

1 Department of Real Estate
2 320 W. 4th Street, Suite 350
3 Los Angeles, CA 90013-1105
4 Telephone: (213) 576-6982

FILED

DEC 11 2023

DEPT. OF REAL ESTATE
By 

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

11 In the Matter of the Accusation of)
12 ONYX PROPERTY MANAGEMENT,)
13 MICHAEL ALAN KOOTCHICK, individually)
14 and as designated officer of Onyx Property)
15 Management, and ROBERT SOLOWEY)
16 SHAPIRO, as licensed officer for Onyx Property)
Management,)
Respondents.

DRE No. H-05694 SD

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

17 It is hereby stipulated by and between Respondents ONYX PROPERTY
18 MANAGEMENT, MICHAEL ALAN KOOTCHICK, and ROBERT SOLOWEY SHAPIRO
19 (collectively "Respondents") and their attorney of record, Jozef G. Magyar of Kimball, Tirey & St.
20 John LLP, and the Complainant, acting by and through Kevin H. Sun, Counsel for the Department
21 of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on
22 February 2, 2023, in Case No. H-05694 SD:

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

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

4 3. On or about February 9, 2023, Respondents filed Notices of Defense pursuant to
5 Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in
6 the Accusation in Case No. H-05694 SD. 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 the
9 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
10 APA and that they will waive other rights afforded to them in connection with the hearing such as
11 the right to present evidence in defense of the allegations in the Accusation and the right to cross-
12 examine witnesses.

13 4. This Stipulation is based on the factual allegations contained in the Accusation.
14 In the interest of expedience and economy, Respondents choose not to contest these allegations, but
15 to 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 is made for the purpose of reaching an agreed disposition of this
20 proceeding and is expressly limited to this proceeding and any other proceeding or case in which
21 the Department or another licensing agency of this state, another state, or if the federal government
22 is involved, and otherwise shall not be admissible in any other criminal or civil proceeding.

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

1 Accusation under all the provisions of the APA and shall not be bound by any admission or waiver
2 made herein.

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

7 **DETERMINATION OF ISSUES**

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

11 The conduct of Respondents, as described in the Accusation, are in violation of
12 California Business and Professions Code ("Code") 10145 and 10159.2 and Title 10, Chapter 6,
13 California Code of Regulations ("Regulations") Sections 2725, 2831, 2831.1, 2831.2, and 2832.1,
14 and are grounds for the suspension or revocation of all of the real estate license and license rights of
15 Respondents under the provision of Code Section 10177(d), 10177(g), and 10177(h) (as to
16 KOOTCHICK and SHAPIRO).

17 **ORDER**

18 WHEREFORE, THE FOLLOWING ORDER is hereby made:

19 I.

20 (ONYX PROPERTY MANAGEMENT)

21 All licenses and license rights of Respondent ONYX PROPERTY
22 MANAGEMENT under the Real Estate Law are suspended for a period of sixty (60) days from the
23 effective date of this Decision;

24 A. Provided, however, that the initial thirty (30) days of said suspension shall be
25 stayed for two (2) years upon the following terms and conditions:

26 1. Respondent shall pay a monetary penalty pursuant to Code section 10175.2
27 at the rate of \$50.00 per day for each of the thirty (30) days of suspension for a total monetary

1 this Decision;

2 A. Provided, however, that the initial thirty (30) days of said suspension shall be
3 stayed for two (2) years upon the following terms and conditions:

4 1. Respondent shall pay a monetary penalty pursuant to Code section 10175.2
5 at the rate of \$50.00 per day for each of the thirty (30) days of suspension for a total monetary
6 penalty of \$1,500.00.

7 2. Said payment shall be in the form of a cashier's check made payable to the
8 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
9 Section, P.O. Box 137013, Sacramento, CA 95813-7013, **prior to the effective date of this**

10 **Decision and Order.**

11 3. No further cause for disciplinary action against the real estate license of
12 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

13 4. If Respondent fails to pay the monetary penalty in accordance with the
14 terms and conditions of the Decision, the suspension shall go into effect automatically with regard
15 to said Respondent. Respondent shall not be entitled to any repayment nor credit, prorated or
16 otherwise, for money paid to the Department under the terms of this Decision and Order.

17 5. All licenses and licensing rights of Respondent are indefinitely suspended
18 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
19 successfully completed the continuing education course on trust fund accounting and handling
20 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
21 Code. Proof of satisfaction of these requirements includes evidence that Respondent has
22 successfully completed the trust fund account and handling continuing education courses, no earlier
23 than 120 days prior to the effective date of the Decision and Order in this matter. **Proof of**
24 **completion of the trust fund accounting and handling course must be delivered to the**
25 **Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or**
26 **by fax at 916-263-8758, prior to the effective date of this Decision and Order.**

27 6. If Respondent pays the monetary penalty, meets all the conditions set forth

1 above, and if no further cause for disciplinary action against the real estate license of Respondent
2 occurs within two (2) years from the effective date of the Decision, the stay hereby granted shall
3 become permanent.

4 B. The remaining thirty (30) days of the sixty (60) day suspension shall be stayed for
5 two (2) years upon the following terms and conditions:

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

8 2. That no final subsequent determination be made after hearing or upon
9 stipulation, that cause for disciplinary action occurred within two (2) years from the effective date
10 of this Decision. Should such a determination be made, the Commissioner may, in his discretion,
11 vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should
12 no such determination be made under this section, the stay imposed herein shall become permanent.

13 III.

14 (ROBERT SOLOWEY SHAPIRO)

15 All licenses and license rights of Respondent ROBERT SOLOWEY SHAPIRO
16 under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of
17 this Decision;

18 A. Provided, however, that the initial thirty (30) days of said suspension shall be
19 stayed for two (2) years upon the following terms and conditions:

20 1. Respondent shall pay a monetary penalty pursuant to Code section 10175.2
21 at the rate of \$50.00 per day for each of the thirty (30) days of suspension for a total monetary
22 penalty of \$1,500.00.

23 2. Said payment shall be in the form of a cashier's check made payable to the
24 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
25 Section, P.O. Box 137013, Sacramento, CA 95813-7013, **prior to the effective date of this**
26 **Decision and Order.**

27 3. No further cause for disciplinary action against the real estate license of

1 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

2 4. If Respondent fails to pay the monetary penalty in accordance with the
3 terms and conditions of the Decision, the suspension shall go into effect automatically with regard
4 to said Respondent. Respondent shall not be entitled to any repayment nor credit, prorated or
5 otherwise, for money paid to the Department under the terms of this Decision and Order.

6 5. All licenses and licensing rights of Respondent are indefinitely suspended
7 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
8 successfully completed the continuing education course on trust fund accounting and handling
9 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
10 Code. Proof of satisfaction of these requirements includes evidence that Respondent has
11 successfully completed the trust fund account and handling continuing education courses, no earlier
12 than 120 days prior to the effective date of the Decision and Order in this matter. **Proof of**
13 **completion of the trust fund accounting and handling course must be delivered to the**
14 **Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or**
15 **by fax at 916-263-8758, prior to the effective date of this Decision and Order.**

16 6. If Respondent pays the monetary penalty, meets all the conditions set forth
17 above, and if no further cause for disciplinary action against the real estate license of Respondent
18 occurs within two (2) years from the effective date of the Decision, the stay hereby granted shall
19 become permanent.

20 B. The remaining thirty (30) days of the sixty (60) day suspension shall be stayed for
21 two (2) years upon the following terms and conditions:

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

24 2. That no final subsequent determination be made after hearing or upon
25 stipulation, that cause for disciplinary action occurred within two (2) years from the effective date
26 of this Decision. Should such a determination be made, the Commissioner may, in his discretion,
27 vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should

1 no such determination be made under this section, the stay imposed herein shall become permanent.

2 IV.

3 (ONYX PROPERTY MANAGEMENT, MICHAEL ALAN KOOTCHICK, and ROBERT
4 SOLOWEY SHAPIRO)

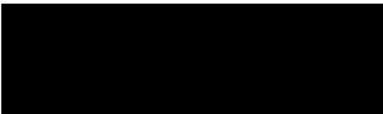
5 A. All licenses and licensing rights of Respondents are indefinitely suspended unless
6 or until Respondents pay the sum of \$1,721.25 (\$252.45 investigation cost and \$1,468.80 for
7 enforcement cost) for the Commissioner's reasonable costs of the investigation and enforcement
8 which led to this disciplinary action. Said payment shall be in the form of a cashier's check made
9 payable to the Department of Real Estate. **The payment for the investigative and enforcement**
10 **costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,**
11 **Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.** If
12 Respondents fail to satisfy this condition, the Commissioner shall order suspension of
13 Respondents' licenses and license rights until the sum is paid.

14 B. Pursuant to Code Sections 10148, Respondents shall pay the Commissioner's
15 reasonable costs for the audit which led to this disciplinary action in the amount of \$11,469.06, or
16 show proof of payment. Respondents shall pay such costs within sixty (60) days of receiving an
17 invoice therefore from the Commissioner. Payment of the audit costs should not be made until
18 Respondents receive the invoice. If Respondents fails to satisfy this condition in a timely manner as
19 provided for herein, Respondents' real estate licenses shall automatically be suspended until
20 payment is made in full, or until a decision providing otherwise is adopted following a hearing held
21 pursuant to this condition.

22 C. Pursuant to Code section 10148 of the Code, Respondents shall pay the
23 Commissioner's reasonable costs, not to exceed \$14,336.32, for a subsequent audit to determine if
24 Respondents has corrected the violations found in the Determination of Issues. In calculating the
25 amount of the Commissioner's reasonable costs, the Commissioner may use the estimated average
26 hourly salary for all persons performing audits of real estate brokers, and shall include an allocation
27 for travel time to and from the auditor's place of work. Respondents shall pay such costs within

1 sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit
2 costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy this
3 condition in a timely manner as provided for herein, Respondents' real estate licenses shall
4 automatically be suspended until payment is made in full, or until a decision, providing otherwise,
5 is adopted following a hearing held pursuant to this condition.

6
7 DATED: 9/29/2023

8 
9 Kevin H. Sun, Counsel for
10 Department of Real Estate

11 * * *

12 **EXECUTION OF THE STIPULATION**

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

20 Respondents shall mail the original signed signature page of the stipulation herein to
21 Kevin H. Sun, Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350,
22 Los Angeles, California 90013-1105.

23 In the event of time constraints before an administrative hearing, Respondents can
24 signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by
25 emailing a scanned copy of the signature page, as actually signed by Respondents, to the
26 Department counsel assigned to this case. Respondents agree, acknowledge and understand that by
27 electronically sending the Department a scan of Respondents' actual signature as it appears on the
Stipulation and Agreement that receipt of the scan by the Department shall be binding on

1 Respondents as if the Department had received the original signed Stipulation. Respondents shall
2 also mail the original signed signature page of this Stipulation to the Department counsel.

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

8
9 DATED: 9/26/2023 _____
10 ONYX PROPERTY MANAGEMENT
11 Respondent
12 By: Robert Solowey Shapiro

13 DATED: _____
14 MICHAEL ALAN KOOTCHICK
15 Respondent

16 DATED: 9/26/2023 _____
17 ROBERT SOLOWEY SHAPIRO
18 Respondent

19 DATED: _____
20 Jozef G. Magyar
21 Kimball, Tirey & St. John LLP
22 Counsel for Respondents
23 Approved as to Form

24 * * *

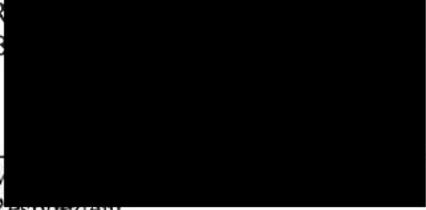
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4 conditions of this Stipulation. Respondents agree, acknowledge and understand that by signing this
5 Stipulation, Respondents are bound by its terms as of the date of such signatures and that this
6 agreement is not subject to rescission or amendment at a later date except by a separate Decision
7 and Order of the Real Estate Commissioner.

8
9 DATED: _____

ONYX PROPERTY MANAGEMENT

R
E

M
Respondent

10
11
12 DATED: 9/27/23

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14
15 DATED: _____

ROBERT SOLOWEY SHAPIRO
Respondent

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18 DATED: _____

Jozef G. Magyar
Kimball, Tirey & St. John LLP
Counsel for Respondents
Approved as to Form

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1 Respondents as if the Department had received the original signed Stipulation. Respondents shall
2 also mail the original signed signature page of this Stipulation to the Department counsel.

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4 conditions of this Stipulation. Respondents agree, acknowledge and understand that by signing this
5 Stipulation, Respondents are bound by its terms as of the date of such signatures and that this
6 agreement is not subject to rescission or amendment at a later date except by a separate Decision
7 and Order of the Real Estate Commissioner.

8
9 DATED: _____

ONYX PROPERTY MANAGEMENT
Respondent
By: _____

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12 DATED: _____

MICHAEL ALAN KOOTCHICK
Respondent

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14
15 DATED: _____

ROBERT SOLOWEY SHAPIRO

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17
18 DATED: 9/28/23



Counsel for Respondents
Approved as to Form

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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents ONYX PROPERTY MANAGEMENT, MICHAEL ALAN KOOTCHICK, and ROBERT SOLOWEY SHAPIRO in this matter and shall become effective at 12 o'clock noon on JAN 10 2024, 2023.

IT IS SO ORDERED 12/4/23, 2024.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



for Doug McCauley