

FILED

November 19, 2011

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

DEPARTMENT OF REAL ESTATE

By *P. Jones*

4 Telephone: (916) 227-0789
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7

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

10 * * *

11			
12	In the Matter of the Accusation of)	NO. H-10877 SF
)	
13)	<u>STIPULATION AND AGREEMENT</u>
14	PACIFIC LEGACY MANAGEMENT AND)	<u>IN SETTLEMENT AND ORDER</u>
	SEAN VIEN DINH,)	
15)	(AS TO SEAN VIEN DINH ONLY)
	Respondent.)	
16)	

17 It is hereby stipulated by and between SEAN VIEN DINH hereinafter
18 "Respondent") and his attorney, EDWARD O. LEAR, and the Complainant, acting by and
19 through Kenneth C. Espell, Counsel for the Department of Real Estate, as follows for the
20 purpose of settling and disposing of the Accusation filed on March 17, 2010, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondent 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.

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

4 3. A Notice of Defense was filed on March 30, 2010 by Respondent, pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
8 Defense he will thereby waive his right to require the Commissioner to prove the allegations in
9 the Accusation at a contested hearing held in accordance with the provisions of the APA and
10 that he will waive other rights afforded to him in connection with the hearing such as the right
11 to present evidence in defense of the allegations in the Accusation and the right to cross-
12 examine witnesses.

13 4. This Stipulation is based on the factual allegations contained in the
14 Accusation. In the interests of expedience and economy, Respondent, pursuant to the limitations
15 set forth below, hereby admits that the factual allegations pertaining to him in the Accusation
16 filed in this proceeding are true and correct and the Real Estate Commissioner shall not be
17 required to provide further evidence of such allegations.

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

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1 6. The Order or any subsequent Order of the Real Estate Commissioner made
2 pursuant to this Stipulation and Agreement in Settlement shall not constitute an estoppel,
3 merger or bar to any further administrative or civil proceedings by the Department of Real
4 Estate with respect to any matters which were not specifically alleged to be causes for
5 accusation in this proceeding.

6
7 DETERMINATION OF ISSUES

8 I

9 By reason of the foregoing stipulations, admissions and waivers and solely for
10 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
11 agreed that the facts alleged above are grounds for the suspension or revocation of the licenses
12 and license rights of Respondent SEAN VIEN DINH under Sections 2725, 2731, 2832, 2834 of
13 Chapter 6, Title 10, California Code of Regulations ("Regulations"); and Sections 10145 and
14 10159.2 of the Business and Professions Code (the Code") and are grounds for discipline under
15 Section 10177(d) of the Code and are grounds for disciplinary action under the provisions of
16 Section 10177(d) and (h) of the Code.

17 ORDER

18 I

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

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

24 A. Respondent shall obey all laws, rules and regulations governing the
25 rights, duties and responsibilities of a real estate licensee in the State of
26 California; and

27 ///

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

8 2. The remaining thirty (30) days of said 60-day suspension shall be stayed upon
9 the condition that Respondent petition pursuant to Section 10175.2 of the Business and
10 Professions Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and
11 Professions Code at a rate of \$100.00 for each day of the suspension for a total monetary
12 penalty of \$3,000.00:

13 A. Said payment shall be in the form of a cashier's check or certified check
14 made payable to the Recovery Account of the Real Estate Fund. Said
15 check must be delivered to the Department prior to the effective date of
16 the Order in this matter.

17 B. No further cause for disciplinary action against the Real Estate licenses of
18 said Respondent occurs within two (2) years from the effective date of
19 the decision in this matter.

20 C. If Respondent fails to pay the monetary penalty as provided above prior
21 to the effective date of this Order, the stay of the suspension shall be
22 vacated as to Respondent and the order of suspension shall be
23 immediately executed, under this Paragraph I of this Order, in which
24 event Respondent shall not be entitled to any repayment nor credit,
25 prorated or otherwise, for the money paid to the Department under the
26 terms of this Order.

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1 D. If Respondent pays the monetary penalty and any other monies due under
2 this Stipulation and Agreement and if no further cause for disciplinary
3 action against the real estate licenses of Respondent occurs within two (2)
4 years from the effective date of this Order, the entire stay hereby granted
5 under Paragraphs I shall become permanent.

6 5. Respondent shall, within six (6) months from the effective date of this
7 Decision, take and pass the Professional Responsibility Examination administered by the
8 Department including the payment of the appropriate examination fee. If Respondent fails to
9 satisfy this condition, the Commissioner may order suspension of Respondent's license until
10 Respondent passes the examination.

11 6. Respondent shall within nine (9) months from the effective date of this Order,
12 present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the
13 most recent issuance of an original or renewal real estate license, taken and successfully
14 completed the continuing education requirements in trust fund handling, property management
15 and real estate ethics as specified in subdivision (a) of Section 10170.5 of the Business and
16 Professions Code. If Respondent fails to satisfy this condition, the Commissioner may order the
17 suspension of the restricted license until Respondent presents such evidence. The
18 Commissioner shall afford Respondent the opportunity for hearing pursuant to the
19 Administrative Procedure Act to present such evidence.

20 7. Respondent shall notify the Commissioner in writing within 72 hours of any
21 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
22 Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of
23 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
24 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
25 constitute an independent violation of the terms of this stipulation and agreement and shall be
26 grounds for the suspension or revocation of Respondent's license.


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10/17/2011 MON 14:15 FAX 9162279458 DRB SAC LEGAL

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1 8. Respondent expressly agrees that for purposes of any subsequent proceedings
 2 in bankruptcy, the payments made pursuant to this agreement are penalties and fines pursuant to
 3 Statute and that such penalties and fines are not compensation for an actual pecuniary loss.
 4 Respondent therefore agrees that his liability under this Stipulation and Agreement in Settlement
 5 is non-dischargeable in a bankruptcy pursuant to 11 U.S.C. § 523(a) (7). The parties agree that
 6 the Department's claim in any bankruptcy proceeding shall be for the full amount of the
 7 Department's claim. In the event of any filing for protection under bankruptcy, liquidation,
 8 receivership or other insolvency law, Respondent agrees not to contest or oppose any motion
 9 filed by the Department seeking relief from the automatic stay imposed by 11 U.S.C. § 362(a), or
 10 to seek relief under 11 U.S.C. § 105 to enjoin or restrain the Department from recovering monies
 11 owed arising out of this Stipulation and Agreement in Settlement or through offset. Respondent
 12 recognizes that this express waiver is in consideration for the final settlement of the claims
 13 addressed herein. The parties further agree that, in the event of default or bankruptcy, the
 14 Department is entitled to declare this Stipulation and Agreement in Settlement void and to pursue
 15 the full amount of its claim.

15 DATED: 10/28/2011


 KENNETH C. ESPELL, Counsel
 DEPARTMENT OF REAL ESTATE

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

25 DATED: 10/17/2011


 SEAN VIEN DINH
 Respondent

H-10877 SF

- 6 -

ACCUSATION OF
SEAN VIEN DINH

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

3 10/17/11
4 DATED

[Signature]
EDWARD O. LEAR
Attorney for Respondent

6 ***

7 The foregoing Stipulation and Agreement in Settlement is hereby adopted by the
8 Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock
9 noon on DEC - 9 2011

10 IT IS SO ORDERED 11/4/11

11 BARBARA J. BIGBY
12 Acting Real Estate Commissioner

13 [Signature]
14

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FILED

November 19, 2011

DEPARTMENT OF REAL ESTATE

By *P. Jones*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-10877 SF
)	
PACIFIC LEGACY MANAGEMENT,)	(AS TO PACIFIC LEGACY
and SEAN VIEN DINH,)	MANAGEMENT)
)	
Respondents.)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On March 17, 2010, an Accusation was filed in this matter against Respondents PACIFIC LEGACY MANAGEMENT and SEAN VIEN DINH .

On October 27, 2010, Respondent PACIFIC LEGACY MANAGEMENT petitioned the Commissioner to voluntarily surrender its real estate corporation license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent PACIFIC LEGACY MANAGEMENT 's petition for voluntary surrender of its real estate corporation 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 October 27, 2010 (attached as Exhibit "A" hereto).


1 Respondent's license certificate(s), pocket card(s) and any branch office license
2 certificate(s) shall be sent to the below listed address so that they reach the Department on or
3 before the effective date of this Order:
4

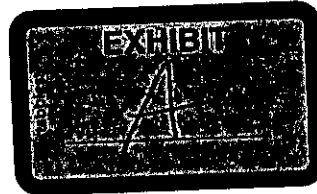
5 DEPARTMENT OF REAL ESTATE
6 Attn: Licensing Flag Section
7 P. O. Box 187000
8 Sacramento, CA 95818-7000

9 This Order shall become effective at 12 o'clock noon on DEC - 9 2011

10 DATED: 11-4-11

11 BARBARA J. BIGBY
12 Acting Real Estate Commissioner

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1 DEPARTMENT OF REAL ESTATE
 2 P. O. Box 187007
 3 Sacramento, CA 95818-7007
 4 Telephone: (916) 227-0789

8 BEFORE THE DEPARTMENT OF REAL ESTATE
 9 STATE OF CALIFORNIA

10 ***

11 TO:)
 12 PACIFIC LEGACY MANAGEMENT,) NO. H-10877 SF
 13 and SEAN VIEN DINH,)
 14 Respondents.)

16 DECLARATION


17 PACIFIC LEGACY MANAGEMENT, ("PLM") through THOR
 18 KAMAKA'ALA declares that it is currently licensed as a corporate real estate broker and has
 19 license rights with respect to said license.

20 In lieu of proceeding in this matter in accordance with the provisions of the
 21 Administrative Procedure Act (Sections 11400 et seq., of the Government Code), PLM wishes to
 22 voluntarily surrender its real estate license issued by the Department of Real Estate
 23 ("Department"), pursuant to Business and Professions Code Section 10100.2.

24 PLM understands that by so voluntarily surrendering PLM's license(s), PLM may
 25 be relicensed as a corporate real estate broker only by petitioning for reinstatement pursuant to
 26 Section 11522 of the Government Code. PACIFIC LEGACY MANAGEMENT also
 27 understands that by so voluntarily surrendering its license(s), PLM agrees to the following:

- 1 1. The filing of this Declaration shall be deemed as PLM's petition for voluntary surrender.
- 2 2. It shall also be deemed to be an understanding and agreement by PLM that
- 3 PLM waives all rights PLM may have to require the Commissioner to prove the allegations
- 4 contained in the Accusation filed in this matter at a hearing held in accordance with the
- 5 provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and
- 6 that PLM also waives other rights afforded to PLM in connection with the hearing such as the
- 7 right to discovery, the right to present evidence in defense of the allegations in the Accusation,
- 8 and the right to cross-examine witnesses.
- 9 3. PLM further agrees that upon acceptance by the Commissioner, as
- 10 evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the
- 11 Department in this matter prior to the Commissioner's acceptance, and all allegations contained
- 12 in the Accusation filed in the Department Case No. H-10877 SF may be considered by the
- 13 Department to be true and correct for the purpose of deciding whether to grant re-licensure or
- 14 reinstatement pursuant to Government Code Section 11522.
- 15 4. PLM freely and voluntarily surrenders its license and license rights under
- 16 the Real Estate Law.

17 On behalf of PLM, I declare under penalty of perjury under the laws of the State
 18 of California that the above is true and correct and that this Declaration was executed October
 19 27th, 2010, at Oakland, California.

20 
 21
 22 BY: TIOR KAMAKA'ALA

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-2380
6
7

FILED
MAR 17 2010
DEPARTMENT OF REAL ESTATE
By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-10877 SF
13 PACIFIC LEGACY MANAGEMENT AND)
14 SEAN VIEN DINH,) ACCUSATION
15 Respondents.)

16 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
17 the State of California, for Accusation against Respondent PACIFIC LEGACY
18 MANAGEMENT (PLM), and Respondent SEAN VIEN DINH (DINH), is informed and alleges
19 as follows:

20 1

21 The Complainant makes this Accusation against Respondents in his official
22 capacity.

23 2

24 DINH is presently licensed and/or has license rights under the Real Estate Law,
25 Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real estate
26 broker.

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

4

At all times during the audit period, DINH was licensed by the Department as the designated broker/officer of PLM. As the designated broker/officer, DINH was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of PLM for which a real estate license is required.

5

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, collected rents from tenants on behalf of landlords, ordered repairs on, offered to rent and performed other duties regarding property owned by landlords.

6

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

FIRST CAUSE OF ACTION

7

Beginning on August 27, 2009 through August 28, 2009, an audit was conducted of PLM's main office located at 220 Athol Avenue, Suite 401 in Oakland, California, where the auditor examined records for the period of May 12, 2009 through July 27, 2009 (the audit period).

1
2 While acting as a real estate broker as described in Paragraph 5, above, and
3 within the audit period, PLM accepted or received funds in trust (trust funds) from tenants on
4 behalf of landlords in connection with the property management activities, deposited or caused
5 to be deposited those funds into a bank account maintained by PLM as follows:

6 a) Citibank, P. O. Box 26892, San Francisco, CA 94126, Account No.
7 201427036, entitled "Vista Del Plaza Condo in Trust Barad Family" (Bank Account #1),

8 b) Citibank, P. O. Box 26892, San Francisco, CA 94126, Account No.
9 201427010, entitled "Islander Apartments in Trust for Barad Family" (Bank Account #2),

10 c) Citibank, P. O. Box 26892, San Francisco, CA 94126, Account No.
11 201427002, entitled "Anita Apartments in Trust for Barad Family" (Bank Account #3),

12 d) Citibank, P. O. Box 26892, San Francisco, CA 94126, Account No.
13 201427028, entitled "Sevilla Condo in Trust Barad Family" (Bank Account #4),

14 e) Citibank, P. O. Box 26892, San Francisco, CA 94126, Account No.
15 202771424, entitled "Vasquez Family Trust" (Bank Account #5),

16 f) Citibank, P. O. Box 26892, San Francisco, CA 94126, Account No.
17 202867207, entitled "Vasquez Family Trust" (Bank Account #6),

18 g) Citibank, P. O. Box 26892, San Francisco, CA 94126, Account No.
19 203177191, entitled "Lakeshore Properties Alliance Partners International LLC Escrow for 875-
20 A Island Drive, Suite #188" (Bank Account #7), and thereafter from time to time made
21 disbursements of said trust funds.

22
23 In the course of the activities described in Paragraph 5, in connection with the
24 collection and disbursement of trust funds, PLM:

- 25 (a) Failed to designate Bank Account #1 through #7 as trust accounts as
26 trustee as required by Section 2832 of Chapter 6, Title 10, California
27 Code of Regulations (Regulations);

1 (b) Allowed unlicensed individuals who were not bonded to withdraw trust
2 funds in violation of Section 2834 of the Regulations;

3 (c) Failed to deposit trust funds in a timely manner, as indicated below, as
4 required by Section 2832 of the Regulations and Section 10145 of the
5 Code;

<u>Tenant/Owner</u>	<u>Amount</u>	<u>Date Recd</u>	<u>Date Deposited</u>
Huseyzak	\$789.00	6/29/09	7/7/09
Valdez	\$375.00	6/29/09	7/7/09
La Hlaya	\$800.00	5/22/09	6/8/09
Noimi	\$875.00	6/30/09	7/7/09

10
11 (d) Failed to register the fictitious name Lakeshore Properties as required by
12 Section 2731 of the Regulations.

13 10

14 The acts and/or omissions of PLM as alleged above violate Sections 2731, 2832,
15 2834 of the Regulations and Section 10145 of the Code and are grounds for discipline under
16 Section 10177(d) of the Code.

17 SECOND CAUSE OF ACTION

18 11

19 Complainant refers to Paragraphs 1 through 10, above, and incorporates them
20 herein by reference.

21 12

22 At all times during the audit period, DINH was responsible, as the designated
23 broker officer of PLM, for the supervision and control of the activities conducted on behalf of
24 the corporation by its officers and employees. DINH failed to exercise reasonable supervision
25 and control over the property management brokering activities of PLM. In particular, DINH
26 permitted, ratified and/or caused the conduct described in the First and Second Causes of
27 Action, above, to occur, and failed to take reasonable steps, including but not limited to the

1 handling of trust funds, supervision of employees, and the implementation of policies, rules,
2 procedures, and systems to ensure the compliance of the corporation with the Real Estate Law
3 and the Regulations.

4 13

5 The above acts and/or omissions of DINH violate Section 2725 of the
6 Regulations and Section 10159.5 of the Code and are grounds for disciplinary action under the
7 provisions of Section 10177(d) and (h) of the Code.

8 THIRD CAUSE OF ACTION

9 14

10 Complainant refers to Paragraphs 1 through 13, above, and incorporates them
11 herein by reference.

12 15

13 At no time within the last three years did the Department license THOR
14 KAMAKA'ALA (KAMAKA'ALA), either as a real estate broker or as a real estate salesperson.

15 16

16 Within the three year period prior to the filing of this Accusation, Respondent
17 PLM employed and compensated Respondent KAMAKA'ALA to perform the activities
18 requiring a real estate license as alleged in Paragraph 5, above.

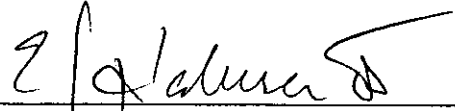
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20 Within the last three years before the filing of this accusation, KAMAKA'ALA
21 engaged in property management activities including leasing or renting, soliciting places for
22 rent, soliciting prospective tenants, collecting rents from tenants and ordering repairs on
23 properties owned by landlords on behalf of PLM, including, but not limited to that certain real
24 property known as 3024 Fruitvale Avenue, in Oakland, California.

25 18

26 The facts alleged above constitute cause for the suspension or revocation of the
27 licenses and license rights of Respondent PLM under Section 10137 of the Code.

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 other provisions of law.

6 

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

9 Dated at Oakland, California,

10 this 24th day of February, 2010.

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