

FILED

MAY 18 2020

DEPARTMENT OF REAL ESTATE

By *B. dew*

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation against

MERRILL & ASSOCIATES REAL ESTATE,
and CASSANDRA ANNE MERRILL

Respondents.

DRE No. H-41222 LA
OAH No. 2019010258

STIPULATION AND AGREEMENT IN
SETTLEMENT AND ORDER

It is hereby stipulated by and between MERRILL & ASSOCIATES REAL ESTATE and CASSANDRA ANNE MERRILL (collectively, "Respondents"), acting by and through their attorney, Frank Buda, and the Complainant, acting by and through David Bruce, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the First Amended Accusation ("Accusation") filed on June 12, 2019, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents 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 and Agreement").

1 2. Respondents have received, read and understand the Statement to Respondents,
2 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate
3 (“Department”) in this proceeding.

4 3. Respondents filed Notices of Defense pursuant to Section 11506 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondents hereby freely and voluntarily withdraw such Notices of Defense. Respondents
7 acknowledge they understand that by withdrawing such Notices of Defense that Respondents
8 thereby waive their right to require the Real Estate Commissioner (“Commissioner”) to prove the
9 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
10 APA and that Respondents will waive other rights afforded to them in connection with the
11 hearing such as the right to present evidence in their defense, and the right to cross-examine
12 witnesses.
13

14 4. This Stipulation and Agreement is based on the allegations in the Accusation
15 against Respondents. In the interest of expediency and economy, Respondents choose not to
16 contest such allegations but to remain silent and understand that, as a result thereof, such
17 allegations, without being admitted, will serve as a prima facie basis for the disciplinary action
18 stipulated to herein. The Commissioner shall not be required to provide evidence to prove such
19 allegations.
20

21 5. This Stipulation and Agreement and Respondents’ decision not to contest the
22 allegations in the Accusation are made for the purpose of reaching an agreed settlement of this
23 proceeding and are expressly limited to this proceeding and any other proceeding or case in
24 which the Department, the state or federal government, an agency of this state, or an agency of
25 another state is involved and do not constitute admissions by Respondents to any other person or
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27

1 entity. This Stipulation and Agreement shall have no force or effect on Respondents except as
2 stated herein.

3 6. It is understood by the parties hereto that the Commissioner may adopt this
4 Stipulation and Agreement as her Decision and Order in this matter thereby imposing the penalty
5 and sanctions on Respondents' real estate licenses and license rights as set forth in the below
6 "Order." In the event that the Commissioner in her discretion does not adopt this Stipulation and
7 Agreement, this Stipulation and Agreement shall be void and of no effect, and Respondents shall
8 retain the right to a hearing and proceed on the Accusation under the provisions of the APA and
9 shall not be bound by any stipulation, admission or waiver made herein.
10

11 7. This Decision and Order or any subsequent Decision and Order of the
12 Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel,
13 merger or bar to any further administrative or civil proceedings by the Department with respect
14 to any matters that were not specifically alleged in the Accusation.
15

16 DETERMINATION OF ISSUES

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

20 1. The acts and/or omissions of Respondents, as described in the Accusation, are in
21 violation of Business and Professions Code ("Code") section 10177(g) (Negligence) and are a
22 basis for disciplinary action against Respondents.

23 ORDER

24 WHEREFORE, THE FOLLOWING ORDER is hereby made:

25 1. All licenses and licensing rights of Respondents MERRILL & ASSOCIATES
26 REAL ESTATE and CASSANDRA ANNE MERRILL are publicly reprovved pursuant to
27 Section 495 of the Code.

1 2. All licenses and licensing rights of both Respondents MERRILL &
2 ASSOCIATES REAL ESTATE and CASSANDRA ANNE MERRILL are indefinitely
3 suspended unless or until each Respondent pays one-half of their collective 1/3 pro rata share of
4 \$14,570 for the Commissioner's reasonable costs of the investigation and enforcement that led to
5 this disciplinary action; such payments shall be in the form of a cashier's check or certified check
6 made payable to the Department. The investigative and enforcement costs must be delivered to
7 the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, California, 95813-
8 7013, prior to the effective date of this Decision and Order.

9
10 April 17, 2020
11 DATED


12
13 DAVID EDWARD BRUCE, Counsel
14 Department of Real Estate

15 * * * *

16 We have read this Stipulation and Agreement, have discussed it with our counsel, and its
17 terms and conditions are understood by us and are agreeable and acceptable to us. We
18 understand that we are waiving rights given to us by the APA (including, but not limited to,
19 Sections 11506, 11508, 11509 and 11513 of the Government Code), and we willingly,
20 intelligently and voluntarily waive those rights, including the right of requiring the
21 Commissioner to prove the allegations in the Accusation at a hearing at which we would have
22 the right to cross-examine witnesses against us and to present evidence in defense and mitigation
23 of the charges contained therein.

24 Respondents can signify acceptance and approval of the terms and conditions of this
25 Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
26 Respondents, to the Department at fax number (916) 263-3767 or by e-mail to
27 david.bruce@dre.ca.gov. Respondents agree, acknowledge and understand that by electronically
sending to the Department a faxed copy of Respondents' actual signatures as they appear on this
Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding

1 on Respondents as if the Department had received the originally-signed Stipulation and
2 Agreement.

3
4 3/12/2020
5 DATED

Cassandra Merrill
MERRILL & ASSOCIATES
REAL ESTATE, Respondent
By: CASSANDRA ANNE MERRILL,
Designated Officer

7
8 3/12/2020
9 DATED

Cassandra Merrill
CASSANDRA ANNE MERRILL
Respondent

11 * * * *

12 I have reviewed this Stipulation and Agreement as to form and content and have advised
13 my clients accordingly.

14 7.16.20
15 DATED

Frank Buda
FRANK BUDA
Attorney for Respondent

17 * * * *

18 The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by
19 the Real Estate Commissioner as her Decision and Order, and shall become effective at 12
20 o'clock noon on JUN 08 2020

21 IT IS SO ORDERED May 8, 2020

23 DOUGLAS R. McCAULEY
24 REAL ESTATE COMMISSIONER

Douglas R. McCauley