

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670
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FILED

JUN 06 2017

BUREAU OF REAL ESTATE

By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 WILLIAM JOSEPH KELLEY, JR.,)
14)
15 Respondent.)

NO. H-11996 SF

STIPULATION AND AGREEMENT IN
SETTLEMENT AND ORDER

16
17 It is hereby stipulated by and between Respondent WILLIAM JOSEPH
18 KELLEY, JR., (Respondent), Joshua A. Rosenthal, and the Complainant, acting by and through
19 Richard K. Uno, Esq., Counsel for the Bureau of Real Estate (Bureau), as follows for the
20 purpose of settling and disposing of the Accusation filed on August 25, 2016, in this matter:

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

WJR

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 is based on the factual allegations contained in the
14 Accusation. In the interest of expedience and economy, Respondent choose not to contest these
15 factual allegations, but to remain silent and understand that, as a result thereof, these factual
16 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
17 forth below. The Commissioner shall not be required to provide further evidence to prove such
18 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 in 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 this
24 Stipulation as his Decision and Order 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, 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 shall not constitute an estoppel, merger or bar to any further administrative
6 or civil proceedings by the Bureau with respect to any matters which were not specifically
7 alleged to be causes for accusation in this proceeding.

8 8. Respondent understands that by agreeing to this Stipulation,
9 Respondent, pursuant to Section 10106 of the Code, the cost of the investigation which
10 resulted in the determination that Respondent committed the violations found in the
11 Determination of Issues. The amount of said costs is \$3,328.00.

12 9. Respondent understands that by agreeing to this Stipulation, Respondent
13 agrees to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
14 violation(s) found in the Determination of Issues. The amount of such costs is \$8,272.99.

15 10. Respondent further understands that by agreeing to this Stipulation, the
16 findings set forth below in the "Determination of Issues" become final, and that the
17 Commissioner may charge said Respondent for the costs of any audit conducted pursuant to
18 Section 10148 of the Code to determine if the violations have been corrected. The maximum
19 cost of said audit shall not exceed \$10,341.24.

20 DETERMINATION OF ISSUES

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

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

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

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

16 4. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
17 \$8,272.99 for the Commissioner's cost of the audit which led to this disciplinary action.
18 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
19 Commissioner. Payment of audit costs should not be made until Respondent receives the
20 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
21 Respondent's real estate licenses shall automatically be suspended until payment is made in full,
22 or until a decision providing otherwise is adopted following a hearing held pursuant to this
23 condition.

24 5. Pursuant to Section 10148 of the Code, Respondent shall pay the
25 Commissioner's reasonable cost, not to exceed \$10,341.24, for an audit to determine if
26 Respondent has corrected the violation(s) found in the "Determination of Issues". In calculating
27 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated

1 average hourly salary for all persons performing audits of real estate brokers, and shall include
2 an allocation for travel time to and from the auditor's place of work. Respondent shall pay such
3 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of
4 the audit costs should not be made until Respondent receives the invoice. If Respondent fails to
5 satisfy this condition in a timely manner as provided for herein, Respondent's real estate licenses
6 shall automatically be suspended until payment is made in full, or until a decision providing
7 otherwise is adopted following a hearing held pursuant to this condition.
8

9 6 All licenses and licensing rights of Respondent are indefinitely

10 Suspended unless or until Respondent pays the sum of \$3,328.00 for the Commissioner's
11 reasonable cost of the investigation which led to this disciplinary action. Said payment shall be
12 in the form of a cashier's check made payable to the Bureau of Real Estate. The investigative
13 and enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
14 137013, Sacramento, CA 95813-7013, prior to the effective date of this Stipulation.
15

16 7. Respondent shall, within six (6) months from the effective date of this

17 Stipulation, take and pass the Professional Responsibility Examination administered by the
18 Bureau including the payment of the appropriate examination fee. If Respondent fails to satisfy
19 this condition, Respondent's real estate license shall automatically be suspended until
20 Respondent passes the examination.
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22 4/26/17

23 DATED

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23 Richard K. Uno, Esq., Counsel
24 Bureau of Real Estate

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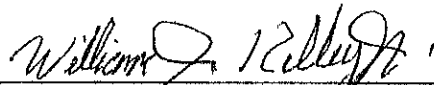
26 I have read the Stipulation and Order in Settlement and Order and its terms are
27 understood by me and are agreeable and acceptable to me. I understand that I am waiving



1 rights given to me by the California Administrative Procedure Act (including but not limited to
2 Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly,
3 intelligently, and voluntarily waive those rights, including the right of requiring the
4 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
5 right to cross-examine witnesses against me and to present evidence in defense and mitigation
6 of the charges. Respondent can signify acceptance and approval of the terms and conditions of
7 this Stipulation and Order by faxing a copy of the signature page, as actually signed by
8 Respondent, to the Bureau at fax number (916) 263-3767. Respondent agrees, acknowledges
9 and understands that by electronically sending to the Bureau a fax copy of Respondent's actual
10 signatures as they appear on the Stipulation and Order, that receipt of the faxed copy by the
11 Bureau shall be as binding on Respondent as if the Bureau had received the original signed
12 Stipulation and Order.

13
14 4-19-2017

15 DATED

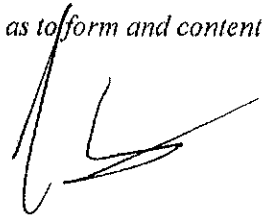
14 
15 WILLIAM JOSEPH KELLEY, JR.,
16 Respondent

17 * * *

18 *I have reviewed the Stipulation and Agreement as to form and content and have*
19 *advised my client accordingly.*

20 4-21-2017

21 DATED

21 
22 Joshua A. Rosenthal
23 Attorney for Respondent


24 The foregoing Stipulation and Agreement In Settlement and Order is hereby
25 adopted by me as my Decision in this matter as to WILLIAM JOSEPH KELLEY, JR., and shall
26



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2 Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly,
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12 Stipulation and Order.

13
14 4-19-2017

15 DATED

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16 Respondent

17 * * *

18 *I have reviewed the Stipulation and Agreement as to form and content and have*
19 *advised my client accordingly.*

20
21
22 DATED

22 Joshua A. Rosenthal
23 Attorney for Respondent

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become effective at 12 o'clock noon on JUN 27 2017

IT IS SO ORDERED 6/5/2017

WAYNE S. BELL
REAL ESTATE COMMISSIONER

