

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670

FILED

OCT 25 2016

BUREAU OF REAL ESTATE

By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:) Case No. H-11957 SF
12)
13 SAM'S DOGHOUSE, INC. and) STIPULATION AND AGREEMENT
14 MIKE NELSON ROWLAND) IN SETTLEMENT AND ORDER
15 Respondents.)

16 It is hereby stipulated by and between Respondents SAM'S DOGHOUSE, INC.
17 ("SAM'S") and MIKE NELSON ROWLAND ("ROWLAND") (collectively referred to as
18 "Respondents"), acting by and through counsel Ethan K. Friedman, and the Complainant, acting
19 by and through Jason D. Lazark, Counsel for the Bureau of Real Estate, as follows for the
20 purpose of settling and disposing of the Accusation filed on March 18, 2016, 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 ("Stipulation and Agreement").

26 2. Respondents have received, read, and understand the Statement to
27 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of

1 Real Estate in this proceeding.

2 3. On or about April 5, 2016, Respondents filed Notices of Defense pursuant to
3 Section 11505 of the Government Code for the purpose of requesting a hearing on the
4 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
5 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
6 Notices of Defense they will thereby waive their rights to require the Commissioner to prove
7 the allegations in the Accusation at a contested hearing held in accordance with the provisions
8 of the APA and that they will waive other rights afforded to them in connection with the
9 hearing such as the right to present evidence in defense of the allegations in the Accusation and
10 the right to cross-examine witnesses.

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

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

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

26 7. Respondents understand that by agreeing to this Stipulation and Agreement,
27 Respondents agree to jointly and severally pay, pursuant to Section 10148 of the California

1 Business and Professions Code ("the Code"), for the costs of Bureau of Real Estate ("Bureau")
2 Audit No. OK 14-0004 which resulted in the determination that SAM's committed the trust fund
3 violations found in the Determination of Issues. The amount of such costs is \$2,213.84.

4 8. Respondents further understand that by agreeing to this Stipulation and
5 Agreement, the findings set forth below in the Determination of Issues become final, and that the
6 Commissioner may charge Respondents, jointly and severally, for the costs of any audit
7 conducted pursuant to Section 10148 of the Code to determine if the violations have been
8 corrected and hold Respondents jointly and severally responsible for paying the costs of the
9 follow up audit to Bureau Audit No. OK 14-0004. The maximum costs of said audit shall not
10 exceed \$2,213.84.

11 9. Respondents understand that by agreeing to this Stipulation and Agreement,
12 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10106
13 of the Code, the costs of the investigation and enforcement of this case which resulted in the
14 determination that Respondents committed the violations found in the Determination of Issues.
15 The amount of such costs is \$1,006.80.

16 DETERMINATION OF ISSUES

17 By reason of the foregoing stipulations, admissions and waivers, and solely for
18 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
19 that the following determination of issues shall be made:

20 I.

21 The acts and omissions of SAM'S, as described in the Accusation, are grounds for
22 the suspension or revocation of the licenses and license rights of SAM'S under the provisions of
23 Sections 10177(d) of the Code, in conjunction with Sections 10145 of the Code, and Sections
24 2831, 2831.1, 2831.2 and 2834 of Title 10 of the California Code of Regulations ("the
25 Regulations").

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1 II.

2 The acts and omissions of ROWLAND, as described in the Accusation, are
3 grounds for the suspension or revocation of the licenses and license rights of ROWLAND under
4 the provisions of Sections 10177(g), 10177(h), and 10177(d) of the Code.

5 ORDER

6 I. AS TO SAM'S

7 All licenses and licensing rights of SAM'S under the Real Estate Law are
8 suspended for a period of ninety (90) days from the effective date of this Order; provided,
9 however, that:

10 1. Sixty (60) days of said suspension shall be stayed upon the condition that
11 SAM'S petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant
12 to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a total
13 monetary penalty of \$3,000.00.

14 a. Said payment shall be in the form of a cashier's check made payable to
15 the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
16 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
17 Order.

18 b. No further cause for disciplinary action against the real estate license
19 of SAM'S occurs within two (2) years from the effective date of the Order in this matter.

20 c. If SAM'S fails to pay the monetary penalty in accordance with the
21 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
22 immediate execution of all or any part of the stayed suspension, in which event, SAM'S shall not
23 be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau
24 under the terms of this decision.

25 d. If SAM'S pays the monetary penalty, and if no further cause for
26 disciplinary action against the real estate license of SAM'S occurs within two (2) years from
27 the effective date of the Decision herein, then the stay hereby granted shall become permanent.

1 2. The remaining thirty (30) days of said suspension shall be stayed for two (2)
2 years upon the following terms and conditions:

3 a. SAM'S shall obey all laws, rules and regulations governing the rights,
4 duties and responsibilities of a real estate licensee in the State of California, and

5 b. That no final subsequent determination be made, after hearing or
6 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
7 effective date of this Order. Should such a determination be made, the Commissioner may, in
8 his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
9 suspension. Should no such determination be made, the stay imposed herein shall become
10 permanent.

11 II. AS TO ROWLAND

12 All licenses and licensing rights of ROWLAND under the Real Estate Law are
13 suspended for a period of ninety (90) days from the effective date of this Order; provided,
14 however, that:

15 1. Sixty (60) days of said suspension shall be stayed upon the condition that
16 ROWLAND petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
17 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
18 total monetary penalty of \$3,000.00.

19 a. Said payment shall be in the form of a cashier's check made payable to
20 the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
21 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
22 Order.

23 b. No further cause for disciplinary action against the real estate license
24 of ROWLAND occurs within two (2) years from the effective date of the Order in this matter.

25 c. If ROWLAND fails to pay the monetary penalty in accordance with
26 the terms and conditions of the Decision, the Commissioner may, without a hearing, order the
27 immediate execution of all or any part of the stayed suspension, in which event, ROWLAND

1 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
2 Bureau under the terms of this decision.

3 d. If ROWLAND pays the monetary penalty, and if no further cause for
4 disciplinary action against the real estate license of ROWLAND occurs within two (2) years
5 from the effective date of the Decision herein, then the stay hereby granted shall become
6 permanent.

7 2. The remaining thirty (30) days of said suspension shall be stayed for two (2)
8 years upon the following terms and conditions:

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

11 b. That no final subsequent determination be made, after hearing or
12 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
13 effective date of this Order. Should such a determination be made, the Commissioner may, in
14 his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
15 suspension. Should no such determination be made, the stay imposed herein shall become
16 permanent.

17 3. ROWLAND shall, within six (6) months from the effective date of this Order,
18 take and pass the Professional Responsibility Examination administered by the Bureau, including
19 the payment of the appropriate examination fee. If ROWLAND fails to satisfy this condition,
20 ROWLAND' real estate license shall automatically be suspended until ROWLAND passes the
21 examination.

22 4. All licenses and licensing rights of Respondent are indefinitely suspended
23 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
24 successfully completed the continuing education course on trust fund accounting and handling
25 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
26 Code. Proof of satisfaction of this requirement includes evidence that Respondent has
27 successfully completed the trust fund account and handling continuing education course, no

1 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of
2 completion of this continuing education course must be delivered to the Bureau of Real Estate,
3 Flag Section, at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8785 prior
4 to the effective date of this Decision and Order.

5 III. AS TO RESPONDENTS

6 1. All licenses and licensing rights of Respondents are indefinitely suspended
7 unless or until Respondents, jointly and severally, pay the sum of \$1,006.80 for the
8 Commissioner's reasonable costs of the investigation and enforcement which led to this
9 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
10 made payable to the Bureau of Real Estate. The investigative and enforcement costs must be
11 delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
12 95813-7013, prior to the effective date of this Order.

13 2. Pursuant to Section 10148 of the Code, Respondents shall jointly and
14 severally pay the sum of \$2,213.84 for the Commissioner's cost of Bureau Audit No. OK 14-
15 0004 which led to this disciplinary action. Respondents shall jointly and severally pay such
16 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment
17 of these audit costs should not be made until Respondents receive the invoice from the
18 Commissioner. If Respondents fail to satisfy this condition in a timely manner as provided
19 herein, the real estate licenses of Respondents shall automatically be suspended until payment
20 is made in full, or until a decision providing otherwise is adopted following a hearing held
21 pursuant to this condition.

22 3. Pursuant to Section 10148 of the Code, Respondents shall jointly and
23 severally pay the Commissioner's reasonable costs, not to exceed \$2,213.84, for the follow-up
24 audit to Bureau Audit No. OK 14-0004, to determine if Respondents have corrected the
25 violations found in the Determination of Issues. In calculating the amount of the
26 Commissioner's reasonable costs, the Commissioner may use the average hourly salary for all
27 persons performing audits of real estate brokers, and shall include an allocation for travel time

1 to and from the auditor's place of work. Respondents shall jointly and severally pay such costs
2 within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of
3 the audit costs should not be made until Respondents receive the invoice from the
4 Commissioner. If Respondents fail to satisfy this condition in a timely manner as provided for
5 herein, the real estate licenses of Respondents shall automatically be suspended until payment
6 is made in full, or until a decision providing otherwise is adopted following a hearing held
7 pursuant to this condition.


8
9 7-7-16
10 DATED


11 JASON D. LAZARK, Counsel
12 Bureau of Real Estate

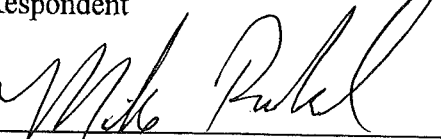
13 * * *

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 Administrative Procedure Act (including but not limited to
17 Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
18 intelligently, and voluntarily waive those rights, including the right of requiring the
19 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
20 right to cross-examine witnesses against me and to present evidence in defense and mitigation
21 of the charges.

22 07-05-2016
23 DATED


24 MIKE NELSON ROWLAND
25 Respondent

26 07-05-2016
27 DATED

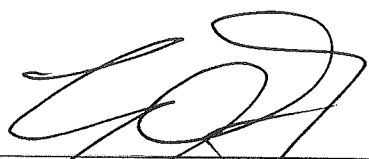

MIKE NELSON ROWLAND
Designated Officer for Respondent
SAM'S DOGHOUSE, INC.

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I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

7/5/16

DATED



ETHAN K. FRIEDMAN
Attorney for Respondents,
MIKE NELSON ROWLAND, and
SAM'S DOGHOUSE, INC.

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on NOV 15 2016.

IT IS SO ORDERED

10/24/2016

WAYNE S. BELL

