

FILED

DEC 29 2011

Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By P. Jones

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

KIM A. PACINI-HAUCH,

Respondent.

No. H-5483 SAC

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between KIM A. PACINI-HAUCH (hereafter "Respondent"), and her attorney C, Breck Jones, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on October 6, 2010 in this matter:

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

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

3. Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation.

1 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
2 acknowledges that she understands that by withdrawing said Notice of Defense she will thereby
3 waive her rights to require the Commissioner to prove the allegations in the Accusation at a
4 contested hearing held in accordance with the provisions of the APA, and that she will waive
5 other rights afforded to her in connection with the hearing such as the right to present evidence in
6 defense of the allegations in the Accusation and the right to cross-examine witnesses.

7 4. This stipulation is based on the factual allegations contained in the Accusation.
8 In the interest of expediency and economy, Respondent chooses not to contest these factual
9 allegations, but to remain silent and understands that, as a result thereof, these factual statements
10 will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below.
11 The Real Estate Commissioner shall not be required to provide further evidence to prove such
12 allegations. The attached Statement of Mitigation provided by Respondent is hereby incorporated
13 by reference and shall become part of the Stipulation.

14 5. This Stipulation and Respondent's decision not to contest the Accusation are
15 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
16 limited to this proceeding and any other proceeding or case in which the Department of Real
17 Estate (herein "the Department"), the state or federal government, an agency of this state, or an
18 agency of another state is involved.

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

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

DETERMINATION OF ISSUES

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

I

The acts and omissions of Respondent as described in the Accusation are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10177(g) of the Code.

ORDER

I

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

1) Sixty (60) days of said suspension shall be stayed, upon the condition that Respondent petition pursuant to Section 10175.2 of the Business and Professions Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of \$50 for each day of the suspension for a total monetary penalty of \$3,000.

a) 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 delivered to the Department prior to the effective date of the Order in this matter.

b) No further cause for disciplinary action against the Real Estate licenses of Respondent occurs within one (1) year from the effective date of the decision in this matter.

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

d) If Respondent pays the monetary penalty and any other moneys due under this Stipulation and Agreement and if no further cause for disciplinary action against the real estate

license of Respondent occurs within one (1) year from the effective date of this Order, the entire stay hereby as to Respondent only, shall become permanent.

2) The remaining thirty (30) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:


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

b) That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year from the effective date of this Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

3) Respondent shall, prior to the effective date of this Decision, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until Respondent presents proof that she has successfully completed the trust fund course.


4) Respondent shall, within six (6) months from the effective date of this Decision, 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, the Commissioner may order suspension of the restricted license until Respondent passes the examination.

10-Oct-11
DATED


TRULY SUGHRUE
Counsel for Complainant

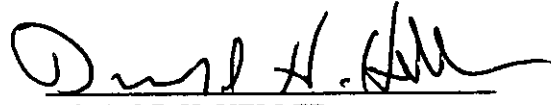
1 I have read the Stipulation and Agreement, and its terms are understood by me
2 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the
3 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive
4 those rights, including the right of requiring the Commissioner to prove the allegations in the
5 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
6 and to present evidence in defense and mitigation of the charges.

7
8 November 9, 2011
9 DATED


KIM A. PACINI-HAUCH
Respondent

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

13
14 November 9, 2011
15 DATED

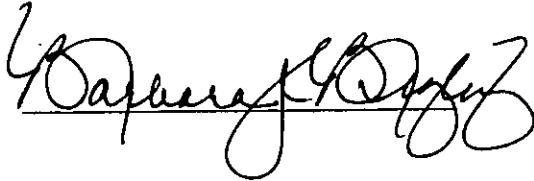

DONALD H. HELLER
Attorney for Respondent

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17 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
18 shall become effective at 12 o'clock noon on JANUARY 18, 2012.

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20 IT IS SO ORDERED 12/13/11, 2011.

21 BARBARA J. BIGBY
22 Acting Real Estate Commissioner

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1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0789
7 (916) 227-0781 (Direct)

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DEPARTMENT OF REAL ESTATE

[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-5483 SAC

12 KIM A. PACINI-HAUCH,)

ACCUSATION

13 Respondent.)
14)

15 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
16 State of California, for cause of Accusation against KIM A. PACINI-HAUCH (hereinafter
17 "Respondent"), is informed and alleges as follows:

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19 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
20 State of California, makes this Accusation in her official capacity.

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22 At all times mentioned, Respondent was and now is licensed and/or has license
23 rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code)
24 (hereinafter "the Code").

25 3

26 At all times mentioned, Respondent was and is licensed by the Department of
27 Real Estate (hereafter "the Department") as a real estate salesperson.

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate licensee in the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property.

On or about July 18, 2009, in course of the activities described in Paragraph 4, Respondent prepared and submitted a written offer for the purchase of real property located at 6591 Garden Highway, Sacramento, California by Bill Cooper (hereinafter after "Buyer"). Respondent represented in said offer that she was in receipt of a check in the amount of \$50,000 from Buyer, to be deposited in escrow within three business days after acceptance of the offer.

On or about July 18, 2009, Gregory and Carol Whitten (hereinafter "Seller") made a counter offer to the buyer.

On or about July 21, 2009, the Buyer accepted the counter offer.

Respondent's representation that she was in receipt of the \$50,000 check was false. The offer was accepted, but no deposit was placed into escrow.

Respondent's conduct described above constitutes the making of substantial misrepresentations, and fraud or dishonest dealing, and is cause under Sections 10176(a) and 10176(i) of the Code for suspension or revocation of all licenses and license rights of Respondent. In the alternative, Respondent's conduct described above constitutes the making of

1 substantial misrepresentations, and negligence or incompetence in performing acts requiring a
2 real estate license, and is cause under Sections 10176(a) and 10177(g) of the Code for
3 suspension or revocation of all licenses and license rights of Respondent.

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

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10 
11 TRICIA SOMMERS
12 Deputy Real Estate Commissioner

13 Dated at Sacramento, California,
14 this 27th day of September, 2010
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