

1 BUREAU OF REAL ESTATE OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670

FILED

FEB 12 2018

BUREAU OF REAL ESTATE
By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:	)	Case No. H-12103 SF
	)	
12 WA KRAUSS & COMPANY, INC.	)	<u>STIPULATION AND AGREEMENT</u>
13 and JENNIFER M. VAIL,	)	<u>IN SETTLEMENT AND ORDER</u>
	)	
14 Respondents.	)	
15	)	

16 It is hereby stipulated by and between Respondents WA KRAUSS &
17 COMPANY, INC. ("WA KRAUSS"), JENNIFER M. VAIL ("VAIL"), acting by and through
18 David Hamerslough, Counsel for WA KRAUSS and VAIL, and the Complainant, acting by and
19 through Jason D. Lazark, Counsel for the Bureau of Real Estate, as follows for the purpose of
20 settling and disposing of the Accusation filed on June 15, 2017, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondents WA KRAUSS and VAIL (collectively referred to
23 herein as "Respondents") at a formal hearing on the Accusation, which hearing was to be held
24 in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead
25 and in place thereof be submitted solely on the basis of the provisions of this Stipulation and
26 Agreement In Settlement and Order ("Stipulation and Agreement").
27

1 2. Respondents have received, read and understand the Statements to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of
3 Real Estate in this proceeding.

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

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

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

23 6. The Order or any subsequent Order of the Real Estate Commissioner made
24 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to
25 any further administrative or civil proceedings by the Bureau of Real Estate with respect to any
26 matters which were not specifically alleged to be causes for accusation in this proceeding.

27 ///

1 7. Respondents understand that by agreeing to this Stipulation and Agreement,
2 Respondents agree to be responsible for paying, pursuant to Section 10148 of the California
3 Business and Professions Code ("the Code"), the costs of the audit which resulted in the
4 determination that Respondents committed the trust fund violation(s) found in the Determination
5 of Issues. The amount of such costs is \$4,504.41.

6 8. Respondents further understand that by agreeing to this Stipulation and
7 Agreement, the findings set forth below in the Determination of Issues become final, and that the
8 Commissioner may charge Respondents for the costs of any audit conducted pursuant to Section
9 10148 of the Code to determine if the violations have been corrected and hold Respondents
10 responsible for paying the costs of the follow up audit. The maximum costs of said audit shall
11 not exceed \$5,630.51.

12 9. Respondents understand that by agreeing to this Stipulation and Agreement,
13 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10106
14 of the Code, the costs of the investigation and enforcement of this case which resulted in the
15 determination that Respondents committed the violation(s) found in the Determination of Issues.
16 The amount of such costs is \$1,277.90.

17 DETERMINATION OF ISSUES

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

21 I.

22 The acts and omissions of WA KRAUSS, as described in the Accusation, are
23 grounds for the suspension or revocation of the licenses and license rights of WA KRAUSS
24 under the provisions of Sections 10177(d) and 10177(g) of the Code, in conjunction with
25 Sections 10085, 10085.5, 10140.6, 10145, 10145(g), 10146, 10161.8 and 10167(e) of the Code,
26 and Sections 2752, 2773, 2831.1, 2831.2, 2832, 2832.1, 2835, 2970, and 2972 of Title 10 of the
27 California Code of Regulations ("the Regulations").

1
2 II.

3 The acts and omissions of VAIL, as described in the Accusation, are grounds for
4 the suspension or revocation of the licenses and license rights of VAIL under the provisions of
5 Sections 10159.2, 10177(d), 10177(g) and 10177(h) of the Code, in conjunction with Sections
6 10085, 10085.5, 10140.6, 10145, 10145(g), 10146, 10161.8 and 10167(e) of the Code, and
7 Sections 2725, 2752, 2773, 2831.1, 2831.2, 2832, 2832.1, 2835, 2970, and 2972 of Title 10 of
8 the Regulations.

9 ORDER

10 I. AS TO WA KRAUSS

11 All licenses and licensing rights of WA KRAUSS under the Real Estate Law are
12 suspended for a period of ninety (90) days from the effective date of this Order; provided,
13 however, that:

14 1. Ninety (90) days of said suspension shall be stayed upon the condition that
15 WA KRAUSS petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
16 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
17 total monetary penalty of \$4,500.00.

18 a. Said payment shall be in the form of a cashier's check made payable to
19 the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
20 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
21 Order.

22 b. No further cause for disciplinary action against the real estate license
23 of WA KRAUSS occurs within two (2) years from the effective date of the Order in this matter.

24 c. If WA KRAUSS fails to pay the monetary penalty in accordance with
25 the terms and conditions of the Decision, the Commissioner may, without a hearing, order the
26 immediate execution of all or any part of the stayed suspension, in which event, WA KRAUSS
27 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
Bureau of Real Estate under the terms of this decision.

1 d. If WA KRAUSS pays the monetary penalty, and if no further cause
2 for disciplinary action against the real estate license of WA KRAUSS occurs within two (2)
3 years from the effective date of the Decision herein, then the stay hereby granted shall become
4 permanent.

5 II. AS TO VAIL

6 All licenses and licensing rights of VAIL under the Real Estate Law are
7 suspended for a period of ninety (90) days from the effective date of this Order; provided,
8 however, that:

9 1. Ninety (90) days of said suspension shall be stayed upon the condition that
10 VAIL petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to
11 Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a total monetary
12 penalty of \$4,500.00.

13 a. Said payment shall be in the form of a cashier's check made payable to
14 the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag
15 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
16 Order.

17 b. No further cause for disciplinary action against the real estate license
18 of VAIL occurs within two (2) years from the effective date of the Order in this matter.

19 c. If VAIL fails to pay the monetary penalty in accordance with the terms
20 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
21 execution of all or any part of the stayed suspension, in which event, VAIL shall not be entitled
22 to any repayment nor credit, prorated or otherwise, for money paid to the Bureau of Real Estate
23 under the terms of this decision.

24 d. If VAIL pays the monetary penalty, and if no further cause for
25 disciplinary action against the real estate license of VAIL occurs within two (2) years from the
26 effective date of the Decision herein, then the stay hereby granted shall become permanent.
27

1 2. VAIL shall, within six (6) months from the effective date of this Decision and
2 Order, take and pass the Professional Responsibility Examination administered by the Bureau of
3 Real Estate, including the payment of the appropriate examination fee. If VAIL fails to satisfy
4 this condition, VAIL's real estate license shall automatically be suspended until VAIL passes
5 the examination.

6 3. All licenses and licensing rights of VAIL are indefinitely suspended unless or
7 until VAIL provides proof satisfactory to the Commissioner, of having taken and successfully
8 completed the continuing education course on trust fund accounting and handling specified in
9 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these
10 requirements includes evidence that VAIL has successfully completed the trust fund accounting
11 and handling continuing education course, no earlier than one hundred twenty (120) days prior
12 to the effective date of the Decision and Order in this matter. Proof of completion of the trust
13 fund accounting and handling course must be delivered to the Bureau of Real Estate, Flag
14 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8785, prior to
15 the effective date of this Decision and Order.

16 III. AS TO BOTH WA KRAUSS AND VAIL

17 1. All licenses and licensing rights of Respondents are indefinitely suspended
18 unless or until Respondents, jointly and severally, pay the sum of \$1,277.90 for the
19 Commissioner's reasonable costs of the investigation and enforcement which led to this
20 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
21 made payable to the Bureau of Real Estate. The investigative and enforcement costs must be
22 delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
23 95813-7013, prior to the effective date of this Order.

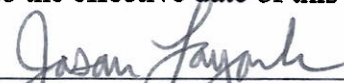
24 2. Pursuant to Section 10148 of the Code, Respondents shall pay the sum of
25 \$4,504.41 for the Commissioner's cost of the audit which led to this disciplinary action.
26 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the
27 Commissioner. Payment of audit costs should not be made until Respondents receive the

1 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein,
2 Respondents' real estate licenses shall automatically be suspended until payment is made in full,
3 or until a decision providing otherwise is adopted following a hearing held pursuant to this
4 condition.

5 3. Pursuant to Section 10148 of the Code, Respondents shall pay the
6 Commissioner's reasonable cost, not to exceed \$5,630.51, for an audit to determine if
7 Respondent has corrected the violation(s) found in the Determination of Issues. In calculating
8 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
9 average hourly salary for all persons performing audits of real estate brokers, and shall include
10 an allocation for travel time to and from the auditor's place of work. Respondents shall pay
11 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
12 Payment of the audit costs should not be made until Respondents receives the invoice. If
13 Respondents fail to satisfy this condition in a timely manner as provided for herein,
14 Respondents real estate license shall automatically be suspended until payment is made in full,
15 or until a decision providing otherwise is adopted following a hearing held pursuant to this
16 condition.

17 4. All licenses and licensing rights of Respondents are indefinitely suspended
18 unless or until Respondents provide proof satisfactory to the Commissioner that Respondents
19 reimbursed all Eviction Protection Plan ("EPP") and Rent Loss Protection Plan ("RLPP") fees
20 collected from their principals between January 1, 2015, and March 31, 2016. Proof of
21 satisfaction of this requirement includes: a copy of a cancelled check to each principal from
22 whom EPP and/or RLPP fees were collected, and/or a letter from each principal from whom
23 EPP and/or RLPP fees were collected attesting that repayment of funds has been received.
24 Proof of payment must be delivered to the Bureau of Real Estate of Real Estate, Flag Section at
25 P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

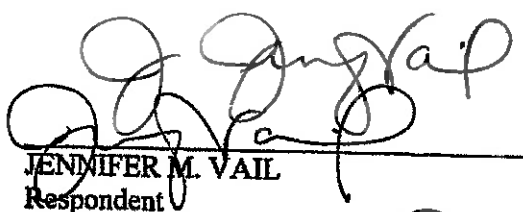
26 11/28/17
27 DATED


JASON D. LAZARK, Counsel
Bureau of Real Estate of Real Estate

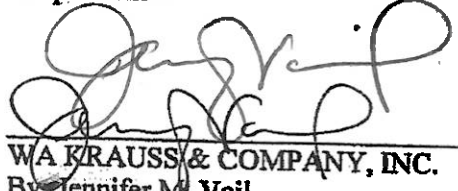
I have read the Stipulation and Agreement in Settlement and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

Respondents further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by Respondents: *Bureau of Real Estate of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007*. Respondents understand and agree that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

11/22/17
DATED


JENNIFER M. VAIL
Respondent

11/22/17
DATED


WA KRAUSS & COMPANY, INC.
By: Jennifer M. Vail

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

11/28/17

DATED

D. Hamerslough

DAVID HAMERSLOUGH

Attorney for Respondents

JENNIFER M. VAIL and

WA KRAUSS & COMPANY, INC.

The foregoing Stipulation and Agreement is hereby adopted as my Decision in
this matter and shall become effective at 12 o'clock noon on MAR 05 2018

IT IS SO ORDERED

2/8/18

WAYNE S. BELL

REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI

Chief Deputy Commissioner