

FILED

JAN 28 2013

DEPARTMENT OF REAL ESTATE

By *L. Jones*

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

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

POWERHOUSE PROPERTY
MANAGEMENT COMPANY INC., and
HERNANI TANO MENDOZA,

Respondents.

No. H-11460 SF

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between POWERHOUSE PROPERTY
MANAGEMENT COMPANY INC., and HERNANI TANO MENDOZA (Respondents),
represented by Joshua A. Rosenthal, and the Complainant, acting by and through Truly
Sughrue, Counsel for the Department of Real Estate (Department), as follows for the purpose
of settling and disposing the Accusation (Accusation) filed on September 19, 2012 in this
matter:

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

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

4 3. Respondents 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 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
7 acknowledge that they understand that by withdrawing said Notice of Defense they will thereby
8 waive their rights to require the Real Estate Commissioner (Commissioner) to prove the
9 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
10 APA, and that they will waive other rights afforded to them in connection with the hearing such
11 as the right to present evidence in defense of the allegations in the Accusation and the right to
12 cross-examine witnesses.

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

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

23 6. Respondents understand that by agreeing to this Stipulation and
24 Agreement, Respondents agrees to pay, pursuant to Section 10148 of the California Business
25 and Professions Code (Code), the cost of the audit, which resulted in the determination that
26 Respondents committed the trust fund violation(s) found in Paragraph I of the Determination of
27 Issues. The amount of said costs is \$3,290.72.

1 7. Respondents further understand that by agreeing to this Stipulation and
2 Agreement, the findings set forth below in the Determination of Issues become final, and that
3 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum
5 costs of said audit shall not exceed \$3,290.72.

6 8. Respondents understand that by agreeing to this Stipulation and
7 Agreement, Respondents agree to pay, pursuant to Section 10106 of the Code, the cost of the
8 investigation and enforcement which resulted in the determination that Respondents committed
9 the violation(s) found in the Determination of Issues. The amount of said costs is \$400.00.

10 9. It is understood by the parties that the Commissioner may adopt the
11 Stipulation and Agreement as his/her decision in this matter thereby imposing the penalty and
12 sanctions on the real estate licenses and license rights of Respondents as set forth in the below
13 "Order". In the event that the Commissioner in his/her discretion does not adopt the Stipulation
14 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a
15 hearing and proceeding on the Accusations under all the provisions of the APA and shall not be
16 bound by any admission or waiver made herein.

17 10. The Order or any subsequent Order of the Commissioner made pursuant to
18 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
19 administrative or civil proceedings by the Department with respect to any matters which were not
20 specifically alleged to be causes for action in Accusation H-11460 SF.

21 * * *

22 DETERMINATION OF ISSUES

23 By reason of the foregoing stipulations and waivers and solely for the purpose of
24 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
25 following determination of issues shall be made:
26
27

I

The acts and omissions of POWERHOUSE PROPERTY MANAGEMENT COMPANY INC. (POWERHOUSE) as described in the First Cause of Action of the Accusation are grounds for the suspension or revocation of POWERHOUSE's licenses and license rights under the following sections of the Code and Title 10 of the California Code of Regulations (Regulations):

(1) As to Paragraph 11(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

(2) As to Paragraph 11(b), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

(3) As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

(4) As to Paragraph 11(d), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations;

II

The acts and/or omissions of HERNANI TANO MENDOZA (MENDOZA) as described in the Second Cause of Action of the Accusation is cause for the suspension or revocation of MENDOZA's license and/or license rights under Section 10177(h) of the Code.

ORDER

I

All licenses and licensing rights of Respondent POWERHOUSE 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, upon the condition that Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to

1 Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total
2 monetary penalty of \$3,000.

3 a) Said payment shall be in the form of a cashier's check or certified check made payable to
4 the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered
5 to the Department prior to the effective date of the Order in this matter.

6 b) No further cause for disciplinary action against the Real Estate licenses of Respondent
7 occurs within two (2) years from the effective date of the decision in this matter.

8 c) If Respondent fails to pay the monetary penalty as provided above prior to the effective
9 date of this Order, the stay of the suspension shall be vacated as to that Respondent and
10 the order of suspension shall be immediately executed, under this Order, in which event
11 the said Respondent shall not be entitled to any repayment nor credit, prorated or
12 otherwise, for the money paid to the Department under the terms of this Order.

13 d) If Respondent pays the monetary penalty and any other moneys due under this Stipulation
14 and Agreement and if no further cause for disciplinary action against the real estate
15 license of said Respondent occurs within two (2) years from the effective date of this
16 Order, the entire stay hereby granted this Order, as to said Respondent only, shall become
17 permanent.

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

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

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

27 3) All licenses and licensing rights of POWERHOUSE are indefinitely suspended unless or

1 until Respondents pays the sum of \$400.00 for the Commissioner's reasonable cost of the
2 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
3 form of a cashier's check or certified check made payable to the Real Estate Fund.

4 4) Pursuant to Section 10148 of the Code, POWERHOUSE shall jointly and severally with
5 MENDOZA pay the sum of \$3,290.72 for the Commissioner's cost of the audit which led to this
6 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
7 invoice from the Commissioner. The Commissioner may suspend the Respondents license
8 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
9 payment is not timely made as provided for herein, or as provided for in a subsequent agreement
10 between the Respondents and the Commissioner. The suspension shall remain in effect until
11 payment is made in full or until Respondents enter into an agreement satisfactory to the
12 Commissioner to provide for payment, or until a decision providing otherwise is adopted
13 following a hearing held pursuant to this condition.

14 5) Pursuant to Section 10148 of the Business and Professions Code, POWERHOUSE shall
15 jointly and severally with MENDOZA pay the Commissioner's reasonable cost, not to exceed
16 \$3,290.72, for an audit to determine if Respondents have corrected the trust fund violation(s)
17 found in the Determination of Issues. In calculating the amount of the Commissioner's
18 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
19 performing audits of real estate brokers, and shall include an allocation for travel time to and
20 from the auditor's place of work. Respondents shall pay such cost within sixty (60) days of
21 receiving an invoice from the Commissioner detailing the activities performed during the audit
22 and the amount of time spent performing those activities. The Commissioner may suspend
23 Respondents license pending a hearing held in accordance with Section 11500, et seq., of the
24 Government Code, if payment is not timely made as provided for herein, or as provided for in a
25 subsequent agreement between Respondents and the Commissioner. The suspension shall
26 remain in effect until payment is made in full or until Respondents enter into an agreement
27 satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise

1 is adopted following a hearing held pursuant to this condition.

2 II

3 All licenses and licensing rights of Respondent MENDOZA under the Real Estate Law
4 are suspended for a period of sixty (60) days from the effective date of this Order, provided,
5 however, that;

6 1) Thirty (30) days of said suspension shall be stayed, upon the condition that Respondent
7 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
8 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty
9 of \$3,000.

10 a) Said payment shall be in the form of a cashier's check or certified check made payable to
11 the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered
12 to the Department prior to the effective date of the Order in this matter.

13 b) No further cause for disciplinary action against the Real Estate licenses of Respondent
14 occurs within two (2) years from the effective date of the decision in this matter.

15 c) If Respondent fails to pay the monetary penalty as provided above prior to the effective
16 date of this Order, the stay of the suspension shall be vacated as to that Respondent and
17 the order of suspension shall be immediately executed, under this Order, in which event
18 the said Respondent shall not be entitled to any repayment nor credit, prorated or
19 otherwise, for the money paid to the Department under the terms of this Order.

20 d) If Respondent pays the monetary penalty and any other moneys due under this Stipulation
21 and Agreement and if no further cause for disciplinary action against the real estate
22 license of said Respondent occurs within two (2) years from the effective date of this
23 Order, the entire stay hereby granted this Order, as to said Respondent only, shall become
24 permanent.

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

27 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 his discretion,
vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.
Should no such determination be made, the stay imposed herein shall become permanent.
- 3) All licenses and licensing rights of MENDOZA are indefinitely suspended unless or until
Respondents pays the sum of \$400.00 for the Commissioner's reasonable cost of the investigation
and enforcement which led to this disciplinary action. Said payment shall be in the form of a
cashier's check or certified check made payable to the Real Estate Fund.
- 4) Pursuant to Section 10148 of the Code, MENDOZA shall jointly and severally with
POWERHOUSE pay the sum of \$3,290.72 for the Commissioner's cost of the audit which led to
this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
invoice from the Commissioner. The Commissioner may suspend the Respondents license
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 the Respondents and the Commissioner. The suspension shall remain in effect until
payment is made in full or until Respondents enter 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) Pursuant to Section 10148 of the Code, MENDOZA shall jointly and severally with
POWERHOUSE pay the Commissioner's reasonable cost, not to exceed \$3,290.72, for an audit
to determine if Respondents have corrected the trust fund violation(s) found in the Determination
of Issues. 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
brokers, and shall include an allocation for travel time to and from the auditor's place of work.
Respondents shall pay such cost within sixty (60) days of receiving an invoice from the

1 Commissioner detailing the activities performed during the audit and the amount of time spent
2 performing those activities. The Commissioner may suspend Respondents license pending a
3 hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not
4 timely made as provided for herein, or as provided for in a subsequent agreement between
5 Respondents and the Commissioner. The suspension shall remain in effect until payment is
6 made in full or until Respondents enter into an agreement satisfactory to the Commissioner to
7 provide for payment, or until a decision providing otherwise is adopted following a hearing held
8 pursuant to this condition.

9 6) All licenses and licensing rights of MENDOZA are indefinitely suspended unless or until
10 Respondent provides proof satisfactory to the Commissioner, of having taken and successfully
11 completed the continuing education course on trust fund accounting and handling specified in
12 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this
13 requirement includes evidence that respondent has successfully completed the trust fund account
14 and handling continuing education course within 120 days prior to the effective date of the
15 Decision in this matter.

16 20-Nov-12
17 DATED

Truly S
TRULY SUGHRUE
Counsel for Complainant

19 I have read the Stipulation and Agreement, discussed it with my counsel, and its
20 terms are understood by me and are agreeable and acceptable to me. I understand that I am
21 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
22 intelligently and voluntarily waive those rights, including the right of requiring the
23 Commissioner to prove the allegations in the Accusations at a hearing at which I would have the
24 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
25 the charges.
26
27

1 November 16, 2012
2 DATED

Hernani T. Mendoza
3 , on behalf of
4 POWERHOUSE PROPERTY
5 MANAGEMENT COMPANY INC.
6 Respondent

7
8 November 16, 2012
9 DATED

Hernani Tano Mendoza
10 HERNANI TANO MENDOZA
11 Respondent

12 ***

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

15 11-19-12
16 DATED

JOSHUA A. ROSENTHAL
17 Attorney for Respondents

18 ***

19 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
20 shall become effective at 12 o'clock noon on FEB 19 2013

21 IT IS SO ORDERED 4/17/13

22 Real Estate Commissioner

Awet P. Kidane

23 By AWET P. KIDANE
24 Chief Deputy Commissioner