

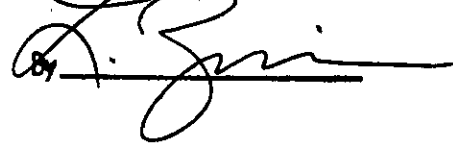
1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916)227-0789

FILED

NOV - 9 2009

DEPARTMENT OF REAL ESTATE

By 

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

10 * * *

11 In the Matter of the Accusation of) NO. H-10673 SF
12)
12 GORMAN & MAYR,) STIPULATION AND AGREEMENT
13 and LIN W. MAYR) IN SETTLEMENT
14) AND ORDER
14 Respondent.)

15
16 It is hereby stipulated by and between LIN W. MAYR (Respondent), represented by
17 Ellen Mendelson, and the Complainant, acting by and through John Van Driel, Counsel for the
18 Department of Real Estate, as follows for the purpose of settling and disposing of the
19 Accusation filed on May 7, 2009 (hereinafter "the Accusation").

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

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

4 3. On May 18, 2009, Respondent 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 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that she understands that by withdrawing said Notice of Defense she will thereby
8 waive her right to require the Commissioner to prove the allegations in the Accusation at a
9 contested hearing held in accordance with the provisions of the APA and that Respondent will
10 waive other rights afforded to Respondent in connection with the hearing, such as the right to
11 present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.
13
14

15 4. The parties have negotiated a settlement of this case and agree to proceed solely on the
16 basis of the provisions of this Stipulation and Agreement in Settlement.

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

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

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

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and waivers and solely for the
5 purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
6 that the acts and/or omissions of Respondent LIN W. MAYR, as described in the Accusation,
7 constitute grounds for the suspension or revocation of the licenses and license rights of
8 Respondent under the provision of Sections 10159.2 and 10177(d) of the Business and
9 Professions Code and Section 2725 of Title 10 California Code of Regulations.

11 ORDER

12 1. All licenses and licensing rights of Respondent LIN W. MAYR under the Real Estate
13 Law are suspended for a period of sixty (60) days from the effective date of the Decision herein;
14 provided, however:

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

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

19 2) That no final subsequent determination be made, after hearing or upon
20 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
21 date of this Decision. Should such a determination be made, the Commissioner may, in his
22 discretion, vacate and set aside the stay order and reimpose all or a portion of the suspension
23 stayed pursuant to this paragraph 1A. Should no such determination be made, the stay so
24 imposed herein shall become permanent.

1 B. The remaining thirty (30) days of said 60-day suspension shall be stayed upon the
2 condition that Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business
3 and Professions Code at a rate of \$50.00 for each day of the suspension for a total monetary
4 penalty of \$1,500.00, and upon the following additional terms and conditions:

5 1) Said payment shall be in the form of a cashier's check or certified check
6 made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered
7 to the Department prior to the effective date of the Decision in this matter.
8

9 2) No further cause for disciplinary action against the Real Estate license of
10 Respondent occurs within two (2) years from the effective date of the decision in this matter.

11 3) If Respondent fails to pay the monetary penalty in accordance with the terms
12 and conditions of the Decision, the Commissioner may, without a hearing, vacate and set aside
13 the stay order, and order the immediate execution of all or any part of the stayed suspension.
14

15 4) No final subsequent determination be made, after hearing or upon stipulation,
16 that cause for disciplinary action against Respondent occurred within two (2) years of the
17 effective date of the Decision herein. Should such a determination be made, the Commissioner
18 may, in his discretion, vacate and set aside the stay order, and order the execution of all or any
19 part of the stayed suspension, in which event the Respondent shall not be entitled to any
20 repayment nor credit, prorated or otherwise, for money paid to the Department under the terms
21 of this Decision.
22

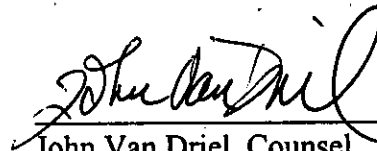
23 5) If Respondent pays the monetary penalty and if no further cause for
24 disciplinary action against the real estate license of Respondent occurs within two (2) years from
25 the effective date of the Decision herein, then the stay hereby granted shall become permanent.
26

27 ///

1 2. Respondent shall, within six (6) months from the effective date of this Order, submit
2 proof satisfactory to the Commissioner of having taken and successfully completed the
3 continuing education course on trust fund accounting and handling specified in subdivision (a)
4 of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this
5 requirement includes evidence that respondent has successfully completed the trust fund account
6 and handling continuing education course within 120 days prior to the effective date of the
7 Order in this matter. If Respondent fails to satisfy this condition, the Commissioner may order
8 the further indefinite suspension of Respondent's real estate broker license until Respondent
9 satisfies this condition.
10

11 3. Respondent shall, within six (6) months from the effective date of this Order, submit
12 proof satisfactory to the Commissioner of having taken and passed the Professional
13 Responsibility Examination administered by the Department, including the payment of the
14 appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may
15 order the further indefinite suspension of Respondent's real estate broker license until
16 Respondent passes the examination.
17

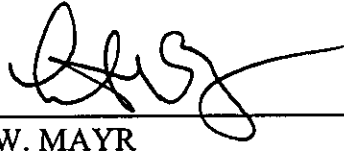
18
19 DATED: 9-30-09


John Van Driel, Counsel
DEPARTMENT OF REAL ESTATE

20
21
22 I have read the Stipulation and Agreement, have discussed its terms with my
23 attorney, and its terms are understood by me and are agreeable and acceptable to me. I
24 understand that I am waiving rights given to me by the California Administrative Procedure Act
25 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government
26 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of
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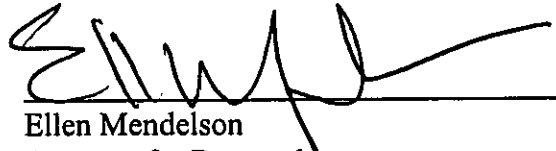
1 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I
2 would have the right to cross-examine witnesses against me and to present evidence in defense
3 and mitigation of the charges.

4 DATED: 9-22-2009


LIN W. MAYR
Respondent

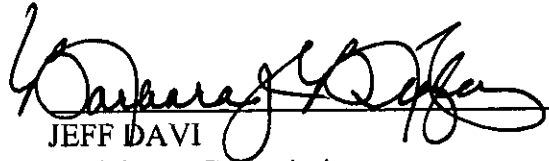
7 I have reviewed the Stipulation and Agreement as to form and content and have
8 advised my client accordingly.

9 DATED: 9/25/09


Ellen Mendelson
Attorney for Respondent

13 The foregoing Stipulation and Agreement in Settlement is hereby adopted by the
14 Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock
15 noon on **NOV 30 2009**

17 IT IS SO ORDERED 11-3-09

19 
JEFF DAVI
Real Estate Commissioner

22 BY: Barbara J. Blgby
Chief Deputy Commissioner

FILED

NOV - 9 2009

DEPARTMENT OF REAL ESTATE

L. Zin

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

GORMAN & MAYR INC., and
LIN W. MAYR,

Respondents.

No. H-10673 SF

OAH No. 2009070183

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On May 7, 2009, an Accusation was filed in this matter against Respondents
GORMAN & MAYR INC., INC. and LIN W. MAYR.

On September 18, 2009, Respondent GORMAN & MAYR INC. INC. only
petitioned the Commissioner to voluntarily surrender its real estate license pursuant to Section
10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent GORMAN & MAYR INC.
only petition for voluntary surrender of its corporate real estate license is accepted as of the
effective date of this Order as set forth below, based upon the understanding and agreement
expressed in Respondent's Declaration dated September 18, 2009 (attached as Exhibit "A"
hereto). Respondent's license certificate, pocket card and any branch office license certificates

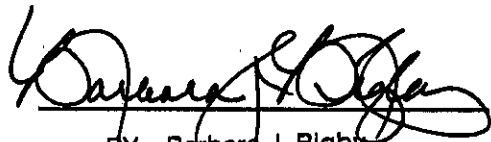
1 shall be sent to the address listed below so that they reach the Department on or before the
2 effective date of this Order:

3 Department of Real Estate
4 Atten: Licensing Flag Section
5 P.O. Box 187000
6 Sacramento, CA 95818-7000

7 This Order shall become effective at 12 o'clock noon on
8 **NOV 30 2009**

9 DATED: 11-3-09

10
11 JEFF DAVI
12 Real Estate Commissioner

13 

14 BY: Barbara J. Bigby
15 Chief Deputy Commissioner
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1 surrender its real estate license issued by the Department of
2 Real Estate ("Department"), pursuant to Business and Professions
3 Code section 10100.2.

4 I understand that by voluntarily surrendering its license,
5 GORMAN & MAYR INC. can only have that license reinstated in
6 accordance with the provisions of Section 11522 of the Government
7 Code. I, LIN W. MAYR, on behalf of GORMAN & MAYR INC., agree to
8 the following:

9 The filing of this Declaration shall be deemed as a petition
10 for voluntary surrender filed on behalf of GORMAN & MAYR INC. It
11 shall also be deemed to be an understanding and agreement that I,
12 LIN W. MAYR, acting on behalf of GORMAN & MAYR INC., waive all
13 rights it may have to require the Commissioner to prove the
14 allegations contained in the Accusation filed in this matter at a
15 hearing held in accordance with the provisions of the
16 Administrative Procedure Act (Government Code Sections 11400 et
17 seq.), and that it also waives other rights afforded to it in
18 connection with the hearing such as the right to discovery, the
19 right to present evidence in defense of the allegations in the
20 Accusation and the right to cross-examine witnesses. I further
21 agree, on behalf of GORMAN & MAYR INC., that upon acceptance by
22 the Commissioner, as evidenced by an appropriate order, all
23 affidavits and all relevant evidence obtained by the Department
24 in this matter prior to the Commissioner's acceptance, and all
25 allegations contained in the Accusation filed in the Department's
26 Case No. H-10673 SF, may be considered by the Department to be
27 true and correct for the purpose of deciding whether or not to

1 grant reinstatement of the real estate license of GORMAN & MAYR
2 INC. pursuant to Government Code Section 11522.

3 I declare under penalty of perjury under the laws of the
4 State of California that the above is true and correct and
5 that I am acting freely and voluntarily on behalf of GORMAN &
6 MAYR INC., to surrender the corporate real estate broker license
7 issued to GORMAN & MAYR INC., and all license rights attached
8 thereto.

9
10 

11 GORMAN & MAYR INC. by
12 Lin W. Mayr, President
13 and Designated Officer

9-18-2009

Dated

FILED

MAY - 7 2009

DEPARTMENT OF REAL ESTATE

By L. Henry

JOHN VAN DRIEL, Counsel (SBN 84056)

Department of Real Estate

P. O. Box 187007

Sacramento, CA 95818-7007

Telephone: (916) 227-0789

-or- (916) 227-0787 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

GORMAN & MAYR INC., and
LIN W. MAYR,

Respondents.

NO. H- 10673 SF

ACCUSATION

The Complainant, Joe M. Carrillo, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent GORMAN MAYR, INC. (GMI), dba UrbanSpace Management Group, and Respondent LIN W. MAYR (MAYR), is informed and alleges as follows:

1

The Complainant, Joe M. Carrillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

2

MAYR is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code).

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1 3

2 GMI is presently licensed by the Department of Real Estate (the Department) as a
3 corporate real estate broker.

4 4

5 At all times herein mentioned, MAYR was licensed by the Department as the
6 designated broker/officer of GMI. As the designated broker/officer, MAYR was responsible,
7 pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers,
8 agents, real estate licensees and employees of GMI for which a real estate license is required.

9 5

10 Whenever reference is made in an allegation in this Accusation to an act or
11 omission of GMI, such allegation shall be deemed to mean that the officers, directors,
12 employees, agents and real estate licensees employed by or associated with GMI committed
13 such act or omission while engaged in furtherance of the business or operations of GMI and
14 while acting within the course and scope of their corporate authority and employment.

15 FIRST CAUSE OF ACTION

16 6

17 From at least October 1, 2008 through March 20, 2009, GMI engaged in the
18 business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within
19 the State of California within the meaning of Section 10131(b) of the Code, including the
20 operation and conduct of a property management business with the public on behalf of others,
21 for or in expectation of compensation.

22 7

23 At no time mentioned herein, prior to March 20, 2009, was GMI licensed by the
24 Department as a corporate real estate broker.

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The acts of GMI described above constitute cause to suspend or revoke all licenses and license rights of Respondent GMI pursuant to the provisions of Sections 10130, 10131(b), and 10177(f) of the Code.

SECOND CAUSE OF ACTION

Intermittently through March 2009, an audit was conducted of GMI's main office located at 811 Washington Street in Oakland, CA, where the auditor examined records for the period of October 1, 2008 through January 31, 2009.

In purporting to act as a real estate broker as described in Paragraph 6, above, GMI accepted or received funds in trust (trust funds) from or on behalf of owners, tenants and/or others in connection with its property management activities.

Within the audit period, in connection with the collection and disbursement of trust funds, trust funds accepted or received by GMI were deposited or caused to be deposited by Respondents into a bank account maintained by GMI at Bank of the West, 3305 Broadway, in Oakland, California, Account No. 124019266, entitled "Urbanspace Management Group Trust Account" (Account #1).

In the course of the activities described in Paragraph 10, in connection with the collection and disbursement of trust funds, GMI and MAYR:

- (a) Failed to reconcile the balance of separate beneficiary or transaction records with the control records of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations as required by Section 2831.2 of Chapter 6, Title 10, California Code of Regulations (Regulations) for Account #1;

- 1 (b) Failed to deposit trust funds received into Account #1 within three
2 business days in violation of Section 2832 of the Regulations; and,
3 (c) Failed to maintain an accurate daily balance for the trust funds deposited
4 to Account #1 and/or failed to maintain records of an accurate daily
5 balance for the trust funds deposited to Account #1 in violation of Section
6 2831 of the Regulations;

7 13

8 The acts and/or omissions of Respondents as alleged above constitute cause for
9 the suspension or revocation of the licenses and license rights of Respondents under the
10 following provisions:

- 11 (a) As alleged in paragraph 12 (a), under Section 2831.2 of the Regulations
12 in conjunction with Section 10177(d) of the Code;
13 (b) As alleged in paragraph 12 (b), Section 10145 of the Code and Section
14 2832 of the Regulations in conjunction with Section 10177(d) of the
15 Code;
16 (c) As alleged in paragraph 12 (c), under Section 2831 of the Regulations in
17 conjunction with Section 10177(d) of the Code;

18 THIRD CAUSE OF ACTION

19 14

20 At all times herein above mentioned, MAYR was responsible, as the designated
21 broker officer of GMI, for the supervision and control of the activities conducted on behalf of
22 the corporation by its officers and employees. MAYR failed to exercise reasonable supervision
23 and control over the property management brokering activities of GMI. In particular, MAYR
24 permitted, ratified and/or caused the conduct described in the First and Second Causes of
25 Action, above, to occur, and failed to take reasonable steps, including but not limited to the
26 handling of trust funds, supervision of employees, and the implementation of policies, rules,

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1 procedures, and systems to ensure the compliance of the corporation with the Real Estate Law
2 and the Regulations.

3 15

4 The above acts and/or omissions of MAYR constitute grounds for disciplinary
5 action under the provisions of Section 10177(h) of the Code and/or Section 10159.2 of the Code
6 and Section 2725 of the Regulations in conjunction with Section 10177(d) of the Code.

7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
9 disciplinary action against all licenses and license rights of Respondents under the Real Estate
10 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
11 relief as may be proper under other provisions of law.

12
13 
14 JOE M. CARILLO
15 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 30 day of April, 2009.
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