

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

4 Telephone: (916) 227-0789

FILED

FEB 11 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 APM REALTY SERVICES, INC.,)
13 a CORPORATION, and)
14 SALLY LEE FRIAR,)

15 Respondents.)

NO. H-4935 SAC

STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

(Revised to Correct Respondent Name)

16
17 It is hereby stipulated by and between Respondents APM REALTY SERVICES,
18 INC. (herein "APM") dba ALPHA PROPERTY MANAGEMENT, and SALLY LEE FRIAR
19 (herein "FRIAR") (herein jointly "Respondents"), individually and jointly and the Complainant,
20 acting by and through Mary F. Clarke, Counsel for the Department of Real Estate (herein "the
21 Department"), as follows for the purpose of settling and disposing of the Accusation filed on
22 February 21, 2008 in this matter:

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

1 2. Respondents have received, read and understand the Statement to Respondent,
2 the Discovery Provisions of the APA, and the Accusation filed by the Department in this
3 proceeding.

4 3. A Notice of Defense was filed on March 10, 2008 by Respondents, pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
7 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they
8 will thereby waive their right to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that
10 they will waive other rights afforded to them in connection with the hearing such as the right to
11 present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations pertaining to them in the Accusation filed in this proceeding are true and
15 correct and the Real Estate Commissioner shall not be required to provide further evidence of
16 such allegations.

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

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement in Settlement shall not constitute an estoppel, merger,
26 or bar to any further administrative or civil proceedings by the Department with respect to any
27 matters which were not specifically alleged to be causes for accusation in this proceeding.

7. Respondents understand that by agreeing to this Stipulation and Agreement in Settlement, Respondents jointly and severally agree to pay, pursuant to Section 10148 of the Business and Professions Code ("herein the Code"), the cost of the audit which resulted in the determination that Respondents committed the trust fund violation(s) found in Paragraph I, below, of the Determination of Issues. The amount of said costs is \$7,825.30.

8. Respondents further understand that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondents, jointly and severally, for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund violation(s) found in Paragraph I, below, of the Determination of Issues have been corrected. The maximum costs of said audit shall not exceed \$7,825.30.

DETERMINATION OF ISSUES

I

The acts and omissions of Respondents as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code, and/or Chapter 6, Title 10, California Code of Regulations (herein “the Regulations”):

(a) as to Paragraph IX(a) and Respondent APM under Section 10145 of the Code and Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

(b) as to Paragraph IX(b) and Respondent APM under Section 10145 of the Code and Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

(c) as to Paragraph IX(c) and Respondent APM under Section 10145 of the Code and Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;

(d) as to Paragraph IX(d) and Respondent APM under Section 10145 of the Code and Section 2715 of the Regulations in conjunction with Section 10177(d) of the Code; and,

(e) as to Paragraph X and Respondent FRIAR under Sections 10159.2, 10177(g), and 10177(h) of the Code in conjunction with Section 10177(d) of the Code.

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1 Paragraph I of this Order, in which event Respondent APM shall not be entitled to any repayment
2 nor credit, prorated or otherwise, for the money paid to the Department under the terms of this
3 Order.

4 (d) If Respondent APM pays the monetary penalty and any other moneys due
5 under this Stipulation and Agreement in Settlement and if no further cause for disciplinary action
6 against the real estate license of Respondent APM occurs within two (2) years from the effective
7 date of this Order, the entire stay hereby granted under Paragraphs I and II of this Order, as to
8 Respondent APM only, shall become permanent.

9 3. Pursuant to Section 10148 of the Code, Respondent APM, shall, jointly and
10 severally with Respondent FRIAR pay the sum of \$7,825.30 for the Commissioner's cost of the
11 audit which led to this disciplinary action. Respondents shall pay such cost within 60 days of
12 receiving an invoice therefor from the Commissioner. The Commissioner may indefinitely
13 suspend all licenses and licensing rights pending a hearing held in accordance with Section 11500,
14 et seq., of the Government Code, if payment is not timely made as provided for herein, or as
15 provided for in a subsequent agreement between Respondent APM and the Commissioner. The
16 suspension shall remain in effect until payment is made in full or until Respondent APM enters
17 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision
18 providing otherwise is adopted following a hearing held pursuant to this condition.

19 4. Respondents APM and FRIAR, jointly and severally, shall pay the
20 Commissioner's costs, not to exceed \$7,825.30, of any audit conducted pursuant to Section
21 10148 of the Code to determine if Respondents have corrected the violations described in
22 Paragraph I of the Determination of Issues, above. In calculating the amount of the
23 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
24 for all persons performing audits of real estate brokers, and shall include an allocation for travel
25 time to and from the auditor's place of work. Respondents shall pay such cost within 60 days of
26 receiving an invoice therefore from the Commissioner detailing the activities performed during
27 the audit and the amount of time spent performing those activities. If Respondents fail to pay

1 such cost within the 60 days, the Commissioner may indefinitely suspend all licenses and
2 licensing rights of Respondent APM under the Real Estate Law until payment is made in full or
3 until Respondent APM enters into an agreement satisfactory to the Commissioner to provide for
4 payment. Upon payment in full, the indefinite suspension provided in this paragraph shall be
5 stayed.

6 II

7 A. All licenses and licensing rights of Respondent FRIAR under the Real
8 Estate Law are suspended until such time as Respondent FRIAR provides proof satisfactory to
9 the Commissioner that Respondent FRIAR has, within one hundred twenty (120) days prior to
10 the effective date of the Decision herein completed the continuing education course on trust fund
11 accounting and handling specified in subdivision (a) of Section 10170.5 of the Code.

12 B. All licenses and licensing rights of Respondent FRIAR under the Real
13 Estate Law are suspended for a period of ninety (90) days from the effective date of this Order;
14 provided, however, that:

15 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon
16 the following terms and conditions:

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

20 b. That no final subsequent determination be made, after hearing or
21 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
22 effective date of this Order. Should such a determination be made, the Commissioner may, in
23 his 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 2. The remaining thirty (30) days of said 90-day suspension shall be stayed
27 upon the condition that Respondent FRIAR petition pursuant to Section 10175.2 of the Code and

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

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

6 b. No further cause for disciplinary action against the real estate licenses
7 of Respondent FRIAR occurs within two (2) years from the effective date of the Decision in this
8 matter.

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

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

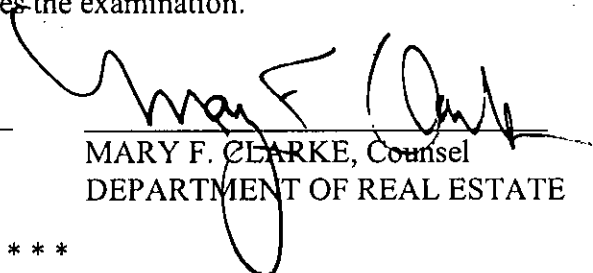
20 3. Pursuant to Section 10148 of the Code, Respondents FRIAR and APM
21 shall, jointly and severally, pay the sum of \$7,825.30 for the Commissioner's cost of the audit
22 which led to this disciplinary action. Respondents shall pay such cost within 60 days of receiving
23 an invoice therefor from the Commissioner. The Commissioner may indefinitely suspend all
24 licenses and licensing rights pending a hearing held in accordance with Section 11500, et seq., of
25 the Government Code, if payment is not timely made as provided for herein, or as provided for in
26 a subsequent agreement between Respondent FRIAR and the Commissioner. The suspension
27 shall remain in effect until payment is made in full or until Respondent FRIAR enters into an

1 agreement satisfactory to the Commissioner to provide for payment, or until a decision providing
2 otherwise is adopted following a hearing held pursuant to this condition.

3 4. Respondents FRIAR and APM, jointly and severally, shall pay the
4 Commissioner's costs, not to exceed \$7,825.30, of any audit conducted pursuant to Section
5 10148 of the Code to determine if Respondents have corrected the violations described in
6 Paragraph I of the Determination of Issues, above. In calculating the amount of the
7 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
8 for all persons performing audits of real estate brokers, and shall include an allocation for travel
9 time to and from the auditor's place of work. Respondents shall pay such cost within 60 days of
10 receiving an invoice therefore from the Commissioner detailing the activities performed during
11 the audit and the amount of time spent performing those activities. If Respondents fail to pay
12 such cost within the 60 days, the Commissioner may indefinitely suspend all licenses and
13 licensing rights of Respondent FRIAR under the Real Estate Law until payment is made in full or
14 until Respondent FRIAR enters into an agreement satisfactory to the Commissioner to provide
15 for payment. Upon payment in full, the indefinite suspension provided in this paragraph shall be
16 stayed.

17 5. Respondent FRIAR shall, within six (6) months from the effective date
18 of the decision, take and pass the Professional Responsibility Examination administered by the
19 Department, including the payment of the appropriate examination fee. If Respondent FRIAR
20 fails to satisfy this condition, the Commissioner may order the suspension of all licenses and
21 licensing rights until Respondent FRIAR passes the examination.

22
23 1-20-09
24 DATED

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26 
27 MARY F. CLARKE, Counsel
DEPARTMENT OF REAL ESTATE

26 I have read the Stipulation and Agreement in Settlement and its terms are
27 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights

1 given to me by the California APA (including but not limited to Sections 11506, 11508, 11509,
2 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those
3 rights, including the right of requiring the Commissioner to prove the allegations in the
4 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
5 and to present evidence in defense and mitigation of the charges.

6 APM REALTY SERVICES, INC.
7 Respondent

8 1/15/09
9 DATED

By: Sally L. Friar
10 SALLY L. FRIAR
11 Designated Officer - Broker

12 1/15/09
13 DATED

Sally L. Friar
14 SALLY L. FRIAR, Respondent

15 * * *

16 The foregoing Stipulation and Agreement is hereby adopted by me as my Decision
17 in this matter and shall become effective at 12 o'clock noon on March 3, 2009

18 IT IS SO ORDERED February 10, 2009.

19 JEFF DAVI
20 Real Estate Commissioner

21 [Signature]
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3 Sacramento, CA 95818-7007
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DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)
13)
14 ALPHA PROPERTY MANAGEMENT,)
15 a CORPORATION, and)
16 SALLY LEE FRIAR)
17 Respondents.)

NO. H-4935 SAC

STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

18 It is hereby stipulated by and between Respondents ALPHA PROPERTY
19 MANAGEMENT (herein "APM"), and SALLY LEE FRIAR (herein "FRIAR") (herein jointly
20 "Respondents"), individually and jointly and the Complainant, acting by and through Mary F.
21 Clarke, Counsel for the Department of Real Estate (herein "the Department"), as follows for the
22 purpose of settling and disposing of the Accusation filed on February 21, 2008 in this matter:

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

1 2. Respondents have received, read and understand the Statement to Respondent,
2 the Discovery Provisions of the APA, and the Accusation filed by the Department in this
3 proceeding.

4 3. A Notice of Defense was filed on March 10, 2008 by Respondents, pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
7 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they
8 will thereby waive their right to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that
10 they will waive other rights afforded to them in connection with the hearing such as the right to
11 present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations pertaining to them in the Accusation filed in this proceeding are true and
15 correct and the Real Estate Commissioner shall not be required to provide further evidence of
16 such allegations.

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

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement in Settlement shall not constitute an estoppel, merger,
26 or bar to any further administrative or civil proceedings by the Department with respect to any
27 matters which were not specifically alleged to be causes for accusation in this proceeding.

1 7. Respondents understand that by agreeing to this Stipulation and Agreement in
2 Settlement, Respondents jointly and severally agree to pay, pursuant to Section 10148 of the
3 Business and Professions Code ("herein the Code"), the cost of the audit which resulted in the
4 determination that Respondents committed the trust fund violation(s) found in Paragraph I,
5 below, of the Determination of Issues. The amount of said costs is \$7,825.30.

6 8. Respondents further understand that by agreeing to this Stipulation and
7 Agreement in Settlement, the findings set forth below in the Determination of Issues become
8 final, and that the Commissioner may charge said Respondents, jointly and severally, for the
9 costs of any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund
10 violation(s) found in Paragraph I, below, of the Determination of Issues have been corrected. The
11 maximum costs of said audit shall not exceed \$7,825.30.

12 DETERMINATION OF ISSUES

13 I

14 The acts and omissions of Respondents as described in the Accusation are
15 grounds for the suspension or revocation of the licenses and license rights of Respondents under
16 the following provisions of the Code, and/or Chapter 6, Title 10, California Code of Regulations
17 (herein "the Regulations"):

18 (a) as to Paragraph IX(a) and Respondent APM under Section 10145 of the Code
19 and Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

20 (b) as to Paragraph IX(b) and Respondent APM under Section 10145 of the Code
21 and Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

22 (c) as to Paragraph IX(c) and Respondent APM under Section 10145 of the Code
23 and Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;

24 (d) as to Paragraph IX(d) and Respondent APM under Section 10145 of the Code
25 and Section 2715 of the Regulations in conjunction with Section 10177(d) of the Code; and,

26 (e) as to Paragraph X and Respondent FRIAR under Sections 10159.2, 10177(g),
27 and 10177(h) of the Code in conjunction with Section 10177(d) of the Code.

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1 Respondent APM and the order of suspension shall be immediately executed, under this
2 Paragraph I of this Order, in which event Respondent APM shall not be entitled to any
3 repayment nor credit, prorated or otherwise, for the money paid to the Department under the
4 terms of this Order.

5 (d) If Respondent APM pays the monetary penalty and any other moneys due
6 under this Stipulation and Agreement in Settlement and if no further cause for disciplinary
7 action against the real estate license of Respondent APM occurs within two (2) years from the
8 effective date of this Order, the entire stay hereby granted under Paragraphs I and II of this
9 Order, as to Respondent APM only, shall become permanent.

10 3. Pursuant to Section 10148 of the Code, Respondent APM, shall, jointly and
11 severally with Respondent FRIAR pay the sum of \$7,825.30 for the Commissioner's cost of the
12 audit which led to this disciplinary action. Respondents shall pay such cost within 60 days of
13 receiving an invoice therefor from the Commissioner. The Commissioner may indefinitely
14 suspend all licenses and licensing rights pending a hearing held in accordance with Section
15 11500, et seq., of the Government Code, if payment is not timely made as provided for herein,
16 or as provided for in a subsequent agreement between Respondent APM and the
17 Commissioner. The suspension shall remain in effect until payment is made in full or until
18 Respondent APM enters into an agreement satisfactory to the Commissioner to provide for
19 payment, or until a decision providing otherwise is adopted following a hearing held pursuant
20 to this condition.

21 4. Respondents APM and FRIAR, jointly and severally, shall pay the
22 Commissioner's costs, not to exceed \$7,825.30, of any audit conducted pursuant to Section
23 10148 of the Code to determine if Respondents have corrected the violations described in
24 Paragraph I of the Determination of Issues, above. In calculating the amount of the
25 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
26 for all persons performing audits of real estate brokers, and shall include an allocation for travel
27 time to and from the auditor's place of work. Respondents shall pay such cost within 60 days of

1 receiving an invoice therefore from the Commissioner detailing the activities performed during
2 the audit and the amount of time spent performing those activities. If Respondents fail to pay
3 such cost within the 60 days, the Commissioner may indefinitely suspend all licenses and
4 licensing rights of Respondent APM under the Real Estate Law until payment is made in full or
5 until Respondent APM enters into an agreement satisfactory to the Commissioner to provide for
6 payment. Upon payment in full, the indefinite suspension provided in this paragraph shall be
7 stayed.

8 II

9 A. All licenses and licensing rights of Respondent FRIAR under the Real
10 Estate Law are suspended until such time as Respondent FRIAR provides proof satisfactory to
11 the Commissioner that Respondent FRIAR has, within one hundred twenty (120) days prior to
12 the effective date of the Decision herein completed the continuing education course on trust fund
13 accounting and handling specified in subdivision (a) of Section 10170.5 of the Code.

14 B. All licenses and licensing rights of Respondent FRIAR under the Real
15 Estate Law are suspended for a period of ninety (90) days from the effective date of this Order:
16 provided, however, that:

17 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon
18 the following terms and conditions:

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

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

1 2. The remaining thirty (30) days of said 90-day suspension shall be stayed
2 upon the condition that Respondent FRIAR petition pursuant to Section 10175.2 of the Code and
3 pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day
4 of the suspension for a total monetary penalty of \$3,000:

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

8 b. No further cause for disciplinary action against the real estate
9 licenses of Respondent FRIAR occurs within two (2) years from the effective date of the
10 Decision in this matter.

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

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

22 3. Pursuant to Section 10148 of the Code, Respondents FRIAR and APM
23 shall, jointly and severally, pay the sum of \$7,825.30 for the Commissioner's cost of the audit
24 which led to this disciplinary action. Respondents shall pay such cost within 60 days of
25 receiving an invoice therefor from the Commissioner. The Commissioner may indefinitely
26 suspend all licenses and licensing rights pending a hearing held in accordance with Section
27 11500, et seq., of the Government Code, if payment is not timely made as provided for herein,

1 or as provided for in a subsequent agreement between Respondent FRIAR and the
2 Commissioner. The suspension shall remain in effect until payment is made in full or until
3 Respondent FRIAR enters into an agreement satisfactory to the Commissioner to provide for
4 payment, or until a decision providing otherwise is adopted following a hearing held pursuant
5 to this condition.

6 4. Respondents FRIAR and APM, jointly and severally, shall pay the
7 Commissioner's costs, not to exceed \$7,825.30, of any audit conducted pursuant to Section
8 10148 of the Code to determine if Respondents have corrected the violations described in
9 Paragraph I of the Determination of Issues, above. In calculating the amount of the
10 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
11 salary for all persons performing audits of real estate brokers, and shall include an allocation
12 for travel time to and from the auditor's place of work. Respondents shall pay such cost within
13 60 days of receiving an invoice therefore from the Commissioner detailing the activities
14 performed during the audit and the amount of time spent performing those activities. If
15 Respondents fail to pay such cost within the 60 days, the Commissioner may indefinitely
16 suspend all licenses and licensing rights of Respondent FRIAR under the Real Estate Law until
17 payment is made in full or until Respondent FRIAR enters into an agreement satisfactory to the
18 Commissioner to provide for payment. Upon payment in full, the indefinite suspension
19 provided in this paragraph shall be stayed.

20 5. Respondent FRIAR shall, within six (6) months from the effective date
21 of the decision, take and pass the Professional Responsibility Examination administered by the
22 Department, including the payment of the appropriate examination fee. If Respondent FRIAR
23 fails to satisfy this condition, the Commissioner may order the suspension of all licenses and
24 licensing rights until Respondent FRIAR passes the examination.

25 11-6-08

26 DATED

27 MARY F. CLARKE, Counsel
DEPARTMENT OF REAL ESTATE

MARY F. CLARKE, Real Estate Counsel (SBN 186744)
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FEB 21 2008

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
APM REALTY SERVICES, INC.,)
A Corporation, and,)
SALLY LEE FRIAR,)
Respondents.)

NO. H-4935 SAC

ACCUSATION

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against APM REALTY SERVICES, INC., a Corporation (herein "APM"), and SALLY LEE FRIAR (herein "FRIAR"), is informed and alleges as follows:

I

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

At all times herein mentioned, Respondents APM and FRIAR (herein "Respondents") were and now are licensed and/or

1 have license rights under the Real Estate Law (Part 1 of Division 4
2 of the Business and Professions Code) (herein "the Code").

3 III

4 At all times herein mentioned APM was and now is
5 licensed by the Department of Real Estate of the State of
6 California (herein "the Department") as a corporate real estate
7 broker by and through FRIAR as designated officer-broker of APM
8 to qualify said corporation and to act for said corporation as a
9 real estate broker.

10 IV

11 At all times herein mentioned, FRIAR was and now is
12 licensed by the Department as a real estate broker, individually
13 and as designated officer-broker of APM. As said designated
14 officer-broker, FRIAR was at all times mentioned herein
15 responsible pursuant to Section 10159.2 of the Code for the
16 supervision of the activities of the officers, agents, real
17 estate licensees and employees of APM for which a license is
18 required.

19 V

20 Whenever reference is made in an allegation in this
21 Accusation to an act or omission of APM, such allegation shall be
22 deemed to mean that the officers, directors, employees, agents
23 and/or real estate licensees employed by or associated with APM
24 committed such act or omission while engaged in the furtherance
25 of the business or operations of such corporate Respondent and
26 while acting within the course and scope of their authority and
27 employment.

1 VI

2 At all times herein mentioned Respondents engaged in
3 the business of, acted in the capacity of, advertised, or assumed
4 to act as real estate brokers within the State of California
5 within the meaning of Sections 10131(b) of the Code, including
6 the operation and conduct of a property management business with
7 the public wherein, on behalf of others, for compensation or in
8 expectation of compensation, Respondent leased or rented and
9 offered to lease or rent, and placed for rent, and solicited
10 listings of places for rent, and solicited for prospective
11 tenants of real property or improvements thereon, and collected
12 rents from real property or improvements thereon.

13 VII

14 In so acting as a real estate broker, as described in
15 Paragraph VI above, Respondents accepted or received funds in
16 trust (herein "trust funds") from or on behalf of owners,
17 tenants, and others in connection with the leasing, renting, and
18 collection of rents on real property or improvements thereon, as
19 alleged herein, and thereafter from time to time made disbursements
20 of said funds.

21 VIII

22 The aforesaid trust funds accepted or received by
23 Respondent were deposited or caused to be deposited by Respondent
24 into "APM Realty Services Inc. Alpha Property MGMT Trust Account",
25 account number 12-500922-01 (Trust #1), a trust fund account at
26 the Sacramento, California, branch of California Bank & Trust,
27 maintained by Respondent for the handling of trust funds.

IX

On or about between October 1, 2005, and on or about February 28, 2007, in connection with the collection and disbursement of said trust funds, Respondent APM:

(a) failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Trust #1 containing all the information required by Section 2831 of Chapter 6, Title 10, California Code of Regulations (herein "the Regulations");

(b) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Trust #1, as required by Section 2831.2 of the Regulations;

(c) caused, suffered or permitted the balance of funds in Trust #1 to be reduced to amounts, as tabulated below, less than the liability of Respondent to all owners of such funds without first obtaining the written consent of each and every owner of such funds:

<u>ITEM</u>	<u>DATE</u>	<u>AMOUNT</u>
(1)	1/31/07	\$25,939.39
(2)	2/28/07	\$23,878.91;

(d) failed to notify the Department of a change in the location or address of the principal place of business, in violation of Section 2715 of the Regulations.

X

At all times mentioned herein, Respondent FRIAR failed to exercise reasonable supervision over the acts of Respondent APM and its agents and employees in such a manner as to allow

1 the acts and omissions on the part of APM, described above, to
2 occur.

3 XI

4 The facts alleged above are grounds for the
5 suspension or revocation of the licenses and license rights of
6 Respondents under the following provisions of the Code and/or
7 the Regulations:

8 (a) as to Paragraph IX(a) and Respondent APM
9 under Section 10145 of the Code and Section 2831 of the
10 Regulations in conjunction with Section 10177(d) of the
11 Code;

12 (b) as to Paragraph IX(b) and Respondent APM
13 under Section 10145 of the Code and Section 2831.2 of the
14 Regulations in conjunction with Section 10177(d) of the
15 Code;

16 (c) as to Paragraph IX(c) and Respondent APM
17 under Section 10145 of the Code and Section 2832.1 of the
18 Regulations in conjunction with Section 10177(d) of the
19 Code;

20 (d) as to Paragraph IX(d) and Respondent APM
21 under Section 10145 of the Code and Section 2715 of the
22 Regulations in conjunction with Section 10177(d) of the
23 Code; and,

24 (e) as to Paragraph X and Respondent FRIAR under
25 Sections 10159.2, 10177(g), and 10177(h) of the Code in
26 conjunction with Section 10177(d) of the Code.

27 \\\

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary action
4 against all licenses and license rights of Respondents under the
5 Real Estate Law (Part 1 of Division 4 of the Business and
6 Professions Code) and for such other and further relief as may
7 be proper under other applicable provisions of law.

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12 CHARLES W. KOENIG
13 Deputy Real Estate Commissioner
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15 Dated at Sacramento, California
16 this 18th day of December, 2007.
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