

FILED

NOV 14 2018

DEPARTMENT OF REAL ESTATE
By *D. Fine*

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

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	No. H-12123 SF
DONALD WAYNE MOSER and DWM)	<u>STIPULATION AND</u>
PROPERTIES, INC.,)	<u>AGREEMENT IN</u>
Respondents.)	<u>SETTLEMENT AND ORDER</u>

It is hereby stipulated by and between DONALD WAYNE MOSER ("MOSER") and DWM PROPERTIES, INC. ("DWM") (collectively "Respondents") and their attorney Nick D. Fine of the Shannon B. Jones Law Group, Inc., and Complainant, acting by and through Adriana Z. Badilas, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on November 27, 2017, 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.

///
///
///

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

4 3. Respondents filed a Notice 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 Notice of Defense. Respondents
7 acknowledge that Respondents will waive Respondents' right to require the Real Estate
8 Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested
9 hearing held in accordance with the provisions of the APA and that Respondents will waive other
10 rights afforded to Respondents in connection with the hearing, such as the right to present
11 evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

24 6. This Decision and Order or any subsequent Order of the Commissioner
25 made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar
26 to any further administrative or civil proceedings by the Department with respect to any matters,
27 which were not specifically alleged in Accusation H-12123 SF.

1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions, and waivers and solely for the
3 purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that
4 the following Determination of Issues shall be made:

5 I

6 The acts and/or omissions of MOSER, as described in the Accusation, are grounds
7 for the suspension or revocation of the licenses and license rights of MOSER under Business and
8 Professions Code ("Code") Sections 10130, 10145, 10159.5, 10161.8, 10177(d) and 10177(g), in
9 conjunction with the California Code of Regulations ("Regulations"), Title 10, Sections 2731,
10 2752, 2831.1, 2831.2, 2832, 2832.1 and 2834.

11 II

12 The acts and/or omissions of DWM, as described in the Accusation, are grounds
13 for the suspension or revocation of the licenses and license rights of DWM under Sections
14 10145, 10177(d) and 10177(g) of the Code, in conjunction with Sections 2831.1, 2832 and
15 2832.1 of the Regulations.

16 ORDER AS TO MOSER

17 I

18 All licenses and licensing rights of MOSER under the Real Estate Law are
19 revoked; provided, however, a restricted real estate broker license shall be issued to MOSER
20 pursuant to Section 10156.5 of the Code if MOSER makes application therefore for the restricted
21 license within ninety (90) days from the effective date of this Decision and Order. The restricted
22 license issued to MOSER shall be subject to all of the provisions of Section 10156.7 of the Code
23 and to the following limitations, conditions and restrictions imposed under authority of Section
24 10156.6 of that Code:

25 1. The restricted license issued to MOSER may be suspended prior to
26 hearing by Order of the Commissioner in the event of MOSER's conviction or plea of nolo

27 ///

1 contendere to a crime which is substantially related to MOSER's fitness or capacity as a real
2 estate licensee.

3 2. The restricted license issued to MOSER may be suspended prior to
4 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
5 MOSER has violated provisions of the California Real Estate Law, the Subdivided Lands
6 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
7 license.

8 3. MOSER shall not be eligible to petition for the issuance of any
9 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions
10 of a restricted license until four (4) years have elapsed from the effective date of this Decision
11 and Order. MOSER shall not be eligible to apply for any unrestricted license until all restrictions
12 attaching to the license have been removed.

13 4. MOSER shall, within six (6) months from the effective date of this Order,
14 take and pass the Professional Responsibility Examination administered by the Department,
15 including the payment of the appropriate examination fee. If MOSER fails to satisfy this
16 condition, MOSER's real estate license shall automatically be suspended until MOSER passes
17 the examination.

18 5. All licenses and licensing rights of MOSER are indefinitely suspended
19 unless or until MOSER provides proof satisfactory to the Commissioner, of having taken and
20 successfully completed the continuing education course on trust fund accounting and handling
21 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
22 satisfaction of these requirements includes evidence that MOSER has successfully completed the
23 trust fund accounting and handling continuing education course, no earlier than one hundred
24 twenty (120) days prior to the effective date of the Order in this matter. Proof of completion of
25 the trust fund accounting and handling course must be delivered to the Department of Real
26 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-
27 8785, prior to the effective date of this Order.

1 6. MOSER shall notify the Commissioner in writing within 72 hours of
2 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,
3 Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of
4 MOSER's arrest, the crime for which MOSER was arrested and the name and address of the
5 arresting law enforcement agency. MOSER's failure to timely file written notice shall
6 constitute an independent violation of the terms of the restricted license and shall be grounds
7 for the suspension or revocation of that license.

8 ORDER AS TO DWM

9 I

10 All licenses and licensing rights of DWM under the Real Estate Law are revoked;
11 provided, however, a restricted real estate corporate broker license shall be issued to DWM
12 pursuant to Section 10156.5 of the Code if DWM makes application therefore for the restricted
13 license within ninety (90) days from the effective date of this Decision and Order. The restricted
14 license issued to DWM shall be subject to all of the provisions of Section 10156.7 of the Code
15 and to the following limitations, conditions and restrictions imposed under authority of Section
16 10156.6 of that Code:

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

21 2. DWM shall not be eligible to petition for the issuance of any unrestricted
22 real estate license nor for removal of any of the conditions, limitations or restrictions of a
23 restricted license until four (4) years have elapsed from the effective date of this Decision and
24 Order. DWM shall not be eligible to apply for any unrestricted license until all restrictions
25 attaching to the license have been removed.

26 ///

27 ///

1 ORDER AS TO MOSER AND DWM

2 I

3 1. All licenses and licensing rights of Respondents are indefinitely
4 suspended unless or until Respondents, jointly and severally, pay the sum of \$1,502.85 for the
5 Commissioner's reasonable costs of the investigation and enforcement which led to this
6 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
7 made payable to the Department. The investigative and enforcement costs must be delivered to
8 the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,
9 prior to the effective date of this Order.

10 2. Respondents, jointly and severally, shall pay the sum of \$6,792.75 for
11 the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall
12 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
13 The Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents
14 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
15 payment is not timely made as provided for herein, or as provided for in a subsequent
16 agreement between Respondents and the Commissioner. The suspension shall remain in effect
17 until payment is made in full or until Respondents enter into an agreement satisfactory to the
18 Commissioner to provide for payment, or until a decision providing otherwise is adopted
19 following a hearing held pursuant to this condition.

20 3. Pursuant to Section 10148 of the Code, Respondents, jointly and
21 severally, shall pay the Commissioner's reasonable cost, not to exceed \$8,490.94, for an audit
22 to determine if Respondents has corrected the violation(s) found in audit #OK 160022 (PM).
23 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
24 the estimated average hourly salary for all persons performing audits of real estate brokers, and
25 shall include an allocation for travel time to and from the auditor's place of work. Respondents
26 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
27 Commissioner. Payment of the audit costs should not be made until Respondents receives 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
3 full, or until a decision providing otherwise is adopted following a hearing held pursuant to this
4 condition.

5
6
7 10/8/18

8 DATED


9 ADRIANA Z. BADILAS, Counsel
10 Department of Real Estate

11 ***

12 I have read the Stipulation and Agreement, have discussed it with my counsel,
13 and its terms are understood by me and are agreeable and acceptable to me. I understand that I
14 am waiving rights given to me by the APA (including but not limited to Sections 11506,
15 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
16 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
17 allegations in the Accusation at a hearing at which I would have the right to cross-examine
18 witnesses against me and to present evidence in defense and mitigation of the charges.

19 Respondent can signify acceptance and approval of the terms and conditions of
20 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
21 Respondent, to the Department at fax number (916) 263-3767 or by e-mail to
22 adriana.badilas@DRE.ca.gov. Respondents agree, acknowledge, and understand that by
23 electronically sending to the Department a fax copy of Respondents' actual signature as it
24 appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department
25 shall be as binding on Respondents as if the Department had received the original signed
26 Stipulation and Agreement.

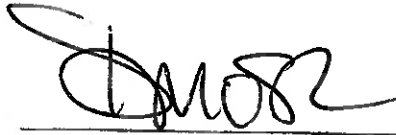
27 ///

///

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

10-8-2018

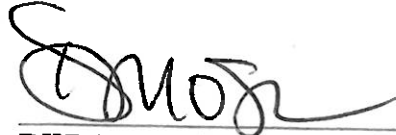
DATED



DONALD WAYNE MOSER
Respondent

10-8-2018

DATED



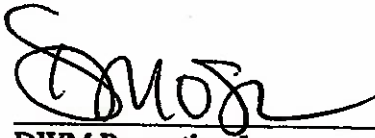
DWM Properties, Inc.
By: Donald W. Moser, Designated Officer
Respondent

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

10-8-2018
DATED


DONALD WAYNE MOSER
Respondent

10-8-2018
DATED


DWM Properties, Inc.
By: Donald W. Moser, Designated Officer
Respondent

I have reviewed this Stipulation and Agreement as to form and content and have advised my clients accordingly.

10/8/18
DATED


NICK D. FINE
Attorney for Respondents

The foregoing Stipulation and Agreement In Settlement and Order is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on DEC 05 2018.

IT IS SO ORDERED October 31, 2018.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

