

1 Bureau of Real Estate
2 P.O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8672

FILED
JUL 29 2015
BUREAU OF REAL ESTATE
By L. Frost

5
6
7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 CWP PROPERTY MANAGEMENT INC.)
14 and ROBERT DONALDSON WINKLER,)
Respondents.)

No. H-11780 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between CWP PROPERTY MANAGEMENT
16 INC., represented by Adam S. Gruen, and ROBERT DONALDSON WINKLER (collectively
17 "Respondents"), and the Complainant, acting by and through Truly Sughrue, Counsel for the
18 Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing the
19 Accusation filed on December 8, 2014 in this matter:

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

25 2. Respondents have received, read, and understand the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Bureau in this proceeding.
27

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 agrees 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 Paragraph I of the Determination of
24 Issues. The amount of said costs is \$6,035.77.

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 Respondent 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 \$6,035.77.

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 Bureau of Real Estate with respect to any matters
13 which were not specifically alleged in Accusation H-11780 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 CWP PROPERTY MANAGEMENT INC. (CWP) as
21 described in the First Cause of Action of the Accusation are grounds for the suspension or
22 revocation of CWP's licenses and license rights under the following sections of the Code and
23 Title 10 of the 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 (2) As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction
27 with Section 10145 of the Code and Section 2832 of the Regulations;

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

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

5 (5) As to Paragraph 12(a), under Section 10177(d) of the Code in conjunction
6 with 2726 of the Regulations; and

7 (6) As to Paragraph 12(b), under Section 10177(d) of the Code in
8 conjunction with Section 10140.6 of the Code and Section 2773 of the Regulations.

9 II

10 The acts and/or omissions of CWP as described in the Second Cause of Action of
11 the Accusation is cause for the suspension or revocation of CWP's license and/or license rights
12 under Section 10130 of the Code in conjunction with Section 10177(d) of the Code.

13 III

14 The acts and/or omissions of ROBERT DONALDSON WINKLER (WINKLER)
15 as described in the Third Cause of Action of the Accusation is cause for the suspension or
16 revocation of WINKLER's license and/or license rights under Section 10177(h) of the Code.

17 * * *

18 ORDER

19 I

20 All licenses and licensing rights of Respondent CWP under the Real Estate Law
21 are suspended for a period of thirty (30) days from the effective date of this Order; provided,
22 however, that, thirty (30) days of said suspension shall be stayed for one (1) year upon the
23 following terms and conditions:

24 a) CWP shall obey all laws, rules and regulations governing the rights, duties and
25 responsibilities of a real estate licensee in the State of California; and,

26 b) That no final subsequent determination be made, after hearing or upon stipulation, that
27 cause for disciplinary action occurred within one (1) year from the effective date of this

1 Order. Should such a determination be made, the Commissioner may, in his discretion,
2 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.
3 Should no such determination be made, the stay imposed herein shall become permanent.
4

II

5 1) All licenses and licensing rights of Respondent WINKLER under the Real Estate Law are
6 suspended for a period of thirty (30) days from the effective date of this Order; provided,
7 however, that, thirty (30) days of said suspension shall be stayed for one (1) year upon the
8 following terms and conditions:

9 a) WINKLER shall obey all laws, rules and regulations governing the rights, duties and
10 responsibilities of a real estate licensee in the State of California; and,

11 b) That no final subsequent determination be made, after hearing or upon stipulation, that
12 cause for disciplinary action occurred within one (1) year from the effective date of this
13 Order. Should such a determination be made, the Commissioner may, in his discretion,
14 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.
15 Should no such determination be made, the stay imposed herein shall become permanent.

16 2) All licenses and licensing rights of WINKLER are indefinitely suspended unless or until
17 Respondent provides proof satisfactory to the Commissioner, of having taken and successfully
18 completed the continuing education course on trust fund accounting and handling specified in
19 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these
20 requirements includes evidence that Respondent has successfully completed the trust fund
21 account and handling continuing education courses, no earlier than 120 days prior to the effective
22 date of the Order in this matter. Proof of completion of the trust fund accounting and handling
23 course must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,
24 Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Order.

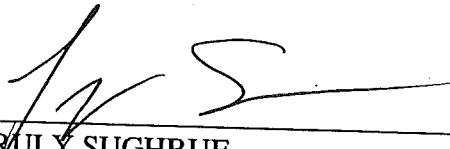
III

26 1) Pursuant to Section 10148 of the Code, Respondents shall pay the sum of \$6,035.77 for the
27 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay

1 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
2 Payment of audit costs should not be made until Respondents receives the invoice. If
3 Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents'
4 real estate licenses shall automatically be suspended until payment is made in full, or until a
5 decision providing otherwise is adopted following a hearing held pursuant to this condition.

6 2) Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's reasonable
7 cost, not to exceed \$6,035.77, for an audit to determine if Respondents have corrected the
8 violation(s) found in the Determination of Issues. In calculating the amount of the
9 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
10 for all persons performing audits of real estate brokers, and shall include an allocation for travel
11 time to and from the auditor's place of work. Respondents shall pay such cost within sixty (60)
12 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should
13 not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition
14 in a timely manner as provided for herein, Respondents' real estate licenses shall automatically be
15 suspended until payment is made in full, or until a decision providing otherwise is adopted

16
17 8-June-15
18 DATED _____

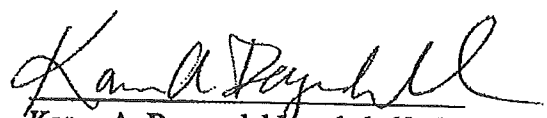
17 
18 _____
19 TRULY SUGHRUE
20 Counsel for Complainant

21 ***

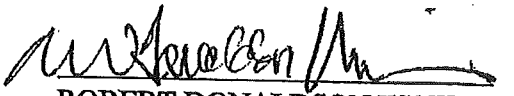
22 I have read the Stipulation and Agreement, and its terms are understood by me
23 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the
24 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive
25 those rights, including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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

MAY 21, 2015
DATED

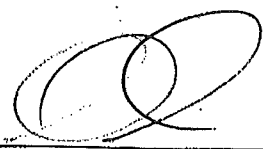

Karen A. Bergendahl, on behalf of
CWP PROPERTY MANAGEMENT INC.
Respondent

MAY 21, 2015
DATED


ROBERT DONALDSON WINKLER
Respondent

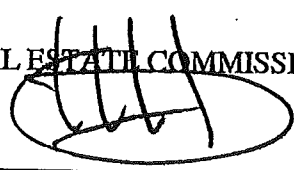
I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

MAY 22, 2015
DATED


ADAM S. GRUEN
Attorney for Respondent CWP
PROPERTY MANAGEMENT INC.

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on AUG 18 2015.

IT IS SO ORDERED JJ, 15, 2015

REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner