

Bureau of Real Estate
320 West 4th Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED

SEP 20 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation

No. H-04849 SD

RADIX REALTY CORPORATION;
and CAROLYN MARIE CERWONKA,
individually, and as designated officer
for Radix Realty Corporation,

STIPULATION AND
AGREEMENT

Respondents.

It is hereby stipulated by and between Respondents RADIX REALTY CORPORATION ("RADIX") and CAROLYN MARIE CERWONKA ("CERWONKA"), individually, and as designated officer for RADIX (sometimes referred to as "Respondents"), and their attorney of record, Fred Ray, Esq., and the Complainant, acting by and through Cheryl Keily, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and disposing of the First Amended Accusation ("Accusation") filed on January 12, 2017, in this matter.

1 1. All issues which were to be contested and all evidence which was to be
2 presented by Complainant and Respondents at a formal hearing on the Accusation, which
3 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
4 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of
5 this Stipulation and Agreement.
6

7 2. Respondents have received, read and understand the Statement to Respondent,
8 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate
9 ("Bureau") in this proceeding.

10 3. On December 5, 2016, Respondents filed a Notice of Defense, pursuant to
11 Section 11506 of the Government Code for the purpose of requesting a hearing on the
12 allegations in the Accusations. Respondents hereby freely and voluntarily withdraw said Notice
13 of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of
14 Defense they will thereby waive their right to require the Commissioner of Real Estate
15 ("Commissioner") to prove the allegations in the Accusations at a contested hearing held in
16 accordance with the provisions of the APA and that they will waive other rights afforded to
17 them in connection with the hearing, such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual allegations contained in the
20 Accusation. In the interest of expedience and economy, Respondents choose not to contest
21 these allegations, but to remain silent and understand that, as a result thereof, these factual
22 allegations, without being admitted or denied, will serve as a prima facie basis for the
23 disciplinary action stipulated to herein. The Commissioner shall not be required to provide
24 further evidence to prove said factual allegations.

25 5. This Stipulation is made for the purpose of reaching an agreed disposition of
26 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
27

1 which the Bureau, the state or federal government, or any agency of this state, another state or
2 federal government is involved, and otherwise shall not be admissible in any other criminal or
3 civil proceedings.
4

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

12 7. The Order or any subsequent Order of the Commissioner made pursuant to
13 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any
14 further administrative or civil proceedings by the Bureau with respect to any matters which
15 were not specifically alleged to be causes for accusation in this proceeding.

16 8. Respondents understand that by agreeing to this Stipulation, Respondents
17 agree to pay, pursuant to Business and Professions Code ("Code") Section 10148, the cost of
18 Audit Nos. SD150038 and SD150016, which led to this disciplinary action and a follow-up
19 audit. The total cost of the audits which led to this disciplinary action is \$13,269.44 (Cerwonka:
20 \$7,403.00 and Radix: \$5,866.44).

21 9. Respondents have received, read, and understand the "Notice Concerning
22 Costs of Subsequent Audit." Respondents further understand that by agreeing to this
23 Stipulation, the findings set forth below in the Determination of Issues become final, and the
24 Commissioner may charge Respondents for the cost of any subsequent audit conducted pursuant
25 to Code Section 10148 to determine if the violations have been corrected. The maximum cost of
26 the subsequent audit shall not exceed \$16,586.80 (Cerwonka: \$9,253.75 and Radix: \$7,333.05).
27

10. Respondents understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant to Code Section 10106, the cost of the investigation and enforcement of this matter. The total amount of the investigation and enforcement costs is \$3,628.70.

DETERMINATION OF ISSUES

1. The conduct, acts or omissions of Respondents, as set forth in the Accusations, is in violation of Code Section 10145 and Sections 2831, 2831.1, and 2840 of Title 10, Chapter 6, Code of Regulations and constitutes cause to suspend or revoke the real estate licenses and license rights of Respondents under the provisions of Code Sections 10177(d).

CERWONKA also violated the provisions of Code sections 10159.2 and 10177(h) which is cause to suspend or revoke her license and license rights under the provisions of Code section 10177(d).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I. ALL licenses and licensing rights of Respondent RADIX under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision;

A. Provided, however, that if said Respondent requests, the initial thirty (30) days of the period of said suspension (or a portion thereof) shall be stayed for two (2) years upon condition that:

1. RADIX pays a monetary penalty pursuant to Section 10175.2 of the Code at the rate of \$100.00 per day for each day of the suspension for a total monetary penalty of \$3,000.00.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received

1 by the Bureau prior to the effective date of the Decision in this matter.

2
3 3. No further cause for disciplinary action against the real estate license of
4 RADIX occurs within two (2) years from the effective date of the Decision in this matter.

5 4. If RADIX fails to pay the monetary penalty in accordance with the terms of
6 the Decision, the Commissioner may, without a hearing, order the immediate execution of all
7 or any part of the stayed suspension as to that Respondent, in which event that Respondent
8 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
9 Bureau under the terms of this Decision.

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

13 B. The remaining thirty (30) days of the ninety (60) day suspension shall be
14 stayed for two (2) years upon the following terms and conditions:

15 1. Respondent shall obey all laws, rules and regulations governing the rights,
16 duties and responsibilities of a real estate licensee in the State of California; and

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

23 II. ALL licenses and licensing rights of Respondent CERWONKA under the
24 Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be
25 issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes application
26 therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days from
27

1 the effective date of this Decision.

2 The Restricted license issued to CERWONKA shall be subject to all of the
3 provisions of Section 10156.7 of the Code and to the following conditions, limitations and
4 restrictions imposed under the authority of Section 10156.6 of the Code:
5

6 1. The restricted license issued to Respondent may be suspended prior to hearing
7 by Order of the Commissioner in the event of Respondent's conviction or plea of nolo
8 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real
9 estate broker licensee.

10 2. The restricted license issued to Respondent may be suspended prior to hearing
11 by Order of the Commissioner on evidence satisfactory to the Commissioner that Respondent
12 has violated provisions of the Real Estate law, the Subdivided Lands Law, Regulations of the
13 Real Estate Commissioner or conditions attaching to the restricted license.

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

17 4. Respondent shall, within nine (9) months from the effective date of this
18 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the
19 most recent issuance of an original or renewal real estate broker license, taken and successfully
20 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
21 Law for renewal of a real estate broker license. If Respondent fails to satisfy this condition, the
22 Commissioner may order the suspension of the restricted license until Respondent presents
23 such evidence. The Commissioner shall afford Respondent the opportunity for a hearing
24 pursuant to the APA to present such evidence.

25 5. All licenses and licensing rights of Respondent are indefinitely suspended
26 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken
27

1 and successfully completed the continuing education course on trust fund accounting and
2 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and
3 Professions Code. Proof of satisfaction of this requirement includes evidence that respondent
4 has successfully completed the trust fund account and handling continuing education course
5 within 120 days prior to the effective date of the Decision in this matter.
6

7 III. Pursuant to Section 10148 of the Business and Professions Code,

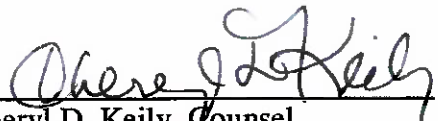
8 Respondents shall pay the sum of \$13,269.44 (Cerwonka: \$7,403.00 and Radix: \$5,866.44) for
9 the Commissioner's cost of the audits which led to this disciplinary action. Respondents
10 RADIX and CERWONKA shall be jointly and severally liable for the cost of the audit.
11 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefor from
12 the Commissioner. Payment of audit costs should not be made until Respondents receive the
13 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein,
14 Respondent's real estate licenses shall automatically be suspended until payment is made in
15 full, or until a decision providing otherwise is adopted following a hearing held pursuant to this
16 condition.

17 Pursuant to Section 10148 of the Code, Respondent shall pay the
18 Commissioner's reasonable cost, not to exceed \$16,586.80 (Cerwonka: \$9,253.75 and Radix:
19 \$7,333.05), for an audit to determine if Respondents have corrected the violation(s) found in
20 the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost,
21 the Commissioner may use the estimated average hourly salary for all persons performing
22 audits of real estate brokers, and shall include an allocation for travel time to and from the
23 auditor's place of work. Respondents shall pay such cost within sixty (60) days of receiving an
24 invoice therefor from the Commissioner. Payment of the audit costs shall not be made until
25 Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely
26 manner as provided for herein, Respondents' real estate licenses shall automatically be
27

1 suspended until payment is made in full, or until a decision providing otherwise is adopted
2 following a hearing held pursuant to this condition.

3 IV. All licenses and licensing rights of Respondents are indefinitely suspended
4 unless or until Respondents pay the sum of \$3,628.70 for the Commissioner's reasonable cost
5 of the investigation and enforcement which led to this disciplinary action. Said payment shall
6 be in the form of a cashier's check made payable to the Bureau of Real Estate. The
7 investigative and enforcements costs must be delivered to the Bureau of Real Estate, Flag
8 Section at P.O. Box 137013, Sacramento, California 95813-7013, prior to the effective date of
9 this Decision and Order.

10
11 DATED: Aug. 22, 2017

12 
13 Cheryl D. Keily, Counsel
14 BUREAU OF REAL ESTATE

15 * * *

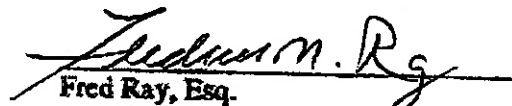
16 I have read the Stipulation and Agreement, and its terms are understood by me
17 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
18 the APA (including but not limited to Sections 11506, 11508, 11509 and 11513 of the
19 Government Code), and I willingly,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

23 Respondents can signify acceptance and approval of the terms and conditions of
24 this Stipulation and Agreement by sending a hard copy of the original signed Stipulation and
25 Agreement to Cheryl Keily at the Bureau of Real Estate, 320 W. 4th Street, Ste. 350, Los
26
27

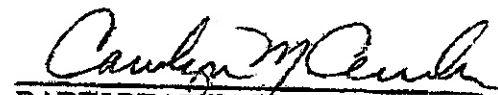
1 Angeles, California 90013. In the event of time constraints before an administrative hearing,
2 Respondents may signify acceptance and approval of the terms and conditions of this
3 Stipulation and Agreement by e-mailing a scanned copy of the signature page, as actually
4 signed by Respondents, to Cheryl Keily whose e-mail address is
5 cheryl.keily@dre.ca.gov. Respondents agree, acknowledge and understand that by
6 electronically sending the Bureau a scan of Respondents' actual signatures as they appear on
7 the Stipulation and Agreement that receipt of the scan by the Bureau shall be as binding on
8 Respondents as if the Bureau had received the original signed Stipulation and Agreement.
9

10 I have reviewed the Stipulation and Agreement as to form and content and have
11 advised my clients accordingly.

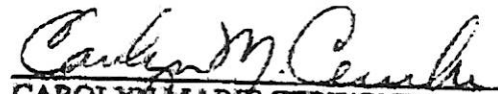
12 DATED: 8/21/17

13 
14 Fred Ray, Esq.
15 Attorney for Respondents
16 RADIX REALTY CORPORATION;
17 CAROLYN MARIE CERWONKA

18 DATED: 8/18/17

19 
20 RADIX REALTY CORPORATION
21 By Carolyn Marie Cerwonka
22 Respondent

23 DATED: 8/18/17

24 
25 CAROLYN MARIE CERWONKA
26 Respondent
27

28 ///

29 ///

30 ///

1
2
3 ***

4 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
5 this matter and shall become effective at 12 o'clock noon on October 10, 2017.

6 IT IS SO ORDERED Sept. 11, 2017.
7

8 REAL ESTATE COMMISSIONER

9
10 
11 WAYNE S. BELL
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27