

1 Department of Real Estate  
2 P.O. Box 137007  
3 Sacramento, CA 95813-7007  
4 Telephone: (916) 576-7848

**FILED**

**AUG 25 2021**

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

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7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

12 ASCEND PROPERTY MANAGEMENT, INC., and )  
13 NIKOLAS TROY BOONE, )

14 Respondents. )

No. H-3353 FR

STIPULATION AND  
AGREEMENT

15 It is hereby stipulated by and between ASCEND PROPERTY MANAGEMENT,  
16 INC. (APM), and NIKOLAS TROY BOONE (BOONE) (collectively referred to as  
17 "Respondents"), represented by Robert F. Hahn, and the Complainant, acting by and through  
18 Richard Uno, Counsel for the Department of Real Estate (Department), as follows for the  
19 purpose of settling and disposing the Accusation filed on December 23, 2020, in this matter:

20 1. All issues which were to be contested and all evidence which was to be  
21 presented by Complainant and Respondents at a formal hearing on the Accusation, which  
22 hearing was to be held in accordance with the provisions of the Administrative Procedure Act  
23 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of  
24 this Stipulation and Agreement.

25 2. Respondents have received, read, and understand the Statement to  
26 Respondent, and the Discovery Provisions of the APA filed by the Department in this  
27 proceeding.

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

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

16                   5.       This Stipulation and Agreement and Respondents' decision not to contest  
17 the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and  
18 are expressly limited to this proceeding and any other proceeding or case in which the  
19 Department, the state or federal government, an agency of this state, or an agency of another  
20 state is involved.

21                   6.       Respondents understand that by agreeing to this Stipulation and  
22 Agreement, Respondents agrees to pay, pursuant to Section 10148 of the California Business  
23 and Professions Code (Code), the cost of the audit, which resulted in the determination that  
24 Respondents committed the trust fund handling violation(s) found in the Determination of  
25 Issues. The amount of said costs is \$4,608.30.

26 ///

27 ///

1           7.       Respondents further understand that by agreeing to this Stipulation and  
2 Agreement, the findings set forth below in the Determination of Issues become final, and that  
3 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant  
4 to Section 10148 of the Code to determine if the violations have been corrected. The maximum  
5 costs of said audit shall not exceed \$5,760.38.

6           8.       It is understood by the parties that the Commissioner may adopt the  
7 Stipulation and Agreement as his Decision and Order in this matter thereby imposing the penalty  
8 and sanctions on the real estate licenses and license rights of Respondents as set forth in the  
9 below "Order". In the event that the Commissioner in his discretion does not adopt the  
10 Stipulation and Agreement, it shall be void and of no effect, and Respondents shall retain the  
11 right to a hearing and proceeding on the Accusation under all the provisions of the APA and  
12 shall not be bound by any admission or waiver made herein.

13           9.       The Order or any subsequent Order of the Commissioner made pursuant to  
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further  
15 administrative or civil proceedings by the Department with respect to any matters which were  
16 not specifically alleged in Accusation H-3353 FR.

17                               \* \* \*

18                               DETERMINATION OF ISSUES

19           By reason of the foregoing stipulations and waivers and solely for the purpose of  
20 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the  
21 following determination of issues shall be made:

22                               I

23           The acts and omissions of Respondents as described in the First Cause of Action  
24 in the Accusation are grounds for the suspension or revocation of Respondents' licenses and  
25 license rights under sections 2831, 2831.1, 2831.2 and 2832 Title 10 of the California Code of  
26 Regulations (Regulations) and Sections 10145 and 10177(g) of the Code.

27       ///

1  
2 II

3 The acts and omissions of BOONE as described in the Second Cause of Action  
4 in the Accusation are grounds for the suspension or revocation of BOONE's licenses and  
5 license rights under Section 10177(h) of the Code.

6 \* \* \*

7 ORDER

8 I

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

11 1) Thirty (30) days of said suspension shall be stayed, upon the condition that APM  
12 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to  
13 Section 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary  
14 penalty of \$1,500.

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

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

21 c) If APM fails to pay the monetary penalty as provided above prior to the effective  
22 date of this Order, the stay of the suspension shall be vacated as to that APM and the order of  
23 suspension shall be immediately executed, under this Order, in which event the said APM shall  
24 not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the  
25 Department under the terms of this Order.

26 d) If APM pays the monetary penalty and any other moneys due under this  
27 Stipulation and Agreement and if no further cause for disciplinary action against the real estate

1 license of said APM occurs within two (2) years from the effective date of this Order, the entire  
2 stay hereby granted this Order, as to said APM only, shall become permanent.

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

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

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

## 12 II

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

16 1) Thirty (30) days of said suspension shall be stayed, upon the condition that  
17 BOONE petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant  
18 to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total  
19 monetary penalty of \$3,000.

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

24 b) No further cause for disciplinary action against the Real Estate licenses of  
25 BOONE occurs within two (2) years from the effective date of the decision in this matter.

26 c) If BOONE fails to pay the monetary penalty as provided above prior to the  
27 effective date of this Order, the stay of the suspension shall be vacated as to that BOONE and the

1 order of suspension shall be immediately executed, under this Order, in which event the said  
2 BOONE shall not be entitled to any repayment nor credit, prorated or otherwise, for the money  
3 paid to the Department under the terms of this Order.

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

8 2) Sixty (60) days of said suspension shall be stayed for two (2) years upon the  
9 following terms and conditions:

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

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

17 III

18 1) Pursuant to Section 10148 of the Code, Respondents shall jointly and severally  
19 pay the sum of \$4,608.30 for the Commissioner's cost of the audit which led to this disciplinary  
20 action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore  
21 from the Commissioner. Payment of audit costs should not be made until Respondents receive  
22 the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for  
23 herein, Respondents' real estate license shall automatically be suspended until payment is made  
24 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to  
25 this condition.

26 2) Pursuant to Section 10148 of the Code, Respondents shall pay the  
27 Commissioner's reasonable cost, not to exceed \$5,760.38, for an audit to determine if

1 Respondents have corrected the violation(s) found in the Determination of Issues. In calculating  
2 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated  
3 average hourly salary for all persons performing audits of real estate brokers, and shall include  
4 an allocation for travel time to and from the auditor's place of work. Respondents shall pay such  
5 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of  
6 the audit costs should not be made until Respondents receive the invoice. If Respondents fail to  
7 satisfy this condition in a timely manner as provided for herein, Respondents' real estate license  
8 shall automatically be suspended until payment is made in full, or until a decision providing  
9 otherwise is adopted following a hearing held pursuant to this condition.

10  
11 6/28/21  
12 DATED

  
13 RICHARD UNO  
14 Counsel for Complainant

15 \* \* \*


16 I have read the Stipulation and Agreement, discussed it with my counsel, and its  
17 terms are understood by me and are agreeable and acceptable to me. I understand that I am  
18 waiving rights given to me by the California Administrative Procedure Act, and I willingly,  
19 intelligently and voluntarily waive those rights, including the right of requiring the  
20 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the  
21 right to cross-examine witnesses against me and to present evidence in defense and mitigation of  
22 the charges.

23 Respondent and Respondent's attorney further agree to send the original signed  
24 Stipulation by mail to the following address no later than one (1) week from the date the  
25 Stipulation is signed by Respondent and Respondent's attorney: *Department of Real Estate,*  
26 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and  
27

1 Respondent's attorney understand and agree that if they fail to return the original signed  
2 Stipulation by the due date, Complainant retains the right to set this matter for hearing.

3 6-22-21

4 DATED

  
NIKOLAS TROY BOONE, on behalf of  
ASCEND PROPERTY MANAGEMENT,  
INC.  
Respondent

7 6-22-21

8 DATED

  
NIKOLAS TROY BOONE  
Respondent

10 \*\*\*

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

13 6-24-21

14 DATED

  
ROBERT F. HAHN  
Attorney for Respondents


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17 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
18 Order and shall become effective at 12 o'clock noon on SEP 15 2021

19 IT IS SO ORDERED

8.17.21

21 DOUGLAS R. McCAULEY  
22 REAL ESTATE COMMISSIONER

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