

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

FILED

DEC 14 2012

DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MORTGAGE PARTNERS, INC.,)
13 RICK SCOTT SCHULLER and)
14 MERLINDA ALDEFOLLA)
15 MATUSZEWSKI,)

Respondents.)

NO. H- 4189 SD

STIPULATION AND AGREEMENT

16
17 It is hereby stipulated by and between Respondents MORTGAGE PARTNERS,
18 INC., ("MPT") and RICK SCOTT SCHULLER ("SCHULLER"), (collectively
19 "Respondents"), acting by and through Jeffrey L. Brown, Counsel for Respondents, and the
20 Complainant, acting by and through John W. Barron, Counsel for the Department of Real
21 Estate, as follows for the purpose of settling and disposing of the Accusation filed on April 22,
22 2011, in this matter:

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

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

4 3. On May 4, 2011, Respondents filed a Notice of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice
7 of Defense. Respondents acknowledge that Respondents understand that by withdrawing said
8 Notice of Defense, Respondents will thereby waive Respondents' right to require the
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that Respondents will waive other rights
11 afforded to Respondents in connection with the hearing such as the right to present evidence in
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

24 6. It is understood by the parties that the Real Estate Commissioner may
25 adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty
26 and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"

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below. In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation under all of the provisions of the APA and shall not be bound by any admission or waiver made herein.

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

DETERMINATION OF ISSUES

I.

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 Respondent MPI described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent MPI under the provisions of Sections 10145, 10148, 10159.5, 10160, 10176(e), 10177(g), 10236.4, and 10240(a) of the Code, and Sections 2726, 2731, 2753, 2831.1, 2831.2, 2832 and 2835 of Title 10 of the California Code of Regulations (hereinafter “the Regulations”).

II.

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 Respondent SCHULLER described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent SCHULLER under the provisions of Sections 10159.2, 10177(g) and 10177(h) of the Code, and Section 2725 of the Regulations.

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1 ORDER

2 I.

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

5 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon
6 the following terms and conditions:

7 a. MPI shall obey all laws, rules and regulations governing the rights, duties
8 and responsibilities of a real estate licensee in the State of California; and

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

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

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

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

24 c. If MPI fails to pay the monetary penalty in accordance with the terms and
25 conditions of the Decision, the Commissioner may, without a hearing, order the immediate
26 execution of all or any part of the stayed suspension, in which event, MPI shall not be

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1 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
2 under the terms of this decision.

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

6 II.

7 All licenses and licensing rights of SCHULLER under the Real Estate Law are
8 suspended for a period of thirty (30) days from the effective date of this Order; provided,
9 however, that:

10 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon
11 the following terms and conditions:

12 a. SCHULLER shall obey all laws, rules and regulations governing the
13 rights, duties and responsibilities of a real estate licensee in the State of California; and

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

20 2. SCHULLER shall, within six (6) months from the effective date of this
21 Order, take and pass the Professional Responsibility Examination administered by the
22 Department, including the payment of the appropriate examination fee. If SCHULLER fails to
23 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
24 rights of SCHULLER until SCHULLER passes the examination.

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

10/18/12
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.

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondents, to the Department at fax number (916) 227-9458. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of

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1 Respondents' actual signatures as they appears on the Stipulation and Agreement, that receipt of
2 the faxed copy by the Department shall be as binding on Respondents as if the Department had
3 received the original signed Stipulation and Agreement.

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6 10-11-12

DATED


RICK SCOTT SCHULLER, Respondent

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9 10-11-12

DATED

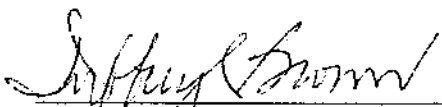

RICK SCOTT SCHULLER,
Designated Officer/Broker for Respondent
MORTGAGE PARTNERS, INC.

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17 *I have reviewed this Stipulation and Agreement and Order as to form and*
18 *content and have advised my clients accordingly.*

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20 10-16-12

DATED


JEFFREY L. BROWN,
Attorney for Respondents,
MORTGAGE PARTNERS, INC. and
RICK SCOTT SCHULLER

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2 The foregoing Stipulation and Agreement is hereby adopted by me as my
3 Decision in this matter as to Respondents MORTGAGE PARTNERS, INC. and RICK SCOTT
4 SCHULLER, and shall become effective at 12 o'clock noon on
5 JAN - 4 2013.

6 IT IS SO ORDERED

7 11/30/2012
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9 REAL ESTATE COMMISSIONER

10 

11 By WAYNE S. BELL
12 Chief Counsel