

1 Department of Real Estate
2 P.O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 576-8700

FILED

JUL 26 2021

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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

10 * * *

11 In the Matter of the Accusation of)

12 ADAM ATITO)

13 Respondent.)
14

No. H-12457 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between ADAM ATITO (ATITO) (referred to as
16 "Respondent"), represented by Ernest Chen, and the Complainant, acting by and through Richard
17 K. Uno, Counsel for the Department of Real Estate (Department), as follows for the purpose of
18 settling and disposing the Accusation filed on June 30, 2020, 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.

24 2. Respondent has received, read, and understand the Statement to
25 Respondent, and the Discovery Provisions of the APA filed by the Department in this
26 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 that Respondent understands that by withdrawing said Notice of Defense
5 Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA, and that Respondent will waive other rights afforded
8 to Respondent in connection with the hearing such as the right to present evidence in defense of
9 the allegations in the Accusation and the right to cross-examine witnesses.

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

16 5. This Stipulation and Agreement and Respondent's decision not to contest
17 the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and
18 are expressly limited to this proceeding and any other proceeding or case in which the
19 Department is involved.

20 6. Respondent understands that by agreeing to this Stipulation and
21 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and
22 Professions Code (Code), the cost of the audit, which resulted in the determination that
23 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.
24 The amount of said costs is \$4,034.03.

25 7. Respondent further understands that by agreeing to this Stipulation and
26 Agreement, the findings set forth below in the Determination of Issues become final, and that
27 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to

1 Section 10148 of the Code to determine if the violations have been corrected. The maximum
2 costs of said audit shall not exceed \$5,042.54.

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

10 9. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Department with respect to any matters which were not
13 specifically alleged in Accusation H-12457 SF.

14 10. Respondent understands that by agreeing to this Stipulation, Respondent
15 agrees to pay, pursuant to Section 10106 of the Business and Professions Code (Code), the cost
16 of the investigation which resulted in the determination that Respondent committed the
17 violations found in the Determination of Issues. The amount of said costs is \$1,519.56.

18 * * *

19 DETERMINATION OF ISSUES

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

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24 The acts and omissions of Respondent as described in the Accusation are grounds
25 for the suspension or revocation of Respondent's licenses and license rights under the sections
26 10130, 10131, 10145, 10162, 10176(e), 10177(d), and 10177(g) of the Code and Sections 2831,
27 2831.1, 2831.2, and 2832, Title 10 of the California Code of Regulations (Regulations):

1 a) ATITO shall obey all laws, rules and regulations governing the
2 rights, duties and responsibilities of a real estate licensee in the State of California; and,

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

9 3. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
10 \$4,034.03 for the Commissioner's cost of the audit which led to this disciplinary action.
11 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
12 Commissioner. Payment of audit costs should not be made until Respondent receives the
13 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
14 Respondent's real estate license shall automatically be suspended until payment is made in full,
15 or until a decision providing otherwise is adopted following a hearing held pursuant to this
16 condition.

17 4. Pursuant to Section 10148 of the Code, Respondent shall pay the
18 Commissioner's reasonable cost, not to exceed \$5,042.54, for an audit to determine if
19 Respondent has corrected the violation(s) found in the Determination of Issues. In calculating
20 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
21 average hourly salary for all persons performing audits of real estate brokers, and shall include an
22 allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost
23 within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the
24 audit costs should not be made until Respondent receives the invoice. If Respondent fails to
25 satisfy this condition in a timely manner as provided for herein, Respondent's real estate license
26 shall automatically be suspended until payment is made in full, or until a decision providing
27 otherwise is adopted following a hearing held pursuant to this condition.

1 5. All licenses and licensing rights of ATITO is indefinitely suspended
2 unless or until ATITO pays the sum of \$1,519.56 for the Commissioner's reasonable cost of the
3 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
4 form of a cashier's check made payable to the Department of Real Estate. The investigative and
5 enforcement costs must be delivered to the Department of Real Estate, Flag Section, at P.O. Box
6 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.

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9 DATED


RICHARD K. UNO
Counsel for Complainant

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11 * * *

12 I have read the Stipulation and Agreement, discussed it with my counsel, and its
13 terms are understood by me and are agreeable and acceptable to me. I understand that I am
14 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
15 intelligently and voluntarily waive those rights, including the right of requiring the
16 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
17 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
18 the charges.

19 Respondent and Respondent's attorney further agree to send the original signed
20 Stipulation by mail to the following address no later than one (1) week from the date the
21 Stipulation is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
22 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and

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Respondent's attorney understand and agree that if they fail to return the original signed Stipulation by the due date. Complainant retains the right to set this matter for hearing.

04-09-2021
DATED


ADAM ATITO
Respondent

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

4-20-2021
DATED


ERNEST CHEN
Attorney for Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on AUG 16 2021.

IT IS SO ORDERED 7-15-21.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

