

FILED

OCT - 6 2020

DEPT. OF REAL ESTATE

By *at*

1 Department of Real Estate
2 320 W. 4th Street, Suite 350
3 Los Angeles, CA 90013-1105
4 Telephone: (213) 576-6982
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9 **BEFORE THE DEPARTMENT OF REAL ESTATE**
10 **STATE OF CALIFORNIA**

11 * * *

12 In the Matter of the Accusation of

13 **KEVIN CHARLES CHURCHILL,**

14 **Respondent.**

) DRE No. H-05068 SD

) OAH No. 2019090172

) **STIPULATION AND AGREEMENT**
) **IN SETTLEMENT AND ORDER**

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18 It is hereby stipulated by and between Respondent KEVIN CHARLES
19 CHURCHILL (sometimes referred to as "Respondent") and the Complainant, acting by and
20 through Judith B. Vasan, Counsel for the Department of Real Estate, as follows for the purpose
21 of settling and disposing of the Accusation ("Accusation") filed on July 11, 2019, in this matter:

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").

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STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

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 Department of Real Estate
3 (“Department”) in this proceeding.

4 3. Respondent filed a Notice 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 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that he understands that by withdrawing said Notice of Defense Respondent
8 thereby waives his right to require the Commissioner to prove the allegations in the Accusation
9 at a contested hearing held in accordance with the provisions of the APA and that Respondent
10 will waive other rights afforded to him in connection with the hearing such as the right to present
11 evidence in their defense, and the right to cross-examine witnesses.

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

15 5. It is understood by the parties that the Real Estate Commissioner may adopt
16 this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on
17 Respondent’s real estate licenses and license rights as set forth in the below “Order.” In the event
18 that the Commissioner in his discretion does not adopt the Stipulation, the Stipulation shall be
19 void and of no effect and Respondent shall retain the right to a hearing and proceed on the
20 Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver
21 made herein.

22 6. The Order or any subsequent Order of the Real Estate Commissioner made
23 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department with respect to any matters which were
25 not specifically alleged to be causes for accusation in this proceeding.

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1 DETERMINATION OF ISSUES

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

4 The conduct, acts or omissions of Respondent KEVIN CHARLES CHURCHILL,
5 as set forth in the Accusation, are in violation of the Real Estate Law, Part 1 of Division 4 of the
6 California Business and Professions Code ("Code") sections 10145, 10159.5, 10176(e), and
7 10176(f) and Section 2731, 2831, 2831.1, 2831.2, 2832, and 2835 of Title 10, Chapter 6, of the
8 California Code of Regulations and are a basis for discipline of Respondent KEVIN CHARLES
9 CHURCHILL's licenses and license rights pursuant to Code sections 10177(d) and/or 10177(g).

10 ORDER

11 WHEREFORE, THE FOLLOWING ORDER is hereby made:

12 I.

13 All licenses and license rights of Respondent KEVIN CHARLES CHURCHILL
14 under the Real Estate Law are suspended for a period of ninety (90) days from the effective date
15 of this Decision and Order; provided, however, that:

16 A. The initial sixty (60) days of said suspension shall be stayed upon the
17 following terms and conditions:

18 1. Respondent shall pay a monetary penalty pursuant to Code section
19 10175.2 at the rate of \$50.00 per day for each of the sixty (60) days of suspension for a total
20 monetary penalty of \$3,000.00.

21 2. Said payment shall be in the form of a cashier's check made payable to
22 the Department of Real Estate. Said check must be delivered to the Department of Real Estate,
23 Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013, within sixty (90) days of the
24 effective date of this Decision and Order.

25 3. No further cause for disciplinary action against the real estate license of
26 Respondent occurs within one (1) year from the effective date of the Decision in this matter.

1 4. If Respondent fails to pay the monetary penalty in accordance with the
2 terms and conditions of the Decision and Order, the suspension shall go into effect automatically.
3 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money
4 paid to the Department under the terms of this Decision and Order.

5 5. If Respondent pays the monetary penalty and if no further cause for
6 disciplinary action against the real estate license of Respondent occurs within one (1) year from
7 the effective date of the Decision, the entire stay hereby granted pursuant to this Decision and
8 Order shall become permanent.

9 B. The remaining thirty (30) days shall be stayed for two (2) years upon the
10 following terms and conditions:

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

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

19 II.

20 Pursuant to Code section 10148, Respondent shall pay the Commissioner's
21 reasonable costs for the audit which led to this disciplinary action in the amount of \$3,588.99.
22 Respondent shall pay such costs within sixty (60) days of receiving an invoice therefore from the
23 Commissioner. Payment of the audit costs should not be made until Respondent receives the
24 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
25 Respondent's real estate licenses shall automatically be suspended until payment is made in full,
26 or until a decision providing otherwise is adopted following a hearing held pursuant to this
27 condition.

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III.

Pursuant to Code section 10148 of the Code, Respondent shall pay the Commissioner's reasonable costs, not to exceed \$4,486.24, for a subsequent audit to determine if Respondent has corrected the violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable costs, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such costs within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein, Respondent's real estate license shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

IV.


All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent pays the sum of \$926.95 for the Commissioner's reasonable costs of investigation (\$168.65) and enforcement (\$758.30) which led to this disciplinary action. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate. Enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.

V.

All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent provides 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 these requirements includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course, no earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of

1 completion of the trust fund accounting and handling course must be delivered to the Department
2 of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 within sixty (60)
3 days from the effective date of this Decision and Order.

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5 DATED: 8-27-2020

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7 Judith B. Vasan, Counsel for
8 Department of Real Estate

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11 EXECUTION OF THE STIPULATION

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

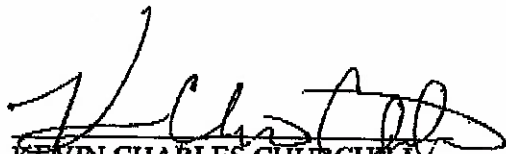
19 Respondent shall mail the original signed signature page of the stipulation herein
20 to Judith B. Vasan, Attention: Legal Section, Department of Real Estate, 320 W. Fourth St.,
21 Suite 350, Los Angeles, California 90013-1105.

22 In the event of time constraints before an administrative hearing, Respondent can
23 signify acceptance and approval of the terms and conditions of this Stipulation and Agreement
24 by emailing a scanned copy of the signature page, as actually signed by Respondent, to the
25 Department counsel assigned to this case. Respondent agrees, acknowledges and understands
26 that by electronically sending the Department a scan of Respondent's actual signature as it
27 appears on the Stipulation and Agreement that receipt of the scan by the Department shall be
binding on Respondent as if the Department had received the original signed Stipulation.

1 Respondent shall also mail the original signed signature page of this Stipulation to the
2 Department counsel.

3 Respondent's signature below constitutes acceptance and approval of the terms
4 and conditions of this Stipulation and Agreement. Respondent agrees, acknowledges and
5 understands that by signing this Stipulation, Respondent is bound by its terms as of the date of
6 such signatures and that this agreement is not subject to rescission or amendment at a later date
7 except by a separate Decision and Order of the Real Estate Commissioner.

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10 DATED: 8/26/20


11 KEVIN CHARLES CHURCHILL
Respondent

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13 * * *

14 The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
15 Respondent KEVIN CHARLES CHURCHILL and shall become effective at 12 o'clock noon on
16 10/26/2020.

17 IT IS SO ORDERED 9.24.20

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19 DOUGLAS R. McCAULEY
20 REAL ESTATE COMMISSIONER

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