

DEC 20 2013

BUREAU OF REAL ESTATE


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

Telephone: (916) 227-0789

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-4344 SD
AXIS REAL ESTATE INC. and)	
PIERS RICHARD WINDEBANK,)	<u>STIPULATION AND AGREEMENT</u>
)	
Respondents.)	
)	

It is hereby stipulated by and between Respondents AXIS REAL ESTATE INC. and PIERS RICHARD WINDEBANK (collectively referred to herein as "Respondents"), acting by and through Geoffrey E. Marr, Esq., Counsel for Respondents, and the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on May 9, 2012, in this matter:

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

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

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

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

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

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I.

The acts and omissions of Respondent AXIS REAL ESTATE INC. as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent AXIS REAL ESTATE INC. under the provisions of Section 10177(g) of the Code, in conjunction with Sections 10130, 10137, 10145, 10146, and 10148, of the Code and Sections 2831, 2831.1, 2831.2, 2832, 2970(b)(3), 2970(b)(6), and 2972 of Title 10 of the California Code of Regulations (“the Regulations”).

II.

The acts and omissions of Respondent PIERS RICHARD WINDEBANK as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent PIERS RICHARD WINDEBANK under the provisions of Section 10177(h) and of the Code, in conjunction with Section 10159.2 of the Code and Sections 2725 of the Regulations.

ORDER

I.

All licenses and licensing rights of Respondent AXIS REAL ESTATE INC. (“Respondent”) under the Real Estate Law are suspended for a period of Sixty (60) days from the effective date of this Order; provided, however, that:

1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:
 - a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,
 - b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed

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- i. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,
- ii. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within four (4) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.
- b. Sixty (60) days of said suspension shall be stayed, upon the condition that Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$25.00 for each day of the suspension for a total monetary penalty of \$1,500.00.
 - i. Said payment shall be in the form of a cashier's check or certified check made payable to the Department of Real Estate. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.
 - ii. No further cause for disciplinary action against the real estate license of Respondent occurs within four (4) years from the effective date of the decision in this matter.
 - iii. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension, in which event, Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this decision.
 - iv. If Respondent pays the monetary penalty, and if no further cause for disciplinary action against the real estate license of Respondent occurs within four (4)

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1 years from the effective date of the Decision herein, then the stay hereby granted shall become
2 permanent.

3 2. Respondent 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 Respondent fails to
6 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
7 rights of Respondent until he passes the examination.

8 3. Notwithstanding any other provision of this Order, all licenses and
9 licensing rights of Respondent 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 Respondent's license pursuant to this condition.

15 4. Notwithstanding any other provision of this Order, all licenses and
16 licensing rights of Respondent are suspended unless and until he provides proof satisfactory to
17 the Commissioner that he has taken and successfully completed the continuing education course
18 on Risk Management specified in Section 10170.5(a)(5) of the Code. The course must have been
19 completed no earlier than one hundred twenty (120) days prior to the effective date of this Order,
20 and proof must be submitted prior to the effective date of this Order, to prevent suspension of
21 Respondent's license pursuant to this condition.

22 5. All licenses and licensing rights of Respondent are indefinitely
23 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of
24 having made payment to David and Kelley Hamersky in the amount of \$1,666.66, or as
25 otherwise mutually agreed between Respondent and David and Kelley Hamersky.

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1 III.

2 1. Respondents AXIS REAL ESTATE INC. and PIERS RICHARD
3 WINDEBANK, ("Respondents") jointly and severally, shall pay the sum of \$3,906.40 for the
4 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay
5 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The
6 Commissioner may indefinitely suspend all licenses and licensing rights of Respondents
7 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
8 payment is not timely made as provided for herein, or as provided for in a subsequent
9 agreement between Respondents and the Commissioner. The suspension shall remain in effect
10 until payment is made in full or until Respondents enter into an agreement satisfactory to the
11 Commissioner to provide for payment, or until a decision providing otherwise is adopted
12 following a hearing held pursuant to this condition.

13 2. Respondents, jointly and severally, shall pay the Commissioner's costs,
14 not to exceed \$3,906.40, of any audit conducted pursuant to Section 10148 of the Code to
15 determine if Respondents have corrected the violations described in the Determination of
16 Issues, above, and any other violations found in the audit which led to this disciplinary action.
17 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
18 the estimated average hourly salary for all persons performing audits of real estate brokers, and
19 shall include an allocation for travel time to and from the auditor's place of work. Respondents
20 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
21 Commissioner detailing the activities performed during the audit and the amount of time spent
22 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
23 Commissioner may indefinitely suspend all licenses and licensing rights of Respondents under
24 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
25 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
26 suspension provided for in this paragraph shall be stayed.

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IV.

All licenses and licensing rights of Respondents AXIS REAL ESTATE INC.
and PIERS RICHARD WINDEBANK ("Respondents") are indefinitely suspended unless or
until Respondents, jointly and severally, pay the sum of \$5,111.20 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
Department of Real Estate.

3-4-13

DATED



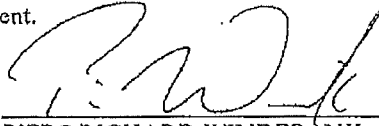
Annette E. Ferrante, Esq.,
Counsel for Department of Real Estate

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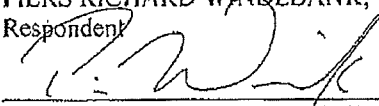
* * *

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

FEB 28, 2013
DATED


PIERS RICHARD WINDEBANK,
Respondent

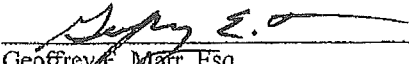
FEB 28, 2013
DATED


PIERS RICHARD WINDEBANK,
As Designated Officer of Respondent
AXIS REAL ESTATE INC.

* * *

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

March 1, 2013
DATED

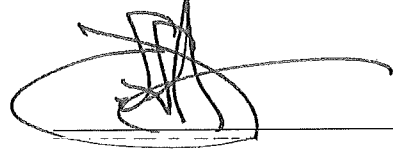

Geoffrey E. Marr, Esq.,
Attorney for Respondents
AXIS REAL ESTATE INC.
and PIERS RICHARD WINDEBANK

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The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter as to Respondents AXIS REAL ESTATE INC. and PIERS RICHARD
WINDEBANK, and shall become effective at 12 o'clock noon on
JAN 09 2014.

IT IS SO ORDERED April 30, 2013.

REAL ESTATE COMMISSIONER



By: Jeffrey Mason
Chief Deputy Commissioner