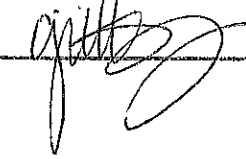


FILED

APR 20 2016

BUREAU OF REAL ESTATE

By



BUREAU OF REAL ESTATE
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105
Telephone: (213) 576-6982

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-40107 LA
)	
MCCABE PROPERTY MANAGEMENT, INC.,)	
and CHARLES R. MERCER, individually and as))	<u>REVISED STIPULATION AND</u>
designated officer for McCabe Property)	<u>AGREEMENT IN SETTLEMENT</u>
Management, Inc.,)	<u>AND ORDER</u>
)	
Respondents.)	
)	

In the Matter of the Order to Desist and Refrain to)	CalBRE No. H-40133 LA
)	
JOSEPH MCCABE,)	
)	<u>REVISED STIPULATION AND</u>
)	<u>AGREEMENT IN SETTLEMENT</u>
Respondent.)	<u>AND ORDER</u>
)	

It is hereby stipulated by and between Respondents MCCABE PROPERTY MANAGEMENT, INC. ("MPMI") and JOSEPH MCCABE ("MCCABE") and their attorney, Landon R. Schwob, Esq.; Respondent CHARLES R. MERCER ("MERCER") and his attorney Rodrigo Suarez, Esq.; and Complainant, acting by and through Lissete Garcia, Counsel for the

1 Bureau of Real Estate ("Bureau"), as follows for the purpose of settling and disposing the
2 Accusation filed on January 19, 2016, with Bureau Case No. H-40107 LA ("Accusation") and
3 the Order to Desist and Refrain filed on February 8, 2016, with Bureau Case No. H-40133 LA
4 ("D&R");

5 1. All issues which were to be contested and all evidence which was to be
6 presented by Complainant and Respondents MPMI, MERCER, and MCCABE (collectively
7 "Respondents") at a formal hearing on the Accusation and D&R, which hearing was to be held in
8 accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and
9 in place thereof be submitted on the basis of the provisions of these Stipulations and Agreements
10 in Settlement and Order ("Stipulations").

11 2. Respondents MPMI and MERCER have received, read, and understand the
12 Statement to Respondent, the Discovery Provisions of the APA, and the Accusation filed by the
13 Bureau in this proceeding.

14 3. Respondent MCCABE has received, read, and understands the Discovery
15 Provisions of the APA and the D&R filed by the Bureau in this proceeding.

16 4. Respondents MPMI and MERCER filed Notices of Defense pursuant to
17 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
18 in the Accusation. Respondent MCCABE's attorney verbally requested a hearing on the
19 allegations in the D&R. Respondents hereby freely and voluntarily withdraw said Notices of
20 Defense and request for hearing on the Accusation and D&R. Respondents acknowledge that
21 they understand that by withdrawing said Notices of Defense and request for hearing, they will
22 thereby waive their rights to require the Real Estate Commissioner ("Commissioner") to prove
23 the allegations in the Accusation and D&R at a contested hearing held in accordance with the
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1 provisions of the APA and that they will waive other rights afforded to them in connection with
2 the hearing such as the right to present evidence in defense of the allegations in the Accusation
3 and D&R and the right to cross-examine witnesses.

4 4. These Stipulations are based on the factual allegations contained in the
5 Accusation and D&R filed in this proceeding. In the interest of expedience and economy,
6 Respondents choose not to contest these factual allegations, but to remain silent and understand
7 that, as a result thereof, these factual statements, will serve as a prima facie basis for the
8 disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to
9 provide further evidence to prove such allegations.

10 5. This Stipulation and Respondents' decision not to contest the Accusation and
11 D&R are made for the purpose of reaching an agreed disposition of these proceedings and are
12 expressly limited to these proceedings and any other proceeding or case in which the Bureau of
13 Real Estate, or another licensing agency of this state, another state or if the federal government is
14 involved and otherwise shall not be admissible in any other criminal or civil proceedings.

15 6. It is understood by the parties that the Real Estate Commissioner may adopt
16 the Stipulations as his decision in this matter thereby imposing the penalty and sanctions on
17 Respondents' real estate licenses and license rights as set forth in the below "Order". In the
18 event that the Commissioner in his discretion does not adopt the Stipulations, the Stipulations
19 shall be void and of no effect, and Respondent shall retain the right to a hearing on the
20 Accusation and D&R under all the provisions of the APA and shall not be bound by any
21 stipulation or waiver made herein.

22 7. The Order or any subsequent Order of the Real Estate Commissioner made
23 pursuant to these Stipulations shall not constitute an estoppel, merger or bar to any further
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1 administrative or civil proceedings by the Bureau of Real Estate with respect to any conduct
2 which was not specifically alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 I.

5 The conduct, acts and/or omissions of Respondent MCCABE PROPERTY
6 MANAGEMENT, INC., as set forth in Paragraphs 9 through 13 of the Bureau's Accusation in
7 Case No. H-40107 LA, constitute cause for the suspension or revocation of all the real estate
8 licenses and license rights of Respondent MCCABE PROPERTY MANAGEMENT, INC. under
9 the provisions of Section 10177(d) of the Business and Professions Code ("Code") for violation
10 of Code Section 10148.

11 II.

12 The conduct, acts and/or omissions of Respondent CHARLES R. MERCER as set
13 forth in Paragraphs 9 through 13 of the Bureau's Accusation in Case No. H-40107 LA, constitute
14 cause for the suspension or revocation of all the real estate licenses and license rights of
15 Respondent CHARLES R. MERCER under the provisions of Code Section 10177(h) for
16 violation of Code Section 10159.2 and Regulation 2725 of the Regulations of the Real Estate
17 Commissioner, Title 10, Chapter 6, California Code of Regulations.

18 III.

19 The conduct, acts and/or omissions of Respondent JOSEPH MCCABE as set
20 forth in Findings of Fact Nos. 1 through 11 of the Bureau's D&R in Case No. H-40133 LA,
21 constitute a violation of Code Section 10130.

22 ///

23 ///

1 ORDER

2 I.

3 All licenses and license rights of Respondent MCCABE PROPERTY

4 MANAGEMENT, INC. under the Real Estate Law are revoked; provided, however, a restricted
5 real estate corporate broker license shall be issued to Respondent pursuant to Section 10156.5 of

6 the Business and Professions Code if Respondent makes application therefor and pays to the
7 Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the
8 effective date of this Decision. The restricted license issued to Respondent shall be subject to all

9 of the provisions of Section 10156.7 of the Business and Professions Code and to the following
10 limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

11 1. The restricted license issued to Respondent may be suspended prior to hearing

12 by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of
13 nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a
14 real estate licensee.

15 2. The restricted license issued to Respondent may be suspended prior to hearing

16 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
17 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
18 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
19 license.

20 3. Respondent shall not be eligible to petition for the issuance of any unrestricted

21 real estate license nor for removal of any of the conditions, limitations or restrictions of a
22 restricted license until three (3) years have elapsed from the effective date of this Decision and
23
24

1 Order. Respondent shall not be eligible to apply for any unrestricted licenses until all restrictions
2 attaching to the license have been removed.

3 II.

4 All licenses and license rights of Respondent CHARLES R. MERCER under the
5 Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be
6 issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if
7 Respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee
8 for the restricted license within 90 days from the effective date of this Decision. The restricted
9 license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the
10 Business and Professions Code and to the following limitations, conditions and restrictions
11 imposed under authority of Section 10156.6 of that Code:

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

16 2. The restricted license issued to Respondent may be suspended prior to hearing
17 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
18 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
19 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
20 license.

21 3. Respondent shall not be eligible to petition for the issuance of any unrestricted
22 real estate license nor for removal of any of the conditions, limitations or restrictions of a
23 restricted license until two (2) years have elapsed from the effective date of this Decision and
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1 Order. Respondent shall not be eligible to apply for any unrestricted licenses until all restrictions
2 attaching to the license have been removed.

3 4. Respondent shall, within six (6) months from the effective date of this
4 **Decision**, take and pass the Professional Responsibility Examination administered by the Bureau
5 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
6 condition, Respondent's real estate license shall automatically be suspended until Respondent
7 passes the examination.

8 III.

9 All licenses and licensing rights of Respondents MCCABE PROPERTY
10 MANAGEMENT, INC. and CHARLES R. MERCER are indefinitely suspended unless or until
11 Respondents pay, jointly or severally, the total sum of \$4,324.30 for the Commissioner's
12 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
13 payment shall be in the form of a cashier's check made payable to the Bureau of Real Estate.
14 **The investigative and enforcement costs must be delivered to the Bureau of Real Estate,**
15 **Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of**
16 **this Decision and Order.**

17 IV.

18 All licenses and licensing rights of Respondents MCCABE PROPERTY
19 MANAGEMENT, INC. and CHARLES R. MERCER are indefinitely suspended unless or until
20 Respondent CHARLES R. MERCER cancels and resigns his designation as the designated
21 officer for MCCABE PROPERTY MANAGEMENT, INC. pursuant to Code Section 10211.
22 **Respondent MERCER's written notice of his cancellation and resignation must be**
23 **delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA**
24

1 95813-7013, prior to the effective date of this Decision and Order.

2 V.

3 Respondent JOSEPH MCCABE, whether doing business in his own name or any
4 other fictitious business name including, but not limited to, MCCABE PROPERTY
5 MANAGEMENT, INC., shall desist and refrain from performing any acts within the State of
6 California for which a real estate broker or salesperson license is required, unless he is so
7 licensed.

8 4/5/2014
9 DATED


Lissete Garcia, Counsel
Bureau of Real Estate

10 * * *

11 Respondents can signify acceptance and approval of the terms and conditions of
12 the Stipulations by faxing or electronically e-mailing a copy of the signature pages, as actually
13 signed by Respondents, to the Bureau at fax number (213) 576-6914. Respondents agree,
14 acknowledge, and understand that by electronically sending to the Bureau a fax or other
15 electronic copy of Respondents' actual signatures as they appear on the Stipulations, that receipt
16 of the faxed or e-mailed copy by the Bureau shall be as binding on Respondents as if the Bureau
17 had received the original signed Stipulations. By signing the Stipulations, Respondents
18 understand and agree that Respondents may not withdraw their agreement or seek to rescind the
19 Stipulations prior to the time the Commissioner considers and acts upon it or prior to the
20 effective date of the Stipulations and Order.

21 We have read the Stipulations and its terms are understood by us and are
22 agreeable and acceptable to us. We understand that we are waiving rights given to us by the
23 California APA (including but not limited to Sections 11506, 11508, 11509, and 11513 of the
24 Government Code), and we willingly, intelligently, and voluntarily waive those rights, including


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1 the right of requiring the Commissioner to prove the allegations in the Accusation and D&R at a
2 hearing at which we would have the right to cross-examine witnesses against us and to present
3 evidence in defense and mitigation of the charges.

4
5 DATED: 4/5/16


Authorized signatory on behalf of Respondent
MCCABE PROPERTY MANAGEMENT, INC.,


7 Print Name Joseph McCabe

8 DATED: 4/5/16


Respondent JOSEPH MCCABE

10 I have reviewed the Stipulations and Agreements as to form and content and have advised
11 my clients accordingly.

12 DATED: 4/5/16


LANDON R. SCHWOB, ESQ., Attorney for
Respondents JOSEPH MCCABE and MCCABE
PROPERTY MANAGEMENT, INC.

16 DATED: _____

Respondent CHARLES R. MERCER

18 I have reviewed the Stipulations and Agreements as to form and content and have advised
19 my client accordingly.

20 DATED: _____

Rodrigo Suarez, ESQ.
Attorney for Respondent CHARLES R. MERCER

23 * * *

1 the right of requiring the Commissioner to prove the allegations in the Accusation and D&R at a
 2 hearing at which we would have the right to cross-examine witnesses against us and to present
 3 evidence in defense and mitigation of the charges.

4
5 DATED: _____

Authorized signatory on behalf of Respondent
MCCABE PROPERTY MANAGEMENT, INC.,

Print Name _____

6
7
8 DATED: _____

Respondent JOSEPH MCCABE

9
10 *I have reviewed the Stipulations and Agreements as to form and content and have advised*
11 *my clients accordingly.*

12 DATED: _____

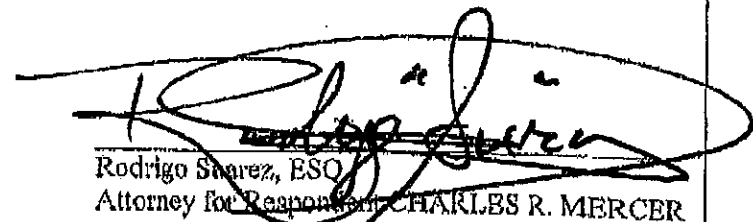
LANDON R. SCHWOB, ESQ., Attorney for
Respondents JOSEPH MCCABE and MCCABE
PROPERTY MANAGEMENT, INC.

13
14
15
16 DATED: 3/31/2016


Respondent CHARLES R. MERCER

17
18 *I have reviewed the Stipulations and Agreements as to form and content and have advised*
19 *my client accordingly.*

20 DATED: 03/31/16


Rodrigo Suarez, ESQ.
Attorney for Respondent CHARLES R. MERCER

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23 * * *

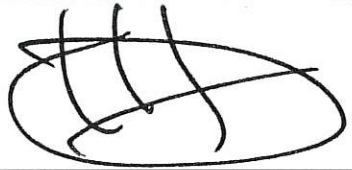
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The foregoing Stipulations and Agreements in Settlement and Order are hereby
adopted by me as my Decision in these matters and shall become effective at 12 o'clock noon on

MAY 10 2016

IT IS SO ORDERED April 15, 2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner