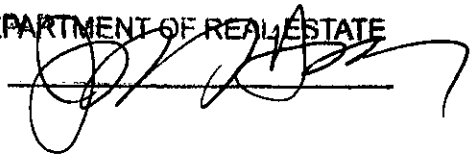


7296

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

FILED

MAR 16 2012

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-37425 LA
12)	OAH L-2011090846
13	TIMOTHY WAYNE MARSHALL and)	
14	KENNETH WAYNE SHISHIDO,)	<u>STIPULATION & AGREEMENT</u>
15)	
16	Respondents.)	

16 It is hereby stipulated by and between Respondents
17 TIMOTHY WAYNE MARSHALL and KENNETH WAYNE SHISHIDO (sometimes
18 referred to as "Respondents"), and the Respondents' attorney of
19 record, Mary E. Work, Esq., and the Complainant, acting by and
20 through Cheryl Keily, Counsel for the Department of Real Estate,
21 as follows for the purpose of settling and disposing of the
22 Accusation filed on August 4, 2011, in this matter.

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and
26 Respondents at a formal hearing on the Accusation, which hearing
27 was to be held in accordance with the provisions of the

1 Administrative Procedure Act (APA), shall instead and in place
2 thereof be submitted solely on the basis of the provisions of
3 this Stipulation and Agreement.

4 2. Respondents have received, read and understand the
5 Statement to Respondent, the Discovery Provisions of the APA
6 and the Accusation filed by the Department of Real Estate
7 ("Department") in this proceeding.

8 3. On August 19, 2011, Respondents filed Notices of
9 Defense, pursuant to Section 11506 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondents hereby freely and voluntarily withdraw
12 said Notices of Defense. Respondents acknowledges that they
13 understand that by withdrawing said Notices of Defense they
14 will thereby waive their right to require the Commissioner to
15 prove the allegations in the Accusation at a contested hearing
16 held in accordance with the provisions of the APA and that they
17 will waive other rights afforded to them in connection with the
18 hearing, such as the right to present evidence in defense of
19 the allegations in the Accusation and the right to cross-
20 examine witnesses.

22 4. This Stipulation and Agreement is based on the
23 factual allegations contained in the Accusation filed in this
24 proceeding. In the interest of expedience and economy,
25 Respondents choose not to litigate these allegations at a
26 formal administrative hearing, but to remain silent and
27 understand that, as a result thereof, these factual

1 allegations, without being admitted or denied, will serve as a
2 prima facie basis for the disciplinary action stipulated to
3 herein. This Stipulation and Agreement and Respondents'
4 decision not to contest the Accusation are hereby expressly
5 limited to this proceeding and made for the sole purpose of
6 reaching an agreed disposition of this proceeding. Respondents'
7 decision not to contest the factual allegations at a formal
8 administrative hearing is made solely for the purpose of
9 effectuating this Stipulation and Agreement and is intended to
10 be non-binding upon Respondents in any action against them by
11 third parties. The Real Estate Commissioner shall not be
12 required to provide further evidence to prove said factual
13 allegations.

14 5. It is understood by the parties that the Real
15 Estate Commissioner may adopt the Stipulation and Agreement as
16 her decision in this matter, thereby imposing the penalty and
17 sanctions on Respondents' real estate licenses and license
18 rights as set forth in the below "Order". In the event that
19 the Commissioner in her discretion does not adopt the
20 Stipulation and Agreement, it shall be void and of no effect,
21 and Respondents shall retain the right to a hearing and
22 proceeding on the Accusation under all the provisions of the
23 APA and shall not be bound by any admission or waiver made
24 herein.
25

26 6. The Order or any subsequent Order of the Real
27 Estate Commissioner made pursuant to this Stipulation and

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

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, admissions
8 and waivers and solely for the purpose of settlement of the
9 pending Accusation without a hearing, it is stipulated and
10 agreed that the following determination of issues shall be made:
11

12 The conduct of Respondents is in violation of Business
13 and Professions Code ("Code") Section 10177(a), and is grounds
14 for the suspension or revocation of all of the real estate
15 licenses and license rights of Respondents under the provisions
16 of Code Section 10177 subdivision (g).

17 ORDER

18 WHEREFORE, THE FOLLOWING ORDER is hereby made:

19 1. The real estate broker licenses of Respondents
20 TIMOTHY WAYNE MARSHALL and KENNETH WAYNE SHISHIDO are hereby
21 publicly reprovod.

22 2. Respondents TIMOTHY WAYNE MARSHALL and KENNETH
23 WAYNE SHISHIDO shall, within six months from the effective date
24 of this Decision, take and pass the Professional Responsibility
25 Examination administered by the Department including the payment
26 of the appropriate examination fee. If either Respondent fails
27

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

4
5 DATED:

Feb. 23, 2012

Cheryl D. Kelly
6 CHERYL D. KELLY, Counsel
7 DEPARTMENT OF REAL ESTATE

8 * * *


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

20 Respondent can signify acceptance and approval of the
21 terms and conditions of this Stipulation and Agreement by faxing
22 a copy of its signature page, as actually signed by Respondent,
23 to the Department at the following telephone/fax number (213)
24 576-6917. Respondent agrees, acknowledges, and understands that
25 by electronically sending to the Department a fax copy of his
26 actual signature as it appears on the Stipulation and Agreement,
27 that receipt of the faxed copy by the Department shall be as


1 binding on Respondent as if the Department had received the
2 original signed Stipulation and Agreement.

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

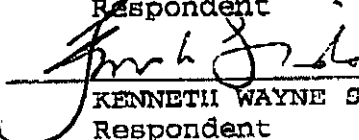
5 DATED: 2/23/12


Mary E. Work, Esq.
Attorney for Respondents

6 DATED: 2/23/12


TIMOTHY WAYNE MARSHALL,
Respondent

7 DATED: 2/23/12


KENNETH WAYNE SHISHIDO,
Respondent

12 * * *

13
14 The foregoing Stipulation and Agreement is hereby
15 adopted as my Decision in this matter and shall become effective
16 at 12 o'clock noon on _____, 2012.

17
18 IT IS SO ORDERED _____, 2012.

1 binding on Respondent as if the Department had received the
2 original signed Stipulation and Agreement.

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

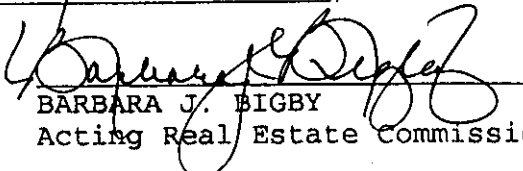
5 DATED: _____
6 Mary E. Work, Esq.
7 Attorney for Respondents

8 DATED: _____
9 TIMOTHY WAYNE MARSHALL,
Respondent

10 DATED: _____
11 KENNETH WAYNE SHISHIDO,
Respondent

12 * * *

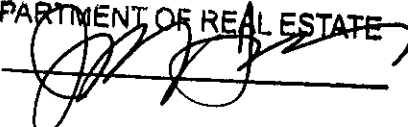
13
14 The foregoing Stipulation and Agreement is hereby
15 adopted as my Decision in this matter and shall become effective
16 at 12 o'clock noon on APR 05 2012, 2012.

17
18 IT IS SO ORDERED 3/13, 2012.
19 
20 BARBARA J. BIGBY
21 Acting Real Estate Commissioner
22
23
24
25
26
27

1 CHERYL D. KEILY SBN# 94008
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6905

FILED

AUG 04 2011

DEPARTMENT OF REAL ESTATE
BY: 

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-37425 LA
13 TIMOTHY WAYNE MARSHALL and,) A C C U S A T I O N
14 KENNETH WAYNE SHISHIDO)
15 Respondents.)

16
17 The Complainant, Robin Trujillo, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against Respondent TIMOTHY WAYNE MARSHALL ("MARSHALL")
20 Respondent KENNETH WAYNE SHISHIDO ("SHISHIDO") alleges as
21 follows:

22 1.

23 The Complainant, Robin Trujillo, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation
25 in her official capacity.

26 ///
27

2.

1 Respondent MARSHALL is presently licensed and/or has
2 license rights under the Real Estate Law (Part 1 of Division 4
3 of the Business and Professions Code, hereinafter "Code") as a
4 real estate broker.
5

6 3.

7 Respondent SHISHIDO is presently licensed and/or has
8 license rights under the Real Estate Law as a real estate
9 broker.
10

11 4.

12 Southbay Passive Income Inc. ("Southbay") is presently
13 licensed and/or has license rights under the Real Estate Law as
14 a real estate corporation acting by and through SHISHIDO as its
15 designated broker-officer. SHISHIDO has continually acted as
16 designated broker-officer since April 6, 2009.
17

18 5.

19 From January 7, 2009, to April 6, 2009, MARSHALL acted
20 as the designated broker-officer for Southbay.
21

22 6.

23 At all times relevant herein W. Darrow Fielder
24 ("Fielder") was an officer of Southbay.
25

26 7.

27 On or about September 26, 2008, MARSHALL, acting as
Southbay's designated broker-officer, submitted to the
Department of Real Estate ("Department") a Corporation License
Application ("Application") seeking a corporate real estate

1 broker license on behalf of Southbay. In Section III of the
2 Application, in the portion of the form entitled
3 "Certification," MARSHALL certified to having read the
4 provisions of Section 2746 of Title 10, California Code of
5 Regulations ("Regulations"). MARSHALL's certification attested
6 that MARSHALL was not required to file a background statement
7 for any director, officer or owner of more than 10% of the
8 Southbay in that none of the individuals listed in Section 2746
9 had been subject to any of those items specified in Section
10 2746, including having a license to engage in real estate
11 revoked (Regulations, Section 2746(a)(2)) or having been
12 convicted of a crime substantially related to the
13 qualifications, functions or duties of a licensee of the
14 Department (Regulations, Section 2746(a)(4)).
15

16 8.

17 On or about March 24, 2009, SHISHIDO, acting as
18 Southbay's designated broker-officer, also submitted to the
19 Department an Application seeking a corporate real estate broker
20 license on behalf of Southbay attesting that he was not required
21 to file a background statement for any director, officer or
22 owner of more than 10% of the Southbay in that none of the
23 individuals listed in Section 2746 had been subject to any of
24 those items specified in Section 2746, including having a
25 license to engage in real estate revoked (Regulations, Section
26 2746(a)(2)) or having been convicted of a crime substantially
27

1 related to the qualifications, functions or duties of a licensee
2 of the Department (Regulations, Section 2746(a)(4)).

3 9.

4 The attestation by MARSHALL alleged in Paragraph 7,
5 above, and by SHISHIDO alleged in Paragraph 8, above, was false
6 based on the following:

7 a. On or about April 12, 2005, the Commissioner of
8 Real Estate revoked the real estate broker license of Fielder,
9 and in doing so gave Fielder the right to apply for and be
10 issued a restricted real estate salesperson license. The
11 grounds for the foregoing discipline were as follows:

12 i. On or about September 19, 2003, in the
13 United States District Court, Central District of
14 California, in Case No. CR 98-261, Fielder was
15 convicted of violating 18 U.S.C. Sections 1014 and 2
16 (Aiding and abetting false statements in a loan
17 application). The underlying facts of this crime bear
18 a substantial relationship under Section 2910 of the
19 Regulations to the qualifications, functions or duties
20 of a real estate licensee; and

21 ii. Fielder negligently failed to disclose
22 certain information he was bound to disclose in a real
23 estate transaction in violation of Code Section
24 10177(g).
25

26 10.

27 The failures by MARSHALL and SHISHIDO to reveal the

1 criminal conviction and license discipline of Fielder as an
2 officer of Southbay, as is set forth in Paragraph 9, above, in
3 their respective Applications is cause to suspend or revoke the
4 real estate license and license rights of Respondent TIMOTHY
5 WAYNE MARSHALL and of Respondent KENNETH WAYNE SHISHIDO pursuant
6 to Business and Professions Code Sections 498, and/or 10177(a).

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against all the licenses and license rights of Respondent
11 TIMOTHY WAYNE MARSHALL and of Respondent KENNETH WAYNE SHISHIDO
12 under the Real Estate Law (Part 1 of Division 4 of the Business
13 and Professions Code), and for such other and further relief as
14 may be proper under other applicable provisions of law.

15 Dated at Los Angeles, California

16 this 2 day of August, 2011.
17

18
19 
20
21 Robin Trujillo
22 Deputy Real Estate Commissioner
23
24
25

26 cc: TIMOTHY WAYNE MARSHALL
27 KENNETH WAYNE SHISHIDO
Robin Trujillo
Sacto.