

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 576-8700

FILED

MAR 12 2020

DEPARTMENT OF REAL ESTATE

By *Stacy Lovapp*

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of:) Case No. H-6760 SAC
11)
12 RMK REALTY INC.) STIPULATION AND AGREEMENT
and DEAN ROBERT KESSLER) IN SETTLEMENT AND ORDER
13)
14 Respondents.)

15 It is hereby stipulated by and between Respondent RMK REALTY INC.
16 ("RMK"), DEAN ROBERT KESSLER ("KESSLER") (collectively referred to as
17 "Respondents"), acting by and through Laurence A. Kluck, counsel for Respondents, and the
18 Complainant, acting by and through Jason D. Lazark, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of the Accusation filed on September
20 26, 2019, 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 ("Stipulation and Agreement").

26 2. Respondents have received, read and understand the Statement to
27 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department

1 of Real Estate in this proceeding.

2 3. On October 15, 2019, Respondents filed Notices of Defense pursuant to
3 Section 11505 of the Government Code for the purpose of requesting a hearing on the
4 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
5 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
6 Notices of Defense they will thereby waive their rights to require the Commissioner to prove
7 the allegations in the Accusation at a contested hearing held in accordance with the provisions
8 of the APA and that they will waive other rights afforded to them in connection with the
9 hearing such as the right to present evidence in defense of the allegations in the Accusation and
10 the right to cross-examine witnesses.

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

15 5. This Stipulation and Agreement is made for the purpose of reaching an
16 agreed disposition of this proceeding and is expressly limited to this proceeding and any other
17 proceeding or case in which the Department, the state or federal government, any agency of
18 this state, or an agency of another state is involved.

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

26 7. The Order or any subsequent Order of the Real Estate Commissioner made
27 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to

1 any further administrative or civil proceedings by the Department of Real Estate with respect
2 to any matters which were not specifically alleged to be causes for accusation in this
3 proceeding.

4 8. Respondents understand that by agreeing to this Stipulation and Agreement,
5 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10106
6 of the Business and Professions Code ("the Code"), the costs of the investigation and
7 enforcement of this case which resulted in the determination that Respondent committed the
8 violation(s) found in the Determination of Issues. The amount of such cost is \$3,139.

9 DETERMINATION OF ISSUES

10 By reason of the foregoing stipulations, admissions, and waivers, and solely for
11 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
12 and agreed that the following Determination of Issues shall be made:

13 The acts and/or omissions of Respondent RMK as described in the Accusation are
14 grounds for the suspension or revocation of the licenses and license rights of Respondent RMK
15 under the provisions of Sections 10176(a), 10176(i), 10177(g), and 10177(j) of the Code.

16 The acts and/or omissions of Respondent KESSLER as described in the
17 Accusation are grounds for the suspension or revocation of the licenses and license rights of
18 Respondent KESSLER under the provisions of Sections 10159.2, 10176(a), 10176(i), 10177(d)
19 10177(g), 10177(h) and 10177(j) of the Code, in conjunction with Section 2725 of Title 10 of the
20 California Code of the Regulations.

21 ORDER

22 I. AS TO RMK

23 1. The corporate real estate broker license and license rights of Respondent
24 RMK under the Real Estate Law are revoked; provided, however, a restricted corporate real
25 estate broker license shall be issued to Respondent RMK pursuant to Section 10156.5 of the
26 Code if Respondent RMK makes application therefore and pays to the Department the
27 appropriate fee for the restricted license within 90 days from the effective date of this Decision.

1 the California Real Estate Law, the Subdivided Lands Law, Regulations of
2 the Real Estate Commissioner, or conditions attaching to the restricted
3 license.

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

7 3. Respondent KESSLER shall notify the Commissioner in writing within 72
8 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real
9 Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date
10 of Respondent KESSLER's arrest, the crime for which Respondent KESSLER was arrested and
11 the name and address of the arresting law enforcement agency. Respondent KESSLER's failure
12 to timely file written notice shall constitute an independent violation of the terms of the restricted
13 license and shall be grounds for the suspension or revocation of that license.

14 4. Respondent KESSLER shall, within nine (9) months from the effective date of
15 this Decision, present evidence satisfactory to the Commissioner that Respondent KESSLER
16 has, since the most recent issuance of an original or renewal real estate license, taken and
17 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the
18 Real Estate Law for renewal of a real estate license. If Respondent KESSLER fails to satisfy this
19 condition, the Commissioner shall order the suspension of the restricted license until the
20 Respondent KESSLER presents such evidence. The Commissioner shall afford Respondent
21 KESSLER the opportunity for hearing pursuant to the APA to present such evidence.

22 5. Respondent KESSLER shall, within six (6) months from the issuance of the
23 Order, take and pass the Professional Responsibility Examination administered by the
24 Department, including the payment of the appropriate examination fee. All licenses and
25 licensing rights of Respondent KESSLER shall be indefinitely suspended unless or until
26 Respondent KESSLER passes the examination.

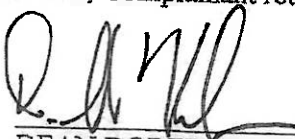
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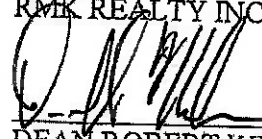
Respondents and Respondents' attorney further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:

Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007. Respondents and Respondents' attorney understand and agree that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

01/28/2020
DATED



DEAN ROBERT KESSLER
Designated Officer for Respondent
RMK REALTY INC.

01/28/2020
DATED


DEAN ROBERT KESSLER
Respondent

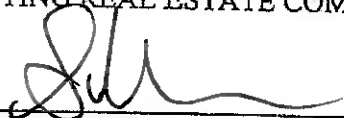
I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

January 28, 2020
DATED


LAURENCE A. KLUCK
Attorney for Respondents,
RMK REALTY INC., and
DEAN ROBERT KESSLER

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on APR 02 2020

IT IS SO ORDERED 2/27/20, 2020.

ACTING REAL ESTATE COMMISSIONER

SANDRA KNAU