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DEPARTMENT OF REAL ESTATE

By B dew

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

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-12421 SF
JOHN EDWARD BARRY,)
Respondent.) STIPULATION AND AGREEMENT
) IN SETTLEMENT AND ORDER

It is hereby stipulated by and between JOHN EDWARD BARRY (Respondent), represented by Joshua A. Rosenthal, and the Complainant, acting by and through Megan Lee Olsen, Counsel for the Department of Real Estate (Department); as follows for the purpose of settling and disposing of the Accusation filed on January 22, 2020, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the 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 on the basis of the provisions of this Stipulation and Agreement In Settlement and Order (Stipulation).

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

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

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

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

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

25 7. Respondent understands that by agreeing to this Stipulation, Respondent agrees
26 to pay, pursuant to Section 10148 of the Business and Professions Code (Code), the cost of the

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1 audit which resulted in the violations found in the "Determination of Issues". The amount of
2 such costs is \$2,995.80.

3 8. Respondent further understand that by agreeing to this Stipulation, the findings
4 set forth below in the "Determination of Issues" become final, and that the Commissioner may
5 charge said Respondent for the costs of any audit conducted pursuant to Section 10148 of the
6 Code to determine if the violations have been corrected. The maximum cost of said audit shall
7 not exceed \$3,744.75.

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions and waivers, and solely for
10 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
11 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds
12 for the suspension or revocation of the licenses and license rights of Respondent under the
13 provisions of Sections 10176 (e), 10177(d) and 10177 (g) of the Code, in conjunction with
14 Sections 10145 and 10159.5 of the Code, and Sections 2725, 2731, 2831.2, 2832, 2832.1 and
15 2835 of Title 10 of the California Code of Regulations (Regulations).

16 ORDER

17 All licenses and licensing rights of JOHN EDWARD BARRY, under the Real
18 Estate Law are suspended for a period of sixty (60) days from the effective date of this Order;
19 provided, however, that:

20 1. Thirty (30) days of said suspension shall be stayed, upon the condition that
21 Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
22 pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a
23 total monetary penalty of \$3,000.

24 (a) Said payment shall be in the form of a cashier's check made payable
25 to the Department of Real Estate. Said check must be delivered to the Department of Real
26 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
27 date of this Order.

1 (b) No further cause for disciplinary action against the real estate license
2 of Respondent occurs within two (2) years from the effective date of the decision in this matter.

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

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

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

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

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

22 3. Respondent shall, within nine (9) months from the effective date of this
23 Stipulation, present evidence satisfactory to the Commissioner that Respondent has, since the
24 most recent issuance of an original or renewal real estate license, taken and successfully
25 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
26 Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
27 Respondent's real estate license shall automatically be suspended until Respondent presents

1 evidence satisfactory to the Commissioner of having taken and successfully completed the
2 continuing education requirements. Proof of completion of the continuing education courses
3 must be delivered to the Department of Real Estate, Flag Section, at P.O. Box 137013,
4 Sacramento, CA 95813-7013.

5 4. All licenses and licensing rights Respondent are indefinitely suspended
6 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
7 successfully completed the continuing education course on trust fund accounting and handling
8 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
9 satisfaction of these requirements includes evidence that Respondent has successfully completed
10 the trust fund account and handling continuing education courses, no earlier than 120 days prior
11 to the effective date of the Decision and Order in this matter. Proof of completion of the trust
12 fund accounting and handling course must be delivered to the Department of Real Estate, Flag
13 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to
14 the effective date of this Decision and Order.

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

20 6. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
21 \$2,995.80 for the Commissioner's cost of the audit which led to this disciplinary action.
22 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
23 Commissioner. Payment of audit costs should not be made until Respondent receives the
24 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
25 Respondent's real estate license shall automatically be suspended until payment is made in full,
26 or until a decision providing otherwise is adopted following a hearing held pursuant to this
27 condition.

1 7. Pursuant to Section 10148 of the Code, Respondent shall pay the
2 Commissioner's reasonable cost, not to exceed \$3,744.75 for an audit to determine if Respondent
3 has corrected the violations found in the "Determination of Issues". In calculating the amount of
4 the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
5 salary for all persons performing audits of real estate brokers, and shall include an allocation for
6 travel time to and from the auditor's place of work. Respondent shall pay such cost within sixty
7 (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs
8 should not be made until Respondent receives the invoice. If Respondent fails to satisfy this
9 condition in a timely manner as provided for herein, Respondent's real estate license shall
10 automatically be suspended until payment is made in full, or until a decision providing otherwise
11 is adopted following a hearing held pursuant to this condition.

12 8. All licenses and licensing rights of Respondent are indefinitely suspended
13 unless or until Respondent pays the sum of \$1,287.00 for the Commissioner's reasonable cost of
14 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
15 the form of a cashier's check made payable to the Department of Real Estate, Flag Section at
16 P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Stipulation.

17 11/18/20

18 DATED

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18 MEGAN LEE OLSEN, Counsel
19 DEPARTMENT OF REAL ESTATE

20 * * *

21 I have read the Stipulation and Agreement In Settlement and Order, discussed it
22 with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I
23 understand that I am waiving rights given to me by the California Administrative Procedure
24 Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government
25 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of
26 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I

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1 would have the right to cross-examine witnesses against me and to present evidence in defense
2 and mitigation of the charges.

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

9 11-4-2020

10 DATED

11 JOHN EDWARD BARRY
Respondent

12 ***

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

15 11-11-20

16 DATED

17 JOSHUA A. ROSENTHAL
Attorney for Respondent

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19 The foregoing Stipulation and Agreement In Settlement and Order is hereby
20 adopted by the Real Estate Commissioner as his Decision and Order and shall become
21 effective at 12 o'clock noon on MAR 30 2021.

22 IT IS SO ORDERED 1. 28. 21

23 DOUGLAS R. McCAULEY
24 REAL ESTATE COMMISSIONER

25 *Douglas R. McCauley*
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