

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

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FILED
AUG 24 2011

DEPARTMENT OF REAL ESTATE
By R. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	DRE No. H-5548 SAC
)	
12 RINDY MERRIFIELD PROPERTY)	<u>STIPULATION AND AGREEMENT</u>
13 MANAGEMENT, INC. and)	<u>IN SETTLEMENT AND ORDER</u>
14 RINDY MERRIFIELD,)	
)	
15 Respondents.)	

16 It is hereby stipulated by and between RINDY MERRIFIELD PROPERTY
17 MANAGEMENT, INC. (RMPPM), RINDY MERRIFIELD (MERRIFIELD), and their attorney,
18 C. Breck Jones, and the Complainant, acting by and through Richard K. Uno, Counsel for the
19 Department of Real Estate; as follows for the purpose of settling and disposing of the
20 Accusation filed on February 3, 2011, in this matter:

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

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

4 3. On February 11, 2011, RMPM and MERRIFIELD filed Notices of Defense
5 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
6 the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
7 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
8 Notices of Defense they will thereby waive their rights to require the Commissioner to prove
9 the allegations in the Accusation at a contested hearing held in accordance with the provisions
10 of the APA and that they will waive other rights afforded to them in connection with the
11 hearing such as the right to present evidence in defense of the allegations in the Accusation and
12 the right to cross-examine witnesses.

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

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

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

6 7. Respondents understand that by agreeing to this Stipulation and Agreement
7 In Settlement and Order, Respondents agree to pay, pursuant to Section 10148 of the Business
8 and Professions Code, the cost of the audit which led to this disciplinary action. The amount of
9 said cost is \$4,910.50.

10 8. Respondents have received, read and understand the "Notice Concerning
11 Costs of Subsequent Audits". Respondents understand that by agreeing to this Stipulation and
12 Agreement in Settlement and Order, the findings set forth below in the DETERMINATION OF
13 ISSUES become final, and that the Commissioner may charge Respondents for the cost of any
14 audit conducted pursuant to Section 10148 of the Business and Professions Code to determine
15 if the violations have been corrected. The maximum costs of said audit will not exceed
16 \$4,910.50.

17 DETERMINATION OF ISSUES

18 By reason of the foregoing stipulations, admissions and waivers, and solely for
19 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
20 agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute
21 grounds for the suspension or revocation of the licenses and license rights of Respondent
22 RMPM under the provisions of Sections 2731, 2831, 2831.1, 2831.2, 2832 and 2834 of Title
23 10, California Code of Regulations (Regulations), and Sections 10130, 10177(d) and 10177(g)
24 of the Business of Professions Code (the Code) and of Respondent MERRIFIELD under the
25 provisions of Section 2725 of the Regulations and Sections 10159.2, 10177(d) and 10177(h) of
26 the Code.

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ORDER

I. RINDY MERRIFIELD PROPERTY MANAGEMENT, INC.

1. The real estate broker license and license rights of Respondent RINDY MERRIFIELD PROPERTY MANAGEMENT, INC. (RMPPM) under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that if Respondent petitions, said suspension shall be stayed upon condition that:

a. RMPPM pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$50.00 per day for thirty (30) days of the suspension for a total monetary penalty of \$1,500.00.

b. 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 by the Department prior to the effective date of the Decision in this matter.

c. No further cause for disciplinary action against the real estate license of RMPPM occurs within one year from the effective date of the Decision in this matter.

d. If RMPPM fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event RMPPM shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

e. If RMPPM pays the monetary penalty, and if no further cause for disciplinary action against the real estate license of RMPPM occurs within one (1) year from the effective date of the Decision, the stay hereby granted shall become permanent.

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

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

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

7 II. RINDY MERRIFIELD

8 1. The real estate broker license and license rights of Respondent RINDY
9 MERRIFIELD (MERRIFIELD), under the Real Estate Law are suspended for a period of sixty
10 (60) days from the effective date of this Order; provided, however, that if MERRIFIELD
11 petitions, said suspension shall be stayed upon condition that:

12 a. MERRIFIELD pays a monetary penalty pursuant to Section 10175.2 of the
13 Business and Professions Code at the rate of \$50.00 per day for thirty (30) days of the
14 suspension for a total monetary penalty of \$1,500.00. Upon receipt of payment, thirty (30)
15 days of the suspension will then be stayed.

16 b. Said payment shall be in the form of a cashier's check or certified check
17 made payable to the Recovery Account of the Real Estate Fund. Said check must be received
18 by the Department prior to the effective date of the Decision in this matter.

19 c. No further cause for disciplinary action against the real estate license of
20 MERRIFIELD occurs within one year from the effective date of the Decision in this matter.

21 d. If MERRIFIELD fails to pay the monetary penalty in accordance with the
22 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
23 immediate execution of all or any part of the stayed suspension in which event MERRIFIELD
24 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
25 Department under the terms of this Decision.

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1 e. If MERRIFIELD pays the monetary penalty, and if no further cause for
2 disciplinary action against the real estate license of MERRIFIELD occurs within one (1) year
3 from the effective date of the Decision, the stay hereby granted shall become permanent.

4 2. Thirty (30) days of said suspension shall be stayed for one (1) year upon the
5 following terms and conditions:

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

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

14 3. Pursuant to Section 10148 of the Business and Professions Code,
15 MERRIFIELD shall pay for the cost of Audit No. OK SC090099 in the amount of \$4,910.50
16 for the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action
17 and an amount less than or equal to \$4,910.50 for b) a subsequent audit to determine if
18 Respondents have corrected the trust fund violations found in the Determination of Issues. In
19 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
20 estimated average hourly salary for all persons performing audits of real estate brokers, and
21 shall include an allocation for travel costs, including mileage, time to and from the auditor's
22 place of work and per diem. Respondents shall pay such cost within sixty (60) days of
23 receiving an invoice from the Commissioner detailing the activities performed during the audit
24 and the amount of time spent performing those activities. The Commissioner may, in her
25 discretion, vacate and set aside the stay order, if payment is not timely made as provided for
26 herein, or as provided for in a subsequent agreement between the Respondents and the
27 Commissioner. The vacation and the set aside of the stay shall remain in effect until payment

1 is made in full, or until Respondents enter into an agreement satisfactory to the Commissioner
2 to provide for payment. Should no order vacating the stay be issued, either in accordance with
3 this condition, the stay imposed herein shall become permanent.

4
5 August 9, 2011
6 DATED

5 Richard K. Uno
6 RICHARD K. UNO, Counsel
7 DEPARTMENT OF REAL ESTATE

8 * * *

9 I have read the Stipulation and Agreement in Settlement and Order and its terms
10 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
11 rights given to me by the California Administrative Procedure Act (including but not limited to
12 Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
13 intelligently, and voluntarily waive those rights, including the right of requiring the
14 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
15 right to cross-examine witnesses against me and to present evidence in defense and mitigation
16 of the charges.

17
18 8-9-11
19 DATED

18 Rindy Merrifield
19 RINDY MERRIFIELD
20 Designated Broker Officer for Respondent
21 RINDY MERRIFIELD PROPERTY
22 MANAGEMENT, INC.

23 * * *

24
25 8-9-11
26 DATED

25 Rindy Merrifield
26 RINDY MERRIFIELD
27 Respondent

1 I have reviewed this Stipulation and Agreement as to form and content and have
2 advised my client accordingly.

3
4 August 9, 2011
5 DATED

6 C. Breck Jones
7 C. BRECK JONES
8 Attorney for Respondents
9 RINDY MERRIFIELD PROPERTY
10 MANAGEMENT, INC. and
11 RINDY MERRIFIELD

12 * * *

13 The foregoing Stipulation and Agreement is hereby adopted by the Real Estate
14 Commissioner as her Decision and Order and shall become effective at 12 o'clock noon on
15 SEP 14 2011

16 IT IS SO ORDERED 8/23/11

17 BARBARA J. BIGBY
18 Acting Real Estate Commissioner

19 Barbara J. Bigby
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1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

FILED

FEB - 8 2011

DEPARTMENT OF REAL ESTATE
By K. Mat

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-5548 SAC
13 RINDY MERRIFIELD PROPERTY)
14 MANAGEMENT, INC. and)
15 RINDY MERRIFIELD,)
16 Respondents.)

17 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
18 of the State of California, for Accusation against Respondent RINDY MERRIFIELD
19 PROPERTY MANAGEMENT, INC. (RMPM), and Respondent RINDY MERRIFIELD, also
20 known as "Clorinda Lee Merrifield", (MERRIFIELD), is informed and alleges as follows:

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22 The Complainant makes this Accusation against Respondents in her official
23 capacity.

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25 RMPM is presently licensed by the Department of Real Estate (the Department)
26 as a corporate real estate broker.

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1 3

2 MERRIFIELD is presently licensed and/or has license rights under the Real
3 Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as
4 a real estate broker.

5 4

6 At all times during the audit period, MERRIFIELD was licensed by the
7 Department as the designated broker/officer of RMPM. As the designated broker/officer,
8 MERRIFIELD was responsible, pursuant to Section 10159.2 of the Code, for the supervision of
9 the activities of the officers, agents, real estate licensees and employees of RMPM for which a
10 real estate license is required to ensure the compliance of the corporation with the Real Estate
11 Law and the Regulations.

12 5

13 At all times herein mentioned, Respondents engaged in the business of, acted in
14 the capacity of, advertised, or assumed to act as real estate brokers within the State of California
15 within the meaning of Section 10131(b) of the Code, including the operation and conduct of a
16 property management business with the public wherein, on behalf of others, for compensation
17 or in expectation of compensation, collected rents from tenants on behalf of landlords, offered
18 to rent and performed other duties regarding property owned by landlords.

19 6

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

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1 FIRST CAUSE OF ACTION

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3 Beginning on March 23, 2010 through April 30, 2010, an audit was conducted of
4 RMPM's property management activities at its main office located at 4320 Anthony Court,
5 Rocklin, California, where the auditor examined records for the period of August 1, 2010
6 through July 31, 2010 (the audit period).

7 8

8 While acting as a real estate broker as described in Paragraph 5, above, and
9 within the audit period, RMPM accepted or received funds in trust (trust funds) from tenants on
10 behalf of landlords in connection with the property management activities, deposited or caused
11 to be deposited those funds into bank accounts located at Wells Fargo Bank, 2173 Sunset
12 Boulevard, Rocklin, California 95675, maintained by RMPM as follows:

13 Bank #1, Account No. XXXXXX916, entitled "RM Property Management
14 Leasing Account";

15 Trust #2, Account No. XXXXXX468, entitled "RM Property Management
16 Trust Fund Account";

17 and thereafter from time to time made disbursements of said trust funds.

18 9

19 In the course of the activities described in Paragraph 5, in connection with the
20 collection and disbursement of trust funds, RMPM:

21 (a) Failed to designate Bank Account #1 as a trust account as required by
22 Section 2832 of Chapter 6, Title 10, California Code of Regulations
23 (Regulations);

24 (b) Allowed Michael Bailey, a licensed salesperson not under RMPS'
25 license, to withdraw trust funds from Bank #1 and Trust #2, in violation
26 of Section 2834(a)(1) of the Regulations;

27 ///

- 1 (c) Failed to maintain a record of trust funds received and paid out as
2 required by Section 2831 of the Regulations;
- 3 (d) Failed to maintain separate beneficiary records as required by Section
4 2831.1 of the Regulations;
- 5 (e) Failed to reconcile, on a monthly basis, the balance of all separate
6 beneficiary records with the control records as required by Section
7 2831.2 of the Regulations;
- 8 (f) Failed to notify the Department that MERRIFIELD was performing
9 property management duties under the name RM Property Management
10 as required by Section 2731 of the Regulations and
- 11 (g) Failed to license the corporate name of RMPM as required by Section
12 10130 of the Code.

13 10

14 The acts and/or omissions of RMPM as alleged above violate Sections 2731
15 (Fictitious Business Name), 2831 (Control Records), 2831.1 (Separate Beneficiary Records),
16 2831.2 (Trust Account Reconciliation), 2832 (Trust Fund Handling) and 2834 (Trust Fund
17 Withdrawals) of the Regulations and Section 10130 (Activity Requiring License) of the Code
18 and are grounds for discipline under Sections 10177(d) (Willful Disregard/Violation of Real
19 Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

20 SECOND CAUSE OF ACTION

21 11

22 Complainant refers to Paragraphs 1 through 10, above, and incorporates them
23 herein by reference.

24 12

25 At all times during the audit period, MERRIFIELD was responsible, as the
26 designated broker officer of RMPM, for the supervision and control of the activities conducted
27 on behalf of the corporation by its officers and employees to ensure its compliance with the Real

1 Estate Law and the Regulations. MERRIFIELD failed to exercise reasonable supervision and
2 control over the property management brokering activities of RMPM. In particular,
3 MERRIFIELD permitted, ratified and/or caused the conduct described in the First Cause of
4 Action, above, to occur, and failed to take reasonable steps, including but not limited to the
5 handling of trust funds, supervision of employees, and the implementation of policies, rules,
6 procedures, and systems to ensure the compliance of the corporation with the Real Estate Law
7 and the Regulations.

8 13

9 The above acts and/or omissions of MERRIFIELD violate Section 2725 (Broker
10 Supervision) of the Regulations and Section 10159.2 (Responsibility/Designated Officer) of the
11 Code and are grounds for disciplinary action under the provisions of Sections 10177(d) (Willful
12 Disregard/Violation of Real Estate Law and 10177(h) (Broker Supervision) of the Code.

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

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20 TRICIA D. SOMMERS
21 Deputy Real Estate Commissioner

22 Dated at Sacramento, California,
23 this 20th day of February, 2011.
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