

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED

APR 28 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 JAMES ANASTASY KILPATRICK,)
15 Respondent.)

NO. H-10512 SF
STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

16
17 It is hereby stipulated by and between Respondent JAMES ANASTASY
18 KILPATRICK (herein "Respondent") and the Complainant, acting by and through Daniel E.
19 Kehew, Counsel for the Department of Real Estate (herein "the Department"), as follows for the
20 purpose of settling and disposing of the Accusation filed on September 12, 2008 in this matter:

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 Accusation, which hearing
23 was to be held in accordance with the provisions of the Administrative Procedure Act (herein
24 APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this
25 Stipulation and Agreement in Settlement.

26 2. Respondent has received, read and understand the Statement to Respondent, the
27 Discovery Provisions of the APA, and the Accusation filed by the Department in this proceeding.

1 3. A Notice of Defense was filed on September 23, 2008 by Respondent, pursuant
2 to Section 11505 of the Government Code, for the purpose of requesting a hearing on the
3 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
4 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
5 Defense he will thereby waive his right to require the Commissioner to prove the allegations in
6 the Accusation at a contested hearing held in accordance with the provisions of the APA and that
7 he will waive other rights afforded to him in connection with the hearing such as the right to
8 present evidence in defense of the allegations in the Accusation and the right to cross-examine
9 witnesses.

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

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

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

25 7. Respondent understands that by agreeing to this Stipulation and Agreement in
26 Settlement, Respondent agrees to pay, pursuant to Section 10148 of the Business and Professions
27 Code ("herein the Code"), the cost of the audit which resulted in the determination that

ORDER

- 1
- 2 1. All licenses and licensing rights of Respondent under the Real Estate Law are suspended
- 3 until such time as Respondent provides proof satisfactory to the Commissioner that
- 4 Respondent has, within one hundred twenty (120) days prior to the effective date of the
- 5 Decision herein completed the continuing education course on trust fund accounting and
- 6 handling specified in subdivision (a) of Section 10170.5 of the Code.
- 7 2. All licenses and licensing rights of Respondent under the Real Estate Law are suspended
- 8 for a period of sixty (60) days from the effective date of this Order; provided, however, that
- 9 said suspension shall be stayed upon the condition that Respondent petition pursuant to
- 10 Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of
- 11 the Code at a rate of \$50.00 for each day of the suspension for a total monetary penalty of
- 12 \$3,000.00:
- 13 (a) Said payment shall be in the form of a cashier's check or certified check made
- 14 payable to the Recovery Account of the Real Estate Fund. Said check must
- 15 be delivered to the Department prior to the effective date of the Order in this
- 16 matter.
- 17 (b) No further cause for disciplinary action against the real estate licenses of
- 18 Respondent occurs within two (2) years from the effective date of the Order in
- 19 this matter.
- 20 (c) If Respondent fails to pay the monetary penalty as provided above prior to the
- 21 effective date of this Order, the stay of the suspension shall be vacated and
- 22 the order of suspension shall be immediately executed, under this Order, in
- 23 which event, Respondent shall not be entitled to any repayment nor credit,
- 24 prorated or otherwise, for the money paid to the Department under the terms of
- 25 this Order.
- 26 (d) If Respondent pays the monetary penalty and any other moneys due under this
- 27 Stipulation and Agreement in Settlement and if no further cause for disciplinary

1 action against the real estate license of Respondent occurs within two (2) years
2 from the effective date of this Order, the entire stay hereby granted under this
3 Order shall become permanent.

4 3. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of \$4,884.40 for
5 the Commissioner's cost of the audit which led to this disciplinary action. Respondent
6 shall pay such cost within 60 days of receiving an invoice therefore from the
7 Commissioner. The Commissioner may indefinitely suspend all licenses and licensing
8 rights of Respondent pending a hearing held in accordance with Section 11500, et seq.,
9 of the Government Code, if payment is not timely made as provided for herein, or as
10 provided for in a subsequent agreement between Respondent and the Commissioner. The
11 suspension shall remain in effect until payment is made in full or until Respondent enters
12 into an agreement satisfactory to the Commissioner to provide for payment, or until a
13 decision providing otherwise is adopted following a hearing held pursuant to this
14 condition.

15 4. Respondent shall pay the Commissioner's costs, not to exceed \$4,884.40, of any audit
16 conducted pursuant to Section 10148 of the Code to determine if Respondent has
17 corrected the violations described in the Determination of Issues, above. In calculating
18 the amount of the Commissioner's reasonable cost, the Commissioner may use the
19 estimated average hourly salary for all persons performing audits of real estate brokers,
20 and shall include an allocation for travel time to and from the auditor's place of work.
21 Respondent shall pay such cost within 60 days of receiving an invoice therefore from the
22 Commissioner detailing the activities performed during the audit and the amount of time
23 spent performing those activities. If Respondent fails to pay such cost within the 60 days,
24 the Commissioner may indefinitely suspend all licenses and licensing rights of
25 Respondent under the Real Estate Law until payment is made in full or until Respondent
26 enters into an agreement satisfactory to the Commissioner to provide for payment. Upon
27 payment in full, the indefinite suspension provided in this paragraph shall be stayed.

1 5. Respondent shall, within six (6) months from the effective date of the Order, take and
2 pass the Professional Responsibility Examination administered by the Department,
3 including the payment of the appropriate examination fee. If Respondent fails to satisfy
4 this condition, the Commissioner may order the suspension of all licenses and licensing
5 rights until Respondent passes the examination.

6
7 2/11/09

8 DATED

9
10 *Daniel E. Kehew*

11 DANIEL E. KEHEW, Counsel
12 DEPARTMENT OF REAL ESTATE

13 * * *

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

21 **RECEIVED**
22 Dept of Real Estate

23 FEB 11 2009

24 DATED
25 SACRAMENTO LEGAL *JK*

26 *[Signature]*
27 JAMES ANASTASY KILPATRICK, Respondent

* * *

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

30 May 18, 2009.

31 IT IS SO ORDERED 4-8, 2009.

32 JEFF DAVI
33 Real Estate Commissioner

34 *[Signature]*

1 DANIEL E. KEHEW, Counsel (SBN 231550)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0425 (Direct)

FILED

SEP 12 2008

DEPARTMENT OF REAL ESTATE

By H. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 JAMES ANASTASY KILPATRICK,) H-10512 SF
14 Respondent.) ACCUSATION

15 The Complainant, E. J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against JAMES ANASTASY KILPATRICK (herein "Respondent"), is
18 informed and alleges as follows:

19 I

20 The Complainant, E. J. HABERER II, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

23 II

24 At all times herein mentioned, Respondent was and now
25 is licensed and/or has license rights under the Real Estate Law
26 (Part 1 of Division 4 of the Business and Professions Code)
27 (herein "the Code").

1 III

2 At all times herein mentioned, Respondent was and now
3 is licensed by the Department of Real Estate of the State of
4 California (herein "the Department") as a real estate broker.

5 IV

6 At all times herein mentioned, Respondent engaged in
7 the business of, acted in the capacity of, advertised, or assumed
8 to act as a real estate broker within the State of California
9 within the meaning of Sections 10131(a) and 10131(b) of the Code,
10 including:

11 (a) the operation and conduct of a property management
12 business with the public wherein, on behalf of others, for
13 compensation or in expectation of compensation, Respondent
14 leased or rented and offered to lease or rent, and placed for
15 rent, and solicited listings of places for rent, and solicited
16 for prospective tenants of real property or improvements thereon,
17 and collected rents from real property or improvements thereon;
18 and,

19 (b) the operation and conduct of a mortgage loan
20 brokerage with the public wherein, on behalf of others, for
21 compensation or in expectation of compensation, Respondent
22 solicited lenders and borrowers for loans secured directly or
23 collaterally by liens on real property, and wherein Respondent
24 arranged, negotiated, processed, and consummated such loans.

25 V

26 In so acting as a real estate broker, as described in
27 Paragraph IV above, Respondent accepted or received funds in

1 trust (herein "trust funds") from or on behalf of borrowers,
2 lenders, owners, tenants and others in connection with the
3 leasing, renting, and collection of rents on real property or
4 improvements thereon, and in connection with negotiating loans
5 secured by real property, as alleged herein, and thereafter from
6 time to time made disbursements of said funds.

7 VI

8 The aforesaid trust funds accepted or received by
9 Respondent were deposited or caused to be deposited by Respondent
10 into one or more bank accounts (herein "trust fund accounts")
11 maintained by Respondent for the handling of trust funds,
12 including but not necessarily limited to the following accounts
13 maintained by Respondent at the San Francisco, California branch
14 of Bank of America:

15 (a) the "James Erin Kilpatrick Highview Property
16 Management" account, account number 00333-49874 (herein "Bank
17 Account 1");

18 (b) the "3570 Pacheco Lakeside LP" account, account
19 number 00333-66680 (herein "Bank Account 2");

20 (c) the "James Erin Kilpatrick & Company" account,
21 account number 00336-49702 (herein "Bank Account 3"); and,

22 (d) the "PDLA, LLC High View Property Management"
23 account, account number 00338-49824 (herein "Bank Account 4").

24 VII

25 Between on or about January 1, 2007 and on or about
26 November 30, 2007, in connection with the collection and
27 disbursement of said trust funds, Respondent:

1 (a) failed to place trust funds entrusted to Respondent
2 into the hands of a principal on whose behalf the funds were
3 received, into a neutral escrow depository, or into a trust fund
4 account in the name of Respondent as trustee at a bank or other
5 financial institution, in conformance with the requirements of
6 Section 10145 of the Code and Section 2832(a) of Chapter 6, Title
7 10, California Code of Regulations (herein "the Regulations"), in
8 that Respondent placed such funds in Bank Accounts #1, #2, #3 and
9 #4, accounts that were not in the name of Respondent as trustee;

10 (b) caused, suffered and permitted Margaret Sharkey,
11 an unlicensed, unbonded person who was not Respondent's employee,
12 to make disbursements from Bank Account #4, in violation of
13 Section 2834 of the Regulations.

14 VIII

15 Between on or about January 1, 2007 and on or about
16 November 30, 2007, in connection with the property management and
17 mortgage loan brokerage activities described in Paragraph IV,
18 Respondent:

19 (a) failed to maintain in effect a written broker-
20 salesperson relationship agreement covering supervision and
21 compensation with Osvaldo Munoz, a real estate salesperson
22 employed by Respondent, in violation of Section 2726 of the
23 Regulations;

24 (b) failed to make available for inspection by the
25 designated representative of the Real Estate Commissioner the
26 real estate licenses of real estate salespersons employed by
27 Respondent, in violation of Section 10160 of the Code;

1 (c) failed to immediately notify the Real Estate
2 Commissioner when Respondent terminated licensed real estate
3 salesperson Cory Elizabeth Alpert from Respondent's employ, in
4 violation of Section 10161.8(b) of the Code; and,

5 (d) failed to retain for three years copies of
6 invoices received by Respondent in connection with Respondent's
7 property management and trust fund handling activities, in
8 violation of Section 10148 of the Code.

9 IX

10 The facts alleged above are grounds for the suspension
11 or revocation of the licenses and license rights of Respondent
12 under the following provisions of the Code and/or the
13 Regulations:

14 (a) as to Paragraph VII(a) under Section 10145 of the
15 Code and Section 2832(a) of the Regulations in conjunction with
16 Section 10177(d) of the Code;

17 (b) as to Paragraph VII(b) under Section 2834 of the
18 Regulations in conjunction with Section 10177(d) of the Code;


19 (c) as to Paragraph VIII(a) under Section 2726 of the
20 Regulations in conjunction with Section 10177(d) of the Code;

21 (d) as to Paragraph VIII(b) under Section 10160 of the
22 Code in conjunction with Sections 10165 and 10177(d) of the Code;

23 (e) as to Paragraph VIII(c) under Section 10161.8(b)
24 of the Code in conjunction with Sections 10165 and 10177(d) of
25 the Code; and

26 (f) as to Paragraph VIII(d) under Section 10148 of the
27 Code in conjunction with Section 10177(d) of the Code.

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary action
4 against all licenses and license rights of Respondent under the
5 Real Estate Law (Part 1 of Division 4 of the Business and
6 Professions Code) and for such other and further relief as may be
7 proper under other applicable provisions of law.

8
9
10
11 
12 _____
 E. J. HABERER II
 Deputy Real Estate Commissioner

13
14
15 Dated at Oakland, California
16 this 26th day of August, 2008.