

FILED

NOV 19 2013

BUREAU OF REAL ESTATE

By 

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0781
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7

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 RE/MAX DIRECT INC., JAN KAREN)
13 RYAN, and DALIA R. NOGUEDA,)

14 Respondents.)

No. H-4402 SD

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between RE/MAX DIRECT INC., JAN KAREN
16 RYAN, and DALIA R. NOGUEDA (Respondents), represented by Frank M. Buda, and the
17 Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real
18 Estate (Department), as follows for the purpose of settling and disposing the Accusation
19 (Accusation) filed on August 23, 2012 in this matter:

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

25 2. Respondents have received, read, and understand the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Department in this
27 proceeding.

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

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

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

19 6. Respondents RE/MAX DIRECT INC. (RE/MAX) and JAN KAREN
20 RYAN (RYAN) understand that by agreeing to this Stipulation and Agreement, Respondents
21 RE/MAX and RYAN agree to pay, pursuant to Section 10106 of the Business and Professions
22 Code (Code), the cost of the investigation and enforcement which resulted in the determination
23 that Respondents committed the violation(s) found in the Determination of Issues. The amount
24 of said costs is \$3,421.18.

25 7. It is understood by the parties that the Commissioner may adopt the
26 Stipulation and Agreement as his/her decision in this matter thereby imposing the penalty and
27 sanctions on the real estate licenses and license rights of Respondents as set forth in the below

1 "Order". In the event that the Commissioner in his/her discretion does not adopt the Stipulation
2 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a
3 hearing and proceeding on the Accusations under all the provisions of the APA and shall not be
4 bound by any admission or waiver made herein.

5 8. The Order or any subsequent Order of the Commissioner made pursuant to
6 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
7 administrative or civil proceedings by the Department with respect to any matters which were not
8 specifically alleged to be causes for action in Accusation H-4402 SD.

9 * * *

10 DETERMINATION OF ISSUES

11 By reason of the foregoing stipulations and waivers and solely for the purpose of
12 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
13 following determination of issues shall be made:

14 I

15 The acts and omissions of RE/MAX and DALIA R. NOGUEDA (NOGUEDA)
16 as described in the First Cause of Action of the Accusation are grounds for the suspension or
17 revocation of RE/MAX and NOGUEDA pursuant to the provisions of Section 10137 of the
18 Code in conjunction with Section 10177(d) of the Code.

19 III

20 The acts and/or omissions of RYAN as described in the Second Cause of Action
21 of the Accusation is cause for the suspension or revocation of RYAN's license and/or license
22 rights under Section 10177(h) of the Code.

23 * * *

24 ORDER

25 I

26 All licenses and licensing rights of Respondent RE/MAX under the Real Estate
27 Law are suspended for a period of one hundred and twenty (120) days from the effective date of

1 this Order; provided, however, that:

2 1) Ninety (90) days of said suspension shall be stayed, upon the condition that RE/MAX
3 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
4 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty
5 of \$9,000.

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

9 b) No further cause for disciplinary action against the Real Estate licenses of RE/MAX
10 occurs within two (2) years from the effective date of the decision in this matter.

11 c) If RE/MAX fails to pay the monetary penalty as provided above prior to the effective date
12 of this Order, the stay of the suspension shall be vacated as to that Respondent and the
13 order of suspension shall be immediately executed, under this Order, in which event the
14 said Respondent shall not be entitled to any repayment nor credit, prorated or otherwise,
15 for the money paid to the Department under the terms of this Order.

16 d) If RE/MAX pays the monetary penalty and any other moneys due under this Stipulation
17 and Agreement and if no further cause for disciplinary action against the real estate
18 license of said Respondent occurs within two (2) years from the effective date of this
19 Order, the entire stay hereby granted this Order, as to said Respondent only, shall become
20 permanent.

21 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms
22 and conditions:

23 a) RE/MAX shall obey all laws, rules and regulations governing the rights, duties and
24 responsibilities of a real estate licensee in the State of California; and,

25 b) That no final subsequent determination be made, after hearing or upon stipulation, that
26 cause for disciplinary action occurred within two (2) years from the effective date of this
27 Order. Should such a determination be made, the Commissioner may, in his discretion,

1 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.
2 Should no such determination be made, the stay imposed herein shall become permanent.

3 II

4 All licenses and licensing rights of Respondent RYAN under the Real Estate Law are
5 suspended for a period of one hundred and twenty (120) days from the effective date of this

6 Order; provided, however, that:

7 1) Ninety (90) days of said suspension shall be stayed, upon the condition that RYAN petition
8 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
9 10175.2 of the at a rate of \$100 for each day of the suspension for a total monetary penalty of
10 \$9,000.

11 a) Said payment shall be in the form of a cashier's check or certified check made payable to
12 the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered
13 to the Department prior to the effective date of the Order in this matter.

14 b) No further cause for disciplinary action against the Real Estate licenses of RYAN occurs
15 within two (2) years from the effective date of the decision in this matter.

16 c) If RYAN fails to pay the monetary penalty as provided above prior to the effective date of
17 this Order, the stay of the suspension shall be vacated as to that Respondent and the order
18 of suspension shall be immediately executed, under this Order, in which event the said
19 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for
20 the money paid to the Department under the terms of this Order.

21 d) If RYAN pays the monetary penalty and any other moneys due under this Stipulation and
22 Agreement and if no further cause for disciplinary action against the real estate license of
23 said Respondent occurs within two (2) years from the effective date of this Order, the
24 entire stay hereby granted this Order, as to said Respondent only, shall become
25 permanent.

26 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms
27 and conditions:

- 1 a) RYAN shall obey all laws, rules and regulations governing the rights, duties and
2 responsibilities of a real estate licensee in the State of California; and,
- 3 b) That no final subsequent determination be made, after hearing or upon stipulation, that
4 cause for disciplinary action occurred within two (2) years from the effective date of this
5 Order. Should such a determination be made, the Commissioner may, in his discretion,
6 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.
7 Should no such determination be made, the stay imposed herein shall become permanent.
- 8 3) RYAN shall, within six (6) months from the effective date of this Decision, take and pass the
9 Professional Responsibility Examination administered by the Department including the payment
10 of the appropriate examination fee. If Respondent fails to satisfy this condition, the
11 Commissioner may order suspension of the license until Respondent passes the examination.

12 III

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

16 4) Thirty (30) days of said suspension shall be stayed, upon the condition that NOGUEDA
17 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
18 10175.2 of the at a rate of \$100 for each day of the suspension for a total monetary penalty of
19 \$3,000.

- 20 a) Said payment shall be in the form of a cashier's check or certified check made payable to
21 the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered
22 to the Department prior to the effective date of the Order in this matter.
- 23 b) No further cause for disciplinary action against the Real Estate licenses of NOGUEDA
24 occurs within two (2) years from the effective date of the decision in this matter.
- 25 c) If NOGUEDA fails to pay the monetary penalty as provided above prior to the effective
26 date of this Order, the stay of the suspension shall be vacated as to that Respondent and
27 the order of suspension shall be immediately executed, under this Order, in which event

1 the said Respondent shall not be entitled to any repayment nor credit, prorated or
2 otherwise, for the money paid to the Department under the terms of this Order.

3 d) If NOGUEDA pays the monetary penalty and any other moneys due under this

4 Stipulation and Agreement and if no further cause for disciplinary action against the real
5 estate license of said Respondent occurs within two (2) years from the effective date of
6 this Order, the entire stay hereby granted this Order, as to said Respondent only, shall
7 become permanent.

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

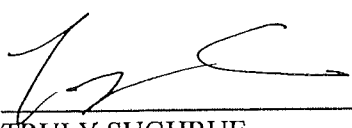
10 a) NOGUEDA shall obey all laws, rules and regulations governing the rights, duties and
11 responsibilities of a real estate licensee in the State of California; and,

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

17 IV

18 All licenses and licensing rights of Respondents RE/MAX and RYAN are indefinitely
19 suspended unless or until Respondents RE/MAX and RYAN pays the sum of \$3,421.18 for the
20 Commissioner's reasonable cost of the investigation and enforcement which led to this
21 disciplinary action. Said payment shall be in the form of a cashier's check or certified check made
22 payable to the Real Estate Fund.

23
24 30-Sept-13
25 DATED

26 
27 TRULY SUGHRUE
Counsel for Complainant

1 I have read the Stipulation and Agreement, discussed it with my counsel, and its
2 terms are understood by me and are agreeable and acceptable to me. I understand that I am
3 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
4 intelligently and voluntarily waive those rights, including the right of requiring the
5 Commissioner to prove the allegations in the Accusations at a hearing at which I would have the
6 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
7 the charges.

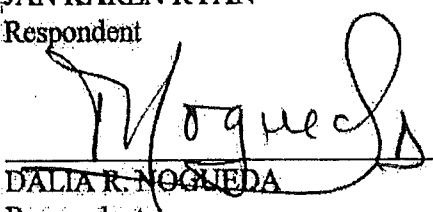
8
9 DATED

Jan Karen Ryan, on behalf of
RE/MAX DIRECT INC.
Respondent

10
11
12
13 DATED

JAN KAREN RYAN
Respondent

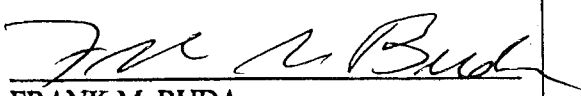
14
15 9/11/13
16 DATED


DALIA R. NOGUERA
Respondent

17
18 ***

19 I have reviewed the Stipulation and Agreement as to form and content and have
20 advised my client accordingly.

21
22 9-12-13
23 DATED


FRANK M. BUDA
Attorney for Respondents

24 ***

25 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
26 shall become effective at 12 o'clock noon on _____
27

1 I have read the Stipulation and Agreement, discussed it with my counsel, and its
2 terms are understood by me and are agreeable and acceptable to me. I understand that I am
3 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
4 intelligently and voluntarily waive those rights, including the right of requiring the
5 Commissioner to prove the allegations in the Accusations at a hearing at which I would have the
6 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
7 the charges.

8 9/12/13
9 DATED

Jan Karen Ryan
Jan Karen Ryan, on behalf of
RE/MAX DIRECT INC.
Respondent

11
12 9/12/13
13 DATED

Jan Karen Ryan
JAN KAREN RYAN
Respondent

14
15
16 DATED

DALIA R. NOGUEDA
Respondent

17
18 ***

19 I have reviewed the Stipulation and Agreement as to form and content and have
20 advised my client accordingly.

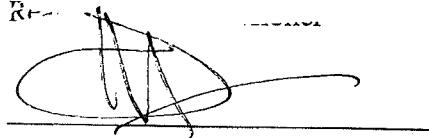
21
22 9-12-13
23 DATED

Frank M. Buda
FRANK M. BUDA
Attorney for Respondents

24 ***

25 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
26 shall become effective at 12 o'clock noon on DEC 09 2013
27

IT IS SO ORDERED NOV 07 2013.

Re: 

By: JEFFREY MASON
Chief Deputy Commissioner