

1
2 Department of Real Estate
3 P.O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 576-8700

FILED

MAY 21 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 SACRAMENTO PROPERTY)
14 MANAGEMENT SERVICES, INC., and)
MICHELLE HORNEFF-COHEN,)
15 Respondents.)

No. H-6702 SAC

STIPULATION AND
AGREEMENT

16 It is hereby stipulated by and between SACRAMENTO PROPERTY
17 MANAGEMENT SERVICES, INC. (SPMS), and MICHELLE HORNEFF-COHEN
18 (HORNEFF-COHEN) (collectively "Respondents"), and the Complainant, acting by and
19 through Truly Sughrue, Counsel for the Department of Real Estate (Department), as follows
20 for the purpose of settling and disposing the Accusation filed on July 18, 2018, 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 hearing
23 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
24 shall instead and in place thereof be submitted solely on the basis of the provisions of this
25 Stipulation and Agreement.
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27

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

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

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

18 5. This Stipulation and Agreement and Respondents' decision not to contest
19 the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and
20 are expressly limited to this proceeding and any other proceeding or case in which the
21 Department, the state or federal government, an agency of this state, or an agency of another state
22 is involved. There are no other open proceedings at this time.

23 6. The attached Statement of Mitigation provided by Respondents is hereby
24 incorporated by reference and shall become part of the Stipulation.

25 7. Respondents understand that by agreeing to this Stipulation and
26 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and
27 Professions Code (Code), the cost of the audit, which resulted in the determination that

1 Respondents committed the trust fund handling violation(s) found in the Determination of
2 Issues. The amount of said costs is \$3,032.31.

3 8. Respondents further understand that by agreeing to this Stipulation and
4 Agreement, the findings set forth below in the Determination of Issues become final, and that
5 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
6 Section 10148 of the Code to verify the violations have been corrected. The maximum costs of
7 said audit shall not exceed \$3,790.39.

8 9. It is understood by the parties that the Commissioner may adopt the
9 Stipulation and Agreement as his decision in this matter thereby imposing the penalty and
10 sanctions on the real estate licenses and license rights of Respondents as set forth in the below
11 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and
12 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
13 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
14 any admission or waiver made herein.

15 10. The Order or any subsequent Order of the Commissioner made pursuant to
16 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
17 administrative or civil proceedings by the Department with respect to any matters which were not
18 specifically alleged to be causes for action in Accusation H-6702 SAC.

19 * * *

20 DETERMINATION OF ISSUES

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

24 I

25 The acts and omissions of Respondents as described in the First Cause of Action
26 of the Accusation are grounds for the suspension or revocation of Respondents' licenses and
27

1 license rights under the following sections of the Code and Title 10 of the California Code of
2 Regulations (Regulations):

3 As to Paragraph 11(a), under Section 10177(g) of the Code in conjunction with
4 Section 10145 of the Code and Section 2832.1 of the Regulations:

5 As to Paragraph 11(b), under Section 10177(g) of the Code in conjunction with
6 Section 10145 of the Code and Section 2834 of the Regulations; and

7 As to Paragraph 11(c), under Section 10177(g) of the Code in conjunction with
8 Section 10162 of the Code and Section 2715 of the Regulations.

9 II

10 The acts and/or omissions of HORNEFF-COHEN as described in the Second
11 Cause of Action of the Accusation is cause for the suspension or revocation of HORNEFF-
12 COHEN's license and/or license rights under Section 10177(h) of the Code.

13 * * *

14 ORDER

15 I

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

23 1. The restricted license issued to SPMS may be suspended prior to hearing
24 by Order of the Commissioner on evidence satisfactory to the Commissioner that SPMS has
25 violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of
26 the Commissioner or conditions attaching to the restricted license.

1 5. HORNEFF-COHEN shall, within nine (9) months from the effective date
2 of this Decision and Order, present evidence satisfactory to the Commissioner that HORNEFF-
3 COHEN has, since the most recent issuance of an original or renewal real estate license, taken
4 and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
5 the Real Estate Law for renewal of a real estate license. If HORNEFF-COHEN fails to satisfy
6 this condition, HORNEFF-COHEN's real estate license shall automatically be suspended until
7 HORNEFF-COHEN presents evidence satisfactory to the Commissioner of having taken and
8 successfully completed the continuing education requirements. Proof of completion of the
9 continuing education courses must be delivered to the Department of Real Estate, Flag Section at
10 P.O. Box 137013, Sacramento, CA 95813-7013.

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

21 III

22 1. Pursuant to Section 10148 of the Code, Respondents shall pay the sum of
23 \$3,032.31 for the Commissioner's cost of the audit which led to this disciplinary action.
24 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the
25 Commissioner. Payment of audit costs should not be made until Respondents receive the
26 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein,
27 Respondents' real estate license shall automatically be suspended until payment is made in full.

1 or until a decision providing otherwise is adopted following a hearing held pursuant to this
2 condition.

3 2. Pursuant to Section 10148 of the Code, Respondents shall pay the
4 Commissioner's reasonable cost, not to exceed \$3,790.39, for an audit to verify Respondents
5 have corrected the violation(s) found in the Determination of Issues. In calculating the amount of
6 the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
7 salary for all persons performing audits of real estate brokers, and shall include an allocation for
8 travel time to and from the auditor's place of work. Respondents shall pay such costs within
9 sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit
10 costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy
11 this condition in a timely manner as provided for herein, Respondents' real estate license shall
12 automatically be suspended until payment is made in full, or until a decision providing otherwise
13 is adopted following a hearing held pursuant to this condition.

14
15 14-March-19
16 DATED

15 
16 TRULY SUGHRUE
17 Counsel for Complainant

18 * * *

19 I have read the Stipulation and Agreement, discussed it with my counsel, and its
20 terms are understood by me and are agreeable and acceptable to me. I understand that I am
21 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
22 intelligently and voluntarily waive those rights, including the right of requiring the
23 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
24 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
25 the charges.

26 Respondent and Respondent's attorney further agree to send the original signed
27 Stipulation by mail to the following address no later than one (1) week from the date the

1 Stipulation is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
2 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and
3 Respondent's attorney understand and agree that if they fail to return the original signed
4 Stipulation by the due date, Complainant retains the right to set this matter for hearing.

5
6 March 13, 2019

7 DATED



MICHELLE HORNEFF-COHEN,
Designated Officer
SACRAMENTO PROPERTY MANAGEMENT
SERVICES, INC.,
Respondent

10
11 March 13, 2019

12 DATED



MICHELLE HORNEFF-COHEN
Respondent

13
14 ***

15 *I have reviewed the Stipulation and Agreement as to form and content and have*
16 *advised my clients accordingly.*

17
18 DATED

JUSTINA MIGNEA
Attorney for Respondents

19 * * *

20 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
21 Order and shall become effective at 12 o'clock noon on _____.

22 IT IS SO ORDERED _____.

23
24 REAL ESTATE COMMISSIONER
25
26 _____
27

1 Stipulation is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
2 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and
3 Respondent's attorney understand and agree that if they fail to return the original signed
4 Stipulation by the due date, Complainant retains the right to set this matter for hearing.

5
6 March 13, 2019

7 DATED



MICHELLE HORNEFF-COHEN,
Designated Officer
SACRAMENTO PROPERTY MANAGEMENT
SERVICES, INC.,
Respondent

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11 March 13, 2019

12 DATED



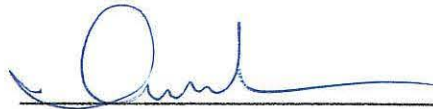
MICHELLE HORNEFF-COHEN
Respondent

13
14 ***

15 *I have reviewed the Stipulation and Agreement as to form and content and have*
16 *advised my clients accordingly.*

17 March 13, 2019

18 DATED



IUSTINA MIGNEA
Attorney for Respondents

19
20 ***

21 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
22 Order and shall become effective at 12 o'clock noon on JUN 11 2019.

23 IT IS SO ORDERED May 16, 2019.

24 DANIEL J. SANDRI
25 ACTING REAL ESTATE COMMISSIONER

