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FILED

OCT 05 2018

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 PATHMARK REALTY CORP., HORN LOW,)
13 and SU KEMP,)

14 Respondents.)

No. H-12117 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between PATHMARK REALTY CORP. (PRC),
16 HORN LOW (LOW), and SU KEMP (KEMP) (collectively "Respondents"), represented by
17 Joshua A. Rosenthal and the Complainant, acting by and through Truly Sughrue, Counsel for
18 the Department of Real Estate (Department), as follows for the purpose of settling and
19 disposing the Accusation filed on August 9, 2017, 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 Department in this
27 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 Respondents understand that by withdrawing said Notice of Defense
5 Respondents will thereby waive Respondents' rights to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA, and that Respondents will waive other rights
8 afforded to Respondents in connection with the hearing such as the right to present evidence in
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

21 6. Respondents PRC and Low understand that by agreeing to this
22 Stipulation and Agreement, Respondents agree to pay, pursuant to Section 10148 of the
23 California Business and Professions Code (Code), the cost of the audit, which resulted in the
24 determination that Respondents committed the trust fund handling violation(s) found in the
25 Determination of Issues. The amount of said costs is \$5,628.14.

26 7. Respondents PRC and Low further understand that by agreeing to this
27 Stipulation and Agreement, the findings set forth below in the Determination of Issues become

1 final, and that the Commissioner may charge said Respondents for the costs of any audit
2 conducted pursuant to Section 10148 of the Code to determine if the violations have been
3 corrected. The maximum costs of said audit shall not exceed \$7,035.13.

4 8. Respondents PRC and LOW understand that by agreeing to this
5 Stipulation and Agreement, Respondents PRC and LOW agree to pay, pursuant to Section
6 10106 of the Code, the reasonable costs of the investigation and enforcement of these cases.
7 The amount of said costs is \$3,387.00.

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

15 10. The Order or any subsequent Order of the Commissioner made pursuant to
16 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
17 administrative or civil proceedings by the Department with respect to any matters which were not
18 specifically alleged to be causes for action in Accusation H-12117 SF.

19 * * *

20 DETERMINATION OF ISSUES

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

24 I

25 The acts and omissions of Respondents PRC and LOW as described in the First
26 Cause of Action of the Accusation are grounds for the suspension or revocation of Respondents
27 PRC and LOW licenses and license rights under Section 10177(d) of the Code in conjunction

1 with Sections 10159.5 and 10140.6(b) of the Code and Sections 2731, 2773, and 2726 of the
2 Regulations.

3 II

4 The acts and omissions of Respondent KEMP as described in the First Cause of
5 Action of the Accusation are grounds for the suspension or revocation of Respondents KEMP's
6 licenses and license rights under Section 10177(d) of the Code in conjunction with Sections
7 10159.5 and 10140.6(b) of the Code and Sections 2731 and 2773 of the Regulations.

8 III

9 The acts and omissions of Respondents PRC and LOW as described in the
10 Second Cause of Action of the Accusation are grounds for the suspension or revocation of
11 Respondents PRC and LOW licenses and license rights under the following sections of the Code
12 and Title 10 of the California Code of:

13 As to Paragraph 20(a), under Section 10177(d) of the Code in conjunction with
14 Section 10145(a) of the Code and Section 2832 of the Regulations;

15 As to Paragraph 20(b), under Section 10176(e) of the Code;

16 As to Paragraph 20(c), under Section 10177(d) of the Code in conjunction with
17 Section 2831 of the Regulations;

18 As to Paragraph 20(d), under Section 10177(d) of the Code in conjunction with
19 Section 10145(g) of the Code and Section 2831.1 of the Regulations; and

20 As to Paragraph 20(e), under Section 10177(d) of the Code in conjunction with
21 Section 2831.2 of the Regulations.

22 IV

23 The acts and omissions of Respondents PRC and LOW as described in the Third
24 Cause of Action of the Accusation are grounds for the suspension or revocation of Respondents
25 PRC and LOW licenses and license rights under Section 10177(d) of the Code in conjunction
26 with Sections 10236.4 and 10241(i) of the Code.

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1 V

2 The acts and/or omissions of Respondent LOW as described in the Fourth Cause
3 of Action of the Accusation is cause for the suspension or revocation of Respondent LOW's
4 license and/or license rights under Section 10177(h) of the Code.

5 * * *

6 ORDER

7 I

8 All licenses and licensing rights of Respondent KEMP under the Real Estate Law
9 are publicly reprovved.

10 II

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

14 1) Forty-five (45) days of said suspension shall be stayed, upon the condition that
15 Respondent PRC petition 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 total
17 monetary penalty of \$2,250.

18 a) Said payment shall be in the form of a cashier's check made payable to the
19 Department of Real Estate. Said check must be delivered to the Department 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 licenses of
23 Respondent PRC occurs within two (2) years from the effective date of the decision in this
24 matter.

25 c) If Respondent PRC fails to pay the monetary penalty as provided above prior to
26 the effective date of this Order, the stay of the suspension shall be vacated as to that Respondent
27 and the order of suspension shall be immediately executed, under this Order, in which event the

1 said Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the
2 money paid to the Department under the terms of this Order.

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

8 2) Forty-five (45) days of said suspension shall be stayed for two (2) years upon the
9 following terms and conditions:

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

12 b) That no final subsequent determination be made, after hearing or upon stipulation,
13 that cause for disciplinary action occurred within two (2) years from the effective date of this
14 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
15 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
16 such determination be made, the stay imposed herein shall become permanent.

17 III

18 All licenses and licensing rights of Respondent LOW under the Real Estate Law
19 are suspended for a period of ninety (90) days from the effective date of this Order; provided,
20 however, that:

21 3) Forty-five (45) days of said suspension shall be stayed, upon the condition that
22 Respondent LOW petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
23 pursuant to Section 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total
24 monetary penalty of \$2,250.

25 a) Said payment shall be in the form of a cashier's check made payable to the
26 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
27

1 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
2 Order.

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

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

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

16 4) Forty-five (45) days of said suspension shall be stayed for two (2) years upon the
17 following terms and conditions:

18 a) Respondent LOW shall obey all laws, rules and regulations governing the rights,
19 duties and responsibilities of a real estate licensee in the State of California; and,

20 b) That no final subsequent determination be made, after hearing or upon stipulation,
21 that cause for disciplinary action occurred within two (2) years from the effective date of this
22 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
23 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
24 such determination be made, the stay imposed herein shall become permanent.

25 5) All licenses and licensing rights of Respondent LOW are indefinitely suspended
26 unless or until Respondent LOW provides proof satisfactory to the Commissioner, of having
27 taken and successfully completed the continuing education course on trust fund accounting and

1 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
2 satisfaction of these requirements includes evidence that Respondent LOW has successfully
3 completed the trust fund account and handling continuing education courses, no earlier than 120
4 days prior to the effective date of the Decision and Order in this matter. Proof of completion of
5 the trust fund accounting and handling course must be delivered to the Department of Real
6 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-
7 8758, prior to the effective date of this Decision and Order.

8 6) Respondent LOW shall, within six (6) months from the effective date of this
9 Decision and Order, take and pass the Professional Responsibility Examination administered by
10 the Department including the payment of the appropriate examination fee. If Respondent LOW
11 fails to satisfy this condition, Respondent LOW's real estate license shall automatically be
12 suspended until Respondent LOW passes the examination.

13 III


14 1) Pursuant to Section 10148 of the Code, Respondents PRC and LOW shall pay the
15 sum of \$5,628.14 for the Commissioner's cost of the audit which led to this disciplinary action.
16 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the
17 Commissioner. Payment of audit costs should not be made until Respondents receive the
18 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein,
19 Respondents' real estate license shall automatically be suspended until payment is made in full,
20 or until a decision providing otherwise is adopted following a hearing held pursuant to this
21 condition.

22 2) Pursuant to Section 10148 of the Code, Respondents PRC and LOW shall pay the
23 Commissioner's reasonable cost, not to exceed \$7,035.13, for an audit to determine if
24 Respondents have corrected the violation(s) found in the Determination of Issues. In calculating
25 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
26 average hourly salary for all persons performing audits of real estate brokers, and shall include an
27 allocation for travel time to and from the auditor's place of work. Respondents shall pay such

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

6 3) All licenses and licensing rights of Respondents PRC and LOW are indefinitely
7 suspended unless or until Respondents PRC and LOW pay the sum of \$3,387.00 for the
8 Commissioner's reasonable cost of the investigation and enforcement which led to this
9 disciplinary action. Said payment shall be in the form of a cashier's check made payable to the
10 Department of Real Estate. The investigative and enforcement costs must be delivered to the
11 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior
12 to the effective date of this Decision and Order.

13
14 10-Sept-18
15 DATED


16 TRULY SUGHRUE
17 Counsel for Complainant

18 * * *

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

25 Respondents further agree to send the original signed Stipulation and Agreement
26 by mail to the following address no later than one (1) week from the date the Stipulation and
27 Agreement is signed by Respondents: *Department 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.

DATED

Horn Low,
Designated Officer
PATHMARK REALTY CORP.,
Respondent

DATED

HORN LOW
Respondent

DATED

SU KEMP
Respondent

* * *

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

IT IS SO ORDERED _____

REAL ESTATE COMMISSIONER

1 to return the original signed Stipulation and Agreement by the due date, Complainant retains the
2 right to set this matter for hearing.
3
4

5 _____
6 DATED

_____ Horn Low,
Designated Officer
PATHMARK REALTY CORP.,
Respondent

9 _____
10 DATED

_____ HORN LOW
Respondent

11
12 08/21/2018
13 DATED

_____ SU KEMP
Respondent

14
15 ***
16

17 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
18 Order and shall become effective at 12 o'clock noon on OCT 26 2018

19 IT IS SO ORDERED October 1, 2018
20

21 DANIEL J. SANDRI
22 ACTING REAL ESTATE COMMISSIONER

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