

1 Department of Real Estate  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789

**FILED**

JUN 07 2011

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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

12 \* \* \*

14 In the Matter of the Accusation of )  
15 ) H-10892 SF  
16 JAMES RICHARD HARDING, ) STIPULATION AND AGREEMENT  
17 Respondent. ) IN SETTLEMENT AND ORDER

18  
19 It is hereby stipulated by and between Respondent JAMES RICHARD  
20 HARDING individually, and, dba MARIN PROPERTY SERVICES (hereinafter "MPA")  
21 (collectively hereinafter "HARDING" and/or "Respondent"), Respondent's Attorney J. Anne  
22 Rawlins, Esq., and the Complainant, acting by and through Kenneth C. Espell, Real Estate  
23 Counsel II for the Department of Real Estate (herein "the Department"), as follows for the  
24 purpose of settling and disposing of the Accusation filed on or about March 29, 2010 in this  
25 matter:

26 1. All issues which were to be contested and all evidence which was to be  
27 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing

1 was to be held in accordance with the provisions of the Administrative Procedure Act (herein  
2 APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this  
3 Stipulation and Agreement in Settlement and Order.

4 2. Respondent has received, read and understand the Statement to Respondent,  
5 the Discovery Provisions of the APA, and the Accusation filed by the Department in this  
6 proceeding.

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

16 4. Respondent, pursuant to the limitations set forth below, hereby admits that the  
17 factual allegations in the Accusation pertaining to Respondent are true and correct and stipulates  
18 and agrees that the Real Estate Commissioner shall not be required to provide further evidence of  
19 such allegations.

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

27 6. 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 to  
2 any matters which were not specifically alleged to be causes for accusation in this proceeding.

3 7. Respondent understands that by agreeing to this Stipulation and Agreement in  
4 Settlement and Order, Respondent agrees to pay, pursuant to Section 10148 of the Business and  
5 Professions Code ("herein the Code"), the cost of the audit which resulted in the determination  
6 that Respondent committed the trust fund violation(s) found in Paragraph I of the Determination  
7 of Issues, below. The amount of said audit is \$6,978.12.

8 8. Respondent further understands that by agreeing to this Stipulation and  
9 Agreement in Settlement and Order, the findings set forth below in the Determination of Issues  
10 become final, and that the Commissioner may charge Respondent for the costs of any audit  
11 conducted pursuant to Section 10148 of the Code to determine if the trust fund violation(s) found  
12 in Paragraph I of the Determination of Issues, below, have been corrected. The maximum costs  
13 of any follow-up audit shall not exceed \$6,978.12.

#### 14 DETERMINATION OF ISSUES

##### 15 I

16 The following acts and omissions of Respondent as described in the Accusation  
17 are grounds for the suspension or revocation of the license and license rights of Respondent  
18 under the following provisions of the Code, and/or Chapter 6, Title 10, California Code of  
19 Regulations (herein "the Regulations"):

20 (a) As to Paragraph 6(a) Section 2832 of the Regulations and Section 10145 of the  
21 Code in conjunction with 10177(d) of the Code; and

22 (b) As to Paragraph 6(b) Section 2832.1 of the Regulations and Section 10145 of the  
23 Code in conjunction with 10177(d) of the Code; and

24 (c) As to Paragraph 6(c) under Section 2832.1 of the Regulations in conjunction with  
25 10177(d) of the Code; and

26 (d) As to Paragraph 6(d) under Section 2832.1 of the Regulations in conjunction with  
27 10177(d) of the Code; and

1 (e) As to Paragraph 6(e) under Section 2832.1 of the Regulations in conjunction with  
2 10177(d) of the Code; and

3 (f) As to Paragraph 6(f) under Section 2831.1 of the Regulations in conjunction with  
4 10177(d) of the Code; and

5 (g) As to Paragraph 6(g) under Section 2831.2 of the Regulations in conjunction with  
6 10177(d) of the Code; and

7 (h) As to Paragraph 6(h) under Section 2834 of the Regulations in conjunction with  
8 10177(d) of the Code; and

9 (i) As to Paragraph 6(i) under Section 10148(a) of the Code in conjunction with  
10 10177(d) of the Code; and

11 (j) As to Paragraph 6(j) under Section 2725 of the Regulations in conjunction with  
12 10177(d) of the Code.

13 **ORDER**

14 I

15 1. All licenses and licensing rights of JAMES RICHARD HARDING  
16 individually, and, dba MARIN PROPERTY SERVICES, under the Real Estate Law are revoked;  
17 provided, however, a restricted real estate brokers license shall be issued to Respondent pursuant  
18 to Section 10156.5 of the Business and Professions Code, if Respondent makes application  
19 therefore and pays to the Department of Real Estate the appropriate fee for the restricted license  
20 within 90 days from the effective date of this Decision. The restricted license issued to  
21 Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and  
22 Professions Code and to the following limitations, conditions and restrictions imposed under  
23 authority of Section 10156.6 of that Code:

24 2. The license shall not confer any property right in the privileges to be  
25 exercised, and the Real Estate Commissioner may by appropriate order suspend the right to  
26 exercise any privileges granted under this restricted license in the event of:

27 (a) The conviction of HARDING (including a plea of nolo

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contendere) of a crime which is substantially related to  
Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that HARDING has violated provisions of  
the California Real Estate Law, the Subdivided Lands Law,  
Regulations of the Real Estate Commissioner, or conditions  
attaching to this restricted license.

3. HARDING shall not be eligible to apply for the issuance of an unrestricted  
real estate license nor the removal of any of the conditions, limitations, or restrictions attaching  
to the restricted license until four (4) years have elapsed from the date of issuance of the  
restricted license to HARDING.

4. Pursuant to Section 10148 of the Code, Respondent, shall pay the sum of  
\$6,978.12 for the Commissioner's cost of the audit which led to this disciplinary action.  
Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from  
the Commissioner. Said payment shall be in the form of a cashier's check or certified check  
made payable to the Recovery Account of the Real Estate Fund. The Commissioner may  
indefinitely suspend all licenses and licensing rights of Respondent pending a hearing held in  
accordance with Section 11500, et seq., of the Government Code, if payment is not timely  
made as provided for herein, or as provided for in a subsequent agreement between Respondent  
and the Commissioner. The suspension shall remain in effect until payment is made in full or  
until Respondent enters into an agreement satisfactory to the Commissioner to provide for  
payment, or until a decision providing otherwise is adopted following a hearing held pursuant  
to this condition.

5. Respondent shall pay the Commissioner's costs, not to exceed \$6,978.10, for  
any follow-up audit conducted pursuant to Section 10148 of the Code to determine if  
Respondent has corrected the violations described in Paragraph I of the Determination of Issues,  
above. 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

1 brokers, and shall include an allocation for travel time to and from the auditor's place of work.  
2 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the  
3 Commissioner detailing the activities performed during the audit and the amount of time spent  
4 performing those activities. Said payment shall be in the form of a cashier's check or certified  
5 check made payable to the Recovery Account of the Real Estate Fund. If Respondent fails to  
6 pay such cost within the sixty (60) days, the Commissioner may indefinitely suspend all  
7 licenses and licensing rights of Respondent under the Real Estate Law until payment is made in  
8 full or until Respondent enters into an agreement satisfactory to the Commissioner to provide  
9 for payment. Upon payment in full, the indefinite suspension provided in this paragraph shall  
10 be stayed.

## 11 II

12 1. Respondent shall, within six (6) months from the effective date of the  
13 decision, take and pass the Professional Responsibility Examination administered by the  
14 Department, including the payment of the appropriate examination fee. If Respondent fails to  
15 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing  
16 rights until Respondent passes the examination.

17 2. Notwithstanding any other provision of this Order, all licenses and license  
18 rights of Respondent are indefinitely suspended unless or until he provides proof satisfactory to  
19 the Commissioner that he has taken and successfully completed the continuing education  
20 course on trust fund accounting and handling specified in Section 10170.5(a)(3) of the Code.  
21 Proof of satisfaction of this requirement includes evidence that Respondent has successfully  
22 completed the trust fund accounting and handling continuing education course within 120 days  
23 prior to the effective date of Commissioner's Order.

## 24 III

25 1. Respondent shall, prior to the Departments issuance of Respondent's restricted  
26 license, present evidence satisfactory to the Real Estate Commissioner, via certification from a  
27 licensed CPA, that the trust fund shortage alleged in the Accusation has been cured and that the

1 remaining violations as set forth in the Department's Accusation have been corrected. The  
2 certification, which shall identify the source of the funds utilized to cure the shortage, shall be  
3 submitted to the Department of Real Estate, Legal Section, P.O. Box 187007, Sacramento, CA  
4 95818-7007. If Respondent fails to satisfy this condition, the Commissioner may, at the  
5 Commissioner's sole discretion, withhold issuance of Respondent's restricted real estate license  
6 until Respondent provides to the Commissioner with the required evidence.

7 2. During the period under which Respondent holds a restricted real estate license,  
8 Respondent shall provide written quarterly accounts of trust funds in the custody and control of  
9 respondent prepared by an independent accountant. For each calendar year commencing on the  
10 effective date of the Commissioner's order, said reports shall be submitted to the Commissioner  
11 at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000 by the  
12 last business day of April, July, October and January. The January report shall summarize the  
13 activities of the previous calendar year. The Department will provide Respondent with  
14 guidelines and details required to be submitted to the Department in order to comply with the  
15 terms of this Order. If Respondent fails to satisfy this condition, the Commissioner may, in the  
16 Commissioner's sole discretion, order the suspension of Respondent's real estate license until  
17 Respondent files with the Commissioner the required quarterly report. In addition, Respondent's  
18 failure to timely file the reports shall constitute an independent violation of the terms of  
19 Respondent's restricted license and shall be grounds for the suspension or revocation of that  
20 license.

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

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4/26/11

DATED



KENNETH C. ESPELL  
Real Estate Counsel II  
DEPARTMENT OF REAL ESTATE

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FACSIMILE TRANSMISSION

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following telephone/fax number: Attention: Kenneth C. Espell at (916) 227-9458. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

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1 I have read the Stipulation and Agreement in Settlement and its terms are  
2 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights  
3 given to me by the California APA (including but not limited to Sections 11506, 11508, 11509,  
4 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those  
5 rights, including the right of requiring the Commissioner to prove the allegations in the  
6 Accusation at a hearing at which I would have the right to cross-examine witnesses against me  
7 and to present evidence in defense and mitigation of the charges.

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10 2-24-2011

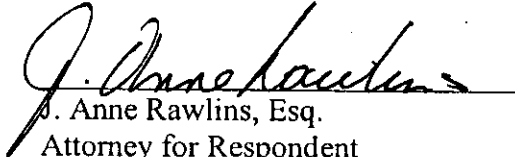
DATED

  
JAMES RICHARD HARDING,  
Respondent

11  
12  
13 I have reviewed the Stipulation and Agreement as to form and content and have  
14 advised my client accordingly.

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16 2.24.2011

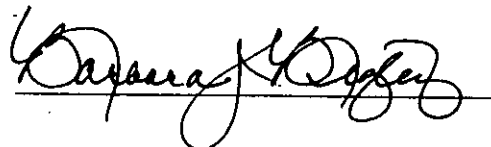
DATED

  
J. Anne Rawlins, Esq.  
Attorney for Respondent

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18  
19 The foregoing Stipulation and Agreement is hereby adopted by me as my  
20 Decision in this matter and shall become effective at 12 o'clock noon on JUN 27 2011

21  
22 IT IS SO ORDERED 5/26/11

23  
24 Real Estate Commissioner

25   
26  
27

FILED

MAR 29 2010

DEPARTMENT OF REAL ESTATE

By L. Henry

KENNETH C. ESPELL, Counsel (SBN 178757)  
Department of Real Estate  
P. O. Box 187007  
Sacramento, CA 95818-7007

Telephone: (916) 227-0789  
-or- (916) 227-0868 (Direct)

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	H- 10892 SF
JAMES RICHARD HARDING,	)	
	)	<u>ACCUSATION</u>
Respondent.	)	
	)	

The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JAMES RICHARD HARDING, ("HARDING"), individually, and doing business as MARIN PROPERTY SERVICES ("MPS") is informed and alleges as follows:

1

At all times herein mentioned herein, HARDING was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a real estate broker and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

///

1  
2 At all times herein mentioned herein, HARDING was doing business as MPS, a  
3 d.b.a. registered by HARDING with the Department of Real Estate.

4  
5 At all times herein mentioned, HARDING engaged in the business of, acted in the  
6 capacity of, advertised, or assumed to act as a real estate broker within the State of California  
7 within the meaning of Sections 10131(a) and 10131(b) of the Code, including:

8 (a) The operation of MPS, a property management business wherein, on  
9 behalf of others, for compensation, or in expectation of compensation, Respondent offered to  
10 lease or rent, rented or leased, solicited listings of places for rent, and solicited for prospective  
11 tenants of real property or improvements thereon, and collected rents from real property or  
12 improvements thereon; and,

13 (b) The operation of a mortgage loan brokerage with the public wherein, on  
14 behalf of others, for compensation or in expectation of compensation, Respondent solicited  
15 lenders and borrowers for loans secured directly or collaterally by liens on real property, and  
16 wherein Respondent arranged, negotiated, processed, and consummated such loans.

17  
18 Beginning on November 4, 2008 and continuing off and on until January 6, 2009,  
19 an audit was conducted at HARDING's main office located at 540 Alameda Del Prado, Novato,  
20 California, wherein the auditor examined the records for the period of March 4, 2008 through  
21 January 6, 2009 (audit period).

22  
23 While acting as a real estate broker, as described in Paragraph 3 above and within  
24 the audit period, HARDING accepted or received funds in trust (trust funds) from or on behalf of  
25 borrowers, lenders, owners, tenants and others in connection with the leasing, renting, and  
26 collection of rents on real property or improvements thereon, and in connection with negotiating  
27 loans secured by real property, deposited or caused to be deposited those funds into one or more

1 bank accounts and thereafter from time to time made disbursement of said trust funds from  
2 accounts maintained by HARDING at the Novato, California branch of Bank of the West  
3 including: (1) "Marin Property Services Management Trust Account", account number 109-  
4 004341 (herein "Trust # 1"); Trust Account #1 was closed by HARDING on or about August 31,  
5 2008, and was replaced by, (2) "Marin Property Services" account, account number 109-017632  
6 (herein "Bank Account #1") as Trust # 1's replacement and successor trust account.

7 6

8 In the course of the activities described in Paragraph 5, in connection with the  
9 collection and disbursement of trust funds, a bank reconciliation was performed for Trust # 1 and  
10 as of August 30, 2007 there was a shortage \$8,887.42 in violation of Section 2832.1, Title 10,  
11 California Code of Regulations ("Regulations") and Section 10145 of the Code. In addition  
12 HARDING:

- 13 (a) Failed to properly designate Bank Account #1 as a trust account as  
14 required by Section 10145 of the Code and Section 2832 of the  
15 Regulations;
- 16 (b) Failed on at least three occasions to deposit rental receipts within three  
17 business days of receipt as required by Section 2832.1 of the  
18 Regulations and Section 10145 of the Code;
- 19 (c) Failed to maintain control records for Trust #1 and Bank Account  
20 #2 which identified from whom all trust funds were received as required  
21 by Section 2832.1 of the Regulations;
- 22 (d) On at least one occasion failed to record the disbursement of trust funds  
23 from Trust #1 in violation of Section 2832.1 of the Regulations;
- 24 (e) On at least three occasions failed to accurately record cash receipts  
25 collected from tenants as required by Section 2832.1 of the Regulations;
- 26 (f) Failed to maintain separate beneficiary records for Trust #1 for all  
27 whom trust funds were received as required by Section 2831.1 of the  
Regulations;

- 1 (g) Failed to reconcile the balance of all separate beneficiary records with the  
2 balance of all trust funds received and disbursed from Trust #1 as  
3 required by Section 2831.2 of the Regulations;
- 4 (h) Failed to obtain a fidelity bond coverage in an amount at least equal to the  
5 minimum amount of trust funds to which unlicensed employees had  
6 signature authority for Trust # 1 and Bank Account # 1 as  
7 required by Section 2834 of the Regulations;
- 8 (i) Failed to make available for inspection supporting invoices for repairs  
9 and/or construction work performed at the direction of HARDING upon  
10 rental properties managed by HARDING and for which trust funds were  
11 used to pay the invoices as required by Section 10148(a) of the Code; and,
- 12 (j) Failed to exercise reasonable supervision over the handling of the trust  
13 fund as required by Section 2725 of the Regulations.

14 7

15 The acts and/or omissions of HARDING as alleged above violate Sections 2725,  
16 2831.1, 2831.2, 2832, 2832.1, and 2834 of the Regulations and Sections 10145, and 10148 of the  
17 Code.

18 8

19 The acts and/or omissions of HARDING alleged above are grounds for discipline  
20 under Section 10177(d) of the Code.

21 SECOND CAUSE OF ACTION

22 9

23 Complainant refers to Paragraphs 1 through 8, above, and incorporates them  
24 herein by reference.

25 10

26 During the course of HARDING's management responsibilities, HARDING was  
27 responsible for the repairs to client's property including, but not limited to, the replacement of

1 water heaters, repairs to electrical and plumbing systems and repairs and improvements to  
2 decking, stairs and window casements. HARDING had a duty to his clients to assure that all  
3 repairs, construction and/or improvements performed by or at the direction of HARDING were  
4 performed in a workmanlike manner and that all required building permits were obtained at the  
5 time such activities were undertaken. However, on or about December 10, 2007, the owners of  
6 929 Scott Court, Novato, California were informed by the City of Novato that certain repairs  
7 completed by or at the direction of HARDING were completed without building permits.  
8 HARDING breached his duty to his clients by either failing to obtain the necessary building  
9 permits or by failing to confirm that the individuals hired by HARDING had obtained the  
10 necessary permits required to perform the repairs and/or improvements to 929 Scott Court. By  
11 failing to obtain the required permits, HARDING exposed his clients to additional fines and  
12 penalties for the unpermitted repairs and/or construction.

13 11

14 The acts and/or omissions of HARDING alleged in Paragraph, 10, above, are  
15 grounds for discipline under Sections 10177(d) and 10177(g) (negligence or incompetence in  
16 performing acts for which a real estate license is required) of the Code.

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

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9                    \_\_\_\_\_  
10                    E. J. HABERER II  
11                    Deputy Real Estate Commissioner

12 Dated at Oakland, California  
13 this 4th day of March, 2010.