

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670

FILED

JAN 09 2018
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-12104 SF
12)
13 Z & M ASSOCIATES, INC., and) STIPULATION AND AGREEMENT
14 MOISE NAHOURAII,) IN SETTLEMENT AND ORDER
15 Respondents.)

16 It is hereby stipulated by and between Respondents Z & M ASSOCIATES, INC.
17 ("Z & M"), acting by a through Z & M's counsel, Frank M. Buda, MOISE NAHOURAII
18 ("NAHOURAII"), acting by and through NAHOURAII's counsel, Frank M. Buda, and the
19 Complainant, acting by and through Jason D. Lazark, Counsel for the Bureau of Real Estate, as
20 follows for the purpose of settling and disposing of the Accusation filed on June 13, 2017, in
21 this matter:

22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondents Z & M and NAHOURAII (collectively referred to
24 herein as "Respondents") at a formal hearing on the Accusation, which hearing was to be held
25 in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead
26 and in place thereof be submitted solely on the basis of the provisions of this Stipulation and
27 Agreement In Settlement and Order ("Stipulation and Agreement").

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

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

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

19 5. This Stipulation and Agreement is made for the purpose of reaching an
20 agreed disposition of this proceeding and is expressly limited to this proceeding and any other
21 proceeding or case in which the Bureau, the state or federal government, any agency of this
22 state, or an agency of another state is involved.

23 6. It is understood by the parties that the Real Estate Commissioner may adopt
24 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalties
25 and sanctions on Respondents' real estate licenses and license rights as set forth in the below
26 "Order." In the event that the Commissioner in his discretion does not adopt the Stipulation
27 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a

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I.

The acts and omissions of Z & M, as described in the Accusation, are grounds for the suspension or revocation of the licenses and license rights of Z & M under the provisions of Sections 10177(d) and 10177(g) of the Code, in conjunction with Sections 10140.6, 10145, 10145(g), 10159.5, and 10163 of the Code, and Sections 2731, 2773, 2831.1, 2832, 2832.1, and 2834 of Title 10 of the California Code of Regulations (“the Regulations”).

II.

The acts and omissions of NAHOURAII, as described in the Accusation, are grounds for the suspension or revocation of the licenses and license rights of NAHOURAII under the provisions of Sections 10159.2, 10177(d), 10177(g), and 10177(h) of the Code, in conjunction with Sections 10140.6, 10145, 10145(g), 10159.5, and 10163 of the Code, and Sections 2725, 2731, 2773, 2831.1, 2832, 2832.1, and 2834 of the Regulations.

ORDER

I. AS TO Z & M

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

1. Forty-five (45) days of said suspension shall be stayed upon the condition that Z & M petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a total monetary penalty of \$2,250.00.

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

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

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

8 d. If Z & M pays the monetary penalty, and if no further cause for
9 disciplinary action against the real estate license of Z & M occurs within two (2) years from the
10 effective date of the Decision herein, then the stay hereby granted shall become permanent.

11 2. The remaining forty-five (45) days of said suspension shall also be stayed for
12 two (2) years upon the following terms and conditions:

13 a. Z & M shall obey all laws, rules and regulations governing the rights,
14 duties and responsibilities of a real estate licensee in the State of California, and

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

21 II. AS TO NAHOURAII

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

25 1. Forty-five (45) days of said suspension shall be stayed upon the condition that
26 NAHOURAII petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
27 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a

1 total monetary penalty of \$2,250.00.

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

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

8 c. If NAHOURAII fails to pay the monetary penalty in accordance with
9 the terms and conditions of the Decision, the Commissioner may, without a hearing, order the
10 immediate execution of all or any part of the stayed suspension, in which event, NAHOURAII
11 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
12 Bureau under the terms of this decision.

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

17 2. The remaining forty-five (45) days of said suspension shall also be stayed for
18 two (2) years upon the following terms and conditions:

19 a. NAHOURAII shall obey all laws, rules and regulations governing the
20 rights, duties and responsibilities of a real estate licensee in the State of California, and

21 b. That no final subsequent determination be made, after hearing or
22 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
23 effective date of this Order. Should such a determination be made, the Commissioner may, in
24 his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
25 suspension. Should no such determination be made, the stay imposed herein shall become
26 permanent.

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1 3. NAHOURAII shall, within six (6) months from the effective date of this
2 Order, take and pass the Professional Responsibility Examination administered by the Bureau,
3 including the payment of the appropriate examination fee. If NAHOURAII fails to satisfy this
4 condition, NAHOURAII's real estate license shall automatically be suspended until
5 NAHOURAII passes the examination.

6 4. All licenses and licensing rights of NAHOURAII are indefinitely suspended
7 unless or until NAHOURAII provides proof satisfactory to the Commissioner, of having taken
8 and successfully completed the continuing education course on trust fund accounting and
9 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
10 satisfaction of these requirements includes evidence that NAHOURAII has successfully
11 completed the trust fund accounting and handling continuing education course, no earlier than
12 one hundred twenty (120) days prior to the effective date of the Order in this matter. Proof of
13 completion of the trust fund accounting and handling course must be delivered to the Bureau of
14 Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-
15 263-8785, prior to the effective date of this Order.

16 III. AS TO BOTH Z & M AND NAHOURAII

17 1. All licenses and licensing rights of Respondents are indefinitely suspended
18 unless or until Respondents, jointly and severally, pay the sum of \$2,399.90 for the
19 Commissioner's reasonable costs of the investigation and enforcement which led to this
20 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
21 made payable to the Bureau of Real Estate. The investigative and enforcement costs must be
22 delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
23 95813-7013, prior to the effective date of this Order.

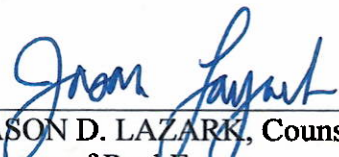
24 2. Respondents, jointly and severally, shall pay the sum of \$4,814.20 for the
25 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay
26 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The
27 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents

1 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
2 payment is not timely made as provided for herein, or as provided for in a subsequent
3 agreement between Respondents and the Commissioner. The suspension shall remain in effect
4 until payment is made in full or until Respondents enter into an agreement satisfactory to the
5 Commissioner to provide for payment, or until a decision providing otherwise is adopted
6 following a hearing held pursuant to this condition.

7 3. Respondents, jointly and severally, shall pay the Commissioner's costs, not
8 to exceed \$6,017.75, of any audit conducted pursuant to Section 10148 of the Code to
9 determine if Respondents have corrected the violations described in the Determination of
10 Issues, above, and any other violations found in the audit which led to this disciplinary action.
11 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
12 the estimated average hourly salary for all persons performing audits of real estate brokers, and
13 shall include an allocation for travel time to and from the auditor's place of work. Respondents
14 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
15 Commissioner detailing the activities performed during the audit and the amount of time spent
16 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
17 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents under
18 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
19 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
20 suspension provided for in this paragraph shall be stayed.

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23 11/17/17

24 DATED

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28 JASON D. LAZARK, Counsel
29 Bureau of Real Estate


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Respondents have read the Stipulation and Agreement in Settlement and Order and its terms are understood by Respondents and are agreeable and acceptable to Respondents. Respondents understand that Respondents are waiving rights given to them by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and Respondents 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 Respondents would have the right to cross-examine witnesses against them and to present evidence in defense and mitigation of the charges.

Respondents and Respondents' attorney further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by Respondents and Respondents' attorney: *Bureau of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007*. Respondents and Respondents' attorney understand and agree that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

11/17/17


DATED



MOISE NAHOURAII
Respondent

11/17/17

DATED



Z & M ASSOCIATES, INC.
By: Moise Nahouraii, President

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

11-20-17

DATED



FRANK M. BUDA
Attorney for Respondents
MOISE NAHOURLI and
Z & M ASSOCIATES, 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 JAN 30 2018

IT IS SO ORDERED 1/4/18

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner