

FILED

AUG 23 2018

DEPARTMENT OF REAL ESTATE

By *A. New*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

BAY AREA PROPERTY MANAGEMENT and
MARY ANN KANYAL,

Respondents.

No. H-12161 SF

STIPULATION AND
AGREEMENT IN
SETTLEMENT AND ORDER

It is hereby stipulated by and between BAY AREA PROPERTY
MANAGEMENT ("BAPM") and MARY ANN KANYAL ("KANYAL") (collectively
"Respondents") and their attorney Steven D. Hoffman and the 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 December 5, 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.

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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-12161 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 BAPM, as described in the Accusation, although
7 technical in nature and do not imply dishonesty or fraud, are grounds for disciplinary action
8 against the licenses and license rights of BAPM under Business and Professions Code ("Code")
9 Sections 10130, 10145, 10159.2, 10162, 10177(d), and 10177(g), in conjunction with the
10 California Code of Regulations ("Regulations"), Title 10, Sections 2731, 2831, 2832, and 2834.

11 II

12 The acts and/or omissions of KANYAL, as described in the Accusation, although
13 technical in nature and do not imply dishonesty or fraud, are grounds for disciplinary action
14 against the licenses and license rights of KANYAL under Sections 10130, 10145, 10159.2,
15 10159.5, 10162, 10177(d), and 10177(g) of the Code, in conjunction with Sections 2731, 2831,
16 2832, and 2834 of the Regulations.

17 ORDER AS TO BAPM

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

21 1. Forty-five (45) days of said suspension shall be stayed upon the condition that
22 BAPM petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant
23 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 \$2,250.00.

25 a. Said payment shall be in the form of a cashier's check made payable to
26 the Department of Real Estate and must be delivered to the Department of Real Estate, Flag
27 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this

1 Order.

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

4 c. If BAPM fails to pay the monetary penalty in accordance with the
5 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
6 immediate execution of all or any part of the stayed suspension, in which event, BAPM shall not
7 be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau
8 under the terms of this decision.

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

12 2. The remaining forty-five (45) days of said suspension shall also be stayed for
13 two (2) years upon the following terms and conditions:

14 a. BAPM shall obey all laws, rules and regulations governing the rights,
15 duties and responsibilities of a real estate licensee in the State of California, and

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

22 ORDER AS TO KANYAL

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

26 1. Forty-five (45) days of said suspension shall be stayed upon the condition that
27 KANYAL petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty

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2 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a
3 total monetary penalty of \$2,250.00.

4 a. Said payment shall be in the form of a cashier's check made payable to
5 the Department of Real Estate and must be delivered to the Department of Real Estate, Flag
6 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
7 Order.

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

10 c. If KANYAL fails to pay the monetary penalty in accordance with the
11 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
12 immediate execution of all or any part of the stayed suspension, in which event, KANYAL shall
13 not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau
14 under the terms of this decision.

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

18 2. The remaining forty-five (45) days of said suspension shall also be stayed for
19 two (2) years upon the following terms and conditions:

20 a. KANYAL shall obey all laws, rules and regulations governing the
21 rights, duties and responsibilities of a real estate licensee in the State of California, and

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

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

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

16 ORDER AS TO BAPM AND KANYAL

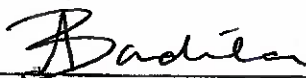
17 1. All licenses and licensing rights of Respondents are indefinitely suspended
18 unless or until Respondents, jointly and severally, pay the sum of \$2,673.00 for the
19 Commissioner's reasonable costs of the investigation and enforcement which led to this
20 disciplinary action. Said payment shall 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. Respondents, jointly and severally, shall pay the sum of \$6,211.75 for the
25 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay
26 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The
27 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents

1 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if
2 payment is not timely made as provided for herein, or as provided for in a subsequent
3 agreement between Respondents and the Commissioner. The suspension shall remain in effect
4 until payment is made in full or until Respondents enter into an agreement satisfactory to the
5 Commissioner to provide for payment, or until a decision providing otherwise is adopted
6 following a hearing held pursuant to this condition.

7 3. Respondents, jointly and severally, shall pay the Commissioner's costs, not
8 to exceed \$7,764.68, of any audit conducted pursuant to Section 10148 of the Code to
9 determine if Respondents have corrected the violations described in the Determination of
10 Issues, above, and any other violations found in the audit which led to this disciplinary action.
11 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
12 the estimated average hourly salary for all persons performing audits of real estate brokers, and
13 shall include an allocation for travel time to and from the auditor's place of work. Respondents
14 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
15 Commissioner detailing the activities performed during the audit and the amount of time spent
16 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
17 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents under
18 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
19 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
20 suspension provided for in this paragraph shall be stayed.

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23 7/31/18
24 DATED


ADRIANA Z. BADILAS, Counsel
Department of Real Estate

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I have read the Stipulation and Agreement, have discussed it with my counsel, 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 APA (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.

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

07/24/2018

DATED



BAY AREA PROPERTY MANAGEMENT

By: Mary Ann Kanyal, Designated Officer
Respondent

07/24/2018

DATED


MARY ANN KANYAL

Respondent

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

7-24-18

DATED _____



STEVEN D. HOFFMAN
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 **SEP 13 2018**.

IT IS SO ORDERED August 21, 2018.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

