

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

APR 13 2011

DEPARTMENT OF REAL ESTATE
By R. Mar

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)

DRE No. H-10778 SF

13 PROGRESS REALTY, INC., and)
14 ALEXANDER KIN LAM LEE,)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

15 Respondents.)

16 It is hereby stipulated by and between PROGRESS REALTY, INC. (Respondent),
17 ALEXANDER KIN LAM LEE (Respondent) and their attorney, Robert B. Yee, and the
18 Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real Estate;
19 as follows for the purpose of settling and disposing of the Accusation filed on October 20, 2009,
20 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 In Settlement and Order.

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

4 3. On November 2, 2009, Respondents filed a Notice of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
7 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they
8 will thereby waive their rights to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that
10 they will waive other rights afforded to them 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 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
15 true and correct and the Real Estate Commissioner shall not be required to provide further
16 evidence of such allegations.

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

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an

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

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions and waivers, and solely for
6 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
7 that the acts and/or omissions of Respondents, as described in the Accusation, constitute grounds
8 for the suspension or revocation of the licenses and license rights of Respondent PROGRESS
9 under the provisions of Sections 2726 and 2832 of Title 10, California Code of Regulations,
10 (Regulations) and Sections 10145, 10161.8(b) and 10177(d) of the Business of Professions Code
11 (the Code) and Respondent LEE under the provisions of Section 2725 of the Regulations and
12 Sections 10159.2, 10177(d) and 10177(h) of the Code.

13 ORDER

14 1. The real estate broker license and license rights of Respondent PROGRESS
15 REALTY, INC. (PROGRESS) under the Real Estate Law are suspended for a period of sixty
16 (60) days from the effective date of this Order; provided, however, that if Respondent petitions,
17 said suspension shall be stayed upon condition that:

18 a. PROGRESS pays a monetary penalty pursuant to Section 10175.2 of the
19 Business and Professions Code at the rate of \$100.00 per day for thirty (30) days of the
20 suspension for a total monetary penalty of \$3,000.00. Upon receipt of payment, thirty (30) days
21 of the suspension will then be stayed.

22 b. Said payment shall be in the form of a cashier's check or certified check made
23 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
24 Department prior to the effective date of the Decision in this matter.

25 c. No further cause for disciplinary action against the real estate license of
26 PROGRESS occurs within one year from the effective date of the Decision in this matter.

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1 d. If PROGRESS fails to pay the monetary penalty in accordance with the terms
2 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
3 execution of all or any part of the stayed suspension in which event PROGRESS shall not be
4 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
5 under the terms of this Decision.

6 e. If PROGRESS pays the monetary penalty, the remaining thirty (30) days of
7 said sixty (60) day suspension will be stayed, and if no further cause for disciplinary action
8 against the real estate license of PROGRESS occurs within one (1) year from the effective date
9 of the Decision, the stay hereby granted shall become permanent.

10 2. The real estate broker license and license rights of Respondent
11 ALEXANDER KIN LAM LEE (LEE), under the Real Estate Law are suspended for a period of
12 sixty (60) days from the effective date of this Order; provided, however, that if LEE petitions,
13 said suspension shall be stayed upon condition that:

14 a. LEE pays a monetary penalty pursuant to Section 10175.2 of the Business and
15 Professions Code at the rate of \$100.00 per day for thirty (30) days of the suspension for a total
16 monetary penalty of \$3,000.00. Upon receipt of payment, thirty (30) days of the suspension will
17 then be stayed.

18 b. Said payment shall be in the form of a cashier's check or certified check made
19 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
20 Department prior to the effective date of the Decision in this matter.

21 c. No further cause for disciplinary action against the real estate license of LEE
22 occurs within one year from the effective date of the Decision in this matter.

23 d. If LEE fails to pay the monetary penalty in accordance with the terms and
24 conditions of the Decision, the Commissioner may, without a hearing, order the immediate
25 execution of all or any part of the stayed suspension in which event LEE shall not be entitled to
26 any repayment nor credit, prorated or otherwise, for money paid to the Department under the
27 terms of this Decision.

1 e. If LEE pays the monetary penalty, the remaining thirty (30) days of said sixty
2 (60) day suspension will be stayed, and if no further cause for disciplinary action against the real
3 estate license of LEE occurs within one (1) year from the effective date of the Decision, the stay
4 hereby granted shall become permanent.

5 f. All licenses and licensing rights of LEE under the Real Estate Law are
6 suspended until such time as LEE provides proof satisfactory to the Commissioner that LEE has
7 completed the continuing education course on real estate trust fund accounting and handling
8 specified in subdivision (a) of Section 10170.5 of the Code. The course must have been
9 completed no earlier than one hundred twenty (120) days prior to the effective date of this Order,
10 and proof must be submitted prior to the effective date of this Order, to prevent suspension of
11 LEE's license pursuant to this condition.

12 g. LEE shall, within six (6) months from the effective date of this Decision, take
13 and pass the Professional Responsibility Examination administered by the Department including
14 the payment of the appropriate examination fee. If LEE fails to satisfy this condition, the
15 Commissioner may order suspension of LEE's license until LEE passes the examination.

17 11/11/10

Richard K. Uno
18 RICHARD K. UNO, Counsel
19 DEPARTMENT OF REAL ESTATE

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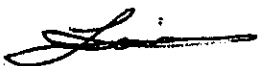
21
22 I have read the Stipulation and Agreement in Settlement and Order and its terms
23 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
24 rights given to me by the California Administrative Procedure Act (including but not limited to
25 Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
26 intelligently, and voluntarily waive those rights, including the right of requiring the

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1 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
2 right to cross-examine witnesses against me and to present evidence in defense and mitigation
3 of the charges.

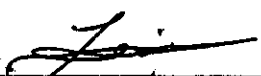
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5 OCT. 27, 2010

6 DATED


7 ALEXANDER KIM LAM LEE
8 For Respondent
9 PROGRESS REALTY, INC.

10 OCT. 27, 2010

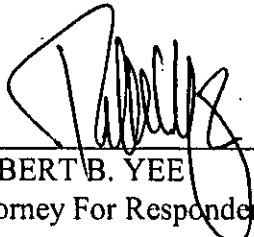
11 DATED


12 ALEXANDER KIM LAM LEE
13 Respondent

14 *I have reviewed this Stipulation and Agreement as to form and content and have
15 advised my client accordingly.*

16 October 27, 2010

17 DATED


18 ROBERT B. YEE
19 Attorney For Respondents

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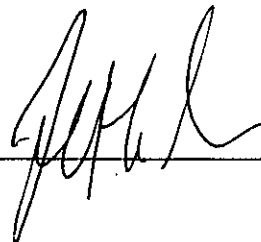
21 The foregoing Stipulation and Agreement is hereby adopted by the Real Estate
22 Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on

23 **MAY - 4 2011**

24 IT IS SO ORDERED

4-12-2011

25 JEFF DAVI
26 Real Estate Commissioner


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At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131 (A) of the Code, including the operation and conduct of a residential resale brokerage wherein Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

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

FIRST CAUSE OF ACTION

In approximately March 2008, acting as a dual agent, PROGRESS represented Rosa Johnson (Seller) to sell her real property known as 1283-78th Avenue, Oakland, California (the property) to Chen and Huang (Buyers).

On or about March 16, 2008, PROGRESS, acting through one or more of its agents or employees, whose identities are unknown at this time, prepared a Probate Purchase Agreement for the Property (the Agreement) on behalf of Buyers.

On or about March 18, 2008, Seller accepted the Agreement. Buyer gave PROGRESS a check in the amount of \$8,000.00 dated March 16, 2008, as an Earnest Money

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1 Deposit for the purchase of the Property. By the terms of the Agreement, the check was to be
2 deposited into escrow within three days of receipt.

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4 On or about April 14, 2008, Buyers notified their agent that they wanted to
5 cancel the sale. PROGRESS had never opened an escrow for this transaction and therefore
6 buyers' check had not been deposited to escrow, or otherwise properly handled as required by
7 Section 10145 of the Code and Section 2832 of the Regulations.

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9 Within three years prior to the filing of this Accusation, PROGRESS hired
10 Real Estate Salesperson Mario Wong without executing a Broker-Salesperson Relationship
11 Agreement, in violation of Section 2726 of the Regulations.

12 11

13 Within three years prior to the filing of this Accusation, PROGRESS released
14 Real Estate Salespersons Chapman Huie, Edmundo Neel, Cuu Quach and Channing Woodsun
15 without notifying the Department, in violation of Section 10161.8(b) of the Code.

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17 The acts and omissions of Respondent PROGRESS described in Paragraph 5
18 through 9, above, constitute violations of Sections 10145 of the Code and Section 2832 of the
19 Regulations and are grounds for discipline under Section 10177(d) of the Code.

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21 The acts and omissions of Respondent PROGRESS described in Paragraph 10,
22 above, constituted a violation of Section 2726 of the Regulations and are grounds for the
23 suspension or revocation of the license of Respondent PROGRESS under Section 10177(d) of
24 the Code.

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The acts and omissions of Respondent PROGRESS described in Paragraph 11, above, constitute a violation of Section 10161.8(b) of the Code and are grounds for the suspension or revocation of the license of Respondent PROGRESS under Section 10177(d) of the Code.

SECOND CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 14, above, and incorporates them herein by reference.

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At all times herein above mentioned, LEE, was responsible as the supervising broker for PROGRESS, for the supervision and control of the activities conducted on behalf of PROGRESS' business by its employees to ensure its full compliance with the Real Estate Law and Regulations. LEE failed to exercise reasonable supervision and control over the real estate resale activities of PROGRESS. In particular, LEE permitted, ratified and/or caused the conduct described above, to occur, and failed to take reasonable steps, including but not limited to handling of trust funds, supervision of employees, and the implementation of policies, rules, and systems to ensure the compliance of the business within the Real Estate Law and the Regulations.

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The above acts and/or omission of LEE violate Section 10159.2 of the Code and Section 2725 of the Regulations and constituted grounds for disciplinary action under the provisions of Section 10177(d) and (h) of the Code.

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

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8 E. J. HABERER, II
9 Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 15th day of October, 2009.