

FILED
OCT 10 2011

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

4 Telephone: (916) 227-0789

By [Signature]

5
6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	DRE No. H-11142 SF
)	
12 VALLEY OF CALIFORNIA, INC.)	<u>STIPULATION AND AGREEMENT</u>
13 and MARY KATHLEEN RYBOLT,)	<u>IN SETTLEMENT AND ORDER</u>
)	
14)	
15 Respondents.)	

16 It is hereby stipulated by and between VALLEY OF CALIFORNIA, INC.
17 (VOC), MARY KATHLEEN RYBOLT (RYBOLT), and their attorney, Stephen W. Thomas,
18 and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of
19 Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on May
20 23, 2011, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondents at a formal hearing on the Accusation, which
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
24 ("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 ///

27 ///

1 2. Respondents have received, read and understand the Statement to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
3 of Real Estate in this proceeding.

4 3. On June 3, 2011, VOC and RYBOLT filed Notices of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
7 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
8 Notices of Defense they will thereby waive their rights to require the Commissioner to prove
9 the allegations in the Accusation at a contested hearing held in accordance with the provisions
10 of the APA and that they will waive other rights afforded to them in connection with the
11 hearing such as the right to present evidence in defense of the allegations in the Accusation and
12 the right to cross-examine witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that
14 the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding
15 are true and correct and the Real Estate Commissioner shall not be required to provide further
16 evidence of such allegations.

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

24 ///
25 ///
26 ///
27 ///

1 c. No further cause for disciplinary action against the real estate license of VOC
2 occurs within one year from the effective date of the Decision in this matter.

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

8 e. If VOC pays the monetary penalty, and if no further cause for disciplinary
9 action against the real estate license of RMPM occurs within one (1) year from the effective
10 date of the Decision, the stay hereby granted shall become permanent.

11
12 II. MARY KATHLEEN RYBOLT

13 1. The real estate broker license and license rights of Respondent MARY
14 KATHLEEN RYBOLT (RYBOLT), under the Real Estate Law are suspended for a period of
15 thirty (30) days from the effective date of this Order; provided, however, that:

16 a) RYBOLT shall obey all laws, rules and regulations governing the rights,
17 duties and responsibilities of a real estate licensee in the State of California; and,

18 b) That no final subsequent determination be made, after hearing or upon
19 stipulation that cause for disciplinary action occurred within one (1) year from the effective
20 date of this Order. Should such a determination be made, the Commissioner may, in her
21 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
22 suspension. Should no such determination be made, the stay imposed herein shall become
23 permanent.

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

1 Proof of satisfaction of this requirement includes evidence that has successfully completed the
2 trust fund account and handling continuing education course within 120 days prior to the
3 effective date of the Decision in this matter.
4

5
6 8/29/11

7 DATED

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

RICHARD K. UNO, Counsel
DEPARTMENT OF REAL ESTATE

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 Administrative Procedure Act (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.

8/23/11
DATED

Mary Kathleen Rybolt
MARY KATHLEEN RYBOLT
Designated Broker Officer for Respondent
VALLEY OF CALIFORNIA, INC.

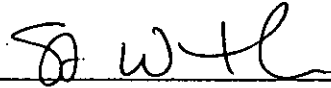
8/23/11
DATED

Mary Kathleen Rybolt
MARY KATHLEEN RYBOLT
Respondent

1
2 *I have reviewed this Stipulation and Agreement as to form and content and have*
3 *advised my client accordingly.*

4
5 8/23/11

6 DATED

7 

8 Stephen W. Thomas
9 Attorney for Respondents
10 VALLEY OF CALIFORNIA, INC. and
11 MARY KATHLEEN RYBOLT

12 ***

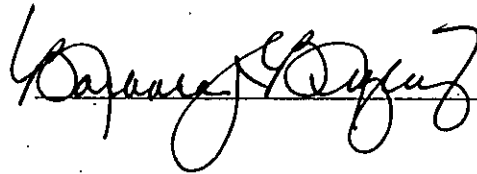
13 The foregoing Stipulation and Agreement is hereby adopted by the Real Estate
14 Commissioner as her Decision and Order and shall become effective at 12 o'clock noon on

15 OCT 31 2011

16 IT IS SO ORDERED

17 9/28/11

18 BARBARA J. BIGBY
19 Acting Real Estate Commissioner

20 

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-2380 (Direct)
6 (916) 227-0789
7

FILED

MAY 23 2011

DEPARTMENT OF REAL ESTATE

By R. Uno

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-11142 SF
13 VALLEY OF CALIFORNIA, INC.)
14 and MARY KATHLEEN RYBOLT,) ACCUSATION
15 Respondents.)

16 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
17 the State of California for cause of Accusation against VALLEY OF CALIFORNIA, INC.
18 (VOC), and MARY KATHLEEN RYBOLT (RYBOLT), collectively referred to as
19 "Respondents", is informed and alleges as follows:

20 1

21 The Complainant makes this Accusation in his official capacity.

22 2

23 VOC is presently licensed and/or has license rights under the Real Estate Law,
24 Part I of Division 4 of the California Business and Professions Code (the Code), as a corporate
25 real estate broker.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3

RYBOLT is presently licensed and/or has license rights under the Code as real estate broker.

4

At all times herein mentioned, RYBOLT was licensed by the Department as the designated broker/officer of VOC. As the designated broker/officer, RYBOLT was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of VOC for which a real estate license is required.

5

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(a) of the Code, including the operation and conduct of a residential resale brokerage wherein Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

FIRST CAUSE OF ACTION

6

On or about May 26, 2009, Randy Kevin Pertner, who was licensed by the Department as a real estate salesperson, on behalf of VOC, prepared a purchase offer on behalf of John Finley (Buyer), for that certain real property, commonly known as 1077 Huntingdon Drive, San Jose, California (Huntingdon Property).

7

Buyer gave Pertner a deposit check in the amount of \$26,250.00 for the purchase of the Huntingdon property.

8

Pertner followed VOC policy and placed the deposit check in the designated box and asked an employee of VOC to call the escrow holder to pick up the deposit check.

1 9

2 VOC failed to cause the deposit check to be picked up and it was therefore not
3 deposited into escrow before buyer put a stop payment on the check on or around June 15, 2009.

4 10

5 On or about June 15, 2009, despite the fact that all contingencies were removed,
6 buyer notified Pertner that he was backing out of the deal and stopped payment on the deposit
7 check.

8 11

9 Seller sought to keep the deposit as liquidated damages, but was unable to do so
10 since VOC failed to cause the check to be deposited into escrow within 5 days of receipt as
11 agreed to by the parties in the contract of purchase.

12 12

13 VOC's acts and omissions described in Paragraphs 6 through 11 above, constitute
14 a violation of Section 10145 (Trust Fund Handling) of the Code and are grounds for the
15 suspension or revocation of the license and license rights of Respondent VOC under Section
16 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

17 SECOND CAUSE OF ACTION

18 13

19 Complainant refers to Paragraphs 1 through 12, above and incorporates the same
20 herein.

21 14

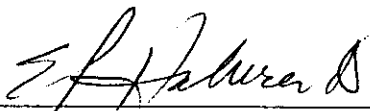
22 At all times herein above mentioned, RYBOLT, was responsible as the
23 supervising broker for VOC, for the supervision and control of the activities conducted on behalf
24 of VOC's business by its employees. RYBOLT failed to exercise reasonable supervision and
25 control over the property management activities of VOC. In particular, RYBOLT permitted,
26 ratified and/or caused the conduct described above, to occur, and failed to take reasonable steps,
27 including but not limited to handling of trust funds, supervision of employees, and the

1 implementation of policies, rules, and systems to ensure the compliance of the business with the
2 Real Estate Law and the Regulations.

3 15

4 The above acts and/or omissions of RYBOLT violate Section 10159.2
5 (Responsibility/Directing Officer) of the Code and Section 2725 (Broker Supervision) of the
6 Regulations and constituted grounds for disciplinary action under the provisions of Sections
7 10177(g) (Negligence/Incompetence Real Estate Licensee) and 10177(h) (Broker Supervision)
8 of the Code.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
10 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
11 action against all licenses and license rights of Respondents under the Code, and for such other
12 and further relief as may be proper under other provisions of law.

13
14 
15 _____
16 E. J. HABERER, II
Deputy Real Estate Commissioner

17 Dated at Oakland, California,
18 this 19th day of May, 2011.
19
20
21
22
23
24
25
26
27