

1 Department of Real Estate
320 West 4th Street, Ste. 350
2 Los Angeles, California 90013-1105
Telephone: (213) 576-6982
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FILED

APR - 6 2020

DEPT. OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against

MICHAEL J. ZAU, REALSMART, INC., and
BENHAM BRASHER VAN GAASBEEK,
individually and as designated officer for
Realsmart, Inc.,

Respondents.

DRE No. H-05088 SD
OAH No. 2019110816

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER AS
TO RESPONDENTS REALSMART,
INC. AND BENHAM BRASHER VAN
GAASBEEK ONLY

It is hereby stipulated by and between Respondents REALSMART, INC. and BENHAM BRASHER VAN GAASBEEK (collectively "Respondents"), represented by Stormoen Law, attorneys at law, and the Complainant, acting by and through Lissete Garcia, Counsel for the Department¹ of Real Estate ("Department" or "DRE"), as follows for the purpose of settling and disposing of the Accusation ("Accusation") filed on August 28, 2019, in Case No. H-05088 SD, in this matter.

¹ Between July 1, 2013 and June 30, 2017, the California Department of Real Estate was the California Bureau of Real Estate.

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

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

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

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

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

1 the Department or another licensing agency of this state, another state, or if the federal
2 government is involved, and otherwise shall not be admissible in any other criminal or civil
3 proceeding.

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

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

15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulation and agreement and solely for the purpose of
17 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
18 following determination of issues shall be made:

19 I.

20 The conduct, acts and/or omissions of Respondent REALSMART, INC. as set forth
21 herein above in Paragraph 4, constitute cause for the suspension or revocation of all real estate
22 licenses and license rights of Respondent REALSMART, INC. under the provisions of Code
23 section 10177(g) for violation of Code section 10137.
24

1 II.

2 The conduct, acts and/or omissions of Respondent BENHAM BRASHER VAN
3 GAASBEEK as set forth herein above in Paragraph 4, constitute cause for the suspension or
4 revocation of all real estate licenses and license rights of Respondent BENHAM BRASHER
5 VAN GAASBEEK under the provisions of Code section 10177(h) for violation of Code section
6 10159.2 and Regulation 2725.

7 ORDER

8 WHEREFORE, THE FOLLOWING ORDER is hereby made:

9 I.

10 1. All licenses and licensing rights of Respondents REALSMART, INC. under the Real
11 Estate Law are hereby publicly reprovod.

12 2. Respondent REALSMART, INC. shall pay, severally or jointly with Respondent
13 BENHAM BRASHER VAN GAASBEEK, a pro rata share totaling \$1,500.00 for the
14 Commissioner's reasonable cost of the investigation and enforcement which led to this
15 disciplinary action. Said payment shall be in the form of a cashier's check made payable to the
16 Department of Real Estate. **The investigative and enforcement costs must be delivered to the**
17 **Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,**
18 **prior to the effective date of this Decision and Order. Payment of investigation and**
19 **enforcement costs should not be made until the Stipulation has been approved by the**
20 **Commissioner.** If Respondent REALSMART, INC. fails to satisfy this condition in a timely
21 manner as provided for herein, Respondent REALSMART, INC.'s real estate license(s) shall
22 automatically be suspended until payment is made in full, or until a decision providing otherwise
23 is adopted following a hearing held pursuant to this condition.
24

3. Respondent REALSMART, INC. shall pay, severally or jointly with Respondent BENHAM BRASHER VAN GAASBEEK, the amount of \$500.00 as restitution to victim, P.M. Respondents shall provide to the Commissioner, proof satisfactory of having paid the restitution prior to the effective date of this Decision and Order. Proof of satisfaction of this requirement includes: a copy of a cancelled check to the victim and/or notarized written confirmation from the victim attesting that payment of the restitution funds has been received **Proof of payment must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Decision and Order.** If Respondent REALSMART, INC. fails to satisfy this condition in a timely manner as provided for herein, Respondent REALSMART, INC.'s real estate license(s) shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

II.

1. All licenses and licensing rights of Respondent BENHAM BRASHER VAN GAASBEEK ("VAN GAASBEEK") under the Real Estate Law are hereby publicly reprovod.

2. Respondent VAN GAASBEEK shall pay, severally or jointly with Respondent REALSMART, INC., a pro rata share totaling \$1,500.00 for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate. **The investigative and enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order. Payment of investigation and enforcement costs should not be made until the Stipulation has been approved by the Commissioner.** If Respondent VAN

GAASBEEK fails to satisfy this condition in a timely manner as provided for herein, Respondent VAN GAASBEEK's real estate license(s) shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

3. Respondent VAN GAASBEEK shall pay, severally or jointly with Respondent REALSMART, INC., the amount of \$500.00 as restitution to P.M. Respondents shall provide to the Commissioner, proof satisfactory of having paid the restitution prior to the effective date of this Decision and Order. Proof of satisfaction of this requirement includes: a copy of a cancelled check to the victim and/or notarized written confirmation from the victim attesting that payment of the restitution funds has been received. **Proof of payment must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Decision and Order. Proof of payment must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Decision and Order.** If Respondent VAN GAASBEEK fails to satisfy this condition in a timely manner as provided for herein, Respondent VAN GAASBEEK's real estate license(s) shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

4. Respondent VAN GAASBEEK shall, within six (6) months from the effective date of this Decision and Order, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, Respondent's real estate license shall automatically be suspended until Respondent passes the examination.

1 5. Respondent VAN GAASBEEK shall, within nine (9) months from the effective date
2 of this Decision and Order, present evidence satisfactory to the Commissioner that Respondent
3 VAN GAASBEEK has, since the most recent issuance of an original or renewal real estate
4 license, taken and successfully completed the continuing education requirements of Article 2.5 of
5 Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent VAN
6 GAASBEEK fails to satisfy this condition, Respondent VAN GAASBEEK's real estate license
7 shall automatically be suspended until Respondent VAN GAASBEEK presents evidence
8 satisfactory to the Commissioner of having taken and successfully completed the continuing
9 education requirements. Proof of completion of the continuing education courses must be
10 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
11 95813-7013.

12 DATED: 2/21/2020

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Lissete Garcia, Counsel for
Department of Real Estate

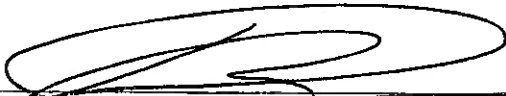
14 * * *

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

22 Respondents can signify acceptance and approval of the terms and conditions of this
23 Stipulation and Agreement by electronically e-mailing a copy of the signature page, as actually
24 signed by Respondents, to the Department. Respondents agree, acknowledge, and understand

1 that by electronically sending to the Department an electronic copy of Respondents' actual
2 signatures, as they appear on the Stipulation, that receipt of the emailed copy by the Department
3 shall be as binding on Respondents as if the Department had received the original signed
4 Stipulation. By signing this Stipulation, Respondents understand and agree that Respondents
5 may not withdraw Respondents' agreement or seek to rescind the Stipulation prior to the time the
6 Commissioner considers and acts upon it or prior to the effective date of the Stipulation and
7 Order.

8 DATED: Feb 20, 2020


Respondent REALSMART, INC.

By (Printed Name): Benham B. Van Gaasbeek

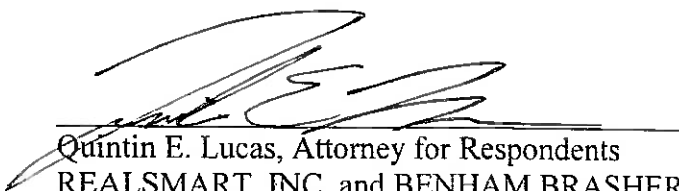
Title: President

11
12 DATED: Feb 20, 2020


Respondent ~~BENHAM BRASHER VAN~~
GAASBEEK

14 *I have reviewed the Stipulation and Agreement as to form and content and have advised*
15 *my clients accordingly.*

16 DATED: 2/20/20


Quintin E. Lucas, Attorney for Respondents
REALSMART, INC. and BENHAM BRASHER
VAN GAASBEEK

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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents REALSMART, INC. and BENHAM BRASHER VAN GAASBEEK, individually and as designated officer of REALSMART, INC., and shall become effective at 12 o'clock noon on May 6, 2020

IT IS SO ORDERED 3/23/20, 2020.

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER

