

**FILED**

MAY 22 2017

BUREAU OF REAL ESTATE

By *Al Q. Davis*

1 Bureau of Real Estate  
2 320 W. 4<sup>th</sup> St., Room 350  
3 Los Angeles, California 90013  
4 Telephone: (213) 576-6982  
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7

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

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|    |                                      |                                  |
|----|--------------------------------------|----------------------------------|
| 11 | In the Matter of the Accusation of ) | No. H-4854 SD                    |
| 12 | )                                    | L-2016 120 507                   |
| 13 | PALOMAR PROPERTY )                   |                                  |
| 14 | MANAGEMENT, INC.; )                  | <u>STIPULATION AND AGREEMENT</u> |
| 15 | and MICHAEL E. WINTER )              |                                  |
| 16 | individually and as )                |                                  |
| 17 | designated officer of )              |                                  |
| 18 | Palomar Property )                   |                                  |
| 19 | Management, Inc. )                   |                                  |
| 20 | Respondents. )                       |                                  |
| 21 | )                                    |                                  |

22 It is hereby stipulated by and between PALOMAR  
23 PROPERTY MANAGEMENT, INC. and MICHAEL E. WINTER (sometimes  
24 referred to as Respondents), and their attorney, Frank M. Buda,  
25 and the Complainant, acting by and through James R. Peel,  
26 Counsel for the Bureau of Real Estate, as follows for the  
27 purpose of settling and disposing of Accusation filed in this  
matter.

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

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

12           3. On December 1, 2016, Respondents filed a Notice of  
13 Defense pursuant to Section 11506 of the Government Code for the  
14 purpose of requesting a hearing on the allegations in the  
15 Accusation. Respondents hereby freely and voluntarily withdraw  
16 said Notice of Defense. Respondents acknowledge that they  
17 understand that by withdrawing said Notice of Defense they will  
18 thereby waive their right to require the Commissioner to prove  
19 the allegations in the Accusation at a contested hearing held in  
20 accordance with the provisions of the APA and that they will  
21 waive other rights afforded to them in connection with the  
22 hearing such as the right to present evidence in defense of the  
23 allegations in the Accusation and the right to cross-examine  
24 witnesses.  
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1                   4. This Stipulation is based on the factual  
2 allegations contained in the Accusation filed in this  
3 proceeding. In the interest of expedience and economy,  
4 Respondents choose not to contest these factual allegations, but  
5 to remain silent and understand that, as a result thereof, these  
6 factual statements, will serve as a prima facie basis for the  
7 disciplinary action stipulated to herein. The Real Estate  
8 Commissioner shall not be required to provide further evidence  
9 to prove such allegations.

10                   5. This Stipulation is made for the purpose of  
11 reaching an agreed disposition of this proceeding and is  
12 expressly limited to this proceeding and any other proceeding or  
13 case in which the Bureau of Real Estate ("Bureau"), the state or  
14 federal government, or an agency of this state, another state or  
15 the federal government is involved.

16                   6. It is understood by the parties that the Real  
17 Estate Commissioner may adopt the Stipulation as his decision  
18 in this matter thereby imposing the penalty and sanctions on  
19 Respondents' real estate licenses and license rights as set  
20 forth in the below "Order". In the event that the Commissioner  
21 in his discretion does not adopt the Stipulation, the  
22 Stipulation shall be void and of no effect, and Respondents  
23 shall retain the right to a hearing and proceeding on the  
24 Accusation under all the provisions of the APA and shall not be  
25 bound by any stipulation or waiver made herein.  
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1           7. The Order or any subsequent Order of the Real  
2 Estate Commissioner made pursuant to this Stipulation shall not  
3 constitute an estoppel, merger or bar to any further  
4 administrative or civil proceedings by the Bureau of Real Estate  
5 with respect to any conduct which was not specifically alleged  
6 to be causes for accusation in this proceeding.

7                                   DETERMINATION OF ISSUES

8           By reason of the foregoing stipulations and waivers  
9 and solely for the purpose of settlement of the pending  
10 Accusation, it is stipulated and agreed that the following  
11 determination of issues shall be made:

12   I

13           The conduct, acts and/or omissions of Respondents  
14 PALOMAR PROPERTY MANAGEMENT, INC. and MICHAEL E. WINTER, as set  
15 forth in the Accusation, constitute cause for the suspension or  
16 revocation of all of the real estate licenses and license rights  
17 of Respondents under the provisions of Sections 10177(d) and  
18 10177(h) of the Business and Professions Code ("Code") for  
19 violation of Code Section 10145.

20   ORDER

21                                   1) All licenses and licensing rights of Respondents  
22 PALOMER PROPERTY MANAGEMENT, INC. and MICHAEL E. WINTER under  
23 the Real Estate Law are suspended for a period of sixty (60)  
24 days from the effective date of this Decision and Order;  
25 provided, however, that said suspensions shall be stayed for two  
26 (2) years upon the following terms and conditions:

1                    a) Respondents shall obey all laws, rules and  
2 regulations governing the rights, duties and responsibilities of  
3 a real estate licensee in the State of California; and

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

12                    2) Pursuant to Section 10148 of the Code, Respondents  
13 shall pay the sum of \$6,606 for the Commissioner's cost of the  
14 audit which led to this disciplinary action. Respondents shall  
15 pay the audit costs prior to the effective date of the Order and  
16 Decision. Payment of audit costs should not be made until  
17 Respondents receive the invoice. If Respondents fail to satisfy  
18 this condition in a timely manner as provided for herein,  
19 Respondents' real estate licenses shall automatically be  
20 suspended until payment is made in full or until a decision  
21 providing otherwise is adopted following a hearing held pursuant  
22 to this condition.  
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Pursuant to Section 10148 of the Code, Respondents

1 shall pay the Commissioner's reasonable cost, not to exceed  
2 \$9909 for an audit to determine if Respondents have corrected  
3 the violations found in the Determination of Issues. In  
4 calculating the amount of the Commissioner's reasonable cost,  
5 the Commissioner may use the estimated average hourly salary for  
6 all persons performing audits of real estate brokers, and shall  
7 include an allocation for travel time to and from the auditor's  
8 place of work. Respondents shall pay such cost within 60 days  
9 of receiving an invoice from the Commissioner. Payment of the  
10 audit costs should not be made until Respondents receive the  
11 invoice. If Respondents fail to satisfy this condition in a  
12 timely manner as provided for herein, Respondents' real estate  
13 licenses shall automatically be suspended until payment is made  
14 in full, or until a decision providing otherwise is adopted  
15 following a hearing held pursuant to this condition.  
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18 3) All licenses and licensing rights of Respondent  
19 MICHAEL E. WINTER are indefinitely suspended unless or until  
20 Respondent provides proof satisfactory to the Commissioner of  
21 having taken and successfully completed the continuing education  
22 course on trust fund accounting and handling specified in  
23 paragraph (3) of subdivision (a) of Section 10170.5 of the  
24 Business and Professions Code. Proof of satisfaction of these  
25 requirements includes evidence that Respondent has successfully  
26 completed the trust fund account and handling continuing  
27 education courses, no earlier than 120 days prior to the

1 effective date of the Decision and Order in this matter. Proof  
2 of completion of the trust fund accounting and handling course  
3 must be delivered to the Bureau of Real Estate, Flag Section at  
4 P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-  
5 8758, prior to the effective date of the Decision and Order.

6 4) All licenses and licensing rights of Respondents  
7 are indefinitely suspended unless or until Respondents pay the  
8 sum of \$916 for the Commissioner's reasonable cost of the  
9 investigation and enforcement which led to this disciplinary  
10 action. Said payment shall be in the form of a cashier's check  
11 made payable to the Bureau of Real Estate. The investigative  
12 and enforcement costs must be delivered to the Bureau of Real  
13 Estate, Flag Section at P. O. Box 137013, Sacramento, CA 95813-  
14 7013, prior to the effective date of this Decision and Order.

15  
16 DATED: 3-27-17

17 James R. Peel  
18 JAMES R. PEEL, Counsel for the  
19 Bureau of Real Estate

20 \* \* \*

21 We have read the Stipulation and Agreement, and its  
22 terms are understood by us and are agreeable and acceptable to  
23 us. We understand that we are waiving rights given to us by the  
24 California Administrative Procedure Act (including but not  
25 limited to Sections 11506, 11508, 11509 and 11513 of the  
26 Government Code), and we willingly, intelligently and  
27


1 voluntarily waive those rights, including the right of requiring  
2 the Commissioner to prove the allegations in the Accusation at a  
3 hearing at which we would have the right to cross-examine  
4 witnesses against us and to present evidence in defense and  
5 mitigation of the charges.

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7 Respondents can signify acceptance and approval of the  
8 terms and conditions of this Stipulation and Agreement by e-  
9 mailing the signature page to the Bureau.

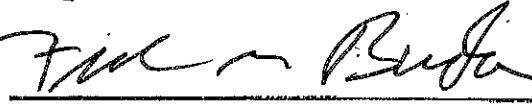
10  
11 DATED: 3/24/17

  
PALOMAR PROPERTY MANAGEMENT, INC.  
Respondent

12  
13 DATED: 3/24/17

  
MICHAEL E. WINTER  
Respondent

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15  
16 DATED: 3-28-17

  
FRANK M. BUDA  
Counsel for Respondents



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The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order in this matter, and shall  
become effective at 12 o'clock noon on JUNE 19 2017.

IT IS SO ORDERED 5/12/2017.

WAYNE S. BELL  
Real Estate Commissioner

