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3 **FILED**

4 AUG 3 1 2020

5 DEPARTMENT OF REAL ESTATE

6 By *S. Kroger*

7
8 **BEFORE THE DEPARTMENT OF REAL ESTATE**
9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of:)

NO. H-12414 SF

12 DAVID SCOTT ROBERSON,)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

13 Respondent.)
14

15 It is hereby stipulated by and between DAVID SCOTT ROBERSON
16 ("Respondent") and the Complainant, acting by and through JASON D. LAZARK, Counsel for
17 the Department of Real Estate (the "Department"), as follows for the purpose of settling and
18 disposing of the Accusation filed on December 20, 2019, in this matter:

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

24 2. Respondent has received, read and understands the Statement to Respondent,
25 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate
26 in this proceeding.
27

1 3. On or about January 7, 2020, Respondent filed a Notice of Defense pursuant
2 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
3 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
4 of Defense. Respondent acknowledges that Respondent will thereby waive Respondent's right
5 to require the Real Estate Commissioner (the "Commissioner") to prove the allegations in the
6 Accusation at a contested hearing held in accordance with the provisions of the APA and that
7 Respondent will waive other rights afforded to Respondent in connection with the hearing such
8 as the right to present evidence in defense of the allegations in the Accusation and the right to
9 cross-examine witnesses.

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

13 5. It is understood by the parties that the Commissioner may adopt the
14 Stipulation and Agreement as his Decision and Order in this matter thereby imposing the penalty
15 and sanctions on Respondent's real estate license and license rights as set forth in the below
16 Decision and Order. In the event that the Commissioner in his discretion does not adopt the
17 Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right
18 to a hearing and proceeding on the Accusation under all of the provisions of the APA and shall
19 not be bound by any admission or waiver made herein.

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

25 7. Respondent understands that by agreeing to this Stipulation and Agreement,
26 Respondent agrees to be responsible for paying, pursuant to Section 10148 of the California
27 Business and Professions Code ("the Code"), the costs of the audit which resulted in the

1 determination that Respondent committed the trust fund violation(s) found in the Determination
2 of Issues. The amount of such costs is \$8,023.44.

3 8. Respondent further understands that by agreeing to this Stipulation and
4 Agreement, the findings set forth below in the Determination of Issues become final, and that the
5 Commissioner may charge Respondent for the costs of any audit conducted pursuant to Section
6 10148 of the Code to determine if the violations have been corrected and hold Respondent
7 responsible for paying the costs of the follow up audit. The maximum costs of said audit shall
8 not exceed \$10,029.30.

9 9. Respondent further understands that by agreeing to this Stipulation and
10 Agreement, the findings set forth below in the Determination of Issues become final, and that the
11 Commissioner may charge said Respondent for the costs of the investigation and enforcement
12 herein. The amount of said costs is \$1,233.00.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and waivers, and solely for
15 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
16 that the acts and omissions of Respondent, as described in the Accusation, are grounds for the
17 suspension or revocation of the licenses and license rights of Respondent under the provisions of
18 Sections 10130, 10145, 10159.5, 10176(e), 10177(d) and 10177(g) of the Code, and Sections
19 2731, 2831.2, 2832, 2832.1, 2834, and 2835 of Title 10 of the California Code of Regulations
20 ("the Regulations").

21 DECISION AND ORDER

22 All licenses and licensing rights of Respondent under the Real Estate Law are
23 revoked; provided, however, a restricted real estate broker license shall be issued to Respondent,
24 pursuant to Section 10156.5 of the Code, if Respondent makes application therefore and pays to
25 the Department the appropriate fee for the restricted license within 90 days from the effective
26 date of this Decision.
27

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

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

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

14 2. Respondent shall not be eligible to apply for the issuance of an unrestricted
15 real estate license nor for removal of any of the conditions, limitations or restrictions of a
16 restricted license until two (2) years have elapsed from the effective date of this Decision.
17 Respondent shall not be eligible for any unrestricted licenses until all restrictions attaching to the
18 license have been removed.

19 3. 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, Legal
21 Section at Post Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the
22 date of Respondent's arrest, the crime for which Respondent was arrested and the name and
23 address of the arresting law enforcement agency. Respondent's failure to timely file written
24 notice shall constitute an independent violation of the terms of the restricted license and shall be
25 grounds for the suspension or revocation of that license.

26 4. Respondent shall, within six (6) months from the effective date of this
27 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the most

1 recent issuance of an original or renewal real estate license, taken and successfully completed the
2 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
3 of a real estate license. If Respondent fails to satisfy this condition, the Commissioner shall
4 order the suspension of the restricted license until the Respondent presents such evidence. The
5 Commissioner shall afford Respondent the opportunity for hearing pursuant to the APA to
6 present such evidence. Proof of completion of the continuing education courses must be
7 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
8 95813-7013.

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

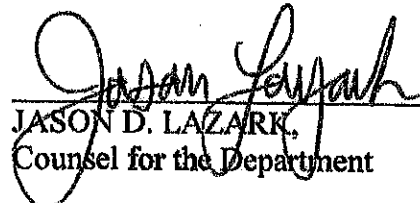
19 6. All licenses and licensing rights of Respondent are indefinitely suspended
20 unless or until Respondent pays the sum of \$1,233.00 representing the Commissioner's
21 reasonable costs of the investigation and enforcement which led to this disciplinary action. Said
22 payment shall be in the form of a cashier's check made payable to the Department of Real Estate.
23 Said check must be received by the Department prior to the effective date of the Decision and
24 Order in this matter at the Department of Real Estate, Flag Section, Post Office Box 137013,
25 Sacramento, CA 95813-7013.

26 7. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
27 \$8,023.44 for the Commissioner's cost of the Department's Audit which led to this disciplinary

1 action. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore
2 from the Commissioner. Payment of audit costs should not be made until Respondent receives
3 the invoice. If Respondent fails to satisfy this condition in a timely manner as provided for
4 herein, Respondent's real estate license shall automatically be suspended until payment is made
5 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to
6 this condition.

7 8. Pursuant to Section 10148 of the Code, Respondent shall pay the
8 Commissioner's reasonable cost, not to exceed \$10,029.30, for an audit to determine if
9 Respondent has corrected the violation(s) found in the Determination of Issues. In calculating
10 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
11 average hourly salary for all persons performing audits of real estate brokers, and shall include
12 an allocation for travel time to and from the auditor's place of work. Respondent shall pay such
13 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of
14 the audit costs should not be made until Respondent receives the invoice. If Respondent fails to
15 satisfy this condition in a timely manner as provided for herein, Respondent's real estate license
16 shall automatically be suspended until payment is made in full, or until a decision providing
17 otherwise is adopted following a hearing held pursuant to this condition.

18
19 6/15/20
20 _____
DATED

21 
JASON D. LAZARK,
Counsel for the Department

22 * * *

23 I have read the Stipulation and Agreement and its terms are understood by me
24 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
25 the California Administrative Procedure Act (including but not limited to Sections 11506,
26 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
27 voluntarily waive those rights, including the right of requiring the Commissioner to prove the

1 allegations in the Accusation at a hearing at which I would have the right to cross-examine
2 witnesses against me and to present evidence in defense and mitigation of the charges.

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

9
10 6/15/2020

11 DATED

12 

13 DAVID SCOTT ROBERSON,
14 Respondent

15 * * *

16 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
17 this matter and shall become effective at 12 o'clock noon on SEP 21 2020.

18 IT IS SO ORDERED 7.30.20

19 REAL ESTATE COMMISSIONER

20
21 
22 DOUGLAS R. McCAULEY