

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

FEB - 6 2013

DEPARTMENT OF REAL ESTATE
By R. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

12 In the Matter of the Accusation of)

13 KM REALTY, INC.,)
14 CAROLYN MARIE CERWONKA)
and KEVIN J. MILHOAN,)

15 Respondents.)

NO. H-4157 SD

STIPULATION AND AGREEMENT

17 It is hereby stipulated by and between Respondents KM REALTY, INC.
18 ("KMR") and KEVIN J. MILHOAN ("MILHOAN"), acting by and through Mary E. Work,
19 Counsel for Respondents KMR and MILHOAN; Respondent CAROLYN MARIE
20 CERWONKA ("CERWONKA"), acting by and through Frederick M. Ray, Counsel for
21 Respondent CERWONKA; and the Complainant, acting by and through John W. Barron,
22 Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing
23 of the Accusation filed on December 9, 2010, in this matter:

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

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

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

6 3. On December 24, 2010, Respondents filed a Notice of Defense pursuant
7 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
8 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice
9 of Defense. Respondents acknowledge that Respondents understand that by withdrawing said
10 Notice of Defense, Respondents will thereby waive Respondents' rights to require the
11 Commissioner to prove the allegations in the Accusation at a contested hearing held in
12 accordance with the provisions of the APA and that Respondents will waive other rights
13 afforded to Respondents in connection with the hearing such as the right to present evidence in
14 defense of the allegations in the Accusation and the right to cross-examine witnesses.

15 4. This Stipulation is based on the factual allegations contained in the
16 Accusation. In the interest of expedience and economy, Respondents choose not to contest
17 these factual allegations, but to remain silent and understand that, as a result thereof, these
18 factual statements will serve as a prima facie basis for the "Determination of Issues" and
19 "Order" set forth below. The Real Estate Commissioner shall not be required to provide further
20 evidence to prove such allegations.

21 5. This Stipulation and Respondents' decision not to contest the Accusation
22 are made for the purpose of reaching an agreed disposition of this proceeding and are expressly
23 limited to this proceeding and any other proceeding or case in which the Department of Real
24 Estate, the State or the federal government, an agency of this State, or an agency of another state
25 is involved.

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

8 7. This Stipulation and Agreement shall not constitute an estoppel, merger
9 or bar to any further administrative or civil proceedings by the Department of Real Estate with
10 respect to any matters which were not specifically alleged to be causes for accusation in this
11 proceeding.

12 8. Respondents KMR and MILHOAN understand that by agreeing to this
13 Stipulation and Agreement, Respondents KMR and MILHOAN agree to pay, pursuant to
14 Section 10148 of the California Business and Professions Code ("the Code"), the cost of the
15 audit which resulted in the determination that Respondents KMR and MILHOAN committed
16 the violation(s) found in the Determination of Issues. The amount of such costs is \$9,505.50.

17 9. Respondents KMR and MILHOAN further understand that by agreeing
18 to this Stipulation and Agreement, the findings set forth below in the Determination of Issues
19 become final, and that the Commission may charge said Respondents KMR and MILHOAN
20 for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the
21 violations have been corrected. The maximum cost of said audit shall not exceed \$9,505.50.

22 10. Respondents KMR and MILHOAN further understand that by agreeing
23 to this Stipulation and Agreement, the findings set forth below in the Determination of Issues
24 become final, and that the Commission may charge said Respondent MILHOAN for the costs
25 of the investigation herein. The amount of such costs is \$1,176.95.

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27 ///

11. Respondent MILHOAN agrees to resign as the designated officer/broker for KMR as of the effective date of this decision. In addition, MILHOAN shall not be eligible to act as the designated officer or broker for any California corporation for a period of two (2) years from the effective date of this decision.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the acts and omissions of Respondents described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of KMR under the provisions of Sections 10145 (handling of trust funds), 10148 (record retention requirements), 10176(g) (taking undisclosed amount of compensation), 10176(i) (fraud or dishonest dealing), 10177(d) (willful disregard of real estate law) and/or 10177(g) (negligence) of the Code, and Sections 2831 (maintenance of trust fund records), 2831.1 (maintenance of separate records for each beneficiary or transaction), 2831.2 (trust account reconciliation) and 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code of Regulations ("the Regulations"); and are grounds for the suspension or revocation of the licenses and license rights of MILHOAN under provisions of Sections 10145, 10159.2 (broker supervision), 10177(d), 10177(g) and 10177(h) (reasonable supervision responsibility of broker) of the Code, and Section 2725 (broker supervision) of the Regulations.

ORDER

1

All licenses and licensing rights of KMR under the Real Estate Law are suspended for a period of 120 days from the effective date of this Order; provided, however, that:

1. Sixty (60) days of said suspension shall be stayed, upon the condition that KMR petitions pursuant to Section 10175.2 of the Business and Professions Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of \$100 for each day of the suspension for a total monetary penalty of \$6,000.

1 a. Said payment shall be in the form of a cashier's check or certified
2 check made payable to the Recovery Account of the Real Estate Fund. Said check must be
3 delivered to the Department prior to the effective date of the Decision in this matter.

4 b. No further cause for disciplinary action against the real estate
5 license of KMR occurs within two (2) years from the effective date of the decision in this matter.

6 c. If KMR fails to pay the monetary penalty in accordance with the
7 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
8 immediate execution of all or any part of the stayed suspension, in which event, KMR shall not
9 be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
10 under the terms of this decision.

11 d. If KMR pays the monetary penalty, and if no further cause for
12 disciplinary action against the real estate license of KMR occurs within two (2) years from the
13 effective date of the Decision herein, then the stay hereby granted shall become permanent.

14 2. The remaining sixty (60) days of said suspension shall be stayed for two
15 (2) years upon the following terms and conditions:

16 a. KMR shall obey all laws, rules and regulations governing the
17 rights, duties and responsibilities of a real estate licensee in the State of California; and

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

24 2

25 All licenses and licensing rights of MILHOAN under the Real Estate Law are
26 suspended for a period of 120 days from the effective date of this Order; provided, however, that:

1 1. Sixty (60) days of said suspension shall be stayed, upon the condition that
2 MILHOAN petitions pursuant to Section 10175.2 of the Business and Professions Code and pays
3 a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate
4 of \$100 for each day of the suspension for a total monetary penalty of \$6,000.

5 a. Said payment shall be in the form of a cashier's check or certified
6 check made payable to the Recovery Account of the Real Estate Fund. Said check must be
7 delivered to the Department prior to the effective date of the Decision in this matter.

8 b. No further cause for disciplinary action against the real estate
9 license of MILHOAN occurs within two (2) years from the effective date of the decision in this
10 matter.

11 c. If MILHOAN fails to pay the monetary penalty in accordance with
12 the terms and conditions of the Decision, the Commissioner may, without a hearing, order the
13 immediate execution of all or any part of the stayed suspension, in which event, MILHOAN
14 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
15 Department under the terms of this decision.

16 d. If MILHOAN pays the monetary penalty, and if no further cause
17 for disciplinary action against the real estate license of MILHOAN occurs within two (2) years
18 from the effective date of the Decision herein, then the stay hereby granted shall become
19 permanent.

20 2. The remaining sixty (60) days of said suspension shall be stayed for two
21 (2) years upon the following terms and conditions:

22 a. MILHOAN shall obey all laws, rules and regulations governing the
23 rights, duties and responsibilities of a real estate licensee in the State of California; and

24 b. That no final subsequent determination be made, after hearing or
25 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
26 effective date of this Order. Should such a determination be made, the Commissioner may, in
27 her discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed

1 suspension. Should no such determination be made, the stay imposed herein shall become
2 permanent.

3 3. MILHOAN shall, within six (6) months from the effective date of this
4 Order, take and pass the Professional Responsibility Examination administered by the
5 Department, including the payment of the appropriate examination fee. If MILHOAN fails to
6 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
7 rights of MILHOAN until MILHOAN passes the examination.

8 4. Notwithstanding any other provision of this Order, all licenses and
9 licensing rights of MILHOAN are suspended unless and until he provides proof satisfactory to
10 the Commissioner that he has taken and successfully completed the continuing education
11 course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code.
12 The course must have been completed no earlier than one hundred twenty (120) days prior to
13 the effective date of this Order, and proof must be submitted prior to the effective date of this
14 Order, to prevent suspension of MILHOAN's license pursuant to this condition.

15 5. Notwithstanding any other provision of this Order, MILHOAN shall
16 resign as the designated officer/broker for KMR as of the effective date of this decision. In
17 addition, MILHOAN shall not be eligible to act as the designated officer or broker for any
18 California corporation for a period of two (2) years from the effective date of this decision.

19 3

20 1. Respondents KMR and MILHOAN, jointly and severally, shall pay the
21 sum of \$9,505.50 for the Commissioner's cost of the audit which led to this disciplinary action.
22 Respondents KMR and MILHOAN shall pay such cost within sixty (60) days of receiving an
23 invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all
24 licenses and licensing right of Respondents KMR and MILHOAN pending a hearing held in
25 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
26 made as provided for herein, or as provided for in a subsequent agreement between
27 Respondents and the Commissioner. The suspension shall remain in effect until payment is

made in full or until Respondents KMR and MILHOAN enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

2. Respondents KMR and MILHOAN, jointly and severally, shall pay the Commissioner's costs, not to exceed \$9,505.50, of any audit conducted pursuant to Section 10148 of the Code to determine if Respondents KMR and MILHOAN have corrected the violations described in the Determination of Issues, above, and any other violations found in the audit which led to this disciplinary action. 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. Respondents KMR and MILHOAN shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. If Respondents KMR and MILHOAN fail to pay such cost within the sixty (60) days, the Commissioner may indefinitely suspend all licenses and licensing rights of Respondents KMR and MILHOAN under the Real Estate Law until payment is made in full or until Respondents KMR and MILHOAN enter into an agreement satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite suspension provided for in this paragraph shall be stayed.

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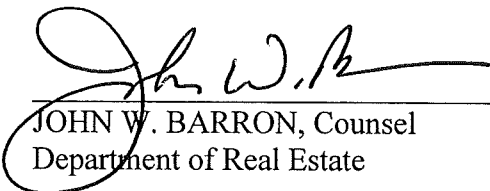
All licenses and licensing rights of Respondents KMR and MILHOAN are
indefinitely suspended unless or until Respondents KMR and MILHOAN, jointly and severally, pay the sum of \$1,176.95 for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check or certified check made payable to the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Order in this matter.

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The Accusation filed on December 9, 2010, as to Respondent CAROLYN
CERWONKA only, is hereby DISMISSED WITHOUT PREJUDICE.

12/19/12

DATED


JOHN W. BARRON, Counsel
Department of Real Estate

* * *

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

DATED

KEVIN J. MILHOAN
Respondent and as the Designated
Officer/Broker for Respondent
KM REALTY, INC.

DATED

CAROLYN MARIE CERWONKA
Respondent

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12/11/2012 FRI 15:31 FAX --- Mary Work

010/012

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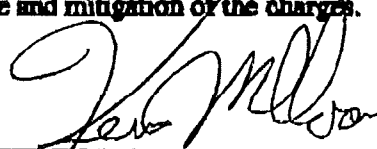
The Accusation filed on December 9, 2010, as to Respondent CAROLYN CERWONKA only, is hereby DISMISSED WITHOUT PREJUDICE.

DATED

JOHN W. BARRON, Counsel
Department of Real Estate

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

2012-12-13
DATED


KEVIN J. MILHOAN
Respondent and as the Designated
Officer/Broker for Respondent
KM REALTY, INC.

DATED

CAROLYN MARIE CERWONKA
Respondent

H-41578D

KM REALTY, INC., CAROLYN MARIE CERWONKA
and KEVIN J. MILHOAN

12/11/2012 TUE 15:27 FAX

010/012

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3 The Accusation filed on December 9, 2010, as to Respondent CAROLYN
4 CERWONKA only, is hereby DISMISSED WITHOUT PREJUDICE.
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DATED

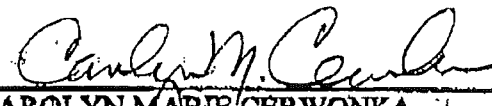
JOHN W. BARRON, Counsel
Department of Real Estate

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DATED

KEVIN J. MILHOAN
Respondent and as the Designated
Officer/Broker for Respondent
KM REALTY, INC.

1/2-1/8-1/2
DATED


CAROLYN MARIE CERWONKA
Respondent

H-41578D

KM REALTY, INC., CAROLYN MARIE CERWONKA
and KEVIN J. MILHOAN

12/11/2012 TUE 15:31 FAX *** MARY WORK

2011/012

I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my client accordingly.

12/18/12

DATED

MARY E. WORK
Attorney for Respondents, KM REALTY,
INC. and KEVIN J. MILHOAN

DATED

FREDERICK M. RAY
Attorney for Respondent
CAROLYN MARIE CERWONKA

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter as to Respondents KM REALTY, INC., KEVIN J. MILHOAN and CAROLYN MARIE CERWONKA, and shall become effective at 12 o'clock noon on

IT IS SO ORDERED

REAL ESTATE COMMISSIONER

B-4157 SD

KM REALTY, INC., CAROLYN MARIE CERWONKA
and KEVIN J. MILHOAN

1 ***

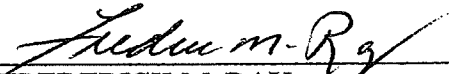
2 *I have reviewed this Stipulation and Agreement and Order as to form and*
3 *content and have advised my client accordingly.*

4
5
6 DATED

MARY E. WORK
Attorney for Respondents, KM REALTY,
INC. and KEVIN J. MILHOAN

8
9 12/19/2012

10 DATED


FREDERICK M. RAY
Attorney for Respondent
CAROLYN MARIE CERWONKA

11
12
13
14 ***

15 The foregoing Stipulation and Agreement is hereby adopted by me as my
16 Decision in this matter as to Respondents KM REALTY, INC., KEVIN J. MILHOAN and
17 CAROLYN MARIE CERWONKA, and shall become effective at 12 o'clock noon on
18 _____.

19 IT IS SO ORDERED _____.

20 REAL ESTATE COMMISSIONER
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I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my client accordingly.

DATED

MARY E. WORK
Attorney for Respondents, KM REALTY,
INC. and KEVIN J. MILHOAN

DATED

FREDERICK M. RAY
Attorney for Respondent
CAROLYN MARIE CERWONKA

* * *

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CAROLYN MARIE CERWONKA, and shall become effective at 12 o'clock noon on
FEB 26 2013.

IT IS SO ORDERED 2/1/13.

REAL ESTATE COMMISSIONER



By AWET P. KIDANE
Chief Deputy Commissioner

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789
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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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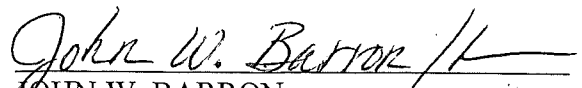
11
12 TO:

13 KM REALTY, INC. and
14 KEVIN J. MILHOAN.

15) NO. H-4157 SD
16)
17) NOTICE CONCERNING
18) COSTS OF AUDITS
19)

20 The attached Decision contains a determination by the Real Estate Commissioner
21 that you have either violated Section 10145 of the Business and Professions Code or a
22 regulation of the Commissioner interpreting Section 10145, or both. Section 10148 of the
23 Business and Professions Code provides that if this finding(s) becomes final, the Commissioner
24 may charge you for the costs of any audits conducted as a result of the violations found herein.
25 Enclosed for your reference is a copy of the provisions of Section 10148 of the Business and
26 Professions Code.
27

DATED: February 6, 2013

25 
26 JOHN W. BARRON
27 Real Estate Counsel