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BUREAU OF REAL ESTATE

By S. Black

Bureau of Real Estate
P.O. Box 137007
Sacramento, CA 95813-7007
Telephone: (916) 263-8670

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

KIMBERLY HIGBY,

Respondent.

No. H-6000 SAC

STIPULATION AND
AGREEMENT IN
SETTLEMENT AND ORDER

It is hereby stipulated by and between KIMBERLY HIGBY (Respondent), represented by Paul Chan, Esq., and the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for the Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing of the Accusation filed on July 9, 2013 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent 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 in Settlement and Order.

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

3. Respondent filed a Notice of Defense on July 12, 2013, pursuant to Section 11505 of the Government Code, for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that she understands that by withdrawing said Notice of Defense she will thereby waive her rights to require the Real Estate Commissioner (Commissioner) to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA, and that she waives other rights afforded to her in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This Stipulation is based on the factual allegations contained in the Accusation. In the interest of expediency and economy, Respondent chooses not to contest these factual allegations, but to remain silent and understands that, as a result thereof, these factual statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below. The Commissioner shall not be required to provide further evidence to prove such allegations.

5. This Stipulation and Respondent's decision to not contest the Accusation are made for the purpose of reaching an agreed disposition in this proceeding and are expressly limited to this proceeding and any other proceeding or case(s) in which the Bureau, the state or federal government, an agency of this state, or an agency of another state is involved.

6. It is understood by the parties that the Commissioner may adopt this Stipulation as his decision in this matter thereby imposing the penalty and sanctions on the real estate licenses and license rights of Respondent as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt this Stipulation, it shall be void and of no

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

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

8 8. Respondent understands that by agreeing to this Stipulation, Respondent agrees
9 to pay, pursuant to Section 10148 of the California Business and Professions Code (Code), the
10 costs of the audit, which resulted in the determination that Respondent committed the trust
11 fund violation(s) found below in the "Determination of Issues". The amount of said costs total
12 \$5,438.02.

13 9. Respondent further understands that by agreeing to this Stipulation, the findings
14 set forth below in the "Determination of Issues" become final, and that the Commissioner may
15 charge said Respondent for the costs of any audit conducted pursuant to Section 10148 of the
16 Code to determine if the violations have been corrected. The maximum cost of said audit shall
17 not exceed \$5,438.02.

18 10. Respondent understands that by agreeing to this Stipulation, Respondent agrees
19 to pay, pursuant to Section 10106 of the Code, the costs of the investigation and enforcement
20 of this matter which resulted in the determination that Respondent committed the violation(s)
21 found in the "Determination of Issues" set forth below. The amount of said investigation and
22 enforcement costs total \$1,511.30.

23 DETERMINATION OF ISSUES

24 By reason of the foregoing Stipulation and solely for the purpose of settlement
25 of the pending Accusation without a hearing, it is stipulated and agreed that the following

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Determination of Issues shall be made: The acts and/or omissions of Respondent, as described in the Accusation, are grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of Section 10177(d) of the Code, in conjunction with Section 10145 of the Code, and Sections 2832.1, 2831.2, 2831.1, and 2832 of Title 10 of the California Code of Regulations.

ORDER

1. All licenses and licensing rights of Respondent under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

- a. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner in the event of Respondent's conviction or plea of guilty or nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
- b. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.

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1 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real
2 estate license, nor the removal of any of the conditions, limitations or restrictions of the
3 restricted license, until four (4) years have elapsed from the effective date of this Decision.

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

9 4. All licenses and licensing rights of Respondent are indefinitely suspended
10 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken
11 and successfully completed the continuing education course on trust fund accounting and
12 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
13 satisfaction of this requirement includes evidence that Respondent has successfully completed
14 said trust fund accounting and handling course, no earlier than 120 days prior to the effective
15 date of the Decision in this matter. Proof of completion of said continuing education course
16 must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento,
17 CA 95813-7013, prior to the effective date of this Decision.

18 5. Respondent shall, within nine (9) months from the effective date of this
19 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the
20 most recent issuance of an original or renewal real estate license, taken and successfully
21 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
22 Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
23 Respondent's real estate license shall automatically be suspended until Respondent presents
24 evidence satisfactory to the Commissioner of having taken and successfully completed the
25 continuing education requirements. Proof of completion of the continuing education courses

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1 must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento,
2 CA 95813-7013.

3 6. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
4 \$5,438.02 for the Commissioner's cost of the audit which led to this disciplinary action.
5 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from
6 the Commissioner. Payment of audit costs should not be made until Respondent receives the
7 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
8 Respondent's real estate license shall automatically be suspended until payment is made in full,
9 or until a decision providing otherwise is adopted following a hearing held pursuant to this
10 condition.

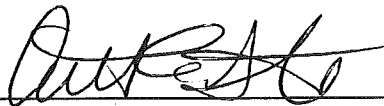
11 7. Pursuant to Section 10148 of the Code, Respondent shall pay the
12 Commissioner's reasonable cost, not to exceed \$5,438.02, for an audit to determine if
13 Respondent has corrected the violation(s) found in the "Determination of Issues", above. In
14 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
15 estimated average hourly salary for all persons performing audits of real estate brokers, and
16 shall include an allocation for travel time to and from the auditor's place of work. Respondent
17 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
18 Commissioner. Payment of the audit costs should not be made until Respondent receives the
19 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
20 Respondent's real estate license and license rights shall automatically be suspended until
21 payment is made in full, or until a decision providing otherwise is adopted following a hearing
22 held pursuant to this condition.

23 8. All licenses and licensing rights of Respondent are indefinitely suspended
24 unless or until Respondent pays the sum of \$1,511.30 for the Commissioner's reasonable cost
25 of the investigation and enforcement which led to this disciplinary action. Said payment shall

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1 be in the form of a cashier's check made payable to the Bureau of Real Estate, and must be
2 delivered to the Bureau of Real Estate, Flag Section, at P.O. Box 137013, Sacramento, CA
3 95813-7013, prior to the effective date of this Decision.

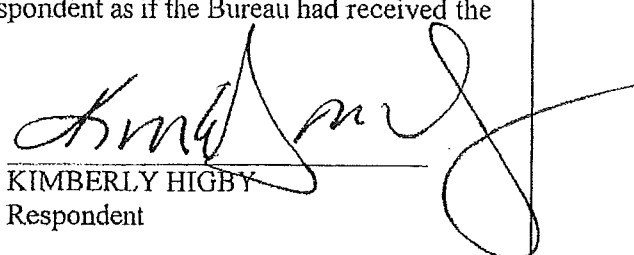
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Annette E. Ferrante, Esq.
Counsel for Complainant

I have read this Stipulation and Agreement in Settlement and Order, discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusations at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges. Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondent, to the Bureau at fax number (916) 263-3767. Respondent agrees, acknowledges and understands that by electronically sending to the Bureau a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Bureau shall be as binding on Respondent as if the Bureau had received the original signed Stipulation and Agreement.

4-2-2015

DATED


KIMBERLY HIGBY
Respondent

I have reviewed the Stipulation and Agreement in Settlement and Order as to form and content and have advised my client accordingly.

4-2-15

DATED


Paul Chan, Esq.
Attorney for Respondent

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In the Matter of the Accusation of KIMBERLY HIGBY
Agency No. H-6000 SAC
OAH No. 2013101112

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adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

IT IS SO ORDERED April 28, 2015.

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner