

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 137007  
3 Sacramento, CA 95813-7007

4 Telephone: (916) 576-7843

**FILED**

**SEP 26 2022**

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of:	)	Case No. H-12548 SF
	)	
12 49 SQUARE REALTY GROUP, INC.	)	<u>STIPULATION AND AGREEMENT</u>
13 and GARY NICHOLAS SAYED,	)	<u>IN SETTLEMENT AND ORDER</u>
	)	
14 Respondents.	)	
15 _____	)	

16 It is hereby stipulated by and between Respondent 49 SQUARE REALTY  
17 GROUP, INC. ("49 SQUARE") and GARY NICHOLAS SAYED ("SAYED") (collectively  
18 referred to as "Respondents"), acting by and through Howard K. Alperin, counsel for  
19 Respondents, and the Complainant, acting by and through Jason D. Lazark, Counsel for the  
20 Department of Real Estate, as follows for the purpose of settling and disposing of the First  
21 Amended Accusation filed on February 8, 2022, in this matter:

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

1                   2. Respondents have received, read and understand the Statement to  
2 Respondent, the Discovery Provisions of the APA and the First Amended Accusation filed by  
3 the Department of 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 First  
6 Amended Accusation. Respondents hereby freely and voluntarily withdraw said Notices of  
7 Defense. Respondents acknowledge that they understand that by withdrawing said Notices of  
8 Defense they will thereby waive their rights to require the Real Estate Commissioner  
9 (“Commissioner”) to prove the allegations in the First Amended Accusation at a contested  
10 hearing held in accordance with the provisions of the APA, and that they will waive other  
11 rights afforded to them in connection with the hearing, such as the right to present evidence in  
12 defense of the allegations in the First Amended Accusation and the right to cross-examine  
13 witnesses.

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

20                   5. This Stipulation and Agreement is made for the purpose of reaching an  
21 agreed disposition of this proceeding and is expressly limited to this proceeding and any other  
22 proceeding or case in which the Department, the state or federal government, any agency of  
23 this state, or an agency of another state is involved.

24                   6. It is understood by the parties that the Real Estate Commissioner may adopt  
25 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalties  
26 and sanctions on Respondents' real estate licenses and license rights as set forth in the below  
27 "Order." In the event that the Commissioner in his discretion does not adopt the Stipulation

1 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a  
2 hearing and proceeding on the First Amended Accusation under all the provisions of the APA  
3 and shall not be bound by any admission or waiver made herein.

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

9           8. Respondents understand that by agreeing to this Stipulation and Agreement,  
10 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10148  
11 of the California Business and Professions Code ("the Code"), the costs of the audit which  
12 resulted in the determination that Respondents committed the trust fund violation(s) found in the  
13 Determination of Issues. The amount of such costs is \$15,000.00.

14           9. Respondents further understand that by agreeing to this Stipulation and  
15 Agreement, the findings set forth below in the Determination of Issues become final, and that the  
16 Commissioner may charge said Respondents for the costs of any audit conducted pursuant to  
17 Section 10148 of the Code to determine if the violations have been corrected and hold  
18 Respondents jointly and severally responsible for paying the costs of the follow up audit. The  
19 maximum costs of said audit shall not exceed \$18,750.00

20           10. Respondents further understand that by agreeing to this Stipulation and  
21 Agreement, Respondents agree to be responsible for jointly and severally paying, pursuant to  
22 Section 10106 of the Code, the costs of the investigation and enforcement of this case which  
23 resulted in the determination that Respondents committed the violation(s) found in the  
24 Determination of Issues. The amount of such cost is \$8,273.75.

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1 DETERMINATION OF ISSUES

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

5 The acts and/or omissions of 49 SQUARE as described in the First Amended  
6 Accusation are grounds for the suspension or revocation of the licenses and license rights of 49  
7 SQUARE under the provisions of Sections 10145, 10176(a), 10176(c), 10176(e), 10176(i),  
8 10177(d), 10177(g), and 10177(j) of the Code, and Sections 2831, 2831.1, 2831.2, and 2832 of  
9 Title 10 of the California Code of the Regulations (“the Regulations”).

10 The acts and/or omissions of SAYED as described in the First Amended  
11 Accusation are grounds for the suspension or revocation of the licenses and license rights of  
12 SAYED under the provisions of Sections 10145, 10159.2, 10176(a), 10176(c), 10176(e),  
13 10176(i), 10177(d), 10177(g), 10177(h) and 10177(j) of the Code, and Sections 2725, 2831,  
14 2831.1, 2831.2, and 2832 of the Regulations.

15 ORDER

16 I.

17 AS TO 49 SQUARE

18 All licenses and licensing rights of 49 SQUARE under the Real Estate Law are  
19 suspended for a period of one hundred twenty (120) days from the effective date of this Order;  
20 provided, however, that:

21 1. All one hundred twenty (120) days of said suspension shall be stayed for two  
22 (2) years upon the following terms and conditions:

23 a. 49 SQUARE shall obey all laws, rules and regulations governing the  
24 rights, duties and responsibilities of a real estate licensee in the State of California, and

25 b. That no final subsequent determination be made, after hearing or  
26 upon stipulation, that cause for disciplinary action occurred within two (2) years from the  
27 effective date of this Order. Should such a determination be made, the Commissioner may, in

1 his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed  
2 suspension. Should no such determination be made, the stay imposed herein shall become  
3 permanent.

4 II.

5 AS TO SAYED

6 All licenses and licensing rights of SAYED under the Real Estate Law are  
7 revoked; provided, however, a restricted real estate broker license shall be issued to SAYED  
8 pursuant to Section 10156.5 of the Code if SAYED makes application therefore and pays to the  
9 Department the appropriate fee for the restricted broker license within 90 days from the effective  
10 date of this Decision.

11 1. The restricted license issued to SAYED shall be subject to all of the  
12 provisions of Section 10156.7 of the Code as to the following limitations, conditions and  
13 restrictions imposed under authority of Section 10156.6 of that Code:

14 (a) The restricted license issued to SAYED shall be suspended prior to  
15 hearing by Order of the Commissioner in the event of SAYED's  
16 conviction (including by plea of guilty or nolo contendere) to a crime  
17 which is substantially related to SAYED's fitness or capacity as a real  
18 estate licensee; and,

19 (b) The restricted license issued to SAYED shall be suspended prior to  
20 hearing by Order of the Commissioner on evidence satisfactory to the  
21 Commissioner that SAYED has violated provisions of the California Real  
22 Estate Law, the Subdivided Lands Law, Regulations of the Real Estate  
23 Commissioner, or conditions attaching to the restricted license.

24 2. SAYED shall not be eligible to apply for the issuance of an unrestricted real  
25 estate license nor for removal of any of the conditions, limitations or restrictions of a restricted  
26 license until two (2) years have elapsed from the effective date of this Decision.

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

8                   4. SAYED shall, within nine (9) months from the effective date of this Decision,  
9 present evidence satisfactory to the Commissioner that Respondent has, since the most recent  
10 issuance of an original or renewal real estate license, taken and successfully completed the  
11 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
12 of a real estate license. If SAYED fails to satisfy this condition, SAYED's real estate license  
13 shall automatically be suspended until SAYED presents evidence satisfactory to the  
14 Commissioner of having taken and successfully completed the continuing education  
15 requirements. Proof of completion of the continuing education courses must be delivered to the  
16 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

17                   5. SAYED shall, within six (6) months from the issuance of the Order, take and  
18 pass the Professional Responsibility Examination administered by the Department, including the  
19 payment of the appropriate examination fee. All licenses and licensing rights of SAYED shall  
20 be indefinitely suspended unless or until SAYED passes the examination. In the event that  
21 access to the location for taking the Professional Responsibility Examination is closed during  
22 normal business hours, the Department shall extend the time for taking and passing the  
23 Professional Responsibility Examination by the same amount of time that access to the test  
24 location was closed.

25                   6. SAYED shall, within six (6) months from the issuance of the Order, take and  
26 successfully complete the continuing education course on trust fund accounting and handling  
27 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code.

1 Proof of completion of the trust fund accounting and handling course must be delivered to the  
2 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,  
3 within six (6) months of the effective date of this Order. If SAYED fails to satisfy this condition,  
4 the Commissioner shall order the suspension of the restricted license until SAYED presents such  
5 evidence. The Commissioner shall afford SAYED the opportunity for hearing pursuant to the  
6 APA to present such evidence.

7 III.

8 AS TO 49 SQUARE AND SAYED JOINTLY AND SEVERALLY

9 1. Pursuant to Section 10148 of the Code, Respondents, jointly and severally,  
10 shall pay the sum of \$15,000.00 for the Commissioner's cost of the audit which led to this  
11 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an  
12 invoice therefore from the Commissioner. The Commissioner shall indefinitely suspend all  
13 licenses and licensing rights of Respondents pending a hearing held in accordance with Section  
14 11500, et seq., of the Government Code, if payment is not timely made as provided for herein,  
15 or as provided for in a subsequent agreement between Respondents and the Commissioner.  
16 The suspension shall remain in effect until payment is made in full or until Respondents enter  
17 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision  
18 providing otherwise is adopted following a hearing held pursuant to this condition.


19 2. Respondents, jointly and severally, shall pay the Commissioner's costs, not  
20 to exceed \$18,750.00, of any audit conducted pursuant to Section 10148 of the Code to  
21 determine if Respondents have corrected the violations described in the Determination of  
22 Issues, above, and any other violations found in the audit which led to this disciplinary action.  
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 detailing the activities performed during the audit and the amount of time spent

1 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the  
2 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents under  
3 the Real Estate Law until payment is made in full or until Respondents enter into an agreement  
4 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite  
5 suspension provided for in this paragraph shall be stayed.

6           3. All licenses and licensing rights of Respondents, are indefinitely suspended  
7 unless or until Respondents, jointly and severally, pay the sum of \$8,273.75 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 or certified check  
10 made payable to the Real Estate Fund. The investigative and enforcement costs must be  
11 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA  
12 95813-7013, prior to the effective date of this Order.

13  
14 7/18/2022

DATED

13  
14   
15 JASON D. LAZARK, Counsel  
16 Department of Real Estate

16 \* \* \*

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

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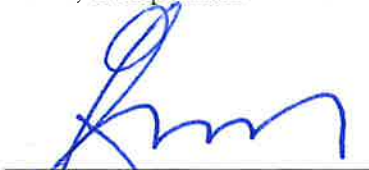


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I further agree to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by me and my attorney: *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007*. I understand and agrees 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.

7/18/22

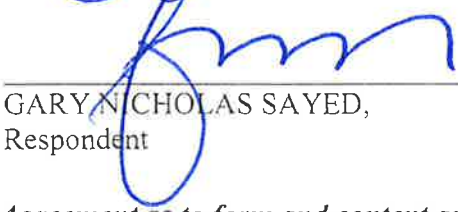
DATED



GARY NICHOLAS SAYED,  
Designated Officer for Respondent,  
49 SQUARE REALTY GROUP, INC.

7/18/22

DATED



GARY NICHOLAS SAYED,  
Respondent

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

7/18/22

DATED



Howard K. Alperin,  
Attorney for Respondents,  
49 SQUARE REALTY GROUP, INC.  
and GARY NICHOLAS SAYED

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The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on **OCT 17 2022**.

IT IS SO ORDERED 9.12.22, 2022.

REAL ESTATE COMMISSIONER

  
DOUGLAS R. McCAULEY