

FILED

MAY 14 2012

1 Department of Real Estate  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By R. Jones

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \*

10 In the Matter of the Accusation of )

No. H-10955 SF

11 MARGUERITE ANNE NOGOSEK, )  
12 MARGUERITE NOGOSEK, INC., CEDAR )  
13 MORTGAGE COMPANY, INC., AND )  
14 KATHRYN HISERT )

STIPULATION AND AGREEMENT  
IN SETTLEMENT AND ORDER  
(as to Kathryn Hisert only)

15 Respondents. )

16 It is hereby stipulated by and between Respondent KATHRYN HISERT only  
17 (hereinafter "HISERT"), acting in pro per, and the Complainant, acting by and through Kenneth C.  
18 Espell, Counsel for the Department of Real Estate (hereinafter "Department"), as follows for the  
19 purpose of settling and disposing of the Accusation filed on June 30, 2010, in this matter.

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

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

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2           3. On July 9, 2010, HISERT filed a Notice of Defense pursuant to Section  
3 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the  
4 Accusation. HISERT hereby freely and voluntarily withdraws said Notice of Defense. HISERT  
5 acknowledges that she understands that by withdrawing said Notice of Defense, HISERT  
6 will thereby waive her rights to require the Commissioner to prove the allegations in the  
7 Accusation at a contested hearing held in accordance with the provisions of the APA and that  
8 HISERT will waive other rights afforded to her in connection with the hearing, such as the right to  
9 present evidence in defense of the allegations in the Accusation and the right to cross-examine  
10 witnesses.

11           4. This Stipulation is based on the factual allegations contained in the  
12 Accusation. In the interest of expedience and economy, HISERT chooses not to contest these  
13 factual allegations, but to remain silent and understand that, as a result thereof, the factual  
14 statements contained in the Accusation will serve as the prima facie basis for the "Determination of  
15 Issues" and "Order" set forth below. The Real Estate Commissioner shall not be required to provide  
16 further evidence to prove such allegations.

17           5. Respondent, pursuant to the limitations set forth below, hereby admits that the  
18 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are  
19 true and correct and the Real Estate Commissioner shall not be required to provide further  
20 evidence of such allegations.

21           6. It is understood by the parties that the Real Estate Commissioner may  
22 adopt the Stipulation and Agreement as the Commissioner's decision in this matter, thereby  
23 imposing the penalty and sanctions on HISERT's real estate license and license rights as set  
24 forth in the "Order" below. In the event that the Commissioner does not adopt the Stipulation  
25 and Agreement, it shall be void and of no effect, and HISERT shall retain the right to a  
26 hearing and proceeding on the Accusation under all the provisions of the APA and shall not be  
27 bound by any admission or waiver made herein.



1 execution of all or any part of the stayed suspension in which event the Respondent shall not be  
2 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department  
3 under the terms of this Decision.

4 5. If Respondent pays the monetary penalty, and if no further cause for  
5 disciplinary action against the real estate license of Respondent occurs within four (4) years from  
6 the effective date of the Decision, the stay hereby granted shall become permanent.

7 6. The remaining twenty (20) days of said suspension shall be stayed for four (4)  
8 year upon the following terms and conditions:

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

11 (b) That no final subsequent determination is made, after hearing or upon  
12 stipulation, that cause for disciplinary action occurred within four (4) years from the effective  
13 date of this Order. Should such a determination be made, the Commissioner may, in the  
14 Commissioner's sole discretion, vacate and set aside the stay order and re-impose all or a portion  
15 of the stayed suspension. Should no such determination be made, the stay imposed herein shall  
16 become permanent.

17 7. Respondent HISERT shall, within six (6) months from the effective date  
18 of the decision, take and pass the Professional Responsibility Examination administered by  
19 the Department, including the payment of the appropriate examination fee. If HISERT  
20 fails to satisfy this condition, the Commissioner may order the suspension of all licenses and  
21 licensing rights until HISERT passes the examination.

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1                    8. Notwithstanding any other provision of this Order, all licenses and license  
 2 rights of HISERT are indefinitely suspended unless or until she provides proof satisfactory to  
 3 the Commissioner that she has taken and successfully completed the continuing education  
 4 course on trust fund accounting and handling specified in Section 10170.5(a)(3) of the Code.  
 5 Proof of satisfaction of this requirement includes evidence that HISERT has successfully  
 6 completed the trust fund accounting and handling continuing education course within 120 days  
 7 prior to the effective date of Commissioner's Order.

8                    9. HISERT shall notify the Commissioner in writing within 72 hours of any  
 9 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post  
 10 Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of  
 11 HISERT's arrest, the crime(s) for which HISERT was arrested, and the name and address of the  
 12 arresting law enforcement agency. HISERT's failure to timely file written notice shall  
 13 constitute an independent violation of the terms of this *Stipulation and Agreement* and shall be  
 14 grounds for the suspension or revocation of HISERT's real estate licenses.

15                    1/19/2012



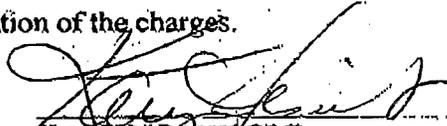
16 DATED

16 KENNETH C. ESPELL,  
 17 Real Estate Counsel II  
 18 DEPARTMENT OF REAL ESTATE

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19                    I have read the Stipulation and Agreement and its terms are understood by me  
 20 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the  
 21 California Administrative Procedure Act (including but not limited to Sections 11506, 11508,  
 22 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily  
 23 waive those rights, including the right of requiring the Commissioner to prove the allegations  
 24 in the accusation at a hearing at which I would have the right to cross-examine witnesses against  
 25 me and present evidence in defense and in mitigation of the charges.

26                    01/18/2012



27 DATED

KATHRYN HISERT  
 Respondent

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The foregoing Stipulation and Agreement is hereby adopted by me as my  
Decision in this matter as to respondent KATHRYN HISERT and shall become effective at  
12 o'clock noon on JUN 04 2012

IT IS SO ORDERED: 4/22/12

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel