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BUREAU OF REAL ESTATE
P. O. Box 137007
Sacramento, CA 95813-7007
Telephone: (916) 263-8672

FILED

AUG 03 2016

BUREAU OF REAL ESTATE
By B. Nicholas

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
)
 NORBIE LABRADOR GAERLAN,)
)
)
 Respondent.)

NO. H-11884 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

It is hereby stipulated by and between Respondent NORBIE LABRADOR GAERLAN ("Respondent"), acting by and through Edgardo Gonzalez, Counsel for Respondent, and the Complainant, acting by and through John W. Barron, Counsel for the Bureau of Real Estate ("the Bureau"), as follows for the purpose of settling and disposing of the Accusation filed on September 18, 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.

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 this
3 proceeding.

4 3. A Notice of Defense was filed on September 29, 2015, by Respondent,
5 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
6 the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said
7 Notice of Defense. Respondent acknowledges that he understands that by withdrawing said
8 Notice of Defense, he will thereby waive his 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 he will waive other rights afforded to him
11 in connection with the hearing such as the right to present evidence in defense of the
12 allegations in the Accusation and the right to cross-examine witnesses.

13 4. This Stipulation and Agreement in Settlement and Order is based on the
14 factual allegations contained in the Accusation. In the interests of expedience and economy,
15 Respondent chooses not to contest these allegations at hearing, but rather understands that, as a
16 result thereof, these allegations, without being admitted or denied, will serve as a prima facie
17 basis for the disciplinary action stipulated to herein. The Commissioner shall not be required
18 to provide further evidence to prove said factual allegations.

19 5. This Stipulation and Respondent's decision not to contest the Accusation
20 are made for the purpose of reaching an agreed disposition of this proceeding and are expressly
21 limited to this proceeding and any other proceeding or case in which the Bureau, the state or
22 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 the
24 Stipulation and Agreement in Settlement and Order as his decision in this matter thereby
25 imposing the penalty and sanctions on Respondent's real estate license and license rights as set
26 forth in the below "Order". In the event that the Commissioner in his discretion does not adopt
27 the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect, and

1 Respondent shall retain the right to a hearing and proceeding on the Accusation under all the
2 provisions of the APA and shall not be bound by any admission or waiver made herein.

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

7 8. Respondent understands that by agreeing to this Stipulation and
8 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and
9 Professions Code ("the Code"), the cost of the audit which resulted in the determination that
10 Respondent committed the violation(s) found in the Determination of Issues. The amount of
11 such costs is \$3,235.68.

12 9. Respondent further understands that by agreeing to this Stipulation and
13 Agreement, the findings set forth below in the Determination of Issues becomes final, and the
14 Commissioner may charge Respondent, for the costs of any audit conducted pursuant to Section
15 10148 of the Code to determine if the violations have been corrected. The maximum cost of
16 said audit shall not exceed \$4,044.60.

17 10. Respondent further understands that by agreeing to this Stipulation and
18 Agreement, the findings set forth below in the Determination of Issues become final, and that the
19 Commissioner may charge Respondent for the costs of the investigation herein. The amount of
20 such costs is \$4,121.50.

21 DETERMINATION OF ISSUES

22 The acts and omissions of Respondent as described in the Accusation are grounds
23 for the suspension or revocation of the license and license rights of Respondent under Sections
24 10140.6 (disclosure of license information in advertising), 10145 (trust fund handling), 10148
25 (record retention requirements), 10176(e) (commingling), 10177(d) (willful disregard of Real
26 Estate Law) and 10240 (written disclosure statement requirement) of the Code, and Sections
27 2831 (trust fund records maintenance), 2831.1 (separate records for each beneficiary and

1 transaction: 2832 (trust fund handling), 2834 (trust account withdrawals) and 2835
2 (commingling) of Title 10, California Code of Regulations.

3 ORDER

4 All licenses and licensing rights of Respondent under the Real Estate Law are
5 suspended for a period of forty-five (45) days from the effective date of this Order; provided,
6 however, that:

7 1. Fifteen (15) days of said suspension shall be stayed, upon the condition
8 that Respondent petitions pursuant to Section 10175.2 of the Business and Professions Code and
9 pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a
10 rate of \$75 for each day of the suspension for a total monetary penalty of \$1,125.

11 a. Said payment shall be in the form of a cashier's check or certified
12 check made payable to the Recovery Account of the Real Estate Fund. Said check must be
13 delivered to the Bureau prior to the effective date of the Decision in this matter.

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

17 c. If Respondent fails to pay the monetary penalty in accordance with
18 the terms and conditions of the Decision, the Commissioner shall, without a hearing, order the
19 immediate execution of all or any part of the stayed suspension, in which event, Respondent shall
20 not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau
21 under the terms of this decision.

22 d. If Respondent pays the monetary penalty, and if no further cause
23 for disciplinary action against the real estate license of Respondent occurs within two (2) years
24 from the effective date of the Decision herein, then the stay hereby granted shall become
25 permanent.

26 2. The remaining thirty (30) days of said suspension shall be stayed for two
27 (2) years upon the following terms and conditions:

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

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

2. Respondent shall pay the sum of \$3,235.68 for the Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all licenses and licensing right of Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

3. Respondent shall pay the Commissioner's costs, not to exceed \$4,044.60, of any audit conducted pursuant to Section 10148 of the Code to determine if Respondent has corrected the violations described in the Determination of Issues, above, and any other violations found in the audit which led to this disciplinary action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities

1 performed during the audit and the amount of time spent performing those activities. If
2 Respondent fails to pay such cost within the sixty (60) days, the Commissioner may
3 indefinitely suspend all licenses and licensing rights of Respondent under the Real Estate Law
4 until payment is made in full or until Respondent enters into an agreement satisfactory to the
5 Commissioner to provide for payment. Upon full payment, the indefinite suspension provided
6 for in this paragraph shall be stayed.

7 4. All licenses and licensing rights of Respondent are indefinitely suspended
8 unless or until Respondent pays the sum of \$4,121.50 for the Commissioner's reasonable cost of
9 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
10 the form of a cashier's check or certified check made payable to the Real Estate Fund. Said check
11 must be received by the Bureau prior to the effective date of the Order in this matter.

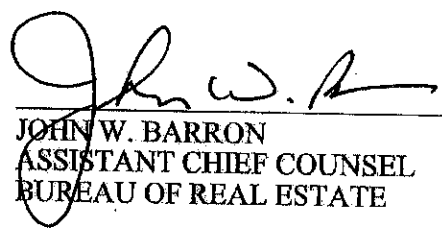
12 5. Respondent shall, within six (6) months from the effective date of this
13 Order, take and pass the Professional Responsibility Examination administered by the Bureau,
14 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
15 condition, Respondent's real estate license shall automatically be suspended until Respondent
16 passes the examination.

17 6. Respondent shall, within nine (9) months from the effective date of this
18 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the
19 most recent issuance of an original or renewal real estate license, taken and successfully
20 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
21 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the
22 Commissioner may order the suspension of Respondent's license until the Respondent presents
23 such evidence. The Commissioner shall afford Respondent the opportunity for hearing pursuant
24 to the APA to present such evidence.

25 7. All licenses and license rights of Respondent are indefinitely suspended
26 unless and until Respondent provides proof satisfactory to the Commissioner of having taken and
27 successfully completed the continuing education course on trust fund accounting and handling

1 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
2 satisfaction of these requirements includes evidence that Respondent has successfully completed
3 the trust fund account and handling continuing education courses no earlier than 120 days prior
4 to the effective date of this Order. **Proof of completion of the continuing education courses**
5 **must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,**
6 **Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this**
7 **Order.**

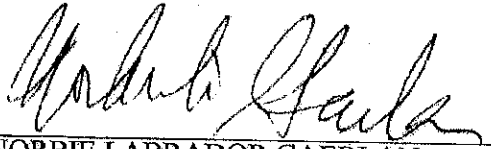
8
9 7/11/16
10 DATED


11 JOHN W. BARRON
12 ASSISTANT CHIEF COUNSEL
13 BUREAU OF REAL ESTATE

14 * * *

15 I have read the Stipulation and Agreement in Settlement and Order and its terms
16 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
17 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
18 11509 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
19 those rights, including the right of requiring the Commissioner to prove the allegations in the
20 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
21 and to present evidence in defense and mitigation of the charges.


22 7-5-16
23 DATED


24 NORBIE LABRADOR GAERLAN
25 Respondent

26 * * *

27 I have reviewed this Stipulation and Agreement and Order as to form and
content and have advised my client accordingly.

7-7-16
DATED


EDGARDO GONZALEZ
Attorney for Respondent

specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these requirements includes evidence that Respondent has successfully completed the trust fund account and handling continuing education courses no earlier than 120 days prior to the effective date of this Order. **Proof of completion of the continuing education courses must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Order.**

DATED

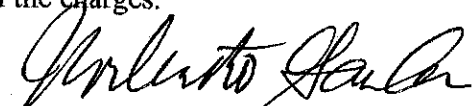
JOHN W. BARRON
ASSISTANT CHIEF COUNSEL
BUREAU OF REAL ESTATE

* * *

I have read the Stipulation and Agreement in Settlement 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 APA (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.

7-5-16

DATED



NORBIE LABRADOR GAERLAN
Respondent

* * *

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

7-20-16

DATED

EDGARDO GONZALEZ
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 and shall become effective at 12 o'clock noon on
AUG 24 2016

IT IS SO ORDERED 8/1/2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER

