

Department of Real Estate  
P.O. Box 137007  
Sacramento, CA 95813-7007

Telephone: (916) 576-7848

**FILED**

JUL 03 2020

DEPARTMENT OF REAL ESTATE  
By X. Magyar

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of	)	
	)	No. H-6915 SAC
MUTUAL HOUSING MANAGEMENT,	)	
and KENNETH WILLIAM	)	<u>STIPULATION AND</u>
BRACKENHOFF,	)	<u>AGREEMENT</u>
	)	
Respondents.	)	

It is hereby stipulated by and between MUTUAL HOUSING MANAGEMENT (MHM) and KENNETH WILLIAM BRACKENHOFF (BRACKENHOFF) (collectively referred to as "Respondents"), represented by Jozef G. Magyar, and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real Estate (Department), as follows for the purpose of settling and disposing the Accusation filed on January 9, 2020, 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.
2. Respondents have received, read, and understand the Statement to Respondent and the Discovery Provisions of the APA filed by the Department in this proceeding.

///

3. Respondents filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that Respondents understand that by withdrawing said Notice of Defense Respondents will thereby waive Respondents' 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 Respondents will waive other rights afforded to Respondents 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 and Agreement is based on the factual allegations contained in the Accusation. In the interest of expediency and economy, Respondents choose not to contest these factual allegations, but to remain silent and understand 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 Agreement and Respondents' decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this proceeding and not any other proceeding or case in which the Department, the state or federal government, an agency of this state, or an agency of another state is involved.

6. Respondents understand that by agreeing to this Stipulation and Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and Professions Code (Code), the cost of the audit, which resulted in the determination that Respondents committed the trust fund handling violation(s) found in the Determination of Issues. The amount of said costs is \$3,236.98.

///

///

7. Respondents further understand that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that

the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the violations have been corrected. The maximum costs of said audit shall not exceed \$4,046.23.

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

9. The Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department with respect to any matters which were not specifically alleged in Accusation H-6915 SAC.

\* \* \*

#### DETERMINATION OF ISSUES

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

I

The acts and omissions of Respondents as described in the First Cause of Action in the Accusation are grounds for the suspension or revocation of Respondents' licenses and license rights under sections 2832 Title 10 of the California Code of Regulations (Regulations) and Sections 10130, 10137, 10145 and 10177(g) of the Code.

///

II

The acts and omissions of BRACKENHOFF, as described in the Second Cause of Action in the Accusation, are grounds for the suspension or revocation of BRACKENHOFF's licenses and license rights under Section 10177(h) of the Code.

\* \* \*

ORDER

I

All licenses and licensing rights of MHM under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that:

1) Thirty (30) days of said suspension shall be stayed, upon the condition that MHM petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty of \$3,000.

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

b) No further cause for disciplinary action against the Real Estate licenses of MHM occurs within two (2) years from the effective date of the decision in this matter.

c) If MHM fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated as to that MHM and the order of suspension shall be immediately executed, under this Order, in which event the said MHM shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms of this Order.

///

d) If MHM pays the monetary penalty and any other monies due under this Stipulation and Agreement and if no further cause for disciplinary action against the real estate license of said MHM occurs within two (2) years from the effective date of this Order, the entire stay hereby granted this Order, as to said MHM only, shall become permanent.

2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

a) MHM shall obey all laws, rules and regulations governing the

rights, duties and responsibilities of a real estate licensee in the State of California; and,

b) That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action has occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in her discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

## II

All licenses and licensing rights of BRACKENHOFF under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that:

1) Thirty (30) days of said suspension shall be stayed, upon the condition that BRACKENHOFF petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty of \$3,000.

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

///

b) No further cause for disciplinary action against the Real Estate licenses of BRACKENHOFF occurs within two (2) years from the effective date of the decision in this matter.

c) If BRACKENHOFF fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated as to that BRACKENHOFF and the order of suspension shall be immediately executed, under this Order, in which event the said BRACKENHOFF shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms of this Order.

d) If BRACKENHOFF pays the monetary penalty and any other monies due under this Stipulation and Agreement and if no further cause for disciplinary action against the real estate license of said BRACKENHOFF occurs within two (2) years from the effective date of this Order, the entire stay hereby granted this Order, as to said BRACKENHOFF only, shall become permanent.

2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

a) BRACKENHOFF shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California;

and,

b) That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action has occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in her discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

III

1) Pursuant to Section 10148 of the Code, Respondents shall jointly and severally pay the sum of \$3,236.98 for the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of audit costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents' real estate license shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

2) Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's reasonable cost, not to exceed \$4,046.23, for an audit to determine if Respondents have corrected the violation(s) found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents' real estate license shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

4/25/20  
\_\_\_\_\_

DATED

  
\_\_\_\_\_  
RICHARD K. UNO  
Counsel for Complainant


\* \* \*

I have read the Stipulation and Agreement, 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 Accusation 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.

Respondents and Respondents' attorney further agree to send the original signed Stipulation by mail to the following address no later than one (1) week from the date the Stipulation 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 by the due date, Complainant retains the right to set this matter for hearing.

4/10/2020  
DATED

  
KENNETH WILLIAM BRACKENHOFF,  
on behalf of  
MUTUAL HOUSING MANAGEMENT  
Respondent

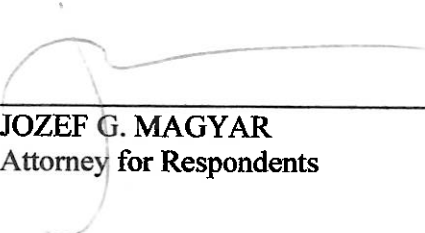
4/10/2020  
DATED

  
KENNETH WILLIAM BRACKENHOFF  
Respondent

\*\*\*

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

4/16/20  
DATED

  
JOZEF G. MAGYAR  
Attorney for Respondents

///

///

///

///

\*\*\*

The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
Order and shall become effective at 12 o'clock noon on JUL 24 2020.

IT IS SO ORDERED 5-28-20.

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley