations in conjunction with Section 10177(d) of the Code;

23 (c) as to Paragraph 8(c) under Section 2834 of the Regulations in conjunction
24 with Section 10177(d) of the Code;

25 (d) as to Paragraph 9 under Section 10163 of the Code in conjunction with
26 Section 10177(d) of the Code; and

1 (e) as to Paragraph 10 under Section 10140.6 of the Code and Section 2773 of
2 the Regulations in conjunction with Section 10177(d) of the Code.

3 ORDER

4 All license and licensing rights of Respondent under the Real Estate Law are
5 suspended for a period of 60 days from the effective date of this Decision; provided, however,
6 that:

7 1) 30 days of said suspension shall be stayed, upon the condition that
8 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
9 pursuant to Section 10175.2 of the Code at a rate of \$100.00 per day for a total monetary penalty
10 of \$3,000.

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

15 b) No further cause for disciplinary action against the Real Estate license of
16 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

17 c) If Respondent fails to pay the monetary penalty in accordance with the
18 terms and conditions of this Decision, the suspension shall go into effect automatically.
19 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money
20 paid to the Bureau under the terms of this Decision

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

25 2) 30 days of said suspension shall be stayed for two (2) years upon the
26 following terms and conditions:

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

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

9 3) Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
10 \$2,298.88, which represents one half of the sum for the Commissioner's cost of the audit which
11 led to this disciplinary action. **Respondent shall pay such cost within sixty (60) days of**
12 **receiving an invoice therefore from the Commissioner.** Payment of audit costs should not be
13 made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a
14 timely manner as provided for herein, Respondent's real estate license shall automatically be
15 suspended until payment is made in full, or until a decision providing otherwise is adopted
16 following a hearing held pursuant to this condition.

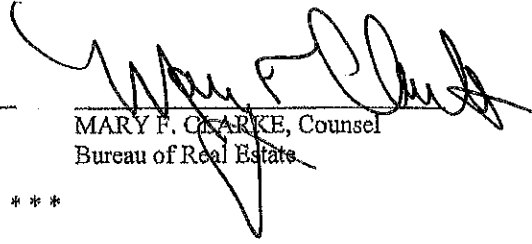
17 4) Pursuant to Section 10148 of the Code, Respondent shall pay the
18 Commissioner's reasonable cost, not to exceed \$4,597.75, for an audit to determine if
19 Respondent has corrected the violations found in the "Determination of Issues." In calculating
20 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
21 average hourly salary for all persons performing audits of real estate brokers, and shall include an
22 allocation for travel time to and from the auditor's place of work. **Respondent shall pay such**
23 **cost within sixty (60) days of receiving an invoice therefore from the Commissioner.**
24 Payment of the audit costs should not be made until Respondent receives the invoice. If
25 Respondent fails to satisfy this condition in a timely manner as provided for herein, Respondent's
26
27

1 real estate license shall automatically be suspended until payment is made in full, or until a
2 decision providing otherwise is adopted following a hearing held pursuant to this condition.

3 5) All licenses and licensing rights of Respondent are indefinitely suspended
4 unless or until Respondent pays the sum of \$1,145.73 for the Commissioner's reasonable cost of
5 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
6 the form of a cashier's check made payable to the Bureau of Real Estate. The investigative and
7 enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
8 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision.

9
10 11-17-15
11 _____

DATED



MARY F. CLARKE, Counsel
Bureau of Real Estate

13 Respondent can signify acceptance and approval of the terms and
14 conditions of this Stipulation and Agreement to Citation and Fine by faxing or electronically e-
15 mailing a copy of the signature page, as actually signed by Respondent, to the Bureau at fax
16 number (916) 263-3767. Respondent agrees, acknowledges and understands that by
17 electronically sending to the Bureau a fax or other electronic copy of Respondent's actual
18 signature as it appears on the Stipulation and Agreement to Citation and Fine, that receipt of the
19 faxed or e-mailed copy by the Bureau shall be as binding on Respondent as if the Bureau had
20 received the original signed Stipulation.
21

22 I have read this Stipulation and its terms are understood by me and are
23 agreeable and acceptable to me. I understand that I am waiving rights given to me by the
24 California APA (including but not limited to Sections 11506, 11508, 11509, and 11513 of the
25 Government Code), and I willingly, intelligently, and voluntarily waive those rights, including
26 the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at
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1 which I would have the right to cross-examine witnesses against me and to present evidence in
2 defense and mitigation of the charges.

3 M & C ASSOCIATION MANAGEMENT
4 SERVICES, INC.
5 Respondent

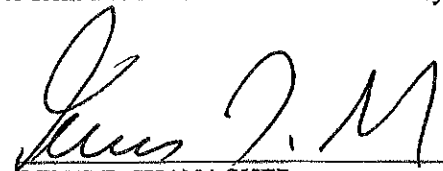
6 10/29/15
7 DATED

By:


8 MICHAEL EARL PACKARD
9 Designated Officer Broker

10 I have reviewed the Stipulation as to form and content and have advised my client
11 accordingly.

12 10/30/2015
13 DATED


14 DENIS F. SHANAGHER
15 Attorney for Respondent

16 The foregoing Stipulation and Agreement in Settlement and Order is hereby
17 adopted by me as my Decision in this matter as to Respondent M & C Association Management
18 Services, Inc. and shall become effective at 12 o'clock noon on

FEB 23 2016

19
20 IT IS SO ORDERED

February 1, 2016

21
22 REAL ESTATE COMMISSIONER

23 

24
25 By: JEFFREY MASON
26 Chief Deputy Commissioner