

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

Telephone: (916) 263-8670

FILED

OCT 31 2019

DEPARTMENT OF REAL ESTATE
By *H. Knapp*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)	Case No. H-12109 SF
)	
FULL ASSOCIATION BUSINESS SERVICES, INC. and ROYAL GARDNER,)	<u>STIPULATION AND AGREEMENT</u>
)	<u>IN SETTLEMENT AND ORDER</u>
)	
Respondents.)	
)	

It is hereby stipulated by and between Respondents FULL ASSOCIATION BUSINESS SERVICES, INC. ("FULL ASSOCIATION") and ROYAL GARDNER ("GARDNER") (collectively, FULL ASSOCIATION and GARDNER are referred to herein as "Respondents"), acting by and through their counsel Frank M. Buda, and the Complainant, acting by and through Jason D. Lazark, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the First Amended Accusation filed on March 26, 2018, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the First Amended 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

1 on the basis of the provisions of this Stipulation and Agreement In Settlement and Order
2 ("Stipulation and Agreement").

3 2. Respondents have received, read and understand the Statements to
4 Respondent, the Discovery Provisions of the APA and the First Amended Accusation filed by
5 the Department in this proceeding.

6 3. Respondents filed Notices of Defense pursuant to Section 11505 of the
7 Government Code for the purpose of requesting a hearing on the allegations in the First
8 Amended Accusation. Respondents hereby freely and voluntarily withdraw said Notices of
9 Defense. Respondents acknowledge that they understand that by withdrawing said Notices of
10 Defense they will thereby waive their rights to require the Commissioner to prove the
11 allegations in the First Amended Accusation at a contested hearing held in accordance with the
12 provisions of the APA and that they will waive other rights afforded to them in connection
13 with the hearing such as the right to present evidence in defense of the allegations in the First
14 Amended Accusation and the right to cross-examine witnesses.

15 4. Respondents, pursuant to the limitations set forth below, hereby admit that
16 the factual allegations as set forth in the First Amended Accusation filed in this proceeding are
17 true and correct and the Commissioner shall not be required to provide further evidence of such
18 allegations.

19 5. It is understood by the parties that the Real Estate Commissioner may adopt
20 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalties
21 and sanctions on Respondents' real estate licenses and license rights as set forth in the below
22 "Order." In the event that the Commissioner in his discretion does not adopt the Stipulation
23 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a
24 hearing and proceeding on the First Amended Accusation under all the provisions of the APA
25 and shall not be bound by any admission or waiver made herein.

26 6. The Order, or any subsequent Order of the Real Estate Commissioner made
27 pursuant to this Stipulation and Agreement, shall not constitute an estoppel, merger, or bar to

1 any further administrative or civil proceedings by the Department with respect to any matters
2 which were not specifically alleged to be causes for accusation in this proceeding.

3 7. FULL ASSOCIATION understands that by agreeing to this Stipulation and
4 Agreement, FULL ASSOCIATION agrees to be responsible for paying, pursuant to Section
5 10106 of the California Business and Professions Code ("the Code"), the costs of the
6 investigation and enforcement of this case which resulted in the determination that FULL
7 ASSOCIATION committed the violation(s) found in the Determination of Issues. The amount
8 of such investigative and enforcement costs is \$7,824.00.

9 8. FULL ASSOCIATION further understands that by agreeing to this Stipulation
10 and Agreement, FULL ASSOCIATION agrees to be responsible for paying, pursuant to Section
11 10148 of the Code, the costs of the audit which resulted in the determination that FULL
12 ASSOCIATION committed the trust fund violation(s) found in the Determination of Issues. The
13 amount of such costs audit costs is \$7,894.50.

14 9. FULL ASSOCIATION further understands that by agreeing to this Stipulation
15 and Agreement, the findings set forth below in the Determination of Issues become final, and
16 that the Commissioner may charge FULL ASSOCIATION for the costs of any audit conducted
17 pursuant to Section 10148 of the Code to determine if the violations have been corrected and
18 hold FULL ASSOCIATION responsible for paying the costs of the follow-up audit. The
19 maximum costs of said follow-up audit shall not exceed \$9,868.13.

20 10. FULL ASSOCIATION further understands that by agreeing to this
21 Stipulation and Agreement, FULL ASSOCIATION agrees to be responsible for reimbursing the
22 beneficiaries that paid fees to "RJ General Contractor" between November 20, 2015 and January
23 14, 2016, regarding the following invoice numbers: V308439: 3223; 3244; 4512; 3265; 3267;
24 4518; and 4537. The total amount of this reimbursement is \$1,873.63.

25 ///

26 ///

27 ///

1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions and waivers, and solely for
3 the purpose of settlement of the pending First Amended Accusation without a hearing, it is
4 stipulated and agreed that the following determination of issues shall be made:

5 I.

6 The acts and omissions of FULL ASSOCIATION, as described in the First
7 Amended Accusation, are grounds for the suspension or revocation of the licenses and license
8 rights of FULL ASSOCIATION under the provisions of Sections 10130, 10130(b), 10137,
9 10145, 10145(a), 10145(g), 10159.5, 10163, 10176(g), 10177(d), and 10177(g) of the Business
10 and Professions Code ("the Code"), and Sections 2731, 2831.1, 2831.2, 2832, and 2834 of Title
11 10, California Code of Regulations ("the Regulations).

12 II.

13 The acts and omissions of GARDNER, as described in the First Amended
14 Accusation, are grounds for the suspension or revocation of the licenses and license rights of
15 GARDNER under the provisions of Sections 10145, 10159.2, 10163, 10177(d), 10177(g), and
16 10177(h) of the Code, and Sections 2725, and 2834 of the Regulations.

17 ORDER

18 I. FULL ASSOCIATION

19 All licenses and licensing rights of FULL ASSOCIATION under the Real Estate
20 Law are suspended for a period of one hundred twenty (120) days from the effective date of this
21 Order; provided, however, that:

22 1. Thirty (30) days of said suspension shall be stayed upon the condition that
23 FULL ASSOCIATION petitions pursuant to Section 10175.2 of the Code and pays a monetary
24 penalty pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension,
25 for a total monetary penalty of \$1,500.00.

26 a. Said payment shall be in the form of a cashier's check made payable to
27 the Department. Said check must be delivered to the Department of Real Estate, Flag Section at

1 P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

2 b. No further cause for disciplinary action against the real estate license
3 of FULL ASSOCIATION occurs within two (2) years from the effective date of the Order in this
4 matter.

5 c. If FULL ASSOCIATION fails to pay the monetary penalty in
6 accordance with the terms and conditions of the Decision, the Commissioner may, without a
7 hearing, order the immediate execution of all or any part of the stayed suspension, in which
8 event, FULL ASSOCIATION shall not be entitled to any repayment nor credit, prorated or
9 otherwise, for money paid to the Department under the terms of this decision.

10 d. If FULL ASSOCIATION pays the monetary penalty, and if no
11 further cause for disciplinary action against the real estate license of FULL ASSOCIATION
12 occurs within two (2) years from the effective date of the Decision herein, then the stay hereby
13 granted shall become permanent.

14 2. The remaining ninety (90) days of said suspension shall also be stayed for two
15 (2) years upon the following terms and conditions:

16 a. FULL ASSOCIATION shall obey all laws, rules and regulations
17 governing the rights, duties and responsibilities of a real estate licensee in the State of
18 California, and

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

25 3. Within one hundred twenty (120) days of the effective date of this Order,
26 FULL ASSOCIATION shall pay the sum of \$7,842.00 for the Commissioner's reasonable
27 costs of the investigation and enforcement which led to this disciplinary action. Said payment

1 shall be in the form of a cashier's check or certified check made payable to the Department.
2 The investigative and enforcement costs must be delivered to the Department of Real Estate,
3 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, within one hundred twenty
4 (120) days of the effective date of this Order. In the event that FULL ASSOCIATION fails to
5 pay all of the investigative and enforcement costs within one hundred twenty (120) days of the
6 effective date of this Order, The Commissioner shall indefinitely suspend all licenses and
7 licensing rights of FULL ASSOCIATION pending a hearing held in accordance with Section
8 11500, et seq., of the Government Code, if payment is not timely made as provided for herein.
9 or as provided for in a subsequent agreement between FULL ASSOCIATION and the
10 Commissioner. The suspension shall remain in effect until payment is made in full or until
11 FULL ASSOCIATION enters into an agreement satisfactory to the Commissioner to provide
12 for payment, or until a decision providing otherwise is adopted following a hearing held
13 pursuant to this condition.

14 4. FULL ASSOCIATION shall pay the sum of \$7,894.50 for the
15 Commissioner's cost of the audit which led to this disciplinary action. FULL ASSOCIATION
16 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
17 Commissioner. The Commissioner shall indefinitely suspend all licenses and licensing rights
18 of FULL ASSOCIATION pending a hearing held in accordance with Section 11500, et seq., of
19 the Government Code. if payment is not timely made as provided for herein, or as provided for
20 in a subsequent agreement between FULL ASSOCIATION and the Commissioner. The
21 suspension shall remain in effect until payment is made in full or until FULL ASSOCIATION
22 enters into an agreement satisfactory to the Commissioner to provide for payment, or until a
23 decision providing otherwise is adopted following a hearing held pursuant to this condition.

24 5. FULL ASSOCIATION shall pay the Commissioner's costs, not to exceed
25 \$9,868.13, of any audit conducted pursuant to Section 10148 of the Code to determine if FULL
26 ASSOCIATION has corrected the violations described in the Determination of Issues, above,
27 and any other violations found in the audit which led to this disciplinary action. In calculating

1 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
2 average hourly salary for all persons performing audits of real estate brokers, and shall include
3 an allocation for travel time to and from the auditor's place of work. FULL ASSOCIATION
4 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
5 Commissioner detailing the activities performed during the audit and the amount of time spent
6 performing those activities. If FULL ASSOCIATION fails to pay such cost within the sixty
7 (60) days, the Commissioner shall indefinitely suspend all licenses and licensing rights of
8 FULL ASSOCIATION under the Real Estate Law until payment is made in full or until FULL
9 ASSOCIATION enters into an agreement satisfactory to the Commissioner to provide for
10 payment. Upon full payment, the indefinite suspension provided for in this paragraph shall be
11 stayed.

12 6. Within one hundred twenty (120) days of the effective date of this Order,
13 FULL ASSOCIATION shall provide proof satisfactory to the Commissioner that FULL
14 ASSOCIATION reimbursed their principals any and all fees paid to "RJ General Contractor"
15 between November 20, 2015, and January 14, 2016, regarding the following "RJ General
16 Contractor" invoice numbers: V308439; 3223; 3244; 4512; 3265; 3267; 4518; and 4537
17 totaling \$1,873.63. Proof of satisfaction of this requirement includes: a copy of a cancelled
18 check to each principal from whom "RJ General Contractor" fees were collected, and/or a
19 letter from each principal from whom "RJ General Contractor" fees were collected attesting
20 that repayment of funds has been received. Proof of payment must be delivered to the
21 Department of Real Estate of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
22 95813-7013, within one hundred twenty (120) days of the effective date of this Order. In the
23 event that FULL ASSOCIATION cannot locate a principal regarding one or more of the
24 invoices described above, FULL ASSOCIATION shall provide the Department with proof
25 satisfactory to the Commissioner that FULL ASSOCIATION has made all necessary
26 arrangements to have the outstanding repayment escheat to the State of California. In the event
27 that FULL ASSOCIATION fails to provide the Commissioner with sufficient evidence that

1 FULL ASSOCIATION either repaid said principals, or caused the amount due a principal that
2 cannot be located to escheat to the State of California, the Commissioner shall indefinitely
3 suspend all licenses and licensing rights of FULL ASSOCIATION under the Real Estate Law
4 until payment as described above is made in full or until FULL ASSOCIATION enters into an
5 agreement satisfactory to the Commissioner to provide for such payment.

6 II. AS TO GARDNER

7 All licenses and licensing rights of GARDNER under the Real Estate Law are
8 suspended for a period of thirty (30) days from the effective date of this Order; provided,
9 however, that:

10 1. All thirty (30) days of said suspension shall be stayed for two (2) years upon
11 the following terms and conditions:

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

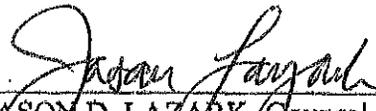
14 b. That no final subsequent determination be made, after hearing or
15 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
16 effective date of this Order. Should such a determination be made, the Commissioner may, in
17 his discretion, vacate and set aside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

20 2. GARDNER shall, within six (6) months from the effective date of this Order,
21 take and pass the Professional Responsibility Examination administered by the Department,
22 including the payment of the appropriate examination fee. If GARDNER fails to satisfy this
23 condition. GARDNER's real estate license shall automatically be suspended until GARDNER
24 passes the examination.

25 3. All licenses and licensing rights of GARDNER are indefinitely suspended
26 unless or until GARDNER 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 GARDNER has successfully completed
3 the trust fund accounting and handling continuing education course, no earlier than one hundred
4 twenty (120) days prior to the effective date of the Order in this matter. Proof of completion of
5 the trust fund accounting and handling course must be delivered to the Department of Real
6 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-
7 8785, prior to the effective date of this Order.

8 8/19/19
9 DATED


10 JASON D. LAZARK, Counsel
11 Department of Real Estate

12 * * *

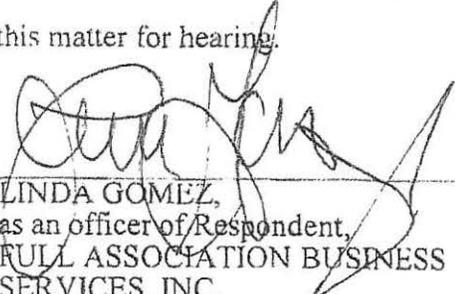
13 Respondents have read the Stipulation and Agreement and its terms are
14 understood by Respondents and are agreeable and acceptable to Respondents. Respondents
15 understand that Respondents are waiving rights given to them by the California Administrative
16 Procedure Act (including but not limited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

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

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

7 8/13/19

8 DATED

9 
10 LINDA GOMEZ,
11 as an officer of Respondent,
12 FULL ASSOCIATION BUSINESS
13 SERVICES, INC.

14 13 Aug 2019

15 DATED

16 
17 ROYAL GARDNER,
18 Respondent

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

21 8-19-2019

22 DATED

23 

24 FRANK M. BUDA,
25 Attorney for Respondents,
26 FULL ASSOCIATION BUSINESS
27 SERVICES, INC., and ROYAL
GARDNER

28 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
29 this matter and shall become effective at 12 o'clock noon on **NOV 21 2019**

30 IT IS SO ORDERED October 16, 2019

31 ACTING REAL ESTATE COMMISSIONER

32 
33 DANIEL J. SANDRI