

FILED

DEC 26 2013

BUREAU OF REAL ESTATE  
P. O. Box 137007  
Sacramento, CA 95813-7007

BUREAU OF REAL ESTATE

By B. Contreras

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )

NO. H-11483 SF

RMRF ENTERPRISES, INC., )

A Corporation, and )

DANIEL SHAW, )

STIPULATION AND AGREEMENT  
IN SETTLEMENT AND ORDER

Respondents. )

It is hereby stipulated by and between RMRF ENTERPRISES, INC. (herein "RMRF"), and DANIEL SHAW (herein "SHAW") (herein collectively "Respondents") individually and jointly, by and through Phillip M. Adleson, attorney of record herein for Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on November 28, 2012 and the First Amended Accusation filed on April 10, 2013 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 First Amended 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 in Settlement and Order.

2. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA, and the First Amended Accusation filed by the Department

1 in this proceeding.

2 3. Notices of Defense were filed on December 20, 2012 by Respondents pursuant  
3 to Section 11505 of the Government Code for the purpose of requesting a hearing on the  
4 allegations in the First Amended Accusation. Respondents hereby freely and voluntarily  
5 withdraw said Notices of Defense. Respondents acknowledge that they understand that by  
6 withdrawing said Notices of Defense, they will thereby waive their rights to require the Real  
7 Estate Commissioner (herein "Commissioner") to prove the allegations in the First Amended  
8 Accusation at a contested hearing held in accordance with the provisions of the APA and that  
9 they will waive other rights afforded to them in connection with the hearing such as the right to  
10 present evidence in defense of the allegations in the First Amended Accusation and the right to  
11 cross-examine witnesses.

12 4. Respondents, pursuant to the limitations set forth below, hereby admit that the  
13 factual allegations pertaining to them in the Accusation filed in this proceeding are true and  
14 correct and the Real Estate Commissioner shall not be required to provide further evidence of  
15 such allegations.

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

24 6. The Order or any subsequent Order of the Commissioner made pursuant to this  
25 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar  
26 to any further administrative or civil proceedings by the Department with respect to any matters  
27 which were not specifically alleged to be causes for First Amended Accusation in this

1 proceeding.

2 7. Respondents understand that by agreeing to this Stipulation and Agreement in  
3 Settlement and Order, Respondents jointly and severally agree to pay, pursuant to Section 10148  
4 of the California Business and Professions Code (herein "Code"), the cost of the audit which  
5 resulted in the determination that Respondents committed the trust fund violations found in  
6 Paragraph I, below, of the Determination of Issues. The amount of said costs is \$6,213.00.

7 8. Respondents understand that by agreeing to this Stipulation and Agreement in  
8 Settlement and Order, the findings set forth below in the Determination of Issues become final,  
9 and that the Commissioner may charge said Respondents, jointly and severally, for the costs of  
10 any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund  
11 violation(s) found in Paragraph I, below, of the Determination of Issues have been corrected.  
12 The maximum costs of said audit shall not exceed \$6,213.00.

13 9. Respondents further understand that by agreeing to this Stipulation and  
14 Agreement in Settlement and Order, Respondents agree to pay, pursuant to Section 10106(a) of  
15 the Code, investigative and enforcement costs of \$4,326.00 which led to this disciplinary action.

16 DETERMINATION OF ISSUES

17 I

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

- 22 (a) as to Paragraph 8(a) and Respondent RMRF under Section 2834 of  
23 the Regulations in conjunction with Section 10177(d) of the Code;  
24 (b) as to Paragraph 8(b) and Respondent RMRF under Section 10234(c)  
25 of the Code in conjunction with Section 10177(d) of the Code;  
26 (c) as to Paragraph 8(c) and Respondent RMRF under Section 10232.4  
27 of the Code in conjunction with Section 10177(d) of the Code;

- 1 (d) as to Paragraph 8(d) and Respondent RMRF under Section  
2 10238(h)(3) of the Code in conjunction with Section 10177(d) of  
3 the Code;  
4 (e) as to Paragraph 9 and Respondent SHAW under Sections 10159.2  
5 and 10177(h) of the Code, and Section 2725 of the Regulations in  
6 conjunction with Section 10177(d) of the Code; and  
7 (f) as to Paragraph 10 and Respondent SHAW under Section 10186.2 of  
8 the Code in conjunction with Section 10177(d) of the Code.

9 ORDER

10 I

11 All licenses and licensing rights of Respondent RMRF under the Real Estate Law  
12 are suspended for a period of sixty (60) days from the effective date of this Order; provided,  
13 however, that:

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

- 16 (a) Respondent RMRF shall obey all laws, rules and regulations  
17 governing the rights, duties and responsibilities of a real estate  
18 licensee in the State of California; and,  
19 (b) That no final subsequent determination be made, after hearing or  
20 upon stipulation, that cause for disciplinary action occurred  
21 within two (2) years from the effective date of this Order. Should  
22 such a determination be made, the Commissioner may, in his  
23 discretion, vacate and set aside the stay order and reimpose all  
24 or a portion of the stayed suspension. Should no such  
25 determination be made, the stay imposed herein shall become  
26 permanent.  
27

1                   2. The remaining thirty (30) days of said sixty (60) days suspension shall be  
2 stayed upon the condition that Respondent RMRF petition pursuant to Section 10175.2 of the  
3 Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100.00  
4 for each day of the suspension for a total monetary penalty of \$3,000.00:

5                   (a) Said payment shall be in the form of a cashier's check or certified  
6 check made payable to the Recovery Account of the Real Estate  
7 Fund. Said check must be received by the Department prior to the  
8 effective date of the Order in this matter.

9                   (b) No further cause for disciplinary action against the Real Estate  
10 licenses of Respondent RMRF occurs within two (2) years from  
11 the effective date of the Order in this matter.

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

19                   (d) If Respondent RMRF pays the monetary penalty and any other  
20 moneys due under this Stipulation and Agreement in Settlement  
21 and Order and if no further cause for disciplinary action against the  
22 real estate license of Respondent RMRF occurs within two (2)  
23 years from the effective date of this Order, the entire stay hereby  
24 granted under Paragraph I of this Order, as to Respondent RMRF,  
25 shall become permanent.  
26  
27

1                   3. Respondents RMRF and SHAW understand that by agreeing to this Stipulation  
2 and Agreement in Settlement and Order, Respondents RMRF and SHAW, jointly and severally  
3 agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the  
4 determination that Respondents RMRF and SHAW committed the trust fund violation(s) found  
5 in Paragraph I, above, of the Determination of Issues. The amount of said cost is \$6,213.00.  
6 Respondents RMRF and SHAW shall pay such cost within sixty (60) days of receiving an  
7 invoice therefore from the Commissioner. If Respondents RMRF and SHAW fail to pay such  
8 cost within the sixty (60) days, the Commissioner may in his discretion indefinitely suspend all  
9 licenses and licensing rights of Respondent RMRF under the Real Estate Law until payment is  
10 made in full or until Respondent RMRF enters into an agreement satisfactory to the  
11 Commissioner to provide for payment. Upon payment in full, the indefinite suspension provided  
12 in this paragraph shall be stayed.

13                   4. Respondents RMRF and SHAW, jointly and severally, shall pay the  
14 Commissioner's costs, not to exceed \$6,213.00, of any audit conducted pursuant to Section  
15 10148 of the Code to determine if Respondents RMRF and SHAW have corrected the  
16 violations described in Paragraph I of the Determination of Issues, above. In calculating the  
17 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated  
18 average hourly salary for all persons performing audits of real estate brokers, and shall include  
19 an allocation for travel time to and from the auditor's place of work. Respondents RMRF and  
20 SHAW 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 RMRF and SHAW fail to pay such cost within the  
23 sixty (60) days, the Commissioner may in his discretion indefinitely suspend all licenses and  
24 licensing rights of Respondent RMRF under the Real Estate Law until payment is made in full or  
25 until Respondent RMRF enters into an agreement satisfactory to the Commissioner to provide  
26 for payment. Upon payment in full, the indefinite suspension provided in this paragraph shall be  
27 stayed.



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

4 3. The remaining thirty (30) days of said sixty (60) days suspension shall be  
5 stayed upon the condition that Respondent SHAW petition pursuant to Section 10175.2 of the  
6 Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100.00  
7 for each day of the suspension for a total monetary penalty of \$3,000.00:

- 8 (a) Said payment shall be in the form of a cashier's check or certified  
9 check made payable to the Recovery Account of the Real Estate Fund.  
10 Said check must be received by the Department prior to the effective  
11 date of the Order in this matter.
- 12 (b) No further cause for disciplinary action against the Real Estate licenses  
13 of Respondent SHAW occurs within two (2) years from the effective  
14 date of the Order in this matter.
- 15 (c) If Respondent SHAW fails to pay the monetary penalty as provided  
16 above prior to the effective date of this Order, the stay of the  
17 suspension shall be vacated as to Respondent SHAW and the order  
18 of suspension shall be immediately executed, under this Paragraph II  
19 of this Order, in which event Respondent SHAW shall not be  
20 entitled to any repayment nor credit, prorated or otherwise, for the  
21 money paid to the Department under the terms of this Order.
- 22 (d) If Respondent SHAW pays the monetary penalty and any other moneys  
23 due under this Stipulation and Agreement in Settlement and if no  
24 further cause for disciplinary action against the real estate license of  
25 Respondent SHAW occurs within two (2) years from the effective date  
26



1 of this Order, the entire stay hereby granted under Paragraph II of this  
2 Order, as to Respondent SHAW, shall become permanent.

3 4. Respondents SHAW and RMRF understand that by agreeing to this  
4 Stipulation and Agreement in Settlement and Order, Respondents SHAW and RMRF, jointly and  
5 severally agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which  
6 resulted in the determination that Respondents SHAW and RMRF committed the trust fund  
7 violation(s) found in Paragraph I, above, of the Determination of Issues. The amount of said cost  
8 is \$6,213.00. Respondents RMRF and SHAW shall pay such cost within sixty (60) days of  
9 receiving an invoice therefore from the Commissioner. If Respondents RMRF and SHAW fail to  
10 pay such cost within the sixty (60) days, the Commissioner may in his discretion indefinitely  
11 suspend all licenses and licensing rights of Respondent SHAW under the Real Estate Law until  
12 payment is made in full or until Respondent SHAW enters into an agreement satisfactory to the  
13 Commissioner to provide for payment. Upon payment in full, the indefinite suspension provided  
14 in this paragraph shall be stayed.

15 5. Respondents SHAW and RMRF, jointly and severally, shall pay the  
16 Commissioner's costs, not to exceed \$6,213.00, of any audit conducted pursuant to Section  
17 10148 of the Code to determine if Respondents SHAW and RMRF have corrected the violations  
18 described in Paragraph I of the Determination of Issues, above. In calculating the amount of the  
19 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary  
20 for all persons performing audits of real estate brokers, and shall include an allocation for travel  
21 time to and from the auditor's place of work. Respondents SHAW and RMRF shall pay such  
22 cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing  
23 the activities performed during the audit and the amount of time spent performing those  
24 activities. If Respondents SHAW and RMRF fail to pay such cost within the sixty (60) days,  
25 the Commissioner may in his discretion indefinitely suspend all licenses and licensing rights of  
26 Respondent SHAW under the Real Estate Law until payment is made in full or until Respondent  
27

1 SHAW enters into an agreement satisfactory to the Commissioner to provide for payment. Upon  
2 payment in full, the indefinite suspension provided in this paragraph shall be stayed.

3 6. Respondents RMRF and SHAW, jointly and severally, shall pay the sum of  
4 \$4,326.00 for the Commissioner's investigative and enforcement costs, pursuant to Section  
5 10106(a) of the Code, of the investigation and enforcement which led to this disciplinary action.  
6 Said payment shall be in the form of a cashier's check or certified check made payable to the  
7 Real Estate Fund. Said check must be received by the Department prior to the effective date of  
8 the Order in this matter. If Respondent fails to satisfy this condition, the stay of the suspension  
9 shall be vacated and the order of suspension shall be immediately executed indefinitely until  
10 payment is made in full.

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

16  
17 12-4-13

18 DATED

19   
20 MARY F. CLARKE, Counsel  
21 DEPARTMENT OF REAL ESTATE

22 \* \* \*

23 I have read the Stipulation and Agreement in Settlement and Order and have  
24 discussed it with my attorney and its terms are understood by me and are agreeable and  
25 acceptable to me. I understand that I am waiving rights given to me by the California APA  
26 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government  
27 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of  
requiring the Commissioner to prove the allegations in the First Amended Accusation at a  
hearing at which I would have the right to cross-examine witnesses against me and to present

1 evidence in defense and mitigation of the charges.

3 RMRF ENTERPRISES, INC., Respondent

5 11-19-2013

6 DATED

By:

DANIEL SHAW  
Designated Officer Broker

10 11-19-2013

11 DATED

DANIEL SHAW  
Respondent

14 \* \* \*

16 I have reviewed the Stipulation and Agreement in Settlement and Order as to form  
17 and content and have advised my clients accordingly.

20 11-19-2013


21 DATED

PHILLIP M. ADLESON  
Attorney for Respondents

24 \* \* \*

25 The foregoing Stipulation and Agreement in Settlement and Order is hereby

26 ///

1 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on  
2 JAN 27 2014  
3  
4 IT IS SO ORDERED DEC 23 2013  
5  
6 REAL ESTATE COMMISSIONER  
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8  
9 By: JEFFREY MASON  
10 Chief Deputy Commissioner  
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