

FILED

JUL 17 2023

DEPT. OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

H-05688-SD

KITTY HAWK REALTY INC., and
TERRY LEE KAZMAIER,
individually and as former designated
officer of Kitty Hawk Realty Inc.,
Respondents.

STIPULATION AND AGREEMENT

It is hereby stipulated and agreed by and between Respondents KITTY HAWK REALTY INC. ("KHRI") and TERRY LEE KAZMAIER ("KAZMAIER"), individually and as the designated officer of KHRI, ("Respondents") and their attorney of record, Joshua Rosenthal, Esq., and the Complainant, acting by and through Laurence Haveson, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on November 16, 2022 ("Accusation") 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 ("Stipulation").

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

4 3. On December 29, 2022, Respondents KHRI and KAZMAIER each filed a Notice of
5 Defense pursuant to section 11506 of the Government Code for the purpose of requesting a hearing
6 on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw their
7 Notices of Defense. Respondents acknowledge that they understand that by withdrawing their
8 Notices of Defense, Respondents will thereby waive their right to require the Real Estate
9 Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested hearing
10 held in accordance with the provisions of the APA and that Respondents will waive other rights
11 afforded to them in connection with the hearing such as the right to present evidence in defense of
12 the allegations in the Accusation and the right to cross-examine witnesses.

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

19 5. This Stipulation and Respondents' decision not to contest the Accusation are made
20 for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to
21 this proceeding and any other proceeding or case brought by the Department, or another licensing
22 agency of this state, another state, or the federal government, and otherwise shall not be admissible
23 in any other criminal or civil proceedings.

24 6. It is understood by the parties that the Real Estate Commissioner may adopt the
25 Stipulation as his Decision in this matter, thereby imposing the penalty and sanctions on
26 Respondents' real estate licenses and license rights as set forth in the below Order. In the event
27 that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and of no

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1 effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation under
2 all the provisions of the APA and shall not be bound by any admission or waiver made herein.

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

7 8. Respondents KHRI and KAZMAIER understand that by agreeing to this Stipulation,
8 that they agree to pay, jointly or severally, pursuant to Business and Professions Code Section
9 10148, the cost of the original audit which led to this disciplinary action. The amount of said cost
10 is \$7,517.00.

11 9. Respondents KHRI and KAZMAIER have received, read, and understand the
12 "Notice Concerning Costs of Subsequent Audit." Respondents further understand that by agreeing
13 to this Stipulation, the findings set forth below in the Determination of Issues become final, and the
14 Commissioner may charge Respondent for the cost of any subsequent audit conducted pursuant to
15 Business and Professions Code Section 10148 to determine if the violations have been corrected.
16 The maximum cost of the subsequent audit shall not exceed 125% of cost of the original audit, or
17 \$9,396.25.

18 10. Respondents KHRI and KAZMAIER understand that by agreeing to this Stipulation,
19 Respondents KHRI and KAZMAIER agree to pay, jointly and severally, pursuant to Business and
20 Professions Code Section 10106, the cost of the investigation and enforcement of this matter. The
21 amount of the investigation costs is \$1,104.75 and the amount of the enforcement costs is
22 \$1,430.40, for a total of \$2,535.15.

23 DETERMINATION OF ISSUES

24 By reason of the foregoing stipulations, admissions, and waivers, and solely for the purpose
25 of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
26 following Determination of Issues shall be made:

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1 I.

2 The conduct, acts, and/or omissions of Respondent KHRI as described in the Accusation,
3 constitute cause for the suspension or revocation of all real estate licenses and license rights of
4 Respondent KHRI under California Business and Professions Code ("Code") sections 10130,
5 10145, 10159.5, 10161.8, 10176(e), and 10177(d) and/or 10177(g), and Title 10, Chapter 6,
6 California Code of Regulations ("Regulations") sections 2731, 2752, 2832.1, and 2835.

7 II.

8 The conduct, acts, and/or omissions of Respondent KAZMAIER, as described in the
9 Accusation, constitute cause for the suspension or revocation of all real estate licenses and license
10 rights of Respondent KAZMAIER under Code sections 10159.2, 10177(h), and 10177(d) and/or
11 10177(g), and Regulation 2725.

12 ORDER

13 I.

14 All licenses and licensing rights of Respondent KHRI under the Real Estate Law are
15 suspended for a period of thirty (30) days from the effective date of this Decision; provided,
16 however, that thirty (30) days of said suspension shall be stayed for one (1) year upon the following
17 terms and conditions:

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

20 2. That no final subsequent determination be made, after hearing or upon stipulation,
21 that cause for disciplinary action occurred within one (1) year of the effective date of this Decision.
22 Should such a determination be made, the Commissioner may, in his discretion, vacate and set
23 aside the stay order and reimpose all or a portion of the stayed suspension. Should no such
24 determination be made, the stay imposed herein shall become permanent.

25 3. Respondent KHRI shall pay, jointly or severally with Respondent KAZMAIER, the
26 sum total of \$2,535.15, amounting to the Commissioner's reasonable cost of the investigation and
27 enforcement which led to this disciplinary action, **within one-hundred and eighty (180) days**
28 **from the effective date of this Decision and Order.** Said payment shall be in the form of a

1 cashier's check made payable to the Department of Real Estate. **The investigative and**
2 **enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O.**
3 **Box 137013, Sacramento, CA 95813-7013. Payment of investigation and enforcement costs**
4 **should not be made until the Stipulation has been approved by the Commissioner.** If
5 Respondent KHRI fails to satisfy this condition in a timely manner as provided for herein,
6 Respondent KHRI's real estate license shall automatically be suspended until payment is made in
7 full, or until a decision providing otherwise is adopted following a hearing held pursuant to this
8 condition.

9 4. Pursuant to section 10148 of the Code, Respondent KHRI shall pay, jointly or
10 severally with Respondent KAZMAIER, the sum of \$7,517.00 for the Commissioner's cost of the
11 audit which led to this disciplinary action. **Respondents shall pay such cost within sixty (60)**
12 **days of receiving an invoice therefore from the Commissioner. Payment of audit costs should**
13 **not be made until Respondents receive the invoice.** If Respondents fail to satisfy this condition
14 in a timely manner as provided for herein, Respondents' real estate licenses shall automatically be
15 suspended until payment is made in full, or until a decision providing otherwise is adopted
16 following a hearing held pursuant to this condition.

17 5. Respondents understand that by agreeing to this Stipulation, the findings set forth
18 above in the Determination of Issues become final, and the Commissioner may charge Respondents
19 for the cost of any subsequent audit, if a subsequent audit is conducted, pursuant to Code section
20 10148 to determine if the violations have been corrected and that Respondents are in compliance
21 with trust fund handling requirements of the Real Estate Law. The maximum cost of the follow-up
22 audit will not exceed one-hundred twenty-five percent (125%) of the cost of the original audit; in
23 the instant case, the cost of the original audit is \$7,517.00 and the maximum cost of the follow-up
24 audit will not exceed \$9,396.25. Therefore, Respondents may be charged a maximum of \$9,396.25
25 in the event of a subsequent audit.

26 6. Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's
27 reasonable cost, not to exceed \$9,396.25, for any subsequent audit, if one is performed, to
28 determine if Respondents have corrected the violations found in the Determination of Issues and

1 that Respondents are in compliance with trust fund handling requirements of the Real Estate Law.
2 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
3 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
4 include an allocation for travel time to and from the auditor's place of work. Respondents shall pay
5 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.

6 **Payment of the audit costs should not be made until Respondents receive the invoice.** If

7 Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents'
8 real estate licenses shall automatically be suspended until payment is made in full, or until a
9 decision providing otherwise is adopted following a hearing held pursuant to this condition.

10 II.

11 All licenses and licensing rights of Respondent KAZMAIER under the Real Estate Law are
12 suspended for a period of thirty (30) days from the effective date of this Decision; provided,
13 however, that thirty (30) days of said suspension shall be stayed for one (1) year upon the following
14 terms and conditions:

15 1. Respondent KAZMAIER shall obey all laws, rules and regulations governing the
16 rights, duties and responsibilities of a real estate licensee in the State of California; and

17 2. That no final subsequent determination be made, after hearing or upon stipulation,
18 that cause for disciplinary action occurred within one (1) year of the effective date of this Decision.
19 Should such a determination be made, the Commissioner may, in his discretion, vacate and set
20 aside the stay order and reimpose all or a portion of the stayed suspension. Should no such
21 determination be made, the stay imposed herein shall become permanent

22 3. Respondent KAZMAIER shall pay, jointly or severally with Respondent KHRI, the
23 sum total of \$2,535.15, amounting to the Commissioner's reasonable cost of the investigation and
24 enforcement which led to this disciplinary action, **within one-hundred and eighty (180) days**
25 **from the effective date of this Decision and Order.** Said payment shall be in the form of a
26 cashier's check made payable to the Department of Real Estate. **The investigative and**
27 **enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O.**
28 **Box 137013, Sacramento, CA 95813-7013. Payment of investigation and enforcement costs**

1 **should not be made until the Stipulation has been approved by the Commissioner.** If

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

6 4. Pursuant to section 10148 of the Code, Respondent KAZMAIER shall pay, jointly
7 or severally with Respondent KHRI, the sum of \$7,517.00 for the Commissioner's cost of the audit
8 which led to this disciplinary action. Respondents shall pay such cost within sixty (60) days of
9 receiving an invoice therefore from the Commissioner. Payment of audit costs **should not be**
10 **made until Respondents receive the invoice.** If Respondents fail to satisfy this condition in a
11 timely manner as provided for herein, Respondents' real estate licenses shall automatically be
12 suspended until payment is made in full, or until a decision providing otherwise is adopted
13 following a hearing held pursuant to this condition.

14 5. Respondents understand that by agreeing to this Stipulation, the findings set forth
15 above in the Determination of Issues become final, and the Commissioner may charge Respondents
16 for the cost of any subsequent audit, if a subsequent audit is conducted, pursuant to Code section
17 10148 to determine if the violations have been corrected and that Respondents are in compliance
18 with trust fund handling requirements of the Real Estate Law. The maximum cost of the follow-up
19 audit will not exceed one-hundred twenty-five percent (125%) of the cost of the original audit; in
20 the instant case, the cost of the original audit is \$7,517.00 and the maximum cost of the follow-up
21 audit will not exceed \$9,396.25. Therefore, Respondents may be charged a maximum of \$9,396.25
22 in the event of a subsequent audit.

23 6. Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's
24 reasonable cost, not to exceed \$9,396.25, for any subsequent audit, if one is performed, to
25 determine if Respondents have corrected the violations found in the Determination of Issues and
26 that Respondents are in compliance with trust fund handling requirements of the Real Estate Law.
27 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
28 estimated average hourly salary for all persons performing audits of real estate brokers, and shall

1 include an allocation for travel time to and from the auditor's place of work. Respondents shall pay
2 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.

3 **Payment of the audit costs should not be made until Respondents receive the invoice.** If
4 Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents'
5 real estate licenses shall automatically be suspended until payment is made in full, or until a
6 decision providing otherwise is adopted following a hearing held pursuant to this condition.

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9 DATED: 05/17/2023

Laurence D. Haveson
Laurence D. Haveson
Counsel for Complainant

Digitally signed by Laurence
Haveson

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12 * * *

13 **EXECUTION OF THE STIPULATION**

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

21 Respondents can signify acceptance and approval of the terms and conditions of this
22 Stipulation and Agreement by electronically e-mailing a copy of the signature pages, as actually
23 signed by Respondents, to the Department. Respondents agree, acknowledge, and understand that
24 by electronically sending to the Department an electronic copy of Respondents' actual signatures,
25 as they appear on the Stipulation, that receipt of the emailed copy by the Department shall be as
26 binding on Respondents as if the Department had received the original signed Stipulation. By
27 signing this Stipulation, Respondents understand and agree that Respondents may not withdraw

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1 their agreement or seek to rescind the Stipulation prior to the time the Commissioner considers and
2 acts upon it or prior to the effective date of the Stipulation and Order.

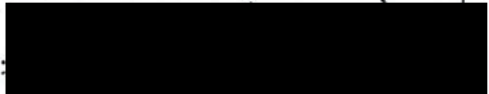
3 MAILING

4 Respondents and their counsel shall, within five (5) business days from signing the
5 Stipulation, mail the original signed signature page(s) of the Stipulation herein to Laurence
6 Haveson, Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Room 350, Los
7 Angeles, California 90013-1105.

8 Respondents' signatures below constitute acceptance and approval of the terms and
9 conditions of this Stipulation. Respondents agree, acknowledge, and understand that by signing
10 this Stipulation Respondents are bound by its terms as of the date of such signature and that this
11 agreement is not subject to rescission or amendment at a later date except by a separate Decision
12 and Order of the Real Estate Commissioner.

13
14 DATED: 5/17/23

15 
Respondent KITTY HAWK REALTY INC.

16 By (Printed Name): 

17 Title: CEO

18
19 DATED: 5/17/23

20 
Respondent TERRY LEE KAZMAIER

21
22 DATED: 5/17/23

23 
24 Joshua Rosenthal
25 Attorney for Respondents KITTY HAWK REALTY
INC. and TERRY LEE KAZMAIER
Approved as to Form

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The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me
as my Decision in this matter and shall become effective at 12 o'clock noon on

Aug. 7, 2023.

IT IS SO ORDERED 7.12.23, 2023.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

