

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED

JUL 28 2008

DEPARTMENT OF REAL ESTATE

By *R. Most*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 ZE MAX LEE,)
14)
15 Respondent.)

NO. H-4333 SAC

STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between Respondent ZE
17 MAX LEE, acting by and through his Counsel, D. Jack Haycock,
18 and the Complainant, acting by and through Michael B. Rich,
19 Counsel for the Department of Real Estate, as follows for the
20 purpose of settling and disposing of the Accusation filed on
21 August 10, 2005, in this matter ("the Accusation"):

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

DRE No. H-4333 SAC

ZE MAX LEE

1 this Stipulation and Agreement.

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

6 3. On August 22, 2005, Respondent filed a Notice of
7 Defense pursuant to Section 11505 of the Government Code for
8 the purpose of requesting a hearing on the allegations in the
9 Accusation. Respondent hereby freely and voluntarily withdraws
10 said Notice of Defense. Respondent acknowledges that
11 Respondent understands that by withdrawing said Notice of
12 Defense Respondent will thereby waive Respondent's right to
13 require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that Respondent will waive other
16 rights afforded to Respondent in connection with the hearing
17 such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. Without admitting the truth of the allegations
21 contained in the remaining paragraphs of the Accusation,
22 Respondent stipulates that he will not interpose a defense
23 thereto. This Stipulation is based on the factual allegations
24 contained in the Accusation. In the interests of expedience and
25 economy, Respondent chooses not to contest the allegations, but
26 to remain silent, and understands that, as a result thereof,
27 these factual allegations, without being admitted or denied,

1 will serve as a basis for the disciplinary action stipulated to
2 herein. The Real Estate Commissioner shall not be required to
3 provide further evidence to prove said factual allegations.

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

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

20 DETERMINATION OF ISSUES

21 By reason of the foregoing stipulations, admissions
22 and waivers and solely for the purpose of settlement of the
23 pending Accusation without hearing, it is stipulated and agreed
24 that the following Determination of Issues shall be made:

25 I

26 The acts and omissions of Respondent ZE MAX LEE
27 described in the Accusation are grounds for the suspension or

1 revocation of the licenses and license rights of Respondent
2 under the provisions of Sections 10176(a) and (i) and 10177(g)
3 of the California Business and Professions Code.

4 ORDER

5 I

6 All licenses and licensing rights of Respondent ZE MAX
7 LEE, under the Real Estate Law are revoked; provided, however, a
8 restricted real estate broker license shall be issued to said
9 Respondent pursuant to Section 10156.5 of the Business and
10 Professions Code if, within 90 days from the effective date of
11 the Decision entered pursuant to this Order, Respondent makes
12 application for the restricted license and pays to the
13 Department of Real Estate the appropriate fee therefor.

14 The restricted license issued to Respondent shall be
15 subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following limitations,
17 conditions and restrictions imposed under authority of Section
18 10156.6 of that Code:

19 1. The restricted license issued to Respondent may
20 be suspended prior to hearing by Order of the Real Estate
21 Commissioner in the event of Respondent's conviction or plea of
22 nolo contendere to a crime which is substantially related to
23 Respondent's fitness or capacity as a real estate licensee.

24 2. The restricted license issued to Respondent may
25 be suspended prior to hearing by Order of the Real Estate
26 Commissioner on evidence satisfactory to the Commissioner that
27 Respondent has violated provisions of the California Real Estate

1 Law, the Subdivided Lands Law, Regulations of the Real Estate
2 Commissioner, or conditions attaching to the restricted license.

3 3. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations, or restrictions
6 of a restricted license until two (2) years have elapsed from
7 the effective date of this Decision.

8 4. Respondent shall, within nine (9) months from the
9 effective date of this Decision, present evidence satisfactory
10 to the Real Estate Commissioner that Respondent has, since the
11 most recent issuance of an original or renewal real estate
12 license, taken and successfully completed the continuing
13 education requirements of Article 2.5 of Chapter 3 of the Real
14 Estate Law for renewal of a real estate License. If Respondent
15 fails to satisfy this condition, the Commissioner may order the
16 suspension of the restricted licenses until Respondent presents
17 such evidence. The Commissioner shall afford Respondent the
18 opportunity for a hearing pursuant to the Administrative
19 Procedure Act to present such evidence.

20 5. Respondent shall, within six (6) months from the
21 effective date of this Decision, take and pass the Professional
22 Responsibility Examination administered by the Department
23 including the payment of the appropriate examination fee. If
24 Respondent fails to satisfy this condition, the Commissioner may
25 order suspension of Respondent's license until Respondent passes
26 the examination.

27 6. Any restricted real estate broker license issued

1 to Respondent may be suspended or revoked for a violation by
2 Respondent of any of the conditions attaching to the restricted
3 license.

4
5
6 DATED

3/4/08

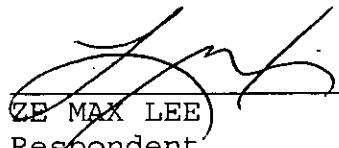

MICHAEL B. RICH, Counsel
Department of Real Estate

7
8 * * *

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

20
21
22 DATED

2. 26- 08


ZE MAX LEE
Respondent

23
24 ///

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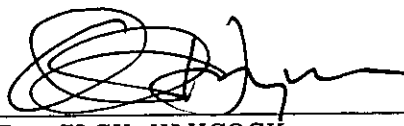
26 /

27
DRE No. H-4333 SAC

ZE MAX LEE

1 Approved as to form and content by counsel for
2 Respondent.

3
4 2/26/08
5 DATED


D. JACK HAYCOCK
Attorney for Respondent

6
7 * * *

8 The foregoing Stipulation and Agreement is hereby
9 adopted by as my Decision in this matter as to Respondent ZE
10 MAX LEE and shall become effective at 12 o'clock noon on

11 AUG 18 2008

12 IT IS SO ORDERED

8-24-08

13
14 JEFF DAVI

15 Real Estate Commissioner

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19
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21 BY: Barbara J. Bigby
22 Chief Deputy Commissioner
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27

1 DEIDRE L. JOHNSON, Counsel
2 State Bar No. 66322
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0789

FILED

AUG 10 2005

DEPARTMENT OF REAL ESTATE

By *Jan Arundt*

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

11 * * *

12 In the Matter of the Accusation of)
13 ZE MAX LEE,) NO. H- 4333 SAC
14 Respondent.) ACCUSATION

15 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate
16 Commissioner of the State of California, for causes of Accusation
17 against ZE MAX LEE, is informed and alleges as follows:

18 PRELIMINARY ALLEGATIONS

19 I

20 Respondent ZE MAX LEE is presently licensed and/or has
21 license rights under the Real Estate Law, Part 1 of Division 4 of
22 the California Business and Professions Code (hereafter the Code).

23 II

24 The Complainant, CHARLES W. KOENIG, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation against Respondent in his official capacity and not
27 otherwise.

1 III

2 At all times herein mentioned, Respondent ZE MAX LEE
3 (hereafter Respondent) was and is licensed by the State of
4 California Department of Real Estate (hereafter Department) as a
5 real estate broker, individually and doing business as GOLDEN
6 STAR MORTGAGE, MAXIMUM REAL ESTATE, and MAXIMUM REAL ESTATE &
7 FINANCE.

8 IV

9 Within the last three years, Respondent engaged in the
10 business of, acted in the capacity of, advertised, or assumed to
11 act within the State of California as a real estate broker with
12 the public, for or in expectation of compensation, including but
13 not limited to the operation and conduct of a real property sales
14 business wherein Respondent sold or offered to sell, bought or
15 offered to buy, solicited prospective sellers or purchasers of,
16 and/or negotiated the purchase, sale or exchange of real property.

17 FIRST CAUSE OF ACTION

18 V

19 In or about May of 2003, Respondent, individually and
20 doing business as MAXIMUM REAL ESTATE & FINANCE, represented
21 seller and/or home Seller Manuel Alexander (hereafter Seller) in
22 the sale of certain real property consisting of approximately
23 three lots located on Wah Avenue in Sacramento, California.

24 VI

25 On or about May 17, 2003, Respondent prepared a
26 residential purchase agreement and receipt for deposit (hereafter
27 Offer #1) on behalf of prospective buyers Yngwie Jade Xiong and

1 Si Moua (hereafter Buyers), to constitute Buyers' offer to
2 purchase one of the lots described above and located at 2736 Wah
3 Avenue, together with a home to be constructed by Seller, for a
4 purchase price of \$200,000.00. Offer #1 acknowledged receipt by
5 Respondent from Buyers of an initial deposit in the sum of
6 \$1,000.00 in the form of a check. Offer #1 stated that the funds
7 would be held uncashed until acceptance of the offer, and then
8 would be deposited into escrow within three business days after
9 acceptance.

10 VII

11 Offer #1 constituted express and/or implied
12 representations by Respondent to Buyers and Seller that he was
13 in receipt of a \$1,000.00 from Buyers as their earnest money
14 deposit; that he would hold the deposit uncashed until
15 acceptance, and that, upon acceptance, the check would be
16 deposited into escrow.

17 VIII

18 Offer #1 also stated that Buyers would obtain a new
19 first loan in the sum of \$190,000.00, and that the balance of the
20 purchase price in the sum of \$9,000.00, would be deposited into
21 escrow within sufficient time to close escrow.

22 IX

23 On or about May 17, 2003, Respondent instructed Buyers
24 to tender an additional deposit in the form of a second check in
25 the sum of \$9,000.00 to Respondent, as a deposit on purported
26 construction costs. Respondent failed to include a written
27 provision in Offer #1 disclosing or acknowledging his receipt of

1 these funds, and/or containing the Buyers' written directions for
2 Respondent's handling of the funds.

3 X

4 On or about May 17, 2003, Respondent instructed Buyers
5 to make both the initial deposit check and the additional deposit
6 check payable to Placer Title Company. On or about the same date,
7 in reliance on Respondent's representations and instructions as
8 above alleged, Buyers complied and delivered both checks into
9 Respondent's hands.

10 XI

11 In the absence of written instructions from Buyers
12 authorizing Respondent to hold their additional \$9,000.00 in
13 trust funds uncashed until acceptance of their offer,
14 Respondent failed to deliver the trust funds into a trust
15 account in the name of Respondent as trustee, into a neutral
16 escrow depository, or into the hands of the owners of the funds
17 not later than three business days following receipt of the
18 funds as required by Section 10145 of the Code and Section
19 2832(a) of Title 10, California Code of Regulations (hereafter
20 the Regulations).

21 XII

22 On or about May 19, 2003, Respondent informed Buyers
23 that Seller wanted the above deposit checks made payable to
24 Seller personally instead of to the title company. Buyers
25 complied and on or about the same date, in reliance on
26 Respondent's representations, cancelled the above checks and
27 issued two new checks, one for the initial deposit in the sum of

1 \$1,000.00, and one for the purported construction deposit in the
2 sum of \$9,000.00, payable to Seller.

3 XIII

4 At all times herein mentioned, in connection with the
5 above transaction, Respondent owed to Buyers a fiduciary duty of
6 utmost care, integrity, honesty and loyalty; a duty of the
7 diligent exercise of reasonable skill and care in performance of
8 the agent's duties; a duty of honest and fair dealing and good
9 faith; and/or a duty to disclose all facts known to the agent
10 materially affecting the value or desirability of the property
11 that are not known to, or within the diligent attention and
12 observation of, the parties.

13 XIV

14 On or about May 20, 2003, Respondent delivered, caused
15 to be delivered, permitted and/or acquiesced in the delivery to
16 Seller of both of Buyers' deposit checks as alleged in Paragraph XII
17 above in the total sum of \$10,000.00, in violation of the
18 provisions of Offer #1, in violation of Section 10145 of the Code,
19 and/or in violation of the requirements of Sections 2832(a) and
20 2832(c) of the Regulations, and without the informed knowledge or
21 consent of Buyers.

22 XV

23 On or about May 26, 2003, Respondent represented to Buyers
24 that Seller had accepted and signed the contract based on Offer #1.

25 XVI

26 On or about June 3, 2003, Buyers discovered that the
27 property located at 2736 Wah Avenue was already constructed and

1 occupied, and contacted Respondent. On or about June 10, 2003,
2 Respondent represented to Buyers that Offer #1 contained a
3 purported incorrect address, and that the purported correct
4 address for the lot Buyers wished to purchase was located at
5 2734 Wah Avenue. On or about the same date, Respondent prepared
6 a second residential purchase agreement and receipt for deposit
7 (hereafter Offer #2) on behalf of Buyers, to constitute Buyers'
8 offer to purchase a lot described above and located at 2734 Wah
9 Avenue, together with a home to be constructed by Seller, on the
10 same terms and conditions as Offer #1. On or about June 10, 2003,
11 in reliance on Respondent's representations, Buyers executed or
12 affirmed Offer #2, which contained the original date of May 17,
13 2003.

14 XVII

15 On or about June 10, 2003, in connection with
16 Respondent's negotiations regarding Offer #2, Respondent failed
17 to disclose to Buyers the true facts then existing, including but
18 not limited to the following: (a) that Seller had not accepted
19 or signed the contract on Offer #1; (b) that Respondent had not
20 verified the correct addresses, existence, and/or ownership of
21 Seller's properties; (c) that Respondent had not verified Seller's
22 construction arrangements or credentials; (d) that Seller had
23 already received their total deposits in the sum of \$10,000.00
24 without execution of any written contract of sale with Buyers;
25 and/or (e) that Seller had already received their total deposits
26 without Buyers' informed knowledge or consent. Respondent then
27 and there knew or should have known that 2736 Wah Avenue was

1 occupied and not for sale; and/or that he did not know the
2 availability for sale of 2734 Wah Avenue, failed to so inform
3 Buyers. If Buyers had known any of the true facts alleged above,
4 they would not have made the offers or tendered their funds.

5 XVIII

6 On or about June 14, 2003, Respondent represented to
7 Buyers that Seller had rejected Offer #2 and/or "cancelled the
8 contract." Buyers thereafter retained an attorney to pursue
9 their legal rights.

10 XIX

11 The acts and/or omissions of Respondent as alleged
12 above violate Section 10145 of the Code, and Sections 2832(a)
13 and 2832(c) of the Regulations, and constitute grounds for
14 disciplinary action under the provisions of Section 10177(d) of
15 the Code. Said acts and/or omissions also constitute grounds for
16 disciplinary action under the provisions of Sections 10176(a),
17 10176(i), and/or 10177(g) of the Code.

18 SECOND CAUSE OF ACTION

19 XX

20 Beginning in or about March of 2004, the Department
21 conducted an audit of the books and records of Respondent for the
22 time period of May 17, 2003 to April 5, 2004 (hereafter the audit
23 period), as set forth in more detail in Department Audit Report
24 No. SC030025/SC030039, dated May 4, 2004, and all accompanying
25 working papers and exhibits. During the audit period, Respondent
26 accepted or received funds in trust from or on behalf of buyers,
27 sellers, lenders and/or borrowers.

1 XXI

2 The trust funds accepted or received by Respondent
3 during the audit period were not deposited or caused to be
4 deposited in any bank account under the custody or control of
5 Respondent.

6 XXII

7 In connection with Respondent's receipt and
8 disbursement of trust funds from Buyers as alleged in the First
9 Cause of Action above, Respondent failed to log any checks or
10 funds from Buyers, in any amount whatsoever, into Respondent's
11 Log of Trust Funds Received and Released [i.e., Not Placed in
12 Trust Bank Account] on or about May 17, 2003, or at any time
13 thereafter.

14 XXIII

15 During the audit period, Respondent employed licensed
16 real estate salespersons Virginia Thor and Grace Lee, but did not
17 have a written agreement with either of them covering material
18 aspects of the relationship between the parties, including
19 supervision, duties, and compensation as required by Section 2726
20 of the Regulations.

21 XXIV

22 The acts and/or omissions of Respondent as alleged in
23 Paragraph XXII above violate Section 10145 of the Code and
24 Sections 2726 and 2831(a)(6) of the Regulations, and constitute
25 grounds for disciplinary action under the provisions of Section
26 10177(d) of the Code.

27 ///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary action
4 against all licenses and license rights of Respondents under the
5 Real Estate Law (Part 1 of Division 4 of the Business and
6 Professions Code), and for such other and further relief as may
7 be proper under other provisions of law.

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11 
12 CHARLES W. KOENIG
13 Deputy Real Estate Commissioner

14 Dated at Sacramento, California,
15 this 9th day of August, 2005..
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