

FILED

JAN 15 2015

BUREAU OF REAL ESTATE

By S. Black

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

Telephone: (916) 227-0781

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

THE HERSH MANAGEMENT COMPANY  
and HAROLD DAVIS,

Respondents.

No. H-11603 SF

STIPULATION AND  
AGREEMENT

It is hereby stipulated by and between THE HERSH MANAGEMENT COMPANY and HAROLD DAVIS (Respondents), represented by Mark J. Solomon, and the Complainant, acting by and through Truly Sughrue, Counsel for the Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing the Accusation (Accusation) filed on October 23, 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 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 Bureau in this proceeding.

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

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

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

20                   6.       Respondents understand that by agreeing to this Stipulation and  
21 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business  
22 and Professions Code (Code), the cost of the audit, which resulted in the determination that  
23 Respondents committed the trust fund violation(s) found in the Determination of Issues. The  
24 amount of said costs is \$6,077.65.

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

1 Section 10148 of the Code to determine if the violations have been corrected. The maximum  
2 costs of said audit shall not exceed \$6,077.65.

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 Accusation 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 Bureau with respect to any matters which were not  
13 specifically alleged to be causes for action in Accusation H-11603 SF.

14 \* \* \*

15 DETERMINATION OF ISSUES

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:

19 I

20 The acts and omissions of Respondents as described in the First  
21 Cause of Action of the Accusation are grounds for the suspension or revocation of Respondents'  
22 licenses and license rights under the following sections of the Code and Title 10 of the  
23 California Code of:

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

26 (2) As to Paragraph 11(b), under Section 10177(d) of the Code in  
27 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

1 (3) As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction  
2 with Section 2834 of the Regulations;

3 (4) As to Paragraph 11(d), under Section 10177(d) of the Code in  
4 conjunction with Section 2831 of the Regulations;

5 (5) As to Paragraph 11(e), under Section 10177(d) of the Code in conjunction  
6 with Section 2831.1 of the Regulations; and

7 (6) As to Paragraph 11(f), under Section 10177(d) of the Code in conjunction  
8 with Section 10159.5 of the Code and Section 2731 of the Regulations.

9 II

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

13 \* \* \*

14 ORDER

15 I

16 All licenses and licensing rights of Respondent THE HERSH MANAGEMENT  
17 COMPANY (HERSH) under the Real Estate Law are revoked; provided, however, a restricted  
18 real estate corporate license shall be issued to Respondent pursuant to Section 10156.5 of the  
19 Code if HERSH makes application therefor and pays to the Bureau the appropriate fee for the  
20 restricted license within 90 days from the effective date of this Decision. The restricted license  
21 issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and  
22 to the following limitations, conditions and restrictions imposed under authority of Section  
23 10156.6 of that Code:

24 1. The restricted license issued to HERSH may be suspended prior to hearing  
25 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that  
26 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
27

1 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
2 license.

3 2. HERSH shall not be eligible to apply for the issuance of an unrestricted  
4 real estate license nor for removal of any of the conditions, limitations or restrictions of a  
5 restricted license until two (2) years have elapsed from the effective date of this Decision.

6 II

7 All licenses and licensing rights of Respondent DAVIS under the Real Estate Law  
8 are revoked; provided, however, a restricted real estate broker license shall be issued to  
9 Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefor  
10 and pays to the Bureau the appropriate fee for the restricted license within 90 days from the  
11 effective date of this Decision. The restricted license issued to Respondent shall be subject to all  
12 of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and  
13 restrictions imposed under authority of Section 10156.6 of that Code:

14 1. The restricted license issued to DAVIS may be suspended prior to hearing  
15 by Order of the Commissioner in the event of Respondent's conviction or plea of nolo contendere  
16 to a crime which is substantially related to Respondent's fitness or capacity as a real estate  
17 licensee.

18 2. The restricted license issued to DAVIS may be suspended prior to hearing  
19 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that  
20 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
21 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
22 license.

23 3. DAVIS shall not be eligible to apply for the issuance of an unrestricted  
24 real estate license nor for removal of any of the conditions, limitations or restrictions of a  
25 restricted license until two (2) years have elapsed from the effective date of this Decision.

26 4. DAVIS shall, within nine (9) months from the effective date of this Order,  
27 present evidence satisfactory to the Commissioner that Respondent has, since the most recent

1 issuance of an original or renewal real estate license, taken and successfully completed the  
2 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
3 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate  
4 license shall automatically be suspended until Respondent presents evidence satisfactory to the  
5 Commissioner of having taken and successfully completed the continuing education  
6 requirements. Proof of completion of the continuing education courses must be delivered to the  
7 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

8           5. All licenses and licensing rights of DAVIS are indefinitely suspended  
9 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and  
10 successfully completed the continuing education course on trust fund accounting and handling  
11 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions  
12 Code. Proof of satisfaction of this requirement includes evidence that Respondent has  
13 successfully completed the trust fund accounting and handling continuing education course, no  
14 earlier than July 1, 2014. Proof of completion of the trust fund accounting and handling course  
15 must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento,  
16 CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Order.

### 17 III

18           1. Pursuant to Section 10148 of the Code, Respondents shall pay the sum of  
19 \$6,077.65 for the Commissioner's cost of the audit which led to this disciplinary action.  
20 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the  
21 Commissioner. Payment of audit costs should not be made until Respondents receive the  
22 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein,  
23 Respondents' real estate licenses shall automatically be suspended until payment is made in full,  
24 or until a decision providing otherwise is adopted following a hearing held pursuant to this  
25 condition.

26           2. Pursuant to Section 10148 of the Code, Respondents shall pay the  
27 Commissioner's reasonable cost, not to exceed \$6,077.65, for an audit to determine if

1 Respondents have corrected the violation(s) found in the Determination of Issues. In calculating  
2 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated  
3 average hourly salary for all persons performing audits of real estate brokers, and shall include an  
4 allocation for travel time to and from the auditor's place of work. Respondents shall pay such  
5 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of  
6 the audit costs should not be made until Respondents receive the invoice. If Respondent fails to  
7 satisfy this condition in a timely manner as provided for herein, Respondent real estate license  
8 shall automatically be suspended until payment is made in full, or until a decision providing  
9 otherwise is adopted following a hearing held pursuant to this condition.

10 8-Dec-14  
11 DATED

Truly Sughrue  
TRULY SUGHRUE  
Counsel for Complainant

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

20 12-2-14  
21 DATED

Harold Davis  
Harold Davis, on behalf of  
THE HERSH MANAGEMENT  
COMPANY  
Respondent

22  
23  
24 12-2-14  
25 DATED

Harold Davis  
HAROLD DAVIS  
Respondent

26  
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1 I have reviewed the Stipulation and Agreement as to form and content and have  
2 advised my client accordingly.

3  
4 12/2/14  
5 DATED

M. J. Solomon  
6 MARK J. SOLOMON  
7 Attorney for Respondents

8 \* \* \*

9 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
10 shall become effective at 12 o'clock noon on FEB 05 2015

11 IT IS SO ORDERED

JAN 09 2015

12  
13 Real Estate Commissioner  
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15 By: JEFFREY MASON  
16 Chief Deputy Commissioner  
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