

SPECTO
Flag

FILED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Department of Real Estate
320 W. 4TH Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

AUG 21 2012

DEPARTMENT OF REAL ESTATE
BY: *Stacy Haleneis*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-37539 LA
)	20111120125
)	
JAMES FRANKLIN LIBERTO, dba)	<u>STIPULATION</u>
Fundamental Financial Services,)	<u>AND</u>
)	<u>AGREEMENT</u>
Respondent.)	

It is hereby stipulated by and between Respondent JAMES FRANKLIN LIBERTO, and the Complainant, acting by and through James A. Demus, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation ("Accusation") filed on September 16, 2011, 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

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement ("Stipulation").

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

7 3. Respondent timely filed a Notice of Defense
8 pursuant to Section 11506 of the Government Code for the purpose
9 of requesting a hearing on the allegations in the Accusation.
10 Respondent hereby freely and voluntarily withdraws said Notice of
11 Defense. Respondent acknowledges that he understands that by
12 withdrawing said Notice of Defense he thereby waives the right to
13 require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that he will waive other rights
16 afforded to him in connection with the hearing such as the right
17 to present evidence in his defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interest of
21 expedience and economy, Respondent chooses not to contest these
22 allegations, but to remain silent and understand that, as a
23 result thereof, these factual allegations, without being admitted
24 or denied, will serve as a prima facie basis for the disciplinary
25 action stipulated to herein. The Real Estate Commissioner shall
26 not be required to provide further evidence to prove said factual
27 allegations.

1 5. This Stipulation is made for the purpose of
2 reaching an agreed disposition of this proceeding and is
3 expressly limited to this proceeding and any other proceeding or
4 case in which the Department of Real Estate ("Department"), the
5 state or federal government, or any agency of this state, another
6 state or federal government is a party.

7 6. It is understood by the parties that the Real
8 Estate Commissioner may adopt this Stipulation as her Decision in
9 this matter thereby imposing the penalty and sanctions on
10 Respondent's real estate license and license rights as set forth
11 in the "Order" herein below. In the event that the Commissioner
12 in her discretion does not adopt the Stipulation, it shall be
13 void and of no effect and Respondent shall retain the right to a
14 hearing and proceeding on the Accusation under the provisions of
15 the APA and shall not be bound by any stipulation or waiver made
16 herein.

17 7. The Order or any subsequent Order of the Real
18 Estate Commissioner made pursuant to this Stipulation shall not
19 constitute an estoppel, merger or bar to any further
20 administrative or civil proceedings by the Department of Real
21 Estate with respect to any matters which were not specifically
22 alleged to be causes for Accusation in this proceeding but do
23 constitute a bar, estoppel and merger as to any allegations
24 actually contained in the Accusation against Respondent herein.

25 8. Respondent understands that by agreeing to this
26 Stipulation, Respondent agrees to pay, pursuant to Business and
27 Professions Code Section 10148, the cost of the audit which led

1 to this disciplinary action. The amount of said cost is \$4,055.

2 DETERMINATION OF ISSUES

3 By reason of the foregoing, it is stipulated and agreed
4 that the following determination of issues shall be made:

5 The conduct of JAMES FRANKLIN LIBERTO as described in
6 Paragraph 4, hereinabove, is a basis for discipline of
7 Respondent's license and license rights pursuant to Business and
8 Professions Code ("Code") Sections 10176(i), 10177(d) and
9 10177(g), for violation of Code Sections 10145, 10148, 10231,
10 10232.4 and Sections 2831, 2831.1 and 2831.2 of Title 10, Chapter
11 6, California Code of Regulations.

12 ORDER

13 WHEREFORE, THE FOLLOWING ORDER is hereby made:

14 I.

15 All licenses and licensing rights of Respondent JAMES
16 FRANKLIN LIBERTO, under the Real Estate Law are revoked;
17 provided, however, a restricted real estate salesperson license
18 shall be issued to Respondent pursuant to Section 10156.5 of the
19 Business and Professions Code, if Respondent makes application
20 therefore and pays to the Department the appropriate fee within
21 90 days from the effective date of this Decision.

22 The restricted license issued to Respondent shall be
23 subject to all of the provisions of Section 10156.7 of the
24 Business and Professions Code and to the following limitations,
25 conditions and restrictions imposed under authority of Section
26 10156.6 of that code:

1 1. The restricted license issued to Respondent may be
2 suspended prior to hearing by Order of the Real Estate
3 Commissioner in the event of Respondent's conviction or plea of
4 nolo contendere to a crime which is substantially related to
5 Respondent's fitness or capacity as a real estate licensee.

6 2. The restricted license issued to Respondent may be
7 suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate
10 Law, the Subdivided Lands Law or Regulations of the Real Estate
11 Commissioner, regarding matters which were not specifically
12 alleged as causes for Accusation in this proceeding, or that
13 Respondent has violated conditions attaching to this restricted
14 license.

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

20 4. Respondent shall submit with any application for
21 license under an employing broker, or any application for
22 transfer to a new employing broker, a statement signed by the
23 prospective employing real estate broker on a form approved by
24 the Department of Real Estate which shall certify:

25 (a) That the employing broker has read the
26 Decision of the Commissioner which granted
27 the right to a restricted license; and

1 (b) That the employing broker will exercise
2 close supervision over the performance by
3 the restricted licensee relating to activities
4 for which a real estate license is required.

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

17 6. Pursuant to Section 10148 of the Business and
18 Professions Code, Respondent shall pay the Commissioner's
19 reasonable cost for the audit which led to this disciplinary
20 action, in the amount of \$4,055. Respondent shall pay such costs
21 within 60 days of receiving an invoice from the Commissioner
22 detailing the activities performed during the audit and the
23 amount of time spent performing those activities. The
24 Commissioner may, in his discretion, vacate and set aside the
25 stay order, if payment is not timely made as provided for herein,
26 or as provided for in a subsequent agreement between the
27 Respondent and the Commissioner. The vacation and the set aside

1 of the stay shall remain in effect until payment is made in full,
2 or until Respondent enters into an agreement satisfactory to the
3 Commissioner to provide for payment.

4 II

5 Respondent JAMES FRANKLIN LIBERTO shall within six (6)
6 months from the effective date of the Decision herein, take and
7 pass the Professional Responsibility Examination administered by
8 the Department including the payment of the appropriate
9 examination fee. If Respondent JAMES FRANKLIN LIBERTO fails to
10 satisfy this condition, the Commissioner may order suspension of
11 Respondent JAMES FRANKLIN LIBERTO's license until Respondent
12 passes the examination.

13
14 DATED: 7/9/12

15 James A. Demus
16 JAMES A. DEMUS, Counsel for
the Department of Real Estate

17 * * *

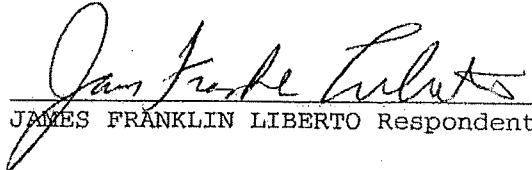
18 EXECUTION OF THE STIPULATION

19 I have read the Stipulation. Its terms are understood
20 by me and are agreeable and acceptable to me. I understand that
21 I am waiving rights given to me by the California Administrative
22 Procedure Act (including but not limited to Sections 11506,
23 11508, 11509 and 11513 of the Government Code), and I willingly,
24 intelligently and voluntarily waive those rights, including the
25 right of requiring the Commissioner to prove the allegations in
26 the Accusation at a hearing at which I would have the right to
27

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

3 Respondent can signify acceptance and approval of the
4 terms and conditions of this Stipulation by faxing a copy of its
5 signature page, as actually signed by Respondent, to the
6 Department at the following telephone/fax number: James A. Demus
7 at (213) 576-6917. Respondent agrees, acknowledges and
8 understands that by electronically sending to the Department a
9 fax copy of Respondent's actual signature, as it appears on the
10 Stipulation, that receipt of the faxed copy by the Department
11 shall be as binding on Respondent as if the Department had
12 received the original signed Stipulation.
13

14
15 DATED: 7/9/2012


16 JAMES FRANKLIN LIBERTO Respondent
17

18 * * *

19 The foregoing Stipulation and Agreement is hereby
20 adopted as my Decision as to Respondent JAMES FRANKLIN LIBERTO
21 and shall become effective at 12 o'clock noon on
22 _____, 2012.

23 IT IS SO ORDERED _____, 2012.

24 Real Estate Commissioner
25 _____
26
27

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

3 Respondent can signify acceptance and approval of the
4 terms and conditions of this Stipulation by faxing a copy of its
5 signature page, as actually signed by Respondent, to the
6 Department at the following telephone/fax number: James A. Demus
7 at (213) 576-6917. Respondent agrees, acknowledges and
8 understands that by electronically sending to the Department a
9 fax copy of Respondent's actual signature, as it appears on the
10 Stipulation, that receipt of the faxed copy by the Department
11 shall be as binding on Respondent as if the Department had
12 received the original signed Stipulation.
13

14
15
16 DATED: _____ JAMES FRANKLIN LIBERTO Respondent

17
18 * * *

19 The foregoing Stipulation and Agreement is hereby
20 adopted as my Decision as to Respondent JAMES FRANKLIN LIBERTO
21 and shall become effective at 12 o'clock noon on
22 SEP 10 2012, 2012.

23 IT IS SO ORDERED August 11, 2012.

24 Real Estate Commissioner

25
26 
27 By WAYNE S. BELL
Chief Counsel