

1 Department of Real Estate
2 P.O. Box 137007
3 Sacramento, CA 95813-7007

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FILED

FEB 22 2021

DEPARTMENT OF REAL ESTATE
By B. Michalos

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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 PROPERTY FORCE, INC., and JOHN M.)
13 WAY JR.,)

14 Respondents.)

No. H-12470 SF

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between PROPERTY FORCE, INC. (PFI), and
16 JOHN M. WAY JR. (WAY) (collectively "Respondents"), represented by Joshua A.
17 Rosenthal, and the Complainant, acting by and through Truly Sughrue, Counsel for the
18 Department of Real Estate (Department), as follows for the purpose of settling and disposing
19 the First Amended Accusation (Accusation) filed on November 10, 2020, 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 understand that by agreeing to this Stipulation and
22 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and
23 Professions Code (Code), the cost of the audit, which resulted in the determination that
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.
25 The amount of said costs is \$5,190.00.

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1 7. Respondents further understand that by agreeing to this Stipulation and
2 Agreement, the findings set forth below in the Determination of Issues become final, and that
3 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum
5 costs of said audit shall not exceed \$6,487.50.

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

13 9. The Order or any subsequent Order of the Commissioner made pursuant to
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
15 administrative or civil proceedings by the Department with respect to any matters which were not
16 specifically alleged to be causes for action in Accusation H-12470 SF.

17 * * *

18 DETERMINATION OF ISSUES

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

22 I

23 The acts and omissions of Respondents as described in the First Cause of Action
24 of the Accusation are grounds for the suspension or revocation of Respondents' licenses and
25 license rights under the following sections of the Code and Title 10 of the California Code of:

26 As to Paragraphs 11(a) and 11(b), under Section 10177(d) of the Code in
27 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

1 As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with
2 Section 10145 of the Code and Section 2831.2 of the Regulations;

3 As to Paragraph 11(d), under Section 10177(d) of the Code in conjunction with
4 Section 10145 of the Code and Section 2834 of the Regulations;

5 As to Paragraph 11(e), under Section 10177(d) of the Code in conjunction with
6 Section 10145(d) of the Code; and

7 As to Paragraph 11(f), under Section 10176(g) of the Code.

8 II

9 The acts and/or omissions of WAY as described in the Second Cause of Action
10 of the Accusation is cause for the suspension or revocation of WAY's license and/or license
11 rights under Section 10177(h) of the Code.

12 * * *

13 ORDER

14 I

15 All licenses and licensing rights of PFI under the Real Estate Law are suspended
16 for a period of sixty (60) days from the effective date of this Order; provided, however, that:

17 1) Thirty (30) days of said suspension shall be stayed, upon the condition that PFI
18 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
19 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty
20 of \$3,000.

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

25 b) No further cause for disciplinary action against the Real Estate licenses of PFI
26 occurs within two (2) years from the effective date of the decision in this matter.

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

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

2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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

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

II

All licenses and licensing rights of WAY under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that:

1) Thirty (30) days of said suspension shall be stayed, upon the condition that WAY petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty of \$3,000.

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

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

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

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

16 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the
17 following terms and conditions:

18 a) WAY shall obey all laws, rules and regulations governing the rights, duties and
19 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 3) All licenses and licensing rights of WAY are indefinitely suspended unless or
26 until WAY provides proof satisfactory to the Commissioner, of having taken and successfully
27 completed the continuing education course on trust fund accounting and handling specified in


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

8
9 III

9 1) Pursuant to Section 10148 of the Code, Respondents shall pay the sum of
10 \$5,190.00 for the Commissioner's cost of the audit which led to this disciplinary action.
11 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the
12 Commissioner. Payment of audit costs should not be made until Respondents receive the
13 invoice. If 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 2) Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's
18 reasonable cost, not to exceed \$6,487.50, for an audit to determine if Respondents have corrected
19 the violation(s) found in the Determination of Issues. In calculating the amount of the
20 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
21 for all persons performing audits of real estate brokers, and shall include an allocation for travel
22 time to and from the auditor's place of work. Respondents shall pay such costs within sixty (60)
23 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should
24 not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition
25 in a timely manner as provided for herein, Respondents' real estate license shall automatically be
26 suspended until payment is made in full, or until a decision providing otherwise is adopted
27 following a hearing held pursuant to this condition.

1
2 11-Jan-21
3 DATED

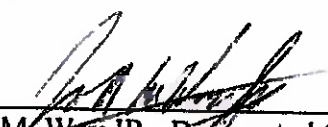

4 TRULY SUGHRUE
5 Counsel for Complainant

6 * * *


7 I have read the Stipulation and Agreement, discussed it with my counsel, and its
8 terms are understood by me and are agreeable and acceptable to me. I understand that I am
9 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
10 intelligently and voluntarily waive those rights, including the right of requiring the
11 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
12 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
13 the charges.

14 Respondents and Respondents' attorney further agree to send the original signed
15 Stipulation and Agreement by mail to the following address no later than one (1) week from the
16 date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:
17 *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-*
18 *7007. Respondents and Respondents' attorney understand and agree that if they fail to return the*
19 *original signed Stipulation and Agreement by the due date, Complainant retains the right to set*
20 *this matter for hearing.*

21 1/8/2021
22 DATED


23 John M. Way JR., Designated Officer
24 PROPERTY FORCE, INC.,
25 Respondent

26 1/8/2021
27 DATED



JOHN M. WAY JR.
Respondent

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

1/08/21

DATED



JOSHUA A. ROSENTHAL
Attorney for Respondents

The foregoing Stipulation and Agreement is hereby adopted as my Decision and
Order and shall become effective at 12 o'clock noon on MAR 15 2021

IT IS SO ORDERED 2-12-21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

