

Floyd

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670

FILED

SEP 16 2019

DEPARTMENT OF REAL ESTATE
By *E. Kropp*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:) Case No. H-12230 SF
12)
13 MICHELLE PARADERO MAGBOO HUNTER) STIPULATION AND AGREEMENT
14 and BRIAN WILLIAM GARRETT,) IN SETTLEMENT AND ORDER
15)
16 Respondents.) (As to Brian William Garrett Only)

16 It is hereby stipulated by and between Respondent BRIAN WILLIAM
17 GARRETT ("Respondent"), acting by and through Robert Hahn, counsel for Respondent, and
18 the Complainant, acting by and through Jason D. Lazark, Counsel for the Department of Real
19 Estate ("the Department"), as follows solely for the purpose of settling and disposing of the
20 Accusation filed on December 18, 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").

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1 2. Respondent has received, read and understands the Statement to Respondent,
2 the Discovery Provisions of the APA and the Accusation filed by the Department in this
3 proceeding.

4 3. On January 2, 2019, 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 his rights to require the Commissioner to
9 prove the allegations in the Accusation at a contested hearing held in accordance with the
10 provisions of the APA and that Respondent will waive other rights afforded to Respondent in
11 connection with the hearing such as the right to present evidence in defense of the allegations
12 in the Accusation and the right to cross-examine witnesses.

13 4. This Stipulation and Agreement is based on the factual allegations contained
14 in the Accusation. In the interest of expediency and economy, Respondent chooses not to
15 contest these factual allegations, but to remain silent and understands that, as a result thereof,
16 these factual statements will serve as a prima facie basis for the "Determination of Issues" and
17 "Order" set forth below. The Commissioner shall not be required to provide further evidence
18 to prove such allegations.

19 5. This Stipulation and Agreement and Respondent's decision not to contest the
20 Accusation are made solely for the purpose of reaching an agreed disposition of this
21 proceeding and are expressly limited to this proceeding and any other proceeding or case in
22 which the Department, the state or federal government, any agency of this state, or an agency
23 of another state is involved.

24 6. It is understood by the parties that the Real Estate Commissioner may adopt
25 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalties
26 and sanctions on Respondent's real estate licenses and license rights as set forth in the below
27 "Order." In the event that the Commissioner in his discretion does not adopt the Stipulation

1 and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a
2 hearing and proceeding on the Accusation under all the provisions of the APA and shall not be
3 bound by any admission or waiver made herein.

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

8 8. Respondent understands that by agreeing to this Stipulation and Agreement,
9 Respondent agrees to be responsible for paying, pursuant to Section 10106 of the Code, the costs
10 of the investigation and enforcement of this case which resulted in the determination that
11 Respondent committed the violation(s) found in the Determination of Issues. The amount of
12 such costs is \$3,760.70.

13 9. Respondent agrees to cooperate with the Department by providing honest and
14 truthful testimony in any administrative hearing in Department Case No. H-12230 SF. Should
15 Respondent fail to cooperate with the Department, this Stipulation and Agreement shall be void
16 and of no effect, and Respondent shall retain the right to a hearing and proceeding on the
17 Accusation under all the provisions of the APA.

18 DETERMINATION OF ISSUES

19 By reason of the foregoing stipulations, admissions and waivers, and solely for
20 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
21 agreed that the acts and/or omissions of Respondent, as described in the Accusation, constitute
22 grounds for the suspension or revocation of the licenses and license rights of Respondent under
23 the provisions of Sections, 10176(a), 10176(i), 10177(g), and 10177(j) of the Code.

24 ORDER

25 1. All licenses and licensing rights of Respondent under the Real Estate Law are
26 revoked; provided, however, a restricted real estate salesperson license shall be issued to
27 Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefore

1 and pays to the Department the appropriate fee for the restricted license within 90 days from the
2 effective date of this Decision.

3 2. The restricted license issued to Respondent shall be subject to all of the
4 provisions of Section 10156.7 of the Code as to the following limitations, conditions and
5 restrictions imposed under authority of Section 10156.6 of that Code:

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

11 (b) The restricted license issued to Respondent shall be suspended prior to
12 hearing by Order of the Commissioner on evidence satisfactory to the
13 Commissioner that Respondent has violated provisions of the California
14 Real Estate Law, the Subdivided Lands Law, Regulations of the Real
15 Estate Commissioner, or conditions attaching to the restricted license.

16 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
17 real estate license nor for removal of any of the conditions, limitations or restrictions of a
18 restricted license until four (4) years have elapsed from the effective date of this Decision.

19 4. Respondent shall notify the Commissioner in writing within 72 hours of any
20 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
21 Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of
22 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
23 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
24 constitute an independent violation of the terms of the restricted license and shall be grounds for
25 the suspension or revocation of that license.

26 5. With any application for license under any employing broker, or any
27 application for transfer to a new employing broker, Respondent shall submit a statement signed

1 by the prospective employing real estate broker on a form approved by the Department which
2 shall certify as follows:

3 (a) That the employing broker has read the Decision of the Commissioner
4 which is the basis for the right to a restricted license; and

5 (b) That the employing broker will carefully review all transaction
6 documents prepared by the restricted licensee and otherwise exercise close
7 supervision over the Respondent's performance of acts for which a real
8 estate license is required.

9 6. Respondent shall, within nine (9) months from the effective date of this Order,
10 present evidence satisfactory to the Commissioner that Respondent has, since the most recent
11 issuance of an original or renewal real estate license, taken and successfully completed the
12 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
13 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate
14 license shall automatically be suspended until Respondent presents evidence satisfactory to the
15 Commissioner of having taken and successfully completed the continuing education
16 requirements. Proof of completion of the continuing education courses must be delivered to the
17 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

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

23 8. All licenses and licensing rights of Respondent are indefinitely suspended
24 unless or until Respondent pays the sum of \$3,760.70 for the Commissioner's reasonable costs
25 of the investigation and enforcement which led to this disciplinary action. Said payment shall
26 be in the form of a cashier's check or certified check made payable to the Department of Real
27 Estate. The investigative and enforcement costs must be delivered to the Department of Real

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

3 9. Respondent shall cooperate with the Department by providing honest and
4 truthful testimony in any administrative hearing in Department Case No. H-12230 SF.

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7-31-19

DATED

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JASON D. LAZARK, Counsel
Department of Real Estate

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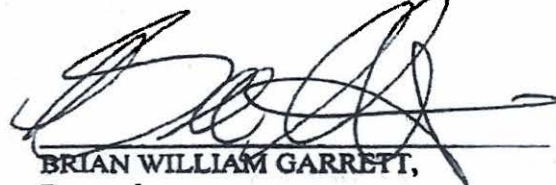
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I have read the Stipulation and Agreement in Settlement and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including 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.

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

July 31, 2019


DATED


BRIAN WILLIAM GARRETT,
Respondent

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

7-31-19
DATED


Robert Hahn
Attorney for Respondent,
BRIAN WILLIAM GARRETT

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 07 2019

IT IS SO ORDERED September 9, 2019.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

