

FILED

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

AUG 20 2013

BUREAU OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	DRE No. H-4403 SD
12	CC & I, INC. and)	<u>STIPULATION AND AGREEMENT</u>
13	PIDA KONGPHOUTHONE,)	<u>IN SETTLEMENT AND ORDER</u>
14)	(PIDA KONGHOUTHONE ONLY)
15	Respondents.)	

16 It is hereby stipulated by and between PIDA KONGPHOUTHONE
17 (Respondent), only, and his attorney, Frank M. Buda, and the Complainant, acting by and
18 through Richard K. Uno, Counsel for the Department of Real Estate; as follows for the purpose
19 of settling and disposing of the First Amended Accusation filed on September 10, 2012, which
20 supersedes the Accusation filed on August 23, 2012, in this matter:

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

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

4 3. On September 5, 2012, Respondent 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. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
8 Defense he will thereby waive his rights to require the Commissioner to prove the allegations
9 in the Accusation at a contested hearing held in accordance with the provisions of the APA and
10 that he will waive other rights afforded to him in connection with the hearing such as the right
11 to present evidence in defense of the allegations in the Accusation and the right to cross-
12 examine witnesses.

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

19 5. It is understood by the parties that the Real Estate Commissioner may adopt
20 the Stipulation and Agreement In Settlement and Order as her Decision in this matter, thereby
21 imposing the penalties and sanctions on Respondent's real estate licenses and license rights as
22 set forth in the below "Order". In the event that the Commissioner in his discretion does not
23 adopt the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect,
24 and Respondent shall retain the right to a hearing and proceeding on the Accusation under all
25 the provisions of the APA and shall not be bound by any admission or waiver made herein.

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1 pursuant to Section 10175.2 of the code at a rate of \$100.00 for each day of the suspension for
2 a total monetary penalty of \$3,000.00

3 a. Said payment shall be in the form of a cashier's check or certified check made
4 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
5 Department prior to the effective date of the Decision in this matter.

6 b. No further cause for disciplinary action against the real estate license of
7 Respondent occurs within two years from the effective date of the Decision in this matter.

8 c. If Respondent fails to pay the monetary penalty in accordance with the terms
9 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
10 execution of all or any part of the stayed suspension in which event Respondent shall not be
11 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
12 under the terms of this Decision.

13 d. If Respondent pays the monetary penalty, and if no further cause for
14 disciplinary action against the real estate license of Respondent occurs within two (2) years
15 from the effective date of the Decision, the stay hereby granted shall become permanent.

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

18 a) Respondent shall obey all laws, rules and regulations governing the rights,
19 duties and responsibilities of a real estate licensee in the State of California; and,

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

26 3. Pursuant to Section 10148 of the Business and Professions Code,
27 Respondent shall pay for: a) the Commissioner's reasonable cost of the audit which led to this

1 disciplinary action in the amount of \$5,270.00 and b) a subsequent audit to determine if
 2 Respondents have corrected the trust fund violations found in the Determination of Issues in an
 3 amount that shall be no more than \$5,270.00. In calculating the amount of the Commissioner's
 4 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
 5 performing audits of real estate brokers, and shall include an allocation for travel costs,
 6 including mileage, time to and from the auditor's place of work and per diem. Respondents
 7 shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner
 8 detailing the activities performed during the audit and the amount of time spent performing
 9 those activities. The Commissioner may, in his discretion, vacate and set aside the stay order,
 10 if payment is not timely made as provided for herein, or as provided for in a subsequent
 11 agreement between the Respondents and the Commissioner. The vacation and the set aside of
 12 the stay shall remain in effect until payment is made in full, or until Respondents enter into an
 13 agreement satisfactory to the Commissioner to provide for payment. Should no order vacating
 14 the stay be issued, either in accordance with this condition, the stay imposed herein shall
 15 become permanent.

16 3. All licenses and licensing rights of Respondent are indefinitely suspended
 17 unless or until Respondent provides proof satisfactory to the Commissioner, of having paid
 18 restitution to the borrowers listed below:

19	Borrower	Amount
20	Giang, Ky	\$2,975.00
21	Le, Mac	\$2,995.00
22	Le, Cuc	\$3,295.00
23	Ngo, Thanh	\$2,995.00
24	Griffith, Daniel	\$3,000.00

25 4. Respondent shall, within six (6) months from the effective date of this
 26 Decision, take and pass the Professional Responsibility Examination administered by the
 27 Department including the payment of the appropriate examination fee. If Respondent fails to

1 satisfy this condition, the Commissioner may order suspension of Respondent's license until
2 Respondent passes the examination.

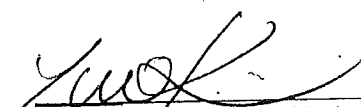
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DATED

RICHARD K. UNO, Counsel III
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement in Settlement and Order 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.

5/08/13
DATED


PIDA KONGPHOUTHONE
Respondent

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

DATED

FRANK M. BUDA
Attorney for Respondent

1 satisfy this condition, the Commissioner may order suspension of Respondent's license until
2 Respondent passes the examination.

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4 6/19/13

5 DATED

Richard K. Uno

RICHARD K. UNO, Counsel III
DEPARTMENT OF REAL ESTATE

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7 * * *

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

16
17
18 DATED

PIDA KONGPHOUTHONE
Respondent

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20 * * *

21
22 *I have reviewed this Stipulation and Agreement as to form and content and have*
23 *advised my client accordingly.*

24 5-7-13

25 DATED

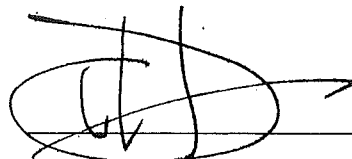
Frank M. Buda

FRANK M. BUDA
Attorney for Respondent

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The foregoing Stipulation and Agreement is hereby adopted by the Real Estate
Commissioner as her Decision and Order and shall become effective at 12 o'clock noon on
SEP 09 2013

IT IS SO ORDERED July 31, 2013



By: JEFFREY MASON
Chief Deputy Commissioner