

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

4 Telephone: (916) 263-8670

FILED

SEP 04 2018

DEPARTMENT OF REAL ESTATE
By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)

Case No. H-12047 SF

12 BARBARA LUCILLE LINCOLN,)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

13 Respondent.)
14)
15)

16 It is hereby stipulated by and between Respondent BARBARA LUCILLE
17 LINCOLN ("Respondent"), acting by and through Jose A. Mendoza, Counsel for Respondent,
18 and the Complainant, acting by and through Jason D. Lazark, Counsel for the Department of
19 Real Estate ("Department"), as follows for the purpose of settling and disposing of the
20 Accusation filed on February 2, 2018, 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 and Agreement").

26 ///

27 ///

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 Department
3 of Real Estate in this proceeding.

4 3. On February 20, 2018, Respondent filed a Notice of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that Respondent understands that by withdrawing said
8 Notice of Defense, Respondent will thereby waive Respondent's right to require the Real
9 Estate Commissioner ("Commissioner") to prove the allegations in the Accusation at a
10 contested hearing held in accordance with the provisions of the APA and that Respondent will
11 waive other rights afforded to Respondent in connection with the hearing such as the right to
12 present evidence in defense of the allegations in the Accusation and the right to cross-examine
13 witnesses.

14 4. Respondent, pursuant to the limitations set forth below, hereby admits that
15 the factual allegations as set forth 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 the
18 Stipulation and Agreement as his Decision and Order in this matter, thereby imposing the
19 penalties and sanctions on Respondent's real estate licenses and license rights as set forth in the
20 below Order. In the event that the Commissioner in his discretion does not adopt the
21 Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the
22 right to a hearing and proceeding on the Accusation under all the provisions of the APA and
23 shall not be bound by any admission or waiver made herein.

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

1 7. Respondent further understands that by agreeing to this Stipulation and
2 Agreement, Respondent agrees to be responsible for paying, pursuant to Section 10106 of the
3 Code, the costs of the investigation and enforcement of this case which resulted in the
4 determination that Respondent committed the violations found in the Determination of Issues.
5 The amount of such costs is \$2,680.95.

6 DETERMINATION OF ISSUES

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

10 The acts and omissions of Respondent, as described in the Accusation, are
11 grounds for the suspension or revocation of the licenses and license rights of Respondent under
12 the provisions of Sections 10177(d) and 10177(g) of the Code.

13 ORDER

14 All licenses and licensing rights of Respondent under the Real Estate Law are
15 suspended for a period of sixty (60) days from the effective date of this Order; provided,
16 however, that:

17 1. Thirty (30) days of said suspension shall be stayed, upon the condition that
18 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
19 pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the suspension for a
20 total monetary penalty of \$1,500.00.

21 (a) Said payment shall be in the form of a cashier's check made payable to
22 the Department of Real Estate. Said check must be delivered to the
23 Department of Real Estate, Legal Section at P.O. Box 137007,
24 Sacramento, CA 95813-7007, prior to the effective date of this Order.

25 (b) No further cause for disciplinary action against the Real Estate
26 licenses of Respondent occurs within two (2) years from the effective date
27 of the decision in this matter.

1 (c) If Respondent fails to pay the monetary penalty as provided above
2 prior to the effective date of this Order, the stay of the suspension shall be
3 vacated as to that Respondent and the order of suspension shall be
4 immediately executed, under this Order, in which event the said
5 Respondent shall not be entitled to any repayment nor credit, prorated or
6 otherwise, for the money paid to the Department under the terms of this
7 Order.

8 (d) If Respondent pays the monetary penalty and any other moneys due under
9 this Stipulation and Agreement and if no further cause for disciplinary
10 action against the real estate license of said Respondent occurs within two
11 (2) years from the effective date of this Order, the entire stay hereby
12 granted in this Order shall become permanent.

13 2. Thirty (30) days of said suspension shall be stayed for two (2) years upon the
14 following terms and conditions:

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

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

25 3. Respondent shall, within six (6) months from the effective date of this
26 Decision and Order, take and pass the Professional Responsibility Examination administered by
27 the Department, including the payment of the appropriate examination fee. If Respondent

1 fails to satisfy this condition, Respondent's real estate license shall automatically be suspended
2 until Respondent passes the examination.

3 4. All licenses and licensing rights of Respondent are indefinitely suspended
4 unless or until Respondent pays the sum of \$2,680.95 for the Commissioner's reasonable costs
5 of the investigation and enforcement which led to this disciplinary action. Said payment shall
6 be in the form of a cashier's check or certified check made payable to the Department of Real
7 Estate. The investigative and enforcement costs must be delivered to the Department of Real
8 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
9 date of this Order.

10
11 8/16/18

12 DATED

13 
14 JASON D. LAZARK, Counsel
15 Department of Real Estate

16 * * *

17 Respondent has read the Stipulation and Agreement and its terms are
18 understood by Respondent and are agreeable and acceptable to Respondent. Respondent
19 understands that Respondent is waiving rights given to Respondent by the California
20 Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and
21 11513 of the Government Code), and Respondent willingly, intelligently, and voluntarily
22 waives those rights, including the right of requiring the Commissioner to prove the allegations
23 in the Accusation at a hearing at which Respondent would have the right to cross-examine
24 witnesses against Respondent and to present evidence in defense and mitigation of the charges.

25 ///

26 ///

27 ///

///

///

1 Respondent further agrees to send the original signed Stipulation and Agreement
2 by mail to the following address no later than one (1) week from the date the Stipulation and
3 Agreement is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
4 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent understands
5 and agrees that if they fail to return the original signed Stipulation and Agreement by the due
6 date, Complainant retains the right to set this matter for hearing.

7
8 8/10/18
9 DATED

Barbara Lucille Lincoln
BARBARA LUCILLE LINCOLN,
Respondent

11 ***

12 *I have reviewed the Stipulation and Agreement as to form and content and*
13 *have advised my clients accordingly.*

14 8/15/18
15 DATED

JOSE A. MENDOZA
Attorney for Respondent,
BARBARA LUCILLE LINCOLN

17 ***

18 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
19 this matter and shall become effective at 12 o'clock noon on SEP 25 2018

20 IT IS SO ORDERED August 31, 2018

21
22 DANIEL J. SANDRI
23 ACTING REAL ESTATE COMMISSIONER

24 Daniel J. Sandri
25
26
27