

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

4 Telephone: (916) 227-0789

FILED

NOV 14 2012

DEPARTMENT OF REAL ESTATE

By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

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

No. H-11364 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between JAMES ANASTASY KILPATRICK
16 ("Respondent") and his attorney, Jozef G. Magyar, and the Complainant, acting by and through
17 Jason Lazark, Counsel for the Department of Real Estate ("Department"), as follows for the
18 purpose of settling and disposing of the Accusation filed on April 27, 2012 in this matter:

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

24 2. Respondent received, read, and understands the Statement to Respondent,
25 and the Discovery Provisions of the APA filed by the Department in this proceeding.

26 3. Respondent filed a Notice of Defense pursuant to section 11505 of the
27 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.

1 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
2 acknowledge that Respondent understands that by withdrawing said Notice of Defense
3 Respondent will thereby waive Respondent's right to require the Real Estate Commissioner
4 ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in
5 accordance with the provisions of the APA, and that Respondent will waive other rights afforded
6 to Respondent in connection with the hearing such as the right to present evidence in defense of
7 the allegations in the Accusation and the right to cross-examine witnesses.

8 4. Respondent, pursuant to the limitations set forth below, hereby admit that
9 the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding
10 are true and correct and the Commissioner shall not be required to provide further evidence of
11 such allegations.

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

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

23 7. Respondent understands that by agreeing to this Stipulation and
24 Agreement, the findings set forth below in the Determination of Issues become final, and that the
25 Commissioner may charge said Respondent for the costs of any audit conducted pursuant to
26 section 10148 of the Code to determine if the violations have been corrected. The maximum
27 costs of said audit shall not exceed \$4,589.50.

1 8. Respondent understands that by agreeing to this Stipulation and
2 Agreement, Respondent agrees to pay, pursuant to section 10106 of the Code, the cost of the
3 investigation and enforcement which resulted in the determination that Respondent committed
4 the violation(s) found in the Determination of Issues. The amount of said investigation and
5 enforcement costs total \$164.39.

6 * * *

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations and waivers and solely for the purpose of
9 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the acts
10 and/or omissions of Respondent, as described in the Accusation, constitute grounds for the
11 suspension or revocation of the licenses and the license rights of Respondent under the
12 provisions of sections 2831 and 2832.1 of title 10, California Code of Regulations
13 (“Regulations”) and sections 10130, 10131(b), 10145, 10177(d) and 10177(g) of the Code.

14 * * *

15 ORDER

16 All licenses and licensing rights of Respondent under the Real Estate Law are
17 suspended for a period of one hundred twenty (120) days from the effective date of this Order;
18 provided, however, that:

19 1. Ninety (90) days of said suspension shall be stayed, upon the condition
20 that Respondent petitions, pursuant to section 10175.2 of the Code, and pays a monetary penalty
21 pursuant to section 10175.2 of the Code at a rate of \$50.00 for each day of the suspension, for a
22 total monetary penalty of \$4,500.00

- 23 a) Said payment shall be in the form of a cashier's check or certified check
24 made payable to the Consumer Recovery Account of the Real Estate Fund.
25 Said check must be delivered to the Department prior to the effective date of
26 the Order in this matter.

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1 b) No further cause for disciplinary action against the real estate license of
2 Respondent occurs within three (3) years from the effective date of the
3 Decision in this matter.

4 c) If Respondent fails to pay the monetary penalty as provided above prior to the
5 effective date of this Order, the stay of the suspension shall be vacated as to
6 Respondent and the order of suspension shall be immediately executed, under
7 this Order, in which event Respondent shall not be entitled to any repayment
8 nor credit, prorated or otherwise, for the money paid to the Department under
9 the terms of this Order.

10 d) If Respondent pays the monetary penalty and any other moneys due under this
11 Stipulation and Agreement the entire stay hereby granted in this Order shall
12 become permanent.

13 2. Thirty (30) days of said suspension shall be stayed for three (3) years upon
14 the following terms and conditions:

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

18 b) That no final subsequent determination be made, after hearing or upon
19 stipulation, that cause for disciplinary action occurred within three (3) years
20 from the effective date of this Order. Should such a determination be made,
21 the Commissioner may, in his discretion, vacate and set aside the stay order
22 and re-impose all or a portion of the stayed suspension. Should no such
23 determination be made, the stay imposed herein shall become permanent.

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

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

4 4. Respondent shall, within six (6) months from the effective date of this
5 Decision, take and pass the Professional Responsibility Examination administered by the
6 Department including the payment of the appropriate examination fee. If Respondent fails to
7 satisfy this condition, the Commissioner may order suspension of Respondent's licenses until
8 Respondent passes the examination.

9 5. Pursuant to section 10148 of the Code, Respondents shall pay the
10 Commissioner's reasonable cost, not to exceed \$4,589.50, for an audit to determine if
11 Respondent has corrected the trust fund violation(s) found in the Determination of Issues. In
12 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
13 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
14 include an allocation for travel time to and from the auditor's place of work. Respondent shall
15 pay such cost within sixty (60) days of receiving an invoice therefor from the Commissioner
16 detailing the activities performed during the audit and the amount of time spent performing those
17 activities. The Commissioner may suspend Respondent's license pending a hearing held in
18 accordance with section 11500, et seq., of the Government Code, if payment is not timely made as
19 provided for herein, or as provided for in a subsequent agreement between Respondent and the
20 Commissioner. The suspension(s) shall remain in effect until payment is made in full or until
21 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or
22 until a decision providing otherwise is adopted following a hearing held pursuant to this
23 condition.

24 6. All licenses and licensing rights of Respondent are indefinitely suspended
25 unless or until Respondents pay the sum of \$164.39 for the Commissioner's reasonable costs of
26 the investigation and enforcement which led to this disciplinary action. Said payment shall be in

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1 the form of a cashier's check or certified check made payable to the Consumer Recovery
2 Account of the Real Estate Fund.

3
4 10-1-12
5 DATED

6
7 
8 JASON LAZARK
9 Counsel for Complainant

10 * * *


11 I have read the Stipulation and Agreement, discussed it with my counsel, and its
12 terms are understood by me and are agreeable and acceptable to me. I understand that I am
13 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
14 intelligently and voluntarily waive those rights, including the right of requiring the
15 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
16 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
17 the charges.

18
19 9/26/2012
20 DATED

21 
22 JAMES ANASTASY KILPATRICK
23 Respondent

24 I have reviewed the Stipulation and Agreement as to form and content and have
25 advised my client accordingly.

26
27 9/28/2012
DATED

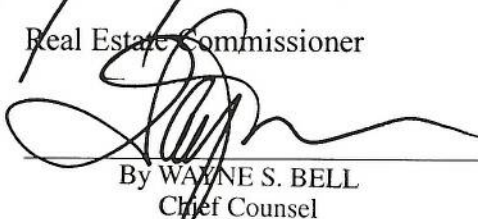
28 
29 JOZEF G. MAGYAR
30 Attorney for Respondents

31 * * *

32 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
33 shall become effective at 12 o'clock noon on DEC 04 2012

34 IT IS SO ORDERED 10/22/2012

35 Real Estate Commissioner

36 
37 By WAYNE S. BELL
38 Chief Counsel