

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

FILED

JUN 18 2014

BUREAU OF REAL ESTATE

By: *K. Contreras*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
MFS/TA INC.,)
ROBERT ALLEN KISLING, and)
BARBARA LEE McMANUS,)
)
Respondents.)

No. H-4314 SD

ORDER EXTENDING TIME

On April 17, 2014, a Stipulation and Agreement was entered into between the Bureau of Real Estate ("Bureau") and MFS/TA INC. ("MFS") and ROBERT ALLEN KISLING ("KISLING") herein suspending MFS' corporate real estate broker license and KISLING'S real estate broker license each for a period of ninety (90) days with the following conditions:

1. Sixty (60) days of the suspension of MFS and KISLING are stayed, and each was given the right to buyout the remaining thirty (30) days at a rate of \$100 per day;
2. Joint and several liability for MFS and KISLING to pay the Bureau's audit costs, the costs of a follow-up audit, and the investigation costs;

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

- 3. Joint and several liability by MFS and KISLING to provide proof of repayment of advance fees collected from clients, as set forth in the Accusation; and
- 4. Successful completion by KISLING of the Professional Responsibility Examination administered by the Bureau, including the appropriate examination fee, and a trust fund handling course.

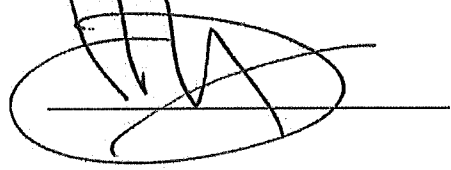
MFS and KISLING have requested additional time to complete the terms and conditions of the Stipulation and Agreement.

Good cause having been shown, the time during which Respondents MFS/TA, INC. and ROBERT ALLEN KISLING must complete the terms and conditions of the Stipulation and Agreement herein is hereby extended to July 31, 2014.

This Order shall be effective immediately.

DATED: June 18, 2014

Real Estate Commissioner



By: JEFFREY MASON
Chief Deputy Commissioner

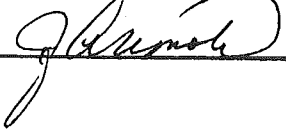
1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670

FILED

APR 17 2014

BUREAU OF REAL ESTATE

By 

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-4314 SD
13)
14 MFS/TA, INC., ROBERT ALLEN) STIPULATION AND AGREEMENT
KISLING and BARBARA MCMANUS,)
15) (As to MFS/TA, Inc. and
Respondents.) Robert Allen Kisling only
16)

17 It is hereby stipulated by and between Respondents MFS/TA, INC. ("MFS")
18 and ROBERT ALLEN KISLING ("KISLING"), (collectively "Respondents"), acting by and
19 through Rizza Gonzales, Counsel for Respondents, and the Complainant, acting by and through
20 John W. Barron, Counsel for the Bureau of Real Estate, as follows for the purpose of settling
21 and disposing of the Third Amended Accusation filed on August 28, 2013, in this matter:

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

27 2. Respondents have received, read and understand the Statement to

1 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
2 of Real Estate in this proceeding.

3 3. On January 6, 2012, Respondents filed a Notice of Defense pursuant to
4 Section 11505 of the Government Code for the purpose of requesting a hearing on the
5 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice
6 of Defense. Respondents acknowledge that Respondents understand that by withdrawing said
7 Notice of Defense, Respondents will thereby waive Respondents' right to require the
8 Commissioner to prove the allegations in the Accusation at a contested hearing held in
9 accordance with the provisions of the APA and that Respondents will waive other rights
10 afforded to Respondents in connection with the hearing such as the right to present evidence in
11 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

23 6. It is understood by the parties that the Real Estate Commissioner may
24 adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty
25 and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"
26 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and
27 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing

1 10131.2 (collection of advance fees), 10137 (payment of compensation to salesperson not
2 employed by broker), 10140 (false advertising), 10145 (advance fees), 10146 (deposit of
3 advance fees into trust account), 10148 (retention of records), 10159.5 (fictitious business
4 name), 10160 (possession of salesperson license by broker), 10177(d) (violation of real estate
5 law), 10177(j) (fraud), 10235 (misleading advertising) and 10235.5 (license disclosure) of the
6 Code; and Sections 2726 (broker-salesperson relationship agreements), 2731 (fictitious
7 business name), 2753 (retention of salesperson license by broker), 2831 (trust fund records),
8 2831.1 (maintenance of separate records for each beneficiary or transaction), 2831.2 (trust
9 account reconciliation), 2832 (trust fund handling), 2834 (trust account withdrawals), 2848
10 (advertising criteria), 2970 (submission of advance fee materials) and 2972 (verified
11 accounting) of Title 10 of the California Code of Regulations.

12 ORDER

13 1

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

16 1. Sixty (60) days of said suspension shall be stayed, upon the condition that
17 MFS petitions pursuant to Section 10175.2 of the Business and Professions Code and pays a
18 monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of
19 \$100 for each day of the suspension for a total monetary penalty of \$6,000.

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

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

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

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

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

6 2. The remaining thirty (30) days of said suspension shall be stayed for two
7 (2) years upon the following terms and conditions:

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

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

16 2

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

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

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

27 b. No further cause for disciplinary action against the real estate license of

1 KISLING occurs within two (2) years from the effective date of the decision in this matter.

2 c. If KISLING fails to pay the monetary penalty in accordance with the
3 terms and conditions of the Decision, the Commissioner shall, without a hearing, order the
4 immediate execution of all or any part of the stayed suspension, in which event, KISLING shall
5 not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau
6 under the terms of this decision.

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

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

12 a. KISLING shall obey all laws, rules and regulations governing the rights,
13 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 shall, 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 3. KISLING shall, within six (6) months from the effective date of this Order,
21 take and pass the Professional Responsibility Examination administered by the Bureau,
22 including the payment of the appropriate examination fee. If KISLING fails to satisfy this
23 condition, KISLING's real estate license shall automatically be suspended until KISLING
24 passes the examination.

25 ///

26 ///

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

8 5. KISLING shall notify the Commissioner in writing within 72 hours of any
9 arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office
10 Box 137000, Sacramento, CA 95813-7007. The letter shall set forth the date of KISLING's
11 arrest, the crime for which KISLING was arrested and the name and address of the arresting law
12 enforcement agency. KISLING's failure to timely file written notice shall constitute an
13 independent violation of the terms of the restricted license and shall be grounds for the
14 suspension or revocation of that license.

15 3

16 1. Respondents, jointly and severally, shall pay the sum of \$5,991.92 for
17 the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall
18 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
19 Respondents' real estate license and license rights shall automatically be suspended until
20 payment is made in full or until Respondents enter into an agreement satisfactory to the
21 Commissioner to provide for payment, or until a decision providing otherwise is adopted
22 following a hearing held pursuant to this condition.

23 2. Respondents, jointly and severally, shall pay the Commissioner's costs,
24 not to exceed \$5,991.92, of any audit conducted pursuant to Section 10148 of the Code to
25 determine if Respondents have corrected the violations described in the Determination of
26 Issues, above, and any other violations found in the audit which led to this disciplinary action.
27 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use

1 the estimated average hourly salary for all persons performing audits of real estate brokers, and
2 shall include an allocation for travel time to and from the auditor's place of work. Respondents
3 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
4 Commissioner detailing the activities performed during the audit and the amount of time spent
5 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
6 Commissioner shall automatically suspend all licenses and licensing rights of Respondents
7 under the Real Estate Law until payment is made in full or until Respondents enter into an
8 agreement satisfactory to the Commissioner to provide for payment, or until a decision
9 providing otherwise is adopted following a hearing held pursuant to this condition. Upon full
10 payment, the indefinite suspension provided for in this paragraph shall be stayed.

11 3. All licenses and licensing rights of Respondents are indefinitely suspended
12 unless or until Respondents, jointly and severally, pay the sum of \$4,592.75 for the
13 Commissioner's reasonable cost of the investigation and enforcement which led to this
14 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
15 made payable to the Real Estate Fund and mailed to: Bureau of Real Estate, P. O. Box 137007,
16 Sacramento, CA 95813-7007 or delivered to the Bureau of Real Estate at 1651 Exposition
17 Boulevard, Sacramento, CA 95815. Said check must be received by the Bureau prior to the
18 effective date of the Order in this matter.

19 4. Respondents, jointly and severally, shall within ninety (90) days of the
20 effective date of this Order provide proof satisfactory to the Commissioner that for each of the
21 58 clients identified in Attachment E-1 of the Audit Report herein from whom Respondents
22 collected an advance fee prior to the Bureau's approval of the advance fee materials used by
23 Respondents, that Respondent did one of the following for each of those clients:

24 a. Repaid the advance fee collected from them; or

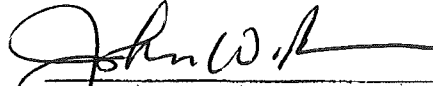
25 b. Obtained a loan modification for each client without additional fees or

26 costs to the client beyond the advance fees collected by Respondents.

27 If Respondents are unable to provide proof satisfactory to the Commissioner that all clients

1 identified above have been repaid or received loan modifications as noted, the parties shall
2 have the right to proceed to a hearing on the issues.

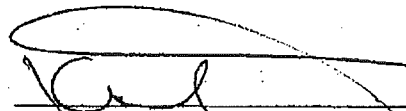
3
4 3/3/14
5 DATED


6 JOHN W. BARRON, Counsel
7 Bureau of Real Estate

8 * * *

9 I have read the Stipulation and Agreement and its terms are understood by me
10 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
11 the California Administrative Procedure Act (including but not limited to Sections 11506,
12 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
13 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
14 allegations in the Accusation at a hearing at which I would have the right to cross-examine
15 witnesses against me and to present evidence in defense and mitigation of the charges.

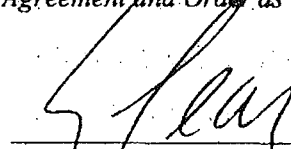
16 3/3/14
17 DATED


18 ROBERT ALLEN KISLING,
19 Respondent and as the Designated
20 Officer/Broker for Respondent
21 MFS/TA, INC.

22 * * *

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

25 3/3/14
26 DATED


27 RIZZA GONZALES
Attorney for Respondents, MFS/TA, INC.
and ROBERT ALLEN KISLING

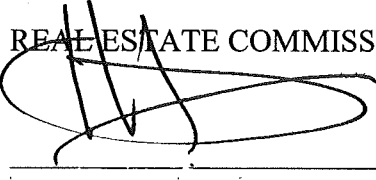
* * *

The foregoing Stipulation and Agreement is hereby adopted by me as my

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

Decision in this matter as to Respondents MFS/TA, INC. and ROBERT ALLEN KISLING and shall become effective at 12 o'clock noon on MAY 08 2014.

IT IS SO ORDERED APR 11 2014.

REAL ESTATE COMMISSIONER


By: JEFFREY MASON
Chief Deputy Commissioner