

Laub

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982 (office)

FILED

FEB 23 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

| | | | |
|----|------------------------------------|---|--------------------|
| 11 | In the Matter of the Accusation of |) | No. H-35833 LA |
| 12 | MDR PROPERTIES INC., doing |) | OAH- L-2009060013 |
| 13 | business as Century 21 King |) | <u>STIPULATION</u> |
| 14 | Realtors; and RICHARD M. KING, |) | <u>AND</u> |
| 15 | individually and as designated |) | <u>AGREEMENT</u> |
| 16 | officer of MDR Properties Inc., |) | |
| 17 | Respondents. |) | |
| 18 | |) | |

19 It is hereby stipulated by and between Respondents
20 MDR PROPERTIES INC. and RICHARD M. KING, individually and as
21 designated officer of MDR Properties Inc., (sometimes
22 collectively referred to as "Respondents"), represented by Mark
23 A. Nialis, Esq. and the Complainant, acting by and through
24 Elliott Mac Lennan, Counsel for the Department of Real Estate, as
25 follows for the purpose of settling and disposing of the
26 Accusation ("Accusation") filed on April 6, 2009, in this matter:
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

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

12 3. Respondents timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense and the right to cross-
23 examine witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondents choose not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation is made for the purpose of
11 reaching an agreed disposition of this proceeding and is
12 expressly limited to this proceeding and any other proceeding or
13 case in which the Department of Real Estate ("Department"), the
14 state or federal government, or any agency of this state, another
15 state or federal government is involved.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 herein.
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondent herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of the audit. The
12 amount of said cost for the audit is \$11,093.39.

13 9. Respondents have received, read, and understand the
14 "Notice Concerning Costs of Subsequent Audit". Respondents
15 further understand that by agreeing to this Stipulation, the
16 findings set forth below in the Determination of Issues become
17 final, and the Commissioner may charge Respondents for the cost
18 of any subsequent audit conducted pursuant to Business and
19 Professions Code Section 10148 to determine if the violations
20 have been corrected. The maximum cost of the subsequent audit
21 will not exceed \$11,093.39.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:
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I.

4 The conduct, acts or omissions of MDR PROPERTIES INC.
5 and RICHARD M. KING, as described in Paragraph 4, above, are in
6 violation of Section 10145 of the Business and Professions Code
7 ("Code") and Sections 2832.1, 2950(d) and 2951 of Title 10,
8 Chapter 6 of the California Code of Regulations ("Regulations")
9 and is a basis for discipline of Respondents' license and license
10 rights as violation of the Real Estate Law pursuant to Code
11 Sections 10177(d).
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II.

13 The conduct, acts or omissions of RICHARD M. KING, as
14 described in Paragraph 4, above, are in violation of Code Section
15 10159.2 and is a basis for discipline of Respondent's license and
16 license rights as violation of the Real Estate Law pursuant to
17 Code Section 10177(h).
18

ORDER

19 WHEREFORE, THE FOLLOWING ORDER is hereby made:
20

I.

21 The license and licensing rights of Respondents MDR
22 PROPERTIES INC. and RICHARD M. KING, under the Real Estate Law,
23 are suspended for a period of sixty (60) days from the effective
24 date of this Decision.
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1 A. Provided, however, that if Respondents request, the
2 initial thirty (30) days of said suspension (or a portion
3 thereof) shall be stayed for one (1) year upon condition that:

4 1. Each Respondent pays a monetary penalty pursuant to
5 Section 10175.2 of the Business and Professions Code at the rate
6 of \$50.00 per day for each day of the suspension for a monetary
7 penalty of \$1,500, or \$3,000 total.

8 2. Said payment shall be in the form of a cashier's
9 check or certified check made payable to the Recovery Account of
10 the Real Estate Fund. Said check must be received by the
11 Department prior to the effective date of the Decision in this
12 matter.

13 3. No further cause for disciplinary action against
14 the real estate license of Respondents occur within one (1) year
15 from the effective date of the Decision in this matter.

16 4. If Respondents fail to pay the monetary penalty in
17 accordance with the terms of the Decision, the Commissioner may,
18 without a hearing, order the immediate execution of all or any
19 part of the stayed suspension, in which event the Respondent
20 shall not be entitled to any repayment nor credit, prorated or
21 otherwise, for money paid to the Department under the terms of
22 this Decision.

23 5. If Respondents pay the monetary penalty and if no
24 further cause for disciplinary action against the real estate
25 license of Respondent occurs within one (1) year from the
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1 effective date of the Decision, the stay hereby granted shall
2 become permanent.

3 B. The remaining 30 days of the sixty day suspension
4 shall be stayed for one (1) year upon the following terms and
5 conditions:

6 1. Respondents shall obey all laws, rules and
7 regulations governing the rights, duties and responsibilities of
8 a real estate licensee in the State of California; and

9 2. That no final subsequent determination be made
10 after hearing or upon stipulation, that cause for disciplinary
11 action occurred within one (1) year from the effective date of
12 this Decision. Should such a determination be made, the
13 Commissioner may, in his discretion, vacate and set aside the
14 stay order and reimpose all or a portion of the stayed
15 suspension. Should no such determination be made, the stay
16 imposed herein shall become permanent.

17 II.

18 Pursuant to Section 10148 of the Business and
19 Professions Code, Respondents MDR PROPERTIES INC. and RICHARD M.
20 KING shall pay the Commissioner's reasonable cost for (a) the
21 audit which led to this disciplinary action (b) a subsequent
22 audit to determine if Respondents are now in compliance with the
23 Real Estate Law. The cost of the audit which led to this
24 disciplinary action is \$11,093.39. In calculating the amount of
25 the Commissioner's reasonable cost, the Commissioner may use the
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1 estimated average hourly salary for all persons performing audits
2 of real estate brokers, and shall include an allocation for
3 travel time to and from the auditor's place of work. Said amount
4 for the prior and subsequent audits shall not exceed \$22,186.78.

5 Respondents shall pay such cost within 60 days of
6 receiving an invoice from the Commissioner detailing the
7 activities performed during the audit and the amount of time
8 spent performing those activities.

9 The Commissioner may suspend the license of Respondents
10 pending a hearing held in accordance with Section 11500, et seq.,
11 of the Government Code, if payment is not timely made as provided
12 for herein, or as provided for in a subsequent agreement between
13 the Respondent and the Commissioner. The suspension shall remain
14 in effect until payment is made in full or until Respondents
15 enter into an agreement satisfactory to the Commissioner to
16 provide for payment, or until a decision providing otherwise is
17 adopted following a hearing held pursuant to this condition.
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19 III.

20 Prior to the effective of the Decision herein,
21 Respondents shall first provide evidence satisfactory to the
22 Commissioner that the trust fund deficit set forth in the
23 Accusation, in the amount of \$5,709.96, has been cured, including
24 the identification of the source of funds used to cure the
25 deficit. If Respondents fail to satisfy this condition, all
26 licenses and licensing rights or Respondents shall be
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1 indefinitely suspended, unless or until such proof is provided.

2 IV.

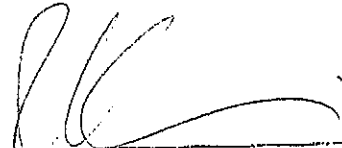
3 All licenses and licensing rights of Respondent RICHARD
4 M. KING are indefinitely suspended unless or until Respondent
5 provides proof satisfactory to the Commissioner, of having taken
6 and successfully completed the continuing education course on
7 trust fund accounting and handling specified in paragraph (3) of
8 subdivision (a) of Section 10170.5 of the Business and
9 Professions Code. Proof of satisfaction of this requirement
10 includes evidence that Respondent has successfully completed the
11 trust fund account and handling continuing education course
12 within 120 days prior to the effective date of the Decision.

13 V.


14 Respondent RICHARD M. KING shall, within nine (9)
15 months from the effective date of this Decision, present evidence
16 satisfactory to the Real Estate Commissioner that Respondent has,
17 since the most recent issuance of an original or renewal real
18 estate license, taken and successfully completed the continuing
19 education requirements of Article 2.5 of Chapter 3 of the Real
20 Estate Law for renewal of a real estate license. If Respondent
21 fails to satisfy this condition, the Commissioner may order the
22 suspension of Respondent's license until Respondent presents such
23 evidence. The Commissioner shall afford Respondent the
24 opportunity for a hearing pursuant to the Administrative
25 Procedure Act to present such evidence.
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1 A facsimile constitutes acceptance and approval of the
2 terms and conditions of this stipulation. Respondents agree,
3 acknowledge and understand that by electronically sending to the
4 Department a facsimile copy of Respondents' actual signature as
5 it appears on the stipulation that receipt of the facsimile copy
6 by the Department shall be as binding on Respondents as if the
7 Department had received the original signed stipulation.
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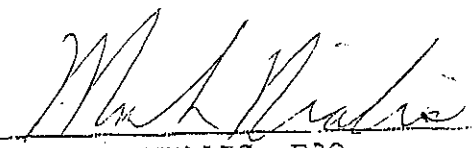
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12 DATED: 11/25/09


MDR PROPERTIES INC.,
BY: RICHARD M. KING D.O.,
Respondent

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17 DATED: 11/25/09


RICHARD M. KING, individually and
as designated officer of MDR
Properties Inc., Respondent

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23 DATED: 12/14/09

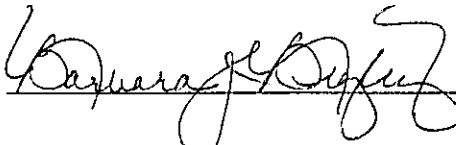

MARK A. NIALIS, ESQ.
Attorney for Respondents

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2 The foregoing Stipulation and Agreement is hereby
3 adopted as my Decision as to Respondents MDR PROPERTIES INC. and
4 RICHARD M. KING, individually and as designated officer of MDR
5 Properties Inc. and shall become effective at 12 o'clock noon on
6 March 25, 2010.

7 IT IS SO ORDERED 2/16, 2010.

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9 JEFF DAVI
10 Real Estate Commissioner

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13 BY: Barbara J. Bigby
14 Chief Deputy Commissioner

1.

1 The Complainant, Robin Trujillo, acting in her official
2 capacity as a Deputy Real Estate Commissioner of the State of
3 California, makes this Accusation against MDR PROPERTIES INC. and
4 RICHARD M. KING.
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6 All references to the "Code" are to the California
7 Business and Professions Code and all references to "Regulations"
8 are to Title 10, Chapter 6, California Code of Regulations.
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3.

10 A. At all times mentioned, MDR PROPERTIES INC. ("MDR")
11 was licensed or had license rights issued by the Department of
12 Real Estate ("Department") as a real estate broker. On December
13 15, 1988, MDR was originally licensed as a corporate real estate
14 broker.
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16 B. At all times mentioned, RICHARD M. KING ("KING")
17 was licensed or had license rights issued by the Department as a
18 real estate broker. On April 30, 1985, KING was originally
19 licensed as a real estate salesperson. On April 1, 1992, KING
20 was originally licensed as a real estate broker. At all times
21 mentioned, KING was licensed as the designated officer or MDR.
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23 C. On February 22, 1999, in case number H-27687 LA,
24 MDR's broker license was revoked with right to a restricted
25 broker license. The restricted broker license issued on February
26 22, 1999. On August 13, 2002, MDR's restricted license was
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1 restored to plenary status, as more fully set forth below in
2 Paragraph 9.

3 D. At all times material herein, MDR was licensed by
4 the Department as a corporate restricted real estate broker by
5 and through KING, as the designated officer and broker
6 responsible, pursuant to Code Section 10159.2 of the Business and
7 Professions Code for supervising the activities requiring a real
8 estate license conducted on behalf MDR of by MDR's officers,
9 agents and employees, including KING.

10 4.

11 At all times mentioned, in City of Chino Hills, County
12 of Los Angeles, MDR and KING acted as real estate brokers and
13 conducted licensed activities within the meaning of:

14 A. Code Section 10131(a). Respondents engaged in the
15 business of, acted in the capacity of, advertised or assumed to
16 act as real estate brokers dba Century 21 King Realtors,
17 including the solicitation for listings of and the negotiation of
18 the sale of real property as the agent of others.; and

19 B. MDR and KING conducted broker-controlled escrows
20 through its escrow division, MDR Escrow, under the exemption set
21 forth in California Financial Code Section 17006(a)(4) for real
22 estate brokers performing escrows incidental to a real estate
23 transaction where the broker is a party and where the broker is
24 performing acts for which a real estate license is required.
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AUDIT EXAMINATION

5.

On January 21, 2009, the Department completed an audit examination of the books and records of MDR pertaining to the broker-escrow activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on January 1, 2007 to July 31, 2008. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 080035 and the exhibits and work papers attached to said audit report.

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, MDR accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties including lenders and borrowers, for loan transactions brokered and escrowed by MDR and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by MDR in the Chino Commerce Bank accounts as follows:

"MDR Properties Inc. dba MDR Escrow - Chino Hills
Account No. 001103464"
Chino, CA 91710 (B/A #1)

"MDR Properties Inc. dba MDR Escrow - Chino Hills
Account No. 1103498"
Chino, CA 91710 (B/A #2)

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2 In the course of activities described in Paragraphs 4
3 and 6 above and during the examination period described in
4 Paragraph 5, Respondents MDR and KING, acted in violation of the
5 Code and the Regulations in that they:

6 (a) Permitted, allowed or caused the disbursement of
7 trust funds from the B/A #1 below where the disbursement of said
8 funds reduced the total of aggregate funds as set forth below, to
9 an amount which, on July 31, 2008, was \$5,709.96, less than the
10 existing aggregate trust fund liability of MDR to every principal
11 who was an owner of said funds, without first obtaining the prior
12 written consent of the owners of said funds, in violation of Code
13 Section 10145 and Regulations 2832.1, 2950(g) and 2951.

14 (b) Permitted Cynthia Zezulka, an unlicensed and
15 unbonded person, to be an authorized signatory on the trust
16 accounts, in violation of Code Section 10145 and Regulations
17 2834, 2950(d) and 2951.

18 (c) While acting in the capacity of an escrow holder in
19 four purchase and sale transactions (Escrow Numbers 2279, 2288,
20 7345, 7366), failed to place trust funds, including earnest money
21 deposits, accepted on behalf of another into the hands of the
22 owner of the funds, a neutral escrow depository or into a trust
23 fund account in the name of the broker at a bank or other
24 financial institution not later than the next business day
25 following receipt of the funds by the broker or by the broker's
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1 salesperson, in violation of Code Section 10145 and Regulation
2 2832(e), 2950(f) and 2951.

3 (d) Used the fictitious names of "MDR Escrow" and "The
4 Sell Fast Team" to conduct licensed activities without holding a
5 license bearing said fictitious business names, in violation of
6 Code Section 10159.5 and Regulation 2731; and

7 (e) Failed to retain all records of MDR's's activity
8 during the audit period requiring a real estate broker license
9 for the Chino Office escrow activity including but not limited to
10 control records and check register for Chino Office B/A #2, as
11 required by Code Section 10148.

12 8.

13 The conduct of Respondents MDR and KING described in
14 Paragraph 7, above, violated the Code and the Regulations as set
15 forth below:

| 16 <u>PARAGRAPH</u> | 17 <u>PROVISIONS VIOLATED</u> |
|---------------------|---|
| 18 7(a) | 19 Code Section 10145 and Regulations 20 2832.1, 2950(g) and 2951 |
| 21 7(b) | 22 Code Section 10145 and Regulations 23 2834, 2950(d) and 2951 |
| 24 7(c) | 25 Code Section 10145 and Regulations 26 2832(e), 2950(f) and 2951 27 |

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7(d) Code Section 10159.5 and Regulation
2731

7(e) Code Section 10148

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of MDR and KING, under the provisions of Code Sections 10177(d) and/or 10177(g).

PRIOR DEPARTMENT ACTION

9.

On June 11, 1998, in Case No. H-27687 LA, an Accusation was filed against Respondent MDR PROPERTIES INC. that resulted in discipline for said Respondent for violation of Code Section 10145 of the California Business and Professions Code and Regulations 2831.2, 2832.1 and 2834.

10.

The overall conduct of Respondents MDR and KING constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents MDR and KING pursuant to Code Section 10177(g).

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2 The overall conduct of Respondent KING constitutes a
3 failure on Respondent's part, as officer designated by a
4 corporate broker licensee, to exercise the reasonable supervision
5 and control over the licensed activities of MDR as required by
6 Code Section 10159.2, and to keep MDR in compliance with the Real
7 Estate Law, and is cause for the suspension or revocation of the
8 real estate license and license rights of KING pursuant to the
9 provisions of Code Section 10177(h).

10 WHEREFORE, Complainant prays that a hearing be
11 conducted on the allegations of this Accusation and that upon
12 proof thereof, a decision be rendered imposing disciplinary
13 action against the license and license rights of Respondents MDR
14 PROPERTIES INC. dba Century 21 King Realtors and MDR Escrow, and
15 RICHARD M. KING, under the Real Estate Law (Part 1 of Division 4
16 of the Business and Professions Code) and for such other and
17 further relief as may be proper under other applicable provisions
18 of law.
19

20 Dated at Los Angeles, California

21 this 1 day of April 2009 Robin Trujillo
22 Deputy Real Estate Commissioner

23
24 cc: MDR Properties Inc.
25 c/o Richard M. King D.O.
26 Robin Trujillo
Sacto
Audits - Surender Bhatia
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