

1 Bureau of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982

FILED

NOV 20 2014

BUREAU OF REAL ESTATE

By Nov 20

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-39336 LA

12)
13 FRANK H. WHITEHEAD III,
14 doing business as South Bay
15 Management Services,

STIPULATION
AND
AGREEMENT

16 Respondent,)

17 It is hereby stipulated by and between Respondent FRANK H. WHITEHEAD III
18 (sometimes referred to as "Respondent") and the Complainant, acting by and through Elliott
19 Mac Lennan, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and
20 disposing of the Accusation ("Accusation") filed on February 27, 2014, in this matter:

- 21
- 22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing
24 was to be held in accordance with the provisions of the Administrative Procedure Act ("APA")
25 shall instead and in place thereof be submitted solely on the basis of the provisions of this
26 Stipulation and Agreement ("Stipulation.")
27

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 Bureau of Real Estate in
3 this proceeding.
4

5 3. Respondent filed a Notice of Defense pursuant to Section 11506 of the
6 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
7 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
8 acknowledges that he understands that by withdrawing said Notice of Defense he thereby
9 waives his right to require the Real Estate Commissioner ("Commissioner ") to prove the
10 allegations in the Accusation at a contested hearing held in accordance with the provisions of
11 the APA and that he will waive other rights afforded to him in connection with the hearing such
12 as the right to present evidence in his defense and the right to cross-examine witnesses.
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14 4. This Stipulation is based on the factual allegations contained in the
15 Accusation. In the interest of expedience and economy, Respondent chooses not to contest
16 these allegations, but to remain silent and understands that, as a result thereof, these factual
17 allegations, without being admitted or denied, will serve as a prima facie basis for the
18 disciplinary action stipulated to herein. The Commissioner shall not be required to provide
19 further evidence to prove said factual allegations.
20

21 5. This Stipulation is made for the purpose of reaching an agreed disposition of
22 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
23 which the Bureau of Real Estate ("Bureau") the state or federal government, or any agency of
24 this state, another state or federal government is involved, and otherwise shall not be admissible
25 in any other criminal or civil proceedings.
26
27

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

9 7. The Order or any subsequent Order of the Commissioner made pursuant to
10 this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or
11 civil proceedings by the Bureau of Real Estate with respect to any matters which were not
12 specifically alleged to be causes for Accusation in this proceeding but do constitute a bar,
13 estoppel and merger as to any allegations actually contained in the Accusation against
14 Respondent herein.
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16 8. Respondent understands that by agreeing to this Stipulation, Respondent
17 agrees to pay, pursuant to Business and Professions Code Section 10148, the cost of the original
18 audit which led to this disciplinary action. The amount of said cost is \$5,334.30.
19

20 9. Respondent understands that by agreeing to this Stipulation, Respondent
21 agrees to pay, pursuant to Business and Professions Code Section 10106, the cost of the
22 investigation and enforcement of this matter. The amount of said cost is \$3,937.75.
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DETERMINATION OF ISSUES

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

The conduct, acts and omissions of Respondent FRANK H. WHITEHEAD III, as referred to in Paragraph 4 of the Stipulation, above, is in violation of Section 10145 of the Business and Professions Code ("Code") and Sections 2725 and 2832(a) of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for suspension or revocation of Respondent's broker license and license rights as a violation of the Real Estate Law pursuant to Code Section 10177(d).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The real estate broker license of Respondent FRANK H. WHITEHEAD III under the Real Estate Law is revoked; provided, however, a restricted real estate broker license shall be issued to Respondent, pursuant to Section 10156.5 of the Business and Professions Code, if Respondent:

A. Makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code.

B. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed

1 the trust fund account and handling continuing education course within 120 days prior to the
2 effective date of the Decision in this matter.

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

7 2. The restricted license issued to Respondent may be suspended prior to hearing
8 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
10 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
11 license.

12 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
13 real estate license nor for the removal of any of the conditions, limitations or restrictions of a
14 restricted license until three (3) years has elapsed from the effective date of the issuance of the
15 restricted license.

16 4. Respondent shall within six (6) months from the effective date of the restricted
17 license, take and pass the Professional Responsibility Examination administered by the Bureau
18 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
19 condition, the Commissioner may order suspension of the restricted license until Respondent
20 passes the examination.

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

1 opportunity for a hearing pursuant to the Administrative Procedure Act to present such
2 evidence.

3 6. During the time Respondent is licensed as a restricted real estate broker,
4 Respondent shall not serve as the designated broker at any corporate real estate broker unless
5 and until Respondent is the sole owner of record of the shares of the licensed real estate
6 corporation.

7 6. During the time Respondent is licensed as a restricted real estate broker,
8 Respondent shall not employ salespersons nor affiliate with any corporation, LLC, or fictitious
9 business name.

10 II.

11 Respondent's restricted real estate broker license under the Real Estate Law is
12 suspended for a period of thirty (30) days from the effective date of issuance.

13 A. Provided, however, that if Respondent requests, all thirty (30) days of said
14 suspension (or a portion thereof) shall be stayed upon condition that:

15 1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the
16 Business and Professions Code at the rate of \$166.67 per day for each day of the suspension for a
17 total monetary penalty of \$5,000.

18 2. Said payment shall be in the form of a cashier's check or certified check made
19 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
20 Bureau prior to the effective date of the Decision in this matter.

21 3. No further cause for disciplinary action against the real estate license of
22 Respondent occurs within three (3) years from the effective date of the Decision in this matter.

23 4. If Respondent fails to pay the monetary penalty in accordance with the terms of
24 the Decision, the Commissioner may, without a hearing, order the immediate execution of all or
25 any part of the stayed suspension, in which event the Respondent shall not be entitled to any
26 repayment nor credit, prorated or otherwise, for money paid to the Bureau under the terms of this
27 Decision.

1 5. If Respondent pays the monetary penalty and if no further cause for
2 disciplinary action against the real estate license of Respondent occurs within three (3) years
3 from the effective date of the Decision, the stay hereby granted shall become permanent.

4 III.

5 Pursuant to Section 10148 of the Business and Professions Code, Respondent
6 shall pay the Commissioner's reasonable cost for the original audit which led to this disciplinary
7 action. The cost of the audit which led to this disciplinary action is \$5,334.30. In calculating the
8 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
9 average hourly salary for all persons performing audits of real estate brokers, and shall include
10 an allocation for travel time to and from the auditor's place of work. Respondent is liable for the
11 cost of the audit.

12 Respondent shall pay such cost within 60 days of receiving an invoice from the
13 Commissioner detailing the activities performed during the audit and the amount of time spent
14 performing those activities.

15 The Commissioner may suspend the license of Respondent pending a hearing
16 held in accordance with Section 11500, et seq., of the Government Code, if payment is not
17 timely made as provided for herein, or as provided for in a subsequent agreement between the
18 Respondent and the Commissioner. The suspension shall remain in effect until payment is
19 made in full or until Respondent enters into an agreement satisfactory to the Commissioner to
20 provide for payment, or until a decision providing otherwise is adopted following a hearing held
21 pursuant to this condition.

22 IV.

23 All licenses and licensing rights of Respondent are indefinitely suspended unless
24 or until Respondent pays the sum of \$3,937.75 for the Commissioner's reasonable cost of the
25 investigation and enforcement which led to this disciplinary action prior to the effective date of
26 the Decision herein. Said payment shall be in the form of a cashier's check made payable to the
27 Bureau of Real Estate, prior to the effective date of this Order.

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V.

Compliant acknowledges that Respondent has paid the \$16,265 restitution ordered
in prior Case Number H-37605 LA.

VI.

As of December 5, 2013, Respondent is no longer the broker of South Bay
Management Services. As such, Respondent is no longer required to provide proof of
corrections of the violations cited in the Determination of Issues, above.

VII.

All proof and payment that is required by this Decision, shall be sent to the
attention of Bureau of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA 95813-
7013

DATED: 10.15.14

EML
ELLIOTT MAC LENNAN, Counsel for
Bureau of Real Estate

EXECUTION OF THE STIPULATION

I have read the Stipulation and Agreement. 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). 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.

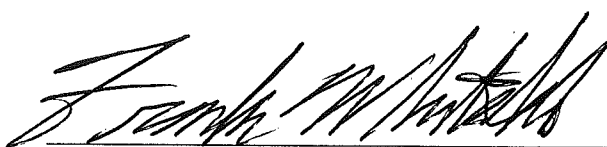
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1 MAILING/FACSIMILE

2 Respondent (1) shall deliver or mail the original signed signature page of the
3 Stipulation herein to Elliott Mac Lennan: Attention: Legal Section, Bureau of Real Estate, 320
4 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Respondent (2) shall also
5 facsimile a copy of signed signature page, to the Bureau at the following fax number: (213) 576-
6 6917, Attention: Elliott Mac Lennan:

7 A facsimile constitutes acceptance and approval of the terms and conditions of
8 this Stipulation. Respondent agrees, acknowledges and understands that by electronically
9 sending to the Bureau a facsimile copy of Respondent's actual signature as it appears on the
10 Stipulation that receipt of the facsimile copy by the Bureau shall be as binding on Respondent as
11 if the Bureau had received the original signed Stipulation.

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14 DATED: 10-13-14



15 FRANK H. WHITEHEAD III
16 Respondent
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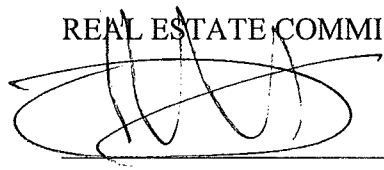
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
Respondent FRANK WHITEHEAD III and shall become effective at 12 o'clock noon on
DEC 10 2014, 2014.

IT IS SO ORDERED October 28, 2014.

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner