

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670
5 Fax: (916) 263-3767

FILED

MAR 16 2015

BUREAU OF REAL ESTATE

By K. Contreras

6 BEFORE THE BUREAU OF REAL ESTATE

7 STATE OF CALIFORNIA

8 * * *

9 In the Matter of the First Amended Accusation of)
10)
11)
12)
13)
14)

PENINSULA BUSINESS SALES, INC.,)
a Corporation,)
MICHAEL ROBERT RUSSELL and)
JONATHAN WILLIAM SAPP,)
Respondents.)

NO. H-2823 FR

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

FOR PENINSULA BUSINESS
SALES, INC., ONLY

15 It is hereby stipulated by and between Respondent PENINSULA BUSINESS
16 SALES, INC. (herein "Respondent"), by and through Frank M. Buda, attorney of record herein
17 for Respondent, and the Complainant, acting by and through Mary F. Clarke, Counsel for the
18 Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing
19 of the First Amended Accusation filed on August 27, 2013 in this matter (herein "the
20 Accusation"):

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

26 2. Respondent has received, read and understands the Statement to Respondent,

1 the Discovery Provisions of the APA, the Accusation and the First Amended Accusation filed by
2 the Bureau in this proceeding.

3 3. A Notice of Defense was filed on May 17, 2013, by Respondent pursuant to
4 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
5 in the Accusation, filed April 25, 2013, as well as the aforementioned First Amended Accusation.
6 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that it understands that by withdrawing said Notice of Defense, it will thereby
8 waive its rights to require the Real Estate Commissioner (herein "Commissioner") to prove the
9 allegations in the First Amended Accusation at a contested hearing held in accordance with the
10 provisions of the APA and that it will waive other rights afforded to it in connection with the
11 hearing such as the right to present evidence in defense of the allegations in the First Amended
12 Accusation and the right to cross-examine witnesses.

13 4. This Stipulation is based on the factual allegations contained in the First
14 Amended Accusation. In the interests of expedience and economy, Respondent chose not to
15 contest these allegations, but to remain silent and understands that, as a result thereof, these
16 factual allegations, without being admitted or denied, will serve as a prima facie basis for the
17 disciplinary action stipulated to herein. The Commissioner shall not be required to provide
18 further evidence to prove said factual allegations.

19 5. This Stipulation and Respondent's decision not to contest the Accusation are
20 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
21 limited to this proceeding and any other proceeding or case in which the Bureau of Real Estate
22 ("Bureau"), or another licensing agency of this state, another state or if the federal government is
23 involved and otherwise shall not be admissible in any other criminal or civil proceedings.

24 6. It is understood by the parties that the Commissioner may adopt the Stipulation
25 and Agreement in Settlement and Order as his decision in this matter, thereby imposing the
26

1 penalty and sanctions on Respondent's real estate license and license rights as set forth in the
2 below "Order". In the event the Commissioner in his discretion does not adopt the Stipulation
3 and Agreement in Settlement and Order, it shall be void and of no effect, and Respondent shall
4 retain the right to a hearing and proceeding on the First Amended Accusation under all the
5 provisions of the APA and shall not be bound by any admission or waiver made herein.

6 7. The Order or any subsequent Order of the Commissioner made pursuant to this
7 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar
8 to any further administrative or civil proceedings by the Bureau with respect to any matters
9 which were not specifically alleged to be causes for the First Amended Accusation in this
10 proceeding.

11 8. Respondent understands that by agreeing to this Stipulation and Agreement in
12 Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the California
13 Business and Professions Code (herein "Code"), the cost of the audit which resulted in the
14 determination that Respondent committed the violations found in the Determination of Issues.
15 The amount of said costs is \$5,700.56.

16 9. Respondent understands that by agreeing to this Stipulation and Agreement in
17 Settlement and Order, the findings set forth below in the Determination of Issues become final,
18 and that the Commissioner may charge said Respondent, for the costs of any audit conducted
19 pursuant to Section 10148 of the Code to determine if the trust fund violations found in the
20 Determination of Issues, below, have been corrected. The maximum costs of said audit shall not
21 exceed \$5,700.56.

22 10. Respondent further understands that by agreeing to this Stipulation and
23 Agreement in Settlement and Order, Respondent agrees to pay, pursuant to Section 10106(a) of
24 the Code, investigative and enforcement costs of \$4,330.90 which led to this disciplinary action.

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1 DETERMINATION OF ISSUES

2 The acts and omissions of Respondent as described in the First Amended
3 Accusation are grounds for the suspension or revocation of the license and license rights of
4 Respondent under the following provisions of the Code and/or Chapter 6, Title 10, California
5 Code of Regulations (herein "the Regulations"):

- 6 (a) as to Paragraph 10(a) and Respondent under Sections 10085 and
7 10085.6 of the Code and Section 2970 of the Regulations in
8 conjunction with Section 10177(d) of the Code;
- 9 (b) as to Paragraph 10(b) and Respondent under Sections 10145 and
10 10146 of the Code and Sections 2832 and 2972 of the Regulations in
11 conjunction with Section 10177(d) of the Code;
- 12 (c) as to Paragraph 10(c) and Respondent under Section 10145(c) of the
13 Code in conjunction with Section 10177(d) of the Code;
- 14 (d) as to Paragraph 10(d) and Respondent under Section 2831 of the
15 Regulations in conjunction with Section 10177(d) of the Code;
- 16 (e) as to Paragraph 10(e) and Respondent under Section 10145(g) of the
17 Code and Section 2831.1 of the Regulations in conjunction with
18 Section 10177(d) of the Code;
- 19 (f) as to Paragraph 10(f) and Respondent under Section 2831.2 of the
20 Regulations in conjunction with Section 10177(d) of the Code;
- 21 (g) as to Paragraph 10(g) and Respondent under Section 2872 of the
22 Regulations in conjunction with Section 10177(d) of the Code; and
- 23 (h) as to Paragraph 10(h) and Respondent under Section 10176(e) of the
24 Code and Section 2835 of the Regulations in conjunction with
25 Section 10177(d) of the Code.
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1
2 ORDER

3 All licenses and licensing rights of Respondent under the Real Estate Law are
4 suspended for a period of sixty (60) days from the effective date of this Order; provided,
5 however, that:

6 1. Thirty (30) days of said sixty (60) day said suspension shall be stayed for two
7 (2) years upon the following terms and conditions:

8 (a) Respondent shall obey all laws, rules and regulations governing the
9 rights, duties and responsibilities of a real estate licensee in the
10 State of California; and,

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

17 2. The remaining thirty (30) days of said sixty (60) day suspension shall be
18 stayed upon the condition that Respondent petitions, pursuant to Section 10175.2 of the Code,
19 and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00 for
20 each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

21 (a) Said payment shall be in the form of a cashier's check or certified
22 made payable to the Bureau of Real Estate. Said check must be
23 delivered to the Bureau of Real Estate, Flag Section at P.O. Box
24 137013, Sacramento, CA 95813-7013, prior to the effective date of
25 this Order.

1 **(b) No further cause for disciplinary action against the Real Estate license**
2 of Respondent occurs within two (2) years from the effective date of
3 this Order.

4 **(c) If Respondent fails to pay the monetary penalty as provided above prior**
5 to the effective date of this Order, the suspension shall go into effect
6 automatically and remain in effect until Respondent pays the monetary
7 penalty in full, in which event Respondent shall not be entitled to any
8 repayment nor credit, prorated or otherwise, for the money paid to the
9 Bureau under the terms of this Order.

10 **(d) If Respondent pays the monetary penalty and any other moneys due**
11 under this Stipulation and Agreement in Settlement and if no further
12 cause for disciplinary action against the real estate license of
13 Respondent occurs within two (2) years from the effective date of this
14 Order, the entire stay hereby granted under this Order shall become
15 permanent.

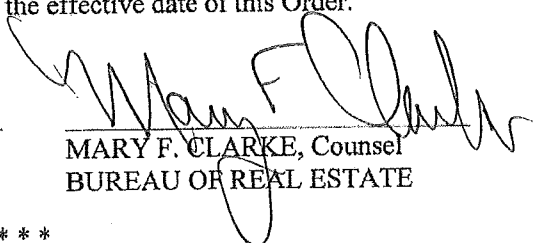
16 3. Respondent understands that by agreeing to this Stipulation and Agreement in
17 Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the Code, the cost
18 of the audit which resulted in the determination that Respondent committed the trust fund
19 violations found in the Determination of Issues, above. The amount of said cost is \$5,700.56.
20 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
21 Commissioner. If Respondent fails to pay such cost within the sixty (60) days, Respondent's real
22 estate license shall automatically be suspended until Respondent's payment is made in full.
23 Upon payment in full, the indefinite suspension provided for in this paragraph shall be stayed.

24 4. Respondent shall pay the Commissioner's costs, not to exceed \$5,700.56, of
25 any audit conducted pursuant to Section 10148 of the Code to determine if Respondent has
26

1 corrected the violations described in the Determination of Issues, above. In calculating the
2 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average
3 hourly salary for all persons performing audits of real estate brokers, and shall include an
4 allocation for travel time to and from the auditor's place of work. Respondent shall pay such
5 cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing
6 the activities performed during the audit and the amount of time spent performing those
7 activities. If Respondent fails to pay such cost within the sixty (60) days, Respondent's real estate
8 license shall automatically be suspended until Respondent's payment is made in full. Upon
9 payment in full, the indefinite suspension provided for in this paragraph shall be stayed.

10 5. Respondent shall pay the sum of \$4,330.90 for the Commissioner's
11 investigative and enforcement costs, pursuant to Section 10106(a) of the Code, for the
12 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
13 form of a cashier's check made payable to the Bureau of Real Estate. The investigative and
14 enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
15 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

16
17 2-11-15
18 DATED


19 MARY F. CLARKE, Counsel
20 BUREAU OF REAL ESTATE

21 * * *

22 I have read the Stipulation and Agreement in Settlement and Order and its terms
23 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
24 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
25 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
26 those rights, including the right of requiring the Commissioner to prove the allegations in the
27 Accusation at a hearing at which I would have the right to cross-examine witnesses against me

1 and to present evidence in defense and mitigation of the charges.

2 2-3-2015

3 DATED

PENINSULA BUSINESS SALES, INC.
Respondent

4 By: David Alan House
5 DAVID ALAN HOUSE
6 Designated Officer - Broker

7 * * *

8 I have reviewed the Stipulation and Agreement as to form and content and have
9 advised my clients accordingly.

10 2-3-2015

11 DATED

12 Frank M. Buda
FRANK M. BUDA
Attorney for Respondent

13 * * *

14 The foregoing Stipulation and Agreement in Settlement and Order is hereby
15 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

16 APR 6 2015

17 IT IS SO ORDERED MARCH 6, 2015.

18 REAL ESTATE COMMISSIONER

19 Jeffrey Mason

20 By: JEFFREY MASON
21 Chief Deputy Commissioner
22
23
24
25
26

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2 P. O. Box 137007
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BUREAU OF REAL ESTATE

By H. Contreras

7 BEFORE THE BUREAU OF REAL ESTATE
8 STATE OF CALIFORNIA

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10 In the Matter of the First Amended Accusation of)
11) NO. H-2823 FR
12 PENINSULA BUSINESS SALES, INC.,) STIPULATION AND AGREEMENT
13 a Corporation,) IN SETTLEMENT AND ORDER
14 MICHAEL ROBERT RUSSELL, and)
15 JONATHAN WILLIAM SAPP) AS TO JONATHAN WILLIAM SAPP
16) ONLY
17 Respondents.)

18 It is hereby stipulated by and between Respondent JONATHAN WILLIAM SAPP
19 (herein "Respondent"), by and through Roger D. Wintle, attorney of record herein for
20 Respondent, and the Complainant, acting by and through Mary F. Clarke, Counsel for the Bureau
21 of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing of the
22 First Amended Accusation filed on August 27, 2013, in this matter:

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

2. Respondent has received, read and understands the Statement to Respondent,

1 the Discovery Provisions of the APA, the Accusation and the First Amended Accusation filed by
2 the Bureau in this proceeding.

3 3. A Notice of Defense was filed on May 6, 2013, by Respondent pursuant to
4 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
5 in the Accusation filed April 24, 2013. Respondent hereby freely and voluntarily withdraws said
6 Notice of Defense. Respondent acknowledges that he understands that by withdrawing said
7 Notice of Defense, he will thereby waive his rights to require the Real Estate Commissioner
8 (herein "Commissioner") to prove the allegations in the First Amended Accusation at a contested
9 hearing held in accordance with the provisions of the APA and that he will waive other rights
10 afforded to him in connection with the hearing such as the right to present evidence in defense of
11 the allegations in the First Amended Accusation and the right to cross-examine witnesses.

12 4. Respondent, pursuant to the Determination of Issues set forth below, hereby
13 admits that the factual allegations in the First Amended Accusation filed in this proceeding are
14 true and correct, and the Real Estate Commissioner shall not be required to provide further
15 evidence of such allegations.

16 5. It is understood by the parties that the Commissioner may adopt the
17 Stipulation and Agreement in Settlement and Order as his decision in this matter thereby
18 imposing the penalty and sanctions on Respondent's real estate license and license rights as set
19 forth in the below "Order." In the event that the Commissioner in his discretion does not adopt
20 the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect, and
21 Respondent shall retain the right to a hearing and proceeding on the First Amended Accusation
22 under all the provisions of the APA and shall not be bound by any admission or waiver made
23 herein.

24 6. The Order or any subsequent Order of the Commissioner made pursuant to
25 this Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger,
26

1 or bar to any further administrative or civil proceedings by the Bureau with respect to any matters
2 which were not specifically alleged to be causes for First Amended Accusation in this
3 proceeding.

4 7. Respondent further understands that by agreeing to this Stipulation and
5 Agreement in Settlement and Order, Respondent agrees to pay \$2,441.45, pursuant to Section
6 10106(a) of the Code, investigative and enforcement costs which led to this disciplinary action.

7 DETERMINATION OF ISSUES

8 The acts and omissions of Respondent as described in the First Amended
9 Accusation, are grounds for the suspension or revocation of the license and license rights
10 of Respondent under Sections 10159.2, 10177(g) and (h) and 10177(b) of the Code and
11 Section 2725 Chapter 6, Title 10, California Code of Regulations.

12 ORDER

13 All licenses and licensing rights of Respondent under the Real Estate Law are
14 revoked; provided, however, a restricted real estate *salesperson* license shall be issued to
15 Respondent pursuant to Section 10156.5 of the Code if, within 90 days from the effective date
16 of the Decision entered pursuant to this Order, Respondent, prior to and as a condition of the
17 issuance of said restricted license makes application for the restricted license and pays to the
18 Bureau the appropriate fee therefor.

19 The restricted license issued to Respondent shall be subject to all of the
20 provisions of Section 10156.7 of the Code and to the following limitations, conditions, and
21 restrictions imposed under authority of Section 10156.6 of that Code:

22 1. The restricted license issued to Respondent may be suspended prior to
23 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo
24 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real
25 estate licensee.

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

6 3. Respondent shall not be eligible to apply for the issuance of an
7 unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions
8 of a restricted license until two (2) years have elapsed from the effective date of this Order.

9 4. Respondent shall submit with any application for license under an
10 employing broker, or any application for transfer to a new employing broker, a statement signed
11 by the prospective employing real estate broker on a form approved by the Bureau which shall
12 certify that:

13 (a) The employing broker has read the Decision of the
14 Commissioner which granted the right to a restricted license;
15 and

16 (b) The employing broker will exercise close supervision over
17 the performance by the restricted licensee relating to
18 activities for which a real estate license is required.

19 If Respondent fails to satisfy this condition in a timely manner as
20 provided for herein, Respondent's real estate license shall **automatically be suspended**
21 until Respondent satisfies this condition.

22 5. All licenses and licensing rights of Respondent are indefinitely suspended
23 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
24 successfully completed the continuing education course on trust fund accounting and handling
25 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
26

1 Code. Proof of satisfaction of these requirements includes evidence that Respondent has
2 successfully completed the trust fund account and handling continuing education courses, no
3 earlier than 120 days prior to the effective date of the Order in this matter. **Proof of completion**
4 **of the trust fund accounting and handling course must be delivered to the Bureau of Real**
5 **Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-**
6 **8758, prior to the effective date of this Order.**

7 6. All licenses and licensing rights of Respondent are indefinitely
8 suspended unless or until Respondent pays the sum of \$2,441.45 for the Commissioner's
9 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
10 payment shall be in the form of a cashier's check made payable to the Bureau of Real Estate.
11 **The investigative and enforcement costs must be delivered to the Bureau of Real Estate,**
12 **Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of**
13 **this Order.**

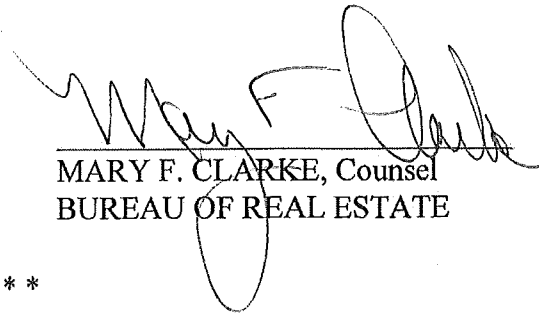
14 7. Respondent shall, within nine (9) months from the effective date of this
15 **Order,** present evidence satisfactory to the Commissioner that Respondent has, since the most
16 recent issuance of an original or renewal real estate license, taken and successfully completed the
17 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
18 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate
19 license shall automatically be suspended until Respondent presents evidence satisfactory to the
20 Commissioner of having taken and successfully completed the continuing education
21 requirements. **Proof of completion of the continuing education courses must be delivered to**
22 **the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.**

23 8. Respondent shall, within six (6) months from the effective date of this
24 **Order,** take and pass the Professional Responsibility Examination administered by the Bureau
25 including the payment of the appropriate examination fee. If Respondent fails to satisfy this

1 condition, Respondent's real estate license shall automatically be suspended until Respondent
2 passes the examination.

3
4 2-17-15

5 DATED


6 
7 MARY F. CLARKE, Counsel
8 BUREAU OF REAL ESTATE

9 * * *

10 I have read the Stipulation and Agreement in Settlement and Order and its terms
11 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
12 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
13 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
14 those rights, including the right of requiring the Commissioner to prove the allegations in the
15 First Amended Accusation at a hearing at which I would have the right to cross-examine
16 witnesses against me and to present evidence in defense and mitigation of the charges.

17 February 6, 2015

18 DATED

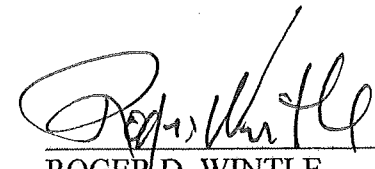
19 
20 JONATHAN WILLIAM SAPP
21 Respondent

22 * * *

23 I have reviewed the Stipulation and Agreement in Settlement and Order as to form
24 and content and have advised my client accordingly.

25 2/10/15

26 DATED

27 
ROGER D. WINTLE
Attorney for Respondent

* * *

1 The foregoing Stipulation and Agreement in Settlement and Order is hereby
2 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

3 APR 6 2015

4 IT IS SO ORDERED MARCH 6, 2015.

7 REAL ESTATE COMMISSIONER

8 

9 By: JEFFREY MASON
10 Chief Deputy Commissioner