

FILED

JUN 19 2015

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

Telephone: (916) 263-8670
Fax: (916) 263-3767

BUREAU OF REAL ESTATE

By K. Contreras

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
)
MONTEREY PENINSULA CAPITAL)
PARTNERS, INC., a Corporation,)
MARIO PADILLA, and)
RICHARD S. KOSTKAS,)
)
)
Respondents.)

NO. H-2853 FR

STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

It is hereby stipulated by and between Respondents MONTEREY PENINSULA CAPITAL PARTNERS, INC. (herein "MPCPI"), MARIO PADILLA (herein "PADILLA") and RICHARD S. KOSTKAS (herein "KOSTKAS") (herein collectively "Respondents") individually and jointly, by and through Mary E. Work, attorney of record herein for Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing of the Accusation filed on December 10, 2013, in this matter (herein "the Accusation"):

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),

1 shall instead and in place thereof be submitted solely on the basis of the provisions of this
2 Stipulation and Agreement in Settlement and Order.

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

5 3. Notices of Defense were filed on December 18, 2013, by Respondents
6 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
7 the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
8 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
9 Notices of Defense, they will thereby waive their rights to require the Real Estate Commissioner
10 (herein "Commissioner") to prove the allegations in the Accusation at a contested hearing held in
11 accordance with the provisions of the APA and that they will waive other rights afforded to them
12 in connection with the hearing such as the right to present evidence in defense of the allegations
13 in the Accusation and the right to cross-examine witnesses.

14 4. Respondents hereby admit that the factual allegations pertaining to them in the
15 Accusation filed in this proceeding are true and correct and the Commissioner shall not be
16 required to provide further evidence of such allegations.

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

24 6. The Order or any subsequent Order of the Commissioner made pursuant to this
25 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar

1 to any further administrative or civil proceedings by the Bureau with respect to any matters
2 which were not specifically alleged to be causes for the Accusation in this proceeding.

3 7. Respondents understand that by agreeing to this Stipulation and Agreement in
4 Settlement and Order, Respondents agree to pay, jointly and severally, pursuant to Section 10148
5 of the California Business and Professions Code (herein "Code"), the cost of the audit which
6 resulted in the determination that Respondents committed the violations found in the
7 Determination of Issues. The amount of said costs is \$4,669.23.

8 8. Respondents understand that by agreeing to this Stipulation and Agreement in
9 Settlement and Order, the findings set forth below in the Determination of Issues become final,
10 and that the Commissioner may charge said Respondents, jointly and severally, for the costs of
11 any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund
12 violations found in the Determination of Issues, below, have been corrected. The maximum
13 costs of said audit shall not exceed \$4,669.23.

14 9. Respondents further understand that by agreeing to this Stipulation and
15 Agreement in Settlement and Order, Respondents agree to pay, jointly and severally, pursuant to
16 Section 10106(a) of the Code, investigative and enforcement costs of \$2,578.80 which led to this
17 disciplinary action.

18 DETERMINATION OF ISSUES

19 The acts and omissions of Respondents as described in the Accusation are
20 grounds for the suspension or revocation of the licenses and license rights of Respondents under
21 the following provisions of the Code and/or Chapter 6, Title 10, California Code of Regulations
22 (herein "the Regulations"):

- 23 (a) as to Paragraph 9(a) and MPCPI and PADILLA, under Section 10145
24 of the Code and Section 2832 of the Regulations in conjunction with
25 Section 10177(d) of the Code;

- 1 (b) as to Paragraph 9(b) and MPCPI and PADILLA, under Section 2831 of
2 the Regulations in conjunction with Section 10177(d) of the Code;
- 3 (c) as to Paragraph 9(c) and MPCPI and PADILLA, under Section 2831.2 of
4 the Regulations in conjunction with Section 10177(d) of the Code;
- 5 (d) as to Paragraph 9(d) and MPCPI and PADILLA, under Section 2834 of
6 the Regulations in conjunction with Section 10177(d) of the Code;
- 7 (e) as to Paragraph 9(e) and MPCPI and PADILLA, under Section
8 10176(e) of the Code;
- 9 (f) as to Paragraph 9(f) and MPCPI and PADILLA, under Section
10 10232.25(a) of the Code in conjunction with 10177(d) of the Code;
- 11 (g) as to Paragraph 9(g) and MPCPI and PADILLA, under Section
12 10238(k)(3) of the Code in conjunction with 10177(d) of the Code;
13 and
- 14 (h) as to Paragraph 10 and MPCPI and KOSTKAS, under Section 10145
15 of the Code and Section 2832 of the Regulations in conjunction with
16 Section 10177(d) of the Code.

17 ORDER

18 I

19 All licenses and licensing rights of Respondent MPCPI under the Real Estate
20 Law are suspended for a period of sixty (60) days from the effective date of this Order;
21 provided, however, that:

22 1. Thirty (30) days of said sixty (60) day suspension shall be stayed for two (2)
23 years upon the following terms and conditions:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

(a) Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,

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

2. The remaining thirty (30) days of said sixty (60) day suspension shall be stayed upon the condition that Respondent 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 \$100.00 for each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

(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, Legal Section at P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective date of this Order.

(b) No further cause for disciplinary action against the Real Estate license of Respondent occurs within two (2) years from the effective date of this Order.

(c) If Respondent fails to pay the monetary penalty as provided above prior to the effective date of this Order, the suspension shall go into effect automatically and remain in effect until Respondent pays the monetary

1 receiving an invoice therefore from the Commissioner detailing the activities performed during
2 the audit and the amount of time spent performing those activities. If Respondent fails to pay
3 such cost within the sixty (60) days, Respondent's real estate license shall automatically be
4 suspended until Respondent's payment is made in full. Upon payment in full, the indefinite
5 suspension provided for in this paragraph shall be stayed.

6 5. All licenses and licensing rights of Respondent are indefinitely suspended
7 unless or until Respondent pays, jointly and severally with Respondents PADILLA and
8 KOSTKAS, the sum of \$2,578.80 for the Commissioner's investigative and enforcement costs,
9 pursuant to Section 10106(a) of the Code, for the investigation and enforcement which led to
10 this disciplinary action. Said payment shall be in the form of a cashier's check or certified check
11 made payable to the Real Estate Fund and **delivered to the Bureau of Real Estate, Legal**
12 **Section at P.O. Box 137007, Sacramento, CA 95813-7007.**

13 II

14 All licenses and licensing rights of Respondent PADILLA under the Real Estate
15 Law are suspended for a period of sixty (60) days from the effective date of this Order;
16 provided, however, that:

17 1. All licenses and licensing rights of Respondent under the Real Estate Law are
18 suspended until such time as Respondent provides proof satisfactory to the Commissioner that
19 Respondent has, within one hundred twenty (120) days prior to the effective date of the Order
20 herein completed the continuing education course on trust fund accounting and handling
21 specified in subdivision (a) of Section 10170.5 of the Code.

22 2. Thirty (30) days of said sixty (60) day suspension shall be stayed for two (2)
23 years upon the following terms and conditions:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

(a) Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,

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

3. The remaining thirty (30) days of said sixty (60) day suspension shall be stayed upon the condition that Respondent 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 \$100.00 for each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

(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, Legal Section at P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective date of this Order.

(b) No further cause for disciplinary action against the Real Estate license of Respondent occurs within two (2) years from the effective date of this Order.

(c) If Respondent fails to pay the monetary penalty as provided above prior to the effective date of this Order, the suspension shall go into effect automatically and remain in effect until Respondent pays the monetary

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

penalty in full, in which event Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Bureau under the terms of this Order.

(d) If Respondent pays the monetary penalty and any other moneys due under this Stipulation and Agreement in Settlement and Order if no further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of this Order, the entire stay hereby granted under this Order shall become permanent.

4. Respondent understands that by agreeing to this Stipulation and Agreement in Settlement and Order, Respondent agrees to pay, jointly and severally with Respondents MPCPI and KOSTKAS, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the determination that Respondent committed the trust fund violations found in the Determination of Issues, above. The amount of said cost is \$4,669.23. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. If Respondent fails to pay such cost within the sixty (60) days, Respondent's real estate license shall automatically be suspended until Respondent's payment is made in full. Upon payment in full, the indefinite suspension provided for in this paragraph shall be stayed.

5. Respondent shall pay, jointly and severally with Respondents MPCPI and KOSTKAS, the Commissioner's costs, not to exceed \$4,669.23, of any audit conducted pursuant to Section 10148 of the Code to determine if Respondent has corrected the violations described in the Determination of Issues, above. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60) days of

1 receiving an invoice therefore from the Commissioner detailing the activities performed during
2 the audit and the amount of time spent performing those activities. If Respondent fails to pay
3 such cost within the sixty (60) days, Respondent's real estate license shall automatically be
4 suspended until Respondent's payment is made in full. Upon payment in full, the indefinite
5 suspension provided for in this paragraph shall be stayed.

6 6. All licenses and licensing rights of Respondent are indefinitely suspended
7 unless or until Respondent pays, jointly and severally with Respondents MPCPI and
8 KOSTKAS, the sum of \$2,578.80 for the Commissioner's investigative and enforcement costs,
9 pursuant to Section 10106(a) of the Code, for the investigation and enforcement which led to
10 this disciplinary action. Said payment shall be in the form of a cashier's check or certified check
11 made payable to the Real Estate Fund and **delivered to the Bureau of Real Estate, Legal**
12 **Section at P.O. Box 137007, Sacramento, CA 95813-7007.**

13 7. Respondent shall, within six (6) months from the effective date of this Order,
14 take and pass the Professional Responsibility Examination administered by the Bureau,
15 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
16 condition Respondent's real estate license shall automatically be suspended until Respondent
17 passes the examination.

18 III

19 All licenses and licensing rights of Respondent KOSTKAS under the Real Estate
20 Law are suspended for a period of sixty (60) days from the effective date of this Order;
21 provided, however, that:

22 1. All licenses and licensing rights of Respondent under the Real Estate Law are
23 suspended until such time as Respondent provides proof satisfactory to the Commissioner that
24 Respondent has, within one hundred twenty (120) days prior to the effective date of the Order
25 herein completed the continuing education course on trust fund accounting and handling

1 specified in subdivision (a) of Section 10170.5 of the Code.

2 2. Thirty (30) days of said sixty (60) day suspension shall be stayed for two (2)
3 years upon the following terms and conditions:

4 (a) Respondent shall obey all laws, rules and regulations governing the
5 rights, duties and responsibilities of a real estate licensee in the
6 State of California; and,

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

14 3. The remaining thirty (30) days of said sixty (60) day suspension shall be
15 stayed upon the condition that Respondent petitions, pursuant to Section 10175.2 of the Code,
16 and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00 for
17 each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

18 (a) Said payment shall be in the form of a cashier's check made
19 payable to the Bureau of Real Estate. Said check must be **delivered**
20 **to the Bureau of Real Estate, Legal Section at P.O. Box 137007,**
21 **Sacramento, CA 95813-7007, prior** to the effective date of this
22 Order.

23 (b) No further cause for disciplinary action against the Real Estate license
24 of Respondent occurs within two (2) years from the effective date of
25 this Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

(c) If Respondent fails to pay the monetary penalty as provided above prior
to the effective date of this Order, the suspension shall go into effect
automatically and remain in effect until Respondent pays the monetary
penalty in full, in which event Respondent shall not be entitled to any
repayment nor credit, prorated or otherwise, for the money paid to the
Bureau under the terms of this Order.

(d) If Respondent pays the monetary penalty and any other moneys due
under this Stipulation and Agreement in Settlement and Order if no
further cause for disciplinary action against the real estate license of
Respondent occurs within two (2) years from the effective date of this
Order, the entire stay hereby granted under this Order shall become
permanent.

4. Respondent understands that by agreeing to this Stipulation and Agreement in
Settlement and Order, Respondent agrees to pay, jointly and severally with Respondents MPCPI
and PADILLA, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
determination that Respondent committed the trust fund violations found in the Determination of
Issues, above. The amount of said cost is \$4,669.23. Respondent shall pay such cost within
sixty (60) days of receiving an invoice therefore from the Commissioner. If Respondent fails to
pay such cost within the sixty (60) days, Respondent's real estate license shall automatically be
suspended until Respondent's payment is made in full. Upon payment in full, the indefinite
suspension provided for in this paragraph shall be stayed.

5. Respondent shall pay, jointly and severally with Respondents MPCPI and
PADILLA, the Commissioner's costs, not to exceed \$4,669.23, of any audit conducted pursuant
to Section 10148 of the Code to determine if Respondent has corrected the violations described
in the Determination of Issues, above. In calculating the amount of the Commissioner's

1 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
2 performing audits of real estate brokers, and shall include an allocation for travel time to and
3 from the auditor's place of work. Respondent shall pay such cost within sixty (60) days of
4 receiving an invoice therefore from the Commissioner detailing the activities performed during
5 the audit and the amount of time spent performing those activities. If Respondent fails to pay
6 such cost within the sixty (60) days, Respondent's real estate license shall automatically be
7 suspended until Respondent's payment is made in full. Upon payment in full, the indefinite
8 suspension provided for in this paragraph shall be stayed.

9 6. All licenses and licensing rights of Respondent are indefinitely suspended
10 unless or until Respondent pays, jointly and severally with Respondents MPCPI and PADILLA,
11 the sum of \$2,578.80 for the Commissioner's investigative and enforcement costs, pursuant to
12 Section 10106(a) of the Code, for the investigation and enforcement which led to this
13 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
14 made payable to the Real Estate Fund and **delivered to the Bureau of Real Estate, Legal**
15 **Section at P.O. Box 137007, Sacramento, CA 95813-7007.**

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

21
22
23 5-21-15

24 DATED

25
26
27 
MARY F. CLARKE, Counsel
BUREAU OF REAL ESTATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27


* * *

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

3-7-15

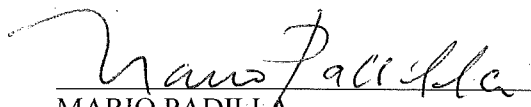
DATED

MONTEREY PENINSULA CAPITAL INC.
Respondent

By: 
RICHARD S. KOSTKAS
Designated Officer - Broker

3-7-15

DATED



MARIO PADILLA
Former Designated Officer - Broker

* * *

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

3/9/2015

DATED


MARY E. WORK
Attorney for Respondents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

The foregoing Stipulation and Agreement in Settlement and Order is hereby
adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

JUL 9 2015

IT IS SO ORDERED Jeffrey I, 2015.

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner