

1 DEPARTMENT OF REAL ESTATE

2 P. O. Box 137007

3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670

FILED

SEP 17 2019

DEPARTMENT OF REAL ESTATE  
By E. Krapp

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of: )

Case No. H-12158 SF

12 )  
13 LCB COMMERCIAL REAL ESTATE, and )  
14 STEVEN HENDEE BANKER )

STIPULATION AND AGREEMENT  
IN SETTLEMENT AND ORDER

15 Respondents. )

16 It is hereby stipulated by and between Respondents STEVEN HENDEE  
17 BANKER ("BANKER"), acting by and through Robert F. Hahn, counsel for BANKER, and the  
18 Complainant, acting by and through Jason D. Lazark, Counsel for the Department of Real  
19 Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation  
20 filed on September 12, 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 BANKER at a formal hearing on the Accusation, which hearing  
23 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 2. BANKER received, read and understands the Statements to Respondent, the  
27 Discovery Provisions of the APA and the Accusation filed by the Department in this

1 proceeding.

2           3. BANKER filed a Notice of Defense pursuant to Section 11505 of the  
3 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
4 BANKER hereby freely and voluntarily withdraws said Notice of Defense. BANKER  
5 acknowledges that BANKER understands that by withdrawing said Notice of Defense  
6 BANKER will thereby waive his rights to require the Commissioner to prove the allegations in  
7 the Accusation at a contested hearing held in accordance with the provisions of the APA and  
8 that BANKER will waive other rights afforded to him in connection with the hearing such as  
9 the right to present evidence in defense of the allegations in the Accusation and the right to  
10 cross-examine witnesses.

11           4. BANKER, pursuant to the limitations set forth below, hereby admits that the  
12 factual allegations as set forth in the Accusation filed in this proceeding are true and correct  
13 and the Commissioner shall not be required to provide further evidence of such allegations.

14           5. This Stipulation and Agreement is made for the purpose of reaching an  
15 agreed disposition of this proceeding and is expressly limited to this proceeding and any other  
16 proceeding or case in which the Department, the state or federal government, any agency of  
17 this state, or an agency of another state is involved.

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

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

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 8. BANKER understands that by agreeing to this Stipulation and Agreement,  
4 BANKER agrees to be responsible for paying, pursuant to Section 10148 of the California  
5 Business and Professions Code ("the Code"), the costs of the audit which resulted in the  
6 determination that BANKER committed the trust fund violation(s) found in the Determination of  
7 Issues. The amount of such costs is \$2,432.50.

8 9. BANKER further understand that by agreeing to this Stipulation and  
9 Agreement, the findings set forth below in the Determination of Issues become final, and that the  
10 Commissioner may charge BANKER for the costs of any audit conducted pursuant to Section  
11 10148 of the Code to determine if the violations have been corrected and hold BANKER  
12 responsible for paying the costs of the follow up audit. The maximum costs of said audit shall  
13 not exceed \$3,040.63.

14 10. BANKER understands that by agreeing to this Stipulation and Agreement,  
15 BANKER agrees to be responsible for paying, pursuant to Section 10106 of the Code, the costs  
16 of the investigation and enforcement of this case which resulted in the determination that  
17 BANKER committed the violation(s) found in the Determination of Issues. The amount of such  
18 costs is \$2,287.95.

#### 19 DETERMINATION OF ISSUES

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

23 The acts and omissions of BANKER, as described in the Accusation, are grounds  
24 for the suspension or revocation of the licenses and license rights of BANKER under the  
25 provisions of Sections 10177(d), 10177(g) and 10177(h) of the Code, in conjunction with  
26 Sections 10145 and 10159.2 and of the Code, and Sections 2725, 2832, and 2832.1 of Title 10 of  
27 the California Code of Regulations ("the Regulations").

1 ORDER

2 All licenses and licensing rights of BANKER under the Real Estate Law are  
3 revoked; provided, however, a restricted real estate broker license shall be issued to BANKER  
4 pursuant to Section 10156.5 of the Code if BANKER makes application therefore and pays to the  
5 Department the appropriate fee for the restricted license within 90 days from the effective date of  
6 this Decision.

7 1. The restricted license issued to BANKER shall be subject to all of the  
8 provisions of Section 10156.7 of the Code as to the following limitations, conditions and  
9 restrictions imposed under authority of Section 10156.6 of that Code:

10 (a) The restricted license issued to BANKER shall be suspended prior to  
11 hearing by Order of the Commissioner in the event of BANKER's  
12 conviction (including by plea of guilty or nolo contendere) to a crime  
13 which is substantially related to BANKER's fitness or capacity as a real  
14 estate licensee; and,

15 (b) The restricted license issued to BANKER shall be suspended prior to  
16 hearing by Order of the Commissioner on evidence satisfactory to the  
17 Commissioner that BANKER has violated provisions of the California  
18 Real Estate Law, the Subdivided Lands Law, Regulations of the Real  
19 Estate Commissioner, or conditions attaching to the restricted license.

20 2. BANKER shall not be eligible to apply for the issuance of an unrestricted real  
21 estate license nor for removal of any of the conditions, limitations or restrictions of a restricted  
22 license until two (2) years have elapsed from the effective date of this Decision.

23 3. BANKER shall notify the Commissioner in writing within 72 hours of any  
24 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post  
25 Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of  
26 BANKER's arrest, the crime for which BANKER was arrested and the name and address of the  
27 arresting law enforcement agency. BANKER's failure to timely file written notice shall

1 constitute an independent violation of the terms of the restricted license and shall be grounds for  
2 the suspension or revocation of that license.

3 4. BANKER shall, within nine (9) months from the effective date of this  
4 Decision, present evidence satisfactory to the Commissioner that BANKER has, since the most  
5 recent issuance of an original or renewal real estate license, taken and successfully completed the  
6 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
7 of a real estate license. If BANKER fails to satisfy this condition, the Commissioner shall order  
8 the suspension of the restricted license until the BANKER presents such evidence. The  
9 Commissioner shall afford BANKER the opportunity for hearing pursuant to the APA to present  
10 such evidence.

11 5. BANKER shall, within six (6) months from the issuance of the Order, take  
12 and pass the Professional Responsibility Examination administered by the Department,  
13 including the payment of the appropriate examination fee. All licenses and licensing rights of  
14 BANKER shall be indefinitely suspended unless or until BANKER passes the examination.

15 6. All licenses and licensing rights of BANKER are indefinitely suspended  
16 unless or until BANKER provides proof satisfactory to the Commissioner, of having taken and  
17 successfully completed the continuing education course on trust fund accounting and handling  
18 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions  
19 Code. Proof of satisfaction of this requirement includes evidence that BANKER has  
20 successfully completed the trust fund account and handling continuing education course, no  
21 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of  
22 completion of this continuing education course must be delivered to the Department of Real  
23 Estate, Flag Section, at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-  
24 8785 prior to the effective date of this Decision and Order.

25 7. All licenses and licensing rights of BANKER are indefinitely suspended  
26 unless or until BANKER pays the sum of \$2,287.95 for the Commissioner's reasonable costs  
27 of the investigation and enforcement which led to this disciplinary action. Said payment shall

1 be in the form of a cashier's check or certified check made payable to the Department of Real  
2 Estate. The investigative and enforcement costs must be delivered to the Department of Real  
3 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective  
4 date of this Order.

5 8. BANKER shall pay the sum of \$2,432.50 for the Commissioner's cost of the  
6 audit which led to this disciplinary action. BANKER shall pay such cost within sixty (60) days  
7 of receiving an invoice therefore from the Commissioner. The Commissioner shall indefinitely  
8 suspend all licenses and licensing rights of BANKER pending a hearing held in accordance  
9 with Section 11500, et seq., of the Government Code, if payment is not timely made as  
10 provided for herein, or as provided for in a subsequent agreement between BANKER and the  
11 Commissioner. The suspension shall remain in effect until payment is made in full or until  
12 BANKER enters into an agreement satisfactory to the Commissioner to provide for payment,  
13 or until a decision providing otherwise is adopted following a hearing held pursuant to this  
14 condition.

15 9. BANKER shall pay the Commissioner's costs, not to exceed \$3,040.63, of  
16 any audit conducted pursuant to Section 10148 of the Code to determine if BANKER has  
17 corrected the violations described in the Determination of Issues, above, and any other  
18 violations found in the audit which led to this disciplinary action. In calculating the amount of  
19 the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly  
20 salary for all persons performing audits of real estate brokers, and shall include an allocation  
21 for travel time to and from the auditor's place of work. BANKER shall pay such cost within  
22 sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities  
23 performed during the audit and the amount of time spent performing those activities. If  
24 BANKER fails to pay such cost within the sixty (60) days, the Commissioner shall indefinitely  
25 suspend all licenses and licensing rights of BANKER under the Real Estate Law until payment  
26 is made in full or until BANKER enter into an agreement satisfactory to the Commissioner to  
27 provide for payment. Upon full payment, the indefinite suspension provided for in this

1 paragraph shall be stayed.

2  
3 July 30, 2019  
4 DATED

5  
6 Jason Lazark  
7 JASON D. LAZARK, Counsel  
8 Department of Real Estate

9 \* \* \*

10 BANKER has read the Stipulation and Agreement in Settlement and Order and  
11 its terms are understood by BANKER and are agreeable and acceptable to BANKER.  
12 BANKER understand that he is waiving rights given to him by the APA (including but not  
13 limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and BANKER  
14 willingly, intelligently, and voluntarily waives those rights, including the right of requiring the  
15 Commissioner to prove the allegations in the Accusation at a hearing at which BANKER  
16 would have the right to cross-examine witnesses against him and to present evidence in  
17 defense and mitigation of the charges.

18 BANKER and BANKER's attorney further agree to send the original signed  
19 Stipulation and Agreement by mail to the following address no later than one (1) week from the  
20 date the Stipulation and Agreement is signed by BANKER and BANKER's attorney:  
21 *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-*  
22 *7007. BANKER and BANKER's attorney understand and agree that if they fail to return the*  
23 *original signed Stipulation and Agreement by the due date, Complainant retains the right to set*  
24 *this matter for hearing.*

25  
26 July 19, 2019  
27 DATED

28 Steven Hendee Banker  
29 STEVEN HENDEE BANKER  
30 Respondent

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

7-19-19

DATED



ROBERT F. HAHN

Attorney for Respondent

STEVEN HENDEE BANKER

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The foregoing Stipulation and Agreement is hereby adopted as my Decision in  
this matter and shall become effective at 12 o'clock noon on OCT 08 2019.

IT IS SO ORDERED September 9, 2019.

ACTING REAL ESTATE COMMISSIONER



DANIEL J. SANDRI