

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

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation of) NO. H-11147 SF
12)
13 EDWARD PY-JEN YUAN and) STIPULATION AND AGREEMENT
14 IMPERIAL DEVELOPMENT, INC., a)
15 California corporation,)
16 Respondents.)

17 It is hereby stipulated by and between Respondent EDWARD PY-JEN YUAN
18 (hereinafter "Respondent" or "Respondent YUAN"), acting by and through his attorney,
19 Jennille A. Smith, and the Complainant, acting by and through Michael B. Rich, Counsel for the
20 Department of Real Estate, as follows for the purpose of settling and disposing of the
21 Accusation filed on May 31, 2011, 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
24 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
25 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of
26 this Stipulation and Agreement.

27 2. Respondent has received, read and understands the Statement to

1 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
2 of Real Estate in this proceeding.

3 3. On June 13, 2011, Respondent YUAN filed a Notice of Defense pursuant
4 to 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 Respondent understands that by withdrawing said
7 Notice of Defense Respondent will thereby waive Respondent's right to require the
8 Commissioner to prove the allegations in the Accusation at a contested hearing held in
9 accordance with the provisions of the APA and that Respondent will waive other rights afforded
10 to Respondent in connection with the hearing such as the right to present evidence in defense of
11 the allegations in the Accusation and the right to cross-examine witnesses.

12 4. Without admitting the truth of the allegations contained in the
13 Accusation, Respondent stipulates that he will not interpose a defense thereto. This Stipulation
14 is based on the factual allegations contained in the Accusation. In the interests of expedience
15 and economy, Respondent chooses not to contest the allegations, but to remain silent, and
16 understands that, as a result thereof, these factual allegations, without being admitted or denied,
17 will serve as a basis for the disciplinary action stipulated to herein. The Real Estate
18 Commissioner shall not be required to provide further evidence to prove said factual allegations
19 and all allegations contained in the Accusation filed in the Department Case No. H-11147 SF
20 may be considered by the Department to be true and correct for the purpose of deciding whether
21 to grant re-licensure or reinstatement pursuant to Government Code Section 11522.

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

1 shall not be bound by any admission or waiver made herein.

2 6. This Stipulation and Agreement shall not constitute an estoppel, merger
3 or bar to any further administrative or civil proceedings by the Department of Real Estate with
4 respect to any matters which were not specifically alleged to be causes for accusation in this
5 proceeding.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, admissions and waivers and solely for
8 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
9 that the following Determination of Issues shall be made:

10 I

11 The acts and omissions of Respondent EDWARD PY-JEN YUAN described in
12 the Accusation are grounds for the suspension or revocation of the licenses and license rights of
13 Respondent under the provisions of Section 10234(a) of the Code in conjunction with Section
14 10177(d) of the Code, and Sections 10176(a), 10176(b), 10176(i), 10177(g), and 10177(j) of the
15 Code

16 ORDER

17 I

18 All licenses and licensing rights of Respondent EDWARD PY-JEN YUAN
19 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
20 license shall be issued to said Respondent pursuant to Section 10156.5 of the Business and
21 Professions Code if, within 90 days from the effective date of the Decision entered pursuant to
22 this Order, Respondent makes application for the restricted license and pays to the Department
23 of Real Estate the appropriate fee therefor.

24 The restricted license issued to Respondent shall be subject to all of the
25 provisions of Section 10156.7 of the Business and Professions Code and to the following
26 limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

27 1. The restricted license issued to Respondent may be suspended prior to

1 hearing by Order of the Real Estate Commissioner on evidence
2 satisfactory to the Commissioner that Respondent has violated provisions
3 of the California Real Estate Law, the Subdivided Lands Law,
4 Regulations of the Real Estate Commissioner or conditions attaching to
5 the restricted license.

6 2. The restricted license issued to Respondent may be suspended prior to
7 hearing by Order of the Real Estate Commissioner in the event of
8 Respondent's conviction or plea of nolo contendere to a crime which is
9 substantially related to Respondent's fitness or capacity as a real estate
10 licensee.

11 3. Respondent shall not be eligible to apply for the issuance of an
12 unrestricted real estate license nor for the removal of any of the
13 conditions, limitations or restrictions of a restricted license until eight (8)
14 years have elapsed from the effective date of this Decision.

15 4. Respondent shall, within nine (9) months from the effective date of the
16 Decision, present evidence satisfactory to the Real Estate Commissioner
17 that Respondent has, since the most recent issuance of an original or
18 renewal real estate license, taken and successfully completed the
19 continuing education requirements of Article 2.5 of Chapter 3 of the Real
20 Estate Law for renewal of a real estate license. If Respondent fails to
21 satisfy this condition, the Commissioner may order the suspension of the
22 restricted license until the Respondent presents such evidence. The
23 Commissioner shall afford Respondent the opportunity for a hearing
24 pursuant to the Administrative Procedure Act to present such evidence.

25 5. Respondent shall, within six (6) months from the effective date of this
26 Decision, take and pass the Professional Responsibility Examination
27 administered by the Department including the payment of the appropriate

1 examination fee. If Respondent fails to satisfy this condition, the
2 Commissioner may order suspension of Respondent's license until
3 Respondent passes the examination.

4 6. Respondent shall submit with any application for license under an
5 employing broker, or any application for transfer to a new employing
6 broker, a statement signed by the prospective employing real estate
7 broker on a form approved by the Department of Real Estate which shall
8 certify:

9 (a) That the employing broker has read the Decision of the
10 Commissioner which granted the right to a restricted license; and,

11 (b) That the employing broker will exercise close supervision over the
12 performance by the restricted licensee relating to activities for
13 which a real estate license is required.

14 7. Respondent shall, as a condition precedent to applying for the issuance of
15 the restricted real estate license, submit, concurrently with his application
16 for the restricted license, to the Department of Real Estate both his
17 written resignation as the designated broker/officer of ATM Investment,
18 Inc. [corporate broker license #01331842], and the appropriate change
19 application, Department of Real Estate Form RE 204A, showing that
20 Respondent will no longer serve as the designated broker/officer for
21 ATM Investment, Inc.

22 8. The restricted license issued to Respondent EDWARD PY-JEN YUAN
23 is suspended for a period of sixty (60) days from the date of issuance of
24 said restricted license; provided, however, that if Respondent petitions,
25 sixty (60) days of said suspension (or a portion thereof) shall be stayed
26 upon condition that:

27 (a.) Respondent pays a monetary penalty pursuant to Section 10175.2

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of the Business and Professions Code at the rate of \$100.00 for each day of the suspension for a total monetary penalty of \$6,000.00.

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

(c.) No further cause for disciplinary action against the real estate license of Respondent occurs within eight (8) years from the effective date of the Decision in this matter.

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

(e.) If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within eight (8) years from the effective date of the Decision, the stay hereby granted shall become permanent.

10/1/12
DATED

Michael B. Rich
MICHAEL B. RICH, Counsel
Department of Real Estate

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3 I have read the Stipulation and Agreement and its terms are understood by me
4 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
5 the California Administrative Procedure Act (including but not limited to Sections 11506,
6 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
7 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
8 allegations in the Accusation at a hearing at which I would have the right to cross-examine
9 witnesses against me and to present evidence in defense and mitigation of the charges.

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11 09/17/2012

12 DATED

13 EDWARD PY-JEN YUAN
Respondent

14 Approved as to form and content by counsel for Respondent.

15 9/17/2012
16 DATED

17 JENNILLE A. SMITH
Attorney for Respondent Edward Py-Jen Yuan

18 * * *

19 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
20 this matter as to Respondent EDWARD PY-JEN YUAN and shall become effective at 12
21 o'clock noon on **DEC 10 2012**, 2012.

22 IT IS SO ORDERED 11/16/2012, 2012.

23
24 REAL ESTATE COMMISSIONER

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26
27 By WAYNE S. BELL
Chief Counsel