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MAY 16 2013

DEPARTMENT OF REAL ESTATE

By R. J. [Signature]

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

Telephone: (916) 227-0781

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

HARBOR BAY REALTY INC., and
DENNIS GEORGE PAGONES,

Respondents.

No. H-11500 SF

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between HARBOR BAY REALTY INC., and DENNIS GEORGE PAGONES (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.

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

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

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

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

6. Respondents understand that by agreeing to this Stipulation and Agreement, Respondents agrees to pay, pursuant to Section 10148 of the California Business and Professions Code (Code), the cost of the audit, which resulted in the determination that Respondents committed the trust fund violation(s) found in Paragraph I of the Determination of Issues. The amount of said costs is \$5,357.65.

7. Respondents further understand that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to

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1 Section 10148 of the Code to determine if the violations have been corrected. The maximum
2 costs of said audit shall not exceed \$5,357.65.

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

10 9. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Department with respect to any matters which were not
13 specifically alleged to be causes for action in Accusation H-11500 SF.

* * *

14 DETERMINATION OF ISSUES

15
16 By reason of the foregoing stipulations and waivers and solely for the purpose of
17 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
18 following determination of issues shall be made:

I

19
20 The acts and omissions of HARBOR BAY REALTY INC. (HBRI) as described
21 in the First Cause of Action of the Accusation are grounds for the suspension or revocation of
22 HBRI's licenses and license rights under the following sections of the Code and Title 10 of the
23 California Code of Regulations (Regulations):

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

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

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

3 II

4 The acts and/or omissions of DENNIS GEORGE PAGONES (PAGONES) as
5 described in the Second Cause of Action of the Accusation is cause for the suspension or
6 revocation of PAGONES' license and/or license rights under Section 10177(h) of the Code.

7 * * *

8 ORDER

9 I

10 All licenses and licensing rights of Respondent HBRI under the Real Estate Law
11 are suspended for a period of forty-five (45) days from the effective date of this Order; provided,
12 however, that:

13 1) Fifteen (15) days of said suspension shall be stayed, upon the condition that HBRI petition
14 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
15 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary
16 penalty of \$1,500.

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

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

22 c) If Respondent fails to pay the monetary penalty as provided above prior to the effective
23 date of this Order, the stay of the suspension shall be vacated as to that Respondent and
24 the order of suspension shall be immediately executed, under this Order, in which event
25 the said Respondent shall not be entitled to any repayment nor credit, prorated or
26 otherwise, for the money paid to the Department under the terms of this Order.
27

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

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

a) HBRI 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.

II

All licenses and licensing rights of Respondent PAGONES under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Order; provided, however, that:

1) Fifteen (15) days of said suspension shall be stayed, upon the condition that PAGONES petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty of \$1,500.

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

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

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- 1 c) If Respondent fails to pay the monetary penalty as provided above prior to the effective
2 date of this Order, the stay of the suspension shall be vacated as to that Respondent and
3 the order of suspension shall be immediately executed, under this Order, in which event
4 the said Respondent shall not be entitled to any repayment nor credit, prorated or
5 otherwise, for the money paid to the Department under the terms of this Order.
- 6 d) If Respondent pays the monetary penalty and any other moneys due under this Stipulation
7 and Agreement and if no further cause for disciplinary action against the real estate
8 license of said Respondent occurs within two (2) years from the effective date of this
9 Order, the entire stay hereby granted this Order, as to said Respondent only, shall become
10 permanent.
- 11 2) Fifteen (15) days of said suspension shall be stayed for two (2) years upon the following
12 terms and conditions:
- 13 a) PAGONES shall obey all laws, rules and regulations governing the rights, duties and
14 responsibilities of a real estate licensee in the State of California; and,
- 15 b) That no final subsequent determination be made, after hearing or upon stipulation, that
16 cause for disciplinary action occurred within two (2) years from the effective date of this
17 Order. Should such a determination be made, the Commissioner may, in his discretion,
18 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.
19 Should no such determination be made, the stay imposed herein shall become permanent.
- 20 3) All licenses and licensing rights of PAGONES are indefinitely suspended unless or until
21 Respondent provides proof satisfactory to the Commissioner, of having taken and successfully
22 completed the continuing education course on trust fund accounting and handling specified in
23 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this
24 requirement includes evidence that respondent has successfully completed the trust fund account
25 and handling continuing education course within 120 days prior to the effective date of the
26 Decision in this matter.
- 27 4) PAGONES shall, within six (6) months from the effective date of this Decision, take and

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1 pass the Professional Responsibility Examination administered by the Department including the
2 payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the
3 Commissioner may order suspension of the license until Respondent passes the examination.

4 III

5 1) All licenses and licensing rights of Respondents are indefinitely suspended unless or until
6 Respondents submit proof satisfactory to the Commissioner of having cured the shortage alleged
7 in Paragraph 11(a) of the Accusation. If Respondents fail to satisfy this condition, Respondents
8 license shall be suspended until Respondents present proof that Respondents have cured the trust
9 fund shortage.

10 2) Pursuant to Section 10148 of the Code, Respondents shall jointly and severally pay the sum of
11 \$5,357.65 for the Commissioner's cost of the audit which led to this disciplinary action.
12 Respondents shall pay such cost within sixty (60) days of receiving an invoice from the
13 Commissioner. The Commissioner may suspend the Respondents license pending a hearing held
14 in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made
15 as provided for herein, or as provided for in a subsequent agreement between the Respondents
16 and the Commissioner. The suspension shall remain in effect until payment is made in full or
17 until Respondents enter into an agreement satisfactory to the Commissioner to provide for
18 payment, or until a decision providing otherwise is adopted following a hearing held pursuant to
19 this condition.

20 3) Pursuant to Section 10148 of the Code, Respondents shall jointly and severally pay the
21 Commissioner's reasonable cost, not to exceed \$5,357.65, for an audit to determine if
22 Respondents have corrected the trust fund violation(s) found in the Determination of Issues. In
23 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
24 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
25 include an allocation for travel time to and from the auditor's place of work. Respondents shall
26 pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the
27 activities performed during the audit and the amount of time spent performing those activities.

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

8
9 28-March-13

10 DATED

11 Jed S.
12 TRULY SUGHRUE
13 Counsel for Complainant

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

21 3/27/13
22 DATED

23 Dennis G. Pagones
24 Dennis George Pagones, on behalf of
25 HARBOR BAY REALTY INC.
26 Respondent

27 3/27/13
DATED

Dennis G. Pagones
DENNIS GEORGE PAGONES
Respondent

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

3-27-12
DATED

JOSHUA A. ROSENTHAL
Attorney for Respondents

The foregoing Stipulation and Agreement is hereby adopted as my Decision and
shall become effective at 12 o'clock noon on JUN 05 2013.

IT IS SO ORDERED Apr. 23, 2013

Real Estate Commissioner

Jeffrey Mason

By: Jeffrey Mason
Chief Deputy Commissioner