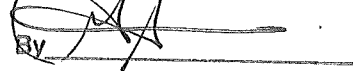


FILED

DEC 20 2013

BUREAU OF REAL ESTATE

By 

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

4 Telephone: (916) 227-0789
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8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) Case No. H-11410 SF
13 H.M.W. AND J.K. ENTERPRISES, INC. and) OAH No. 2012070977
14 JOSEPH KIN-CHUN KONG,) STIPULATION AND AGREEMENT
15 Respondents.)

16
17 It is hereby stipulated by and between Respondents H.M.W. AND J.K.
18 ENTERPRISES, INC. and JOSEPH KIN-CHUN KONG (collectively referred to herein as
19 "Respondents"), acting by and through Leslie Baxter, Esq., Counsel for Respondents, and the
20 Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for the Department of
21 Real Estate ("Department"), as follows for the purpose of settling and disposing of the
22 Accusation filed on June 13, 2012; in this matter:

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

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

4 3. Respondents filed a Notice of Defense pursuant to Section 11505 of
5 the Government Code for the purpose of requesting a hearing on the allegations in the
6 Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
7 Respondents acknowledge that Respondents understand that by withdrawing said Notice of
8 Defense, Respondents will thereby waive Respondents' right to require the Real Estate
9 Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested
10 hearing held in accordance with the provisions of the APA and that Respondents will waive
11 other rights afforded to Respondents in connection with the hearing, such as the right to present
12 evidence in defense of the allegations in the Accusation and the right to cross-examine
13 witnesses.

14 4. This Stipulation is based on the factual allegations contained in the
15 Accusation. In the interest of expedience and economy, Respondents choose not to contest these
16 factual allegations, but to remain silent and understand that, as a result thereof, these factual
17 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
18 forth below. The Commissioner shall not be required to provide further evidence to prove such
19 allegations.

20 5. This Stipulation and Respondents' decision not to contest the
21 Accusation are made for the purpose of reaching an agreed disposition in this proceeding and are
22 expressly limited to this proceeding and any other proceeding or case in which the Department,
23 the state or federal government, an agency of this state, or an agency of another state is involved.

24 6. It is understood by the parties that the Commissioner may adopt the
25 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and
26 sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"

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I.

The acts and omissions of Respondent H.M.W. AND J.K. ENTERPRISES, INC. as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent H.M.W. AND J.K. ENTERPRISES, INC. under the provisions of Sections 10176(e) and 10177(g) of the Code, in conjunction with Sections 10085, 10085.5, 10145, 10146, 10148, 10166.02, 10232.4, 10233(c), 10238(a), 10238(f), 10240(a), and 10241 of the Code and Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 2835, 2970, and 2972 of Title 10 of the California Code of Regulations (“the Regulations”).

II.

The acts and omissions of Respondent JOSEPH KIN-CHUN KONG as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent JOSEPH KIN-CHUN KONG under the provisions of Sections 10177(g) and 10177(h) and of the Code, in conjunction with Section 10159.2 of the Code and Section 2725 of the Regulations.

ORDER

I.

All licenses and licensing rights of Respondent H.M.W. AND J.K. ENTERPRISES, INC. (“Respondent”) 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 for two (2) years upon the following terms and conditions:

a. Respondent 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 occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in

///

1 his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
2 suspension. Should no such determination be made, the stay imposed herein shall become
3 permanent.

4 2. Thirty (30) days of said suspension shall be stayed, upon the condition that
5 Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
6 pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the suspension for a
7 total monetary penalty of \$1,500.00.

8 a. Said payment shall be in the form of a cashier's check or certified
9 check made payable to the Department of Real Estate. Said check must be delivered to the
10 Department prior to the effective date of the Decision in this matter.

11 b. No further cause for disciplinary action against the real estate
12 license of Respondent occurs within two (2) years from the effective date of the decision in this
13 matter.

14 c. If Respondent fails to pay the monetary penalty in accordance with
15 the terms and conditions of the Decision, the Commissioner may, without a hearing, order the
16 immediate execution of all or any part of the stayed suspension, in which event, Respondent
17 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
18 Department under the terms of this decision.

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

23 II.

24 1. All licenses and licensing rights of Respondent JOSEPH KIN-CHUN
25 KONG ("Respondent") under the Real Estate Law are suspended for a period of Sixty (60) days
26 from the effective date of this Order; provided, however, that:

27 ///

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

3 i. Respondent shall obey all laws, rules and regulations
4 governing the rights, duties and responsibilities of a real estate licensee in the State of
5 California; and,

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

12 b. Thirty (30) days of said suspension shall be stayed, upon the
13 condition that Respondent petitions pursuant to Section 10175.2 of the Code and pays a
14 monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the
15 suspension for a total monetary penalty of \$1,500.00.

16 i. Said payment shall be in the form of a cashier's check or
17 certified check made payable to the Department of Real Estate. Said check must be delivered to
18 the Department prior to the effective date of the Decision in this matter.

19 ii. No further cause for disciplinary action against the real
20 estate license of Respondent occurs within two (2) years from the effective date of the decision
21 in this matter.

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

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1 III.

2 1. Respondents H.M.W. AND J.K. ENTERPRISES, INC. and JOSEPH
3 KIN-CHUN KONG, ("Respondents") jointly and severally, shall pay the sum of \$8,723.41 for
4 the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall
5 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
6 The Commissioner may indefinitely suspend all licenses and licensing rights of Respondents
7 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
8 payment is not timely made as provided for herein, or as provided for in a subsequent
9 agreement between Respondents and the Commissioner. The suspension shall remain in effect
10 until payment is made in full or until Respondents enter into an agreement satisfactory to the
11 Commissioner to provide for payment, or until a decision providing otherwise is adopted
12 following a hearing held pursuant to this condition.

13 2. Respondents, jointly and severally, shall pay the Commissioner's costs,
14 not to exceed \$8,723.41, of any audit conducted pursuant to Section 10148 of the Code to
15 determine if Respondents have corrected the violations described in the Determination of
16 Issues, above, and any other violations found in the audit which led to this disciplinary action.
17 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
18 the estimated average hourly salary for all persons performing audits of real estate brokers, and
19 shall include an allocation for travel time to and from the auditor's place of work. Respondents
20 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
21 Commissioner detailing the activities performed during the audit and the amount of time spent
22 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
23 Commissioner may indefinitely suspend all licenses and licensing rights of Respondents under
24 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
25 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
26 suspension provided for in this paragraph shall be stayed.

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IV.

All licenses and licensing rights of Respondents H.M.W. AND J.K.

ENTERPRISES, INC. and JOSEPH KIN-CHUN KONG (“Respondents”) are indefinitely suspended unless or until Respondents, jointly and severally, pay the sum of \$2,996.50 for the Commissioner’s reasonable cost of the investigation and enforcement which led to this disciplinary action, and proof must be submitted prior to the effective date of this Order to prevent suspension of Respondents’ licenses pursuant to this condition. Said payment shall be in the form of a cashier’s check or certified check made payable to the Department of Real Estate.

V.

Respondents H.M.W. AND J.K. ENTERPRISES, INC. and JOSEPH KIN-CHUN

KONG (“Respondents”) shall remit via cash or check the amount of \$750.00 to Shao L. (“the Client”) as identified in paragraph 12(k) of the Accusation. Respondents’ due diligence in completing this remittance shall include at least one notice mailing and, if no claim is made by the Client upon the first notice, a follow-up notice mailing via certified mail to the last known address of the Client. Each such notice mailing shall include a means for the Client to claim, without cost to the Client, the cash or check repayment of the advance fee of \$750.00. Remittance funds that are not claimed by the Client as of December 31, 2013, shall be subject to the Unclaimed Property Law (Code of Civil Procedure Sections 1500 et seq.). Respondents shall provide proof satisfactory to the Commissioner, of having made said payment by January 31, 2014. If Respondents fail to provide such proof by January 31, 2014, the Commissioner may indefinitely suspend all licenses and license rights of Respondents until such proof is provided.

7-3-13
DATED

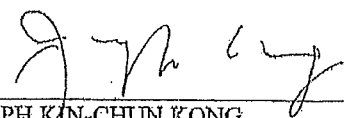


Annette E. Ferrante, Esq.,
Counsel for Department of Real Estate

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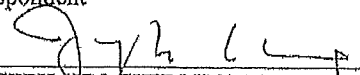
I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), 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 can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondents, to the Department at fax number (916) 227-9458. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

5/7/2013
DATED



JOSEPH KIN-CHUN KONG,
Respondent

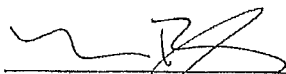
5/7/2013
DATED



JOSEPH KIN-CHUN KONG,
As Designated Officer of Respondent
H.M.W. AND J.K. ENTERPRISES, INC.

I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my clients accordingly.

5/7/2013
DATED

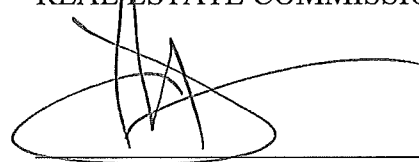


Leslie Baxter, Esq., Attorney for
Respondents H.M.W. AND J.K.
ENTERPRISES, INC. and
JOSEPH KIN-CHUN KONG

1 The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in
2 this matter as to Respondents H.M.W. AND J.K. ENTERPRISES, INC. and JOSEPH KIN-
3 CHUN KONG, and shall become effective at 12 o'clock noon on JAN 09 2014.

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5 IT IS SO ORDERED July 29, 2013.
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8 REAL ESTATE COMMISSIONER

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11 By: JEFFREY MASON
12 Chief Deputy Commissioner
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