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2 BUREAU OF REAL ESTATE
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FILED

APR 17 2014

BUREAU OF REAL ESTATE

By 

8
9 BEFORE THE BUREAU OF REAL ESTATE

10 STATE OF CALIFORNIA

11 In the Matter of the Accusation of)
12 MFS/TA, INC.,) NO. H-4314 SD
13 ROBERT ALLEN KISLING and) STIPULATION AND AGREEMENT
14 BARBARA LEE MCMANUS,) IN SETTLEMENT AND ORDER
15 Respondents.) (As to Barbara Lee McManus Only)
16)

17 It is hereby stipulated by and between Respondent BARBARA LEE MCMANUS,
18 (“Respondent”), and her attorney, Edward O. Lear, and the Complainant, acting by and through
19 John W. Barron, Counsel for the Bureau of Real Estate (“the Bureau”), as follows for the purpose
20 of settling and disposing of the Third Amended Accusation, only as it pertains to Respondent,
21 filed on August 28, 2013, in this matter (“the Accusation”):

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 in Settlement and Order.
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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 in this proceeding.

3 3. A Notice of Defense was filed on March 22, 2012, by Respondent, pursuant to
4 Section 11505 of the Government Code for the purpose of requesting a hearing on the
5 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
6 of Defense. Respondent acknowledges that she understands that by withdrawing said Notice of
7 Defense, she will thereby waive her right to require the Commissioner to prove the allegations
8 in the Accusation at a contested hearing held in accordance with the provisions of the APA and
9 that she will waive other rights afforded to her in connection with the hearing such as the right
10 to present evidence in defense of the allegations in the Accusation and the right to cross-
11 examine witnesses.

12 4. This Stipulation and Agreement in Settlement and Order is based on the
13 factual allegations contained in the Accusation. In the interests of expedience and economy,
14 Respondent choses not to contest these allegations at hearing, but rather understands that, as a
15 result thereof, these allegations, without being admitted or denied, will serve as a prima facie
16 basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not
17 be required to provide further evidence to prove said factual allegations.

18 5. This Stipulation and Respondent's decision not to contest the Accusation are
19 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
20 limited to this proceeding and any other proceeding or case in which the Bureau, the state or
21 federal government, an agency of this state, or an agency of another state is involved.

22 6. It is understood by the parties that the Real Estate Commissioner may adopt
23 the Stipulation and Agreement in Settlement and Order as his decision in this matter thereby
24 imposing the penalty and sanctions on Respondent's real estate licenses and license rights as
25 set forth in the below "Order". In the event that the Commissioner in his discretion does not
26 adopt the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect,
27

1 and Respondent shall retain the right to a hearing and proceeding on the Accusation under all
2 the provisions of the APA and shall not be bound by any admission or waiver made herein.

3 7. The Order or any subsequent Order of the Real Estate Commissioner made
4 pursuant to this Stipulation and Agreement in Settlement and Order shall not constitute an
5 estoppel, merger, or bar to any further administrative or civil proceedings by the Bureau with
6 respect to any matters which were not specifically alleged to be causes for accusation in this
7 proceeding.

8 DETERMINATION OF ISSUES

9 The acts and omissions of Respondent as described in the Accusation are
10 grounds for the suspension or revocation of the license and license rights of Respondent under
11 Sections 10137 (employment by and/or acceptance of compensation from someone other than
12 employing broker), and 10177(d) (willful disregard/violation of Real Estate Law) and/or
13 10177(g) (negligence/incompetence) of the Code.

14 ORDER

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

18 1. Thirty (30) days of said suspension shall be stayed, upon the condition
19 that Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
20 pursuant to Section 10175.2 of the Business and Professions Code at a rate of \$50.00 for each of
21 the remaining 30-days of the suspension for a total monetary penalty of \$1,500.00.

22 a. Said payment shall be in the form of a cashier's check or certified
23 check made payable to the Consumer Recovery Account of the Real Estate Fund. Said check
24 must be delivered to the Bureau prior to the effective date of the Decision in this matter.

25 b. No further cause for disciplinary action against the real estate
26 license of Respondent occurs within two (2) years from the effective date of the decision in this
27 matter.

1 c. If Respondent fails to pay the monetary penalty in accordance with
2 the terms and conditions of the Decision, the Commissioner shall, without a hearing, order the
3 immediate execution of all or any part of the stayed suspension, in which event, Respondent shall
4 not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau
5 under the terms of this decision.

6 d. If Respondent pays the monetary penalty, and if no further cause
7 for disciplinary action against the real estate license of Respondent occurs within two (2) years
8 from the effective date of the Decision herein, then the stay hereby granted shall become
9 permanent.

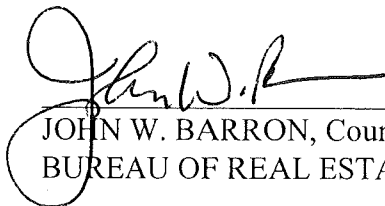
10 2. The remaining thirty (30) days of said suspension shall be stayed for two
11 (2) years upon the following terms and conditions:

12 a. Respondent shall obey all laws, rules and regulations governing the
13 rights, duties and responsibilities of a real estate licensee in the State of California; and

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

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

25
26 3/3/14
27 DATED


JOHN W. BARRON, Counsel
BUREAU OF REAL ESTATE

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I have read the Stipulation and Agreement in Settlement and Order and 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 APA (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and 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.

February 28, 2014
DATED

Barbara Lee McManus
BARBARA LEE McMANUS
Respondent

I have reviewed this Stipulation and Agreement In Settlement and Order as to form and content and have advised my client accordingly.

2/28/14
DATED

Edward O. Lear
EDWARD O. LEAR
Attorney for Respondent

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

MAY 08 2014

IT IS SO ORDERED APR 11 2014

REAL ESTATE COMMISSIONER

Jeffrey Mason

By: JEFFREY MASON
Chief Deputy Commissioner