

FILED  
JUN 02 2005

DEPARTMENT OF REAL ESTATE

By Anne Shaw

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-1771 FR
	)	
REMAX DIRECT, INC., JAN KAREN	)	<u>STIPULATION AND</u>
RYAN, and RYAN HARDESTY,	)	<u>AGREEMENT</u>
	)	
Respondents.	)	

It is hereby stipulated by and between REMAX DIRECT, INC., JAN KAREN RYAN, and RYAN HARDESTY (hereafter Respondents) and their attorney, Robert E. Muir, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on April 12, 2005 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this  
2 Stipulation and Agreement.

3           2. Respondents have received, read and understand the  
4 Statement to Respondent, and the Discovery Provisions of the APA  
5 filed by the Department of Real Estate in this proceeding.

6           3. On April 27, 2005, Respondents filed a Notice of  
7 Defense pursuant to Section 11505 of the Government Code for the  
8 purpose of requesting a hearing on the allegations in the  
9 Accusation. Respondents hereby freely and voluntarily withdraw  
10 said Notice of Defense. Respondents acknowledge that they  
11 understand that by withdrawing said Notice of Defense they will  
12 thereby waive their rights to require the Commissioner to prove  
13 the allegations in the Accusation at a contested hearing held in  
14 accordance with the provisions of the APA, and that they will  
15 waive other rights afforded to him in connection with the hearing  
16 such as the right to present evidence in defense of the  
17 allegations in the Accusation and the right to cross-examine  
18 witnesses.

19           4. Respondents, pursuant to the limitations set forth  
20 below, hereby admit that the factual allegations pertaining to  
21 them in Paragraphs I through VI of the Accusation filed in this  
22 proceeding are true and correct and the Real Estate Commissioner  
23 shall not be required to provide further evidence of such  
24 allegations.

25           5. Without admitting the truth of the allegations  
26 contained in the remaining Paragraphs of the Accusation,  
27 Respondents stipulate that they will not interpose a defense

1 thereto. This Stipulation is based on the factual allegations  
2 contained in the Accusation. In the interests of expedience and  
3 economy, Respondents choose not to contest the allegations, but  
4 to remain silent, and understand that, as a result thereof, these  
5 factual allegations, without being admitted or denied, will serve  
6 as a basis for the disciplinary action stipulated to herein. The  
7 Real Estate Commissioner shall not be required to provide further  
8 evidence to prove said factual allegations.

9           6. The Order or any subsequent Order of the Real  
10 Estate Commissioner made pursuant to this Stipulation and  
11 Agreement shall not constitute an estoppel, merger or bar to any  
12 further administrative or civil proceedings by the Department of  
13 Real Estate with respect to any matters which were not  
14 specifically alleged to be causes for accusation in this  
15 proceeding.

16                   \* \* \*

17                   DETERMINATION OF ISSUES

18           By reason of the foregoing stipulations and waivers and  
19 solely for the purpose of settlement of the pending Accusation  
20 without a hearing, it is stipulated and agreed that the facts  
21 alleged above are grounds for the suspension or revocation of the  
22 licenses and license rights of Respondent RYAN HADESTY under  
23 Section 10130 of the Code, as to Respondent JAN KAREN RYAN under  
24 Sections 10137, 10177(g), 10177(h) and 10159.2 of the Code and,  
25 as to Respondent REMAX DIRECT INC. under Section 10137 of the  
26 Code all in conjunction with Section 10177(d) of the Code.

27                   \* \* \*

1 ORDER

2 I

3 All licenses and licensing rights of Respondents REMAX  
4 DIRECT, INC., JAN KAREN RYAN, and RYAN HARDESTY under the Real  
5 Estate Law are suspended for a period of thirty (30) days from  
6 the effective date of this Order; provided, however, Thirty (30)  
7 days of said suspension shall be stayed, as to each Respondent  
8 individually, upon the condition that each Respondent petition  
9 pursuant to Section 10175.2 of the Business and Professions Code  
10 and each pays a monetary penalty pursuant to Section 10175.2 of  
11 the Business and Professions Code at a rate of \$150 for each day  
12 of the suspension for a total monetary penalty of \$4,500 for each  
13 Respondent:

14 A. Said payment shall be in the form of a cashier's check  
15 or certified check made payable to the Recovery Account of  
16 the Real Estate Fund. Said check must be delivered to the  
17 Department prior to the effective date of the Order in this  
18 matter.

19 B. No further cause for disciplinary action against the  
20 Real Estate licenses of said Respondent occurs within two  
21 (2) years from the effective date of the decision in this  
22 matter.

23 C. If any Respondent fails to pay the monetary penalty as  
24 provided above prior to the effective date of this Order,  
25 the stay of the suspension shall be vacated as to that  
26 Respondent and the order of suspension shall be immediately  
27 executed, under this Paragraph 2 of this Order, in which

1 event the said Respondent shall not be entitled to any  
2 repayment nor credit, prorated or otherwise, for the money  
3 paid to the Department under the terms of this Order.

4 D. If said Respondents pay the monetary penalty and any  
5 other moneys due under this Stipulation and Agreement and if  
6 no further cause for disciplinary action against the real  
7 estate licenses of said Respondents occurs within two (2)  
8 years from the effective date of this Order, the entire stay  
9 hereby granted under Paragraphs 1 and 2 of this Order, as to  
10 said Respondents only, shall become permanent.

11 18-May-05  
12 DATED

11 Truly Sughrie  
12 TRULY SUGHRUE  
13 Counsel for Complainant

14 \* \* \*

15 I have read the Stipulation and Agreement, have  
16 discussed it with my counsel, and its terms are understood by me  
17 and are agreeable and acceptable to me. I understand that I am  
18 waiving rights given to me by the California Administrative  
19 Procedure Act (including but not limited to Sections 11506,  
20 11508, 11509, and 11513 of the Government Code), and I willingly,  
21 intelligently, and voluntarily waive those rights, including the  
22 right of requiring the Commissioner to prove the allegations in  
23 the First Amended Accusation at a hearing at which I would have  
24 the right to cross-examine witnesses against me and to present  
25 evidence in defense and mitigation of the charges.

5-9-05

DATED

ReMax Direct Inc  
by Jan Karen Ryan

REMAX DIRECT, INC.  
Respondent

5-9-05

DATED

Jan Karen Ryan

JAN KAREN RYAN  
Respondent

5-10-05

DATED

Ryan Hardesty

RYAN HARDESTY  
Respondent

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

DATED: 5-11-05

R E Muir

ROBERT E. MUIR  
Attorney for Respondents

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and shall become effective at 12 o'clock  
noon on JUNE 20, 2005.

IT IS SO ORDERED 5-31-05, 2005.

JEFF DAVI  
Real estate Commissioner

Jeff Davi

1 TRULY SUGHRUE, Counsel  
2 State Bar No. 223266  
3 Department of Real Estate  
4 P.O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0781

FILED  
APR 12 2005

DEPARTMENT OF REAL ESTATE

By Anne Shanon

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-1771 FR

12 REMAX DIRECT, INC., JAN KAREN )

ACCUSATION

13 RYAN, AND RYAN HARDESTY, )

14 Respondent.

15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against REMAX DIRECT, INC., JAN KAREN RYAN, AND RYAN HARDESTY  
18 (hereinafter "Respondents"), are informed and alleges as follows:

19 I

20 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
21 Commissioner of the State of California, makes this Accusation in  
22 his official capacity.

23 II

24 Respondents are presently licensed and/or has license  
25 rights under the Real Estate Law, Part 1 of Division 4 of the  
26 Business and Professions Code ("Code").  
27

III

At all times herein mentioned, REMAX DIRECT INC., (hereafter REMAX) was and is licensed by the State of California Department of Real Estate (hereafter Department) as a real estate broker corporation.

IV

At all times herein mentioned, Respondent JAN KAREN RYAN, (hereafter RYAN) was and is licensed by the Department individually and as the designated broker officer of REMAX. As said designated officer-broker, RYAN was and now is responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of REMAX for which a license is required.

V

On October 25, 2004, the Department issued a license to Respondent RYAN HARDESTY (hereinafter HARDESTY) as a real estate salesperson. HARDESTY was never licensed by the Department either as a real estate broker or as a real estate salesperson prior to October 25, 2004.

VI

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised and assumed to act as real estate brokers in the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in



1 expectation of compensation, Respondents sold and offered to  
2 sell, bought and offered to buy, solicited prospective sellers  
3 and purchasers of, solicited and obtained listings of, and  
4 negotiated the purchase and sale of real property.

#### 5 VII

6 At all times mentioned herein beginning on or about  
7 July 2004, REMAX and RYAN employed and compensated HARDESTY to  
8 perform the acts and conduct the activities described in  
9 Paragraph VI, above, including but not limited to the activities  
10 described in Paragraph VIII, below.

#### 11 VIII

12 Beginning on or about July 2004, in the course of the  
13 activities and employment described in Paragraphs VI and VII,  
14 above, HARDESTY, acting for and on behalf of another or others,  
15 for or in expectation of compensation, negotiated and arranged  
16 the purchase and sale of real property, including but not limited  
17 to the real property located at 16142 Watt Way, Ramona,  
18 California.

#### 19 IX

20 In acting as described above, HARDESTY violated Section  
21 10130 of the Code, and REMAX and RYAN violated Section 10137 of  
22 the Code.

#### 23 X

24 At all times mentioned herein, RYAN failed to exercise  
25 reasonable supervision over the acts of REMAX and its agents and  
26 employees in such a manner as to allow the acts and omissions on  
27 the part of REMAX and HARDESTY, described above, to occur.

XI

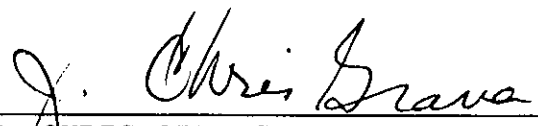
The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code:

(a) As to Respondents REMAX and RYAN under Section 10137 the Code in conjunction with Section 10177(d) of the Code;

(b) As to Respondent HARDESTY under Section 10130 the Code in conjunction with Section 10177(d) of the Code;

(c) As to Respondent RYAN under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

  
J. CHRIS GRAVES  
Deputy Real Estate Commissioner

Dated at San Diego, California,  
this 8<sup>th</sup> day of April, 2005