

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 576-8700

FILED
OCT 10 2022
DEPARTMENT OF REAL ESTATE
By J. Taggart

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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:) Case No. H-12579 SF
12)
13 MIDTOWN REALTY, INC.) STIPULATION AND AGREEMENT
and TIMOTHY JOSEPH FOY,) IN SETTLEMENT AND ORDER
14 Respondents.)
15 _____)

16 It is hereby stipulated by and between Respondent MIDTOWN REALTY, INC.
17 (“MRI”) and TIMOTHY JOSEPH FOY (“FOY”) (collectively referred to as “Respondents”),
18 acting by and through Joshua Rosenthal, counsel for Respondents, and the Complainant, acting
19 by and through Kyle Jones, Counsel for the Department of Real Estate, as follows for the
20 purpose of settling and disposing of the Accusation filed on March 3, 2022, in this matter:

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

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

1 3. Respondents filed Notices 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 Notices of Defense. Respondents
4 acknowledge that they understand that by withdrawing said Notices of Defense they will
5 thereby waive their rights to require the Real Estate Commissioner (“Commissioner”) to prove
6 the allegations in the Accusation at a contested hearing held in accordance with the provisions
7 of the APA, and that they will waive other rights afforded to them in connection with the
8 hearing, such as the right to present evidence in defense of the allegations in the Accusation
9 and the right to cross-examine witnesses.

10 4. Respondent, pursuant to the limitations set forth below and solely for the
11 purpose of this Stipulation and Agreement, waives any requirement that the Commissioner be
12 required to provide further evidence to prove the factual allegations in the Accusation filed in
13 this proceeding and stipulates that the Commissioner may properly impose discipline as set forth
14 herein as if the evidence in the Commissioner’s possession and any allegations based thereon had
15 been proven.

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

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

27

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

6 8. Respondents understand that by agreeing to this Stipulation and Agreement,
7 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10148
8 of the California Business and Professions Code ("Code"), the costs of the audit which resulted
9 in the determination that Respondents committed the trust fund violation(s) found in the
10 Determination of Issues. The amount of such costs is \$4,122.00.

11 9. Respondents further understand that by agreeing to this Stipulation and
12 Agreement, the findings set forth below in the Determination of Issues become final, and that the
13 Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
14 Section 10148 of the Code to determine if the violations have been corrected and hold
15 Respondents jointly and severally responsible for paying the costs of the follow up audit. The
16 maximum costs of said audit shall not exceed \$5,152.50

17 10. Respondents further understand that by agreeing to this Stipulation and
18 Agreement, Respondents agree to be responsible for jointly and severally paying, pursuant to
19 Section 10106 of the Code, the costs of the investigation and enforcement of this case which
20 resulted in the determination that Respondents committed the violation(s) found in the
21 Determination of Issues. The amount of such cost is \$1,998.20.

22 DETERMINATION OF ISSUES

23 By reason of the foregoing stipulations, admissions, and waivers, and solely for
24 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
25 and agreed that the following Determination of Issues shall be made:

26 The acts and/or omissions of MRI as described in the Accusation are grounds for
27 the suspension or revocation of the licenses and license rights of MRI under the provisions of

1 Sections 10145, 10176(e), 10176(g), 10176(i), 10177(d), and 10177(g) of the Code, and Section
2 2832.1 of Title 10 of the California Code of the Regulations (“Regulations”).

3 The acts and/or omissions of FOY as described in the Accusation are grounds for
4 the suspension or revocation of the licenses and license rights of FOY under the provisions of
5 Sections 10145, 10159.2, 10176(e), 10176(g), 10176(i), 10177(d), 10177(g), and 10177(h) of the
6 Code, and Section 2832.1 of the Regulations.

7 ORDER

8 I.

9 AS TO MRI

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

12 1. Forty-five (45) days of said suspension shall be stayed upon the condition that
13 MRI petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to
14 Section 10175.2 of the Code, at a rate of \$50.00 for each day of the suspension, for a total
15 monetary penalty of \$2,250.00.

16 a. Said payment shall be in the form of a cashier’s check made payable to
17 the Department of Real Estate. Said check must be delivered to the Department of Real Estate,
18 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
19 Order.

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

22 c. If MRI fails to pay the monetary penalty in accordance with the terms
23 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
24 execution of all or any part of the stayed suspension, in which event, MRI shall not be entitled to
25 any repayment nor credit, prorated or otherwise, for money paid to the Department under the
26 terms of this decision.

27 d. If MRI pays the monetary penalty, and if no further cause for

1 disciplinary action against the real estate license of MRI occurs within two (2) years from the
2 effective date of the Decision herein, then the stay hereby granted shall become permanent.

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

5 a. MRI shall obey all laws, rules and regulations governing the rights,
6 duties and responsibilities of a real estate licensee in the State of California, and

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

13 II.

14 AS TO FOY

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

17 1. Forty-five (45) days of said suspension shall be stayed upon the condition that
18 FOY petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to
19 Section 10175.2 of the Code, at a rate of \$50.00 for each day of the suspension, for a total
20 monetary penalty of \$2,250.00.

21 a. Said payment shall be in the form of a cashier's check made payable to
22 the Department of Real Estate. Said check must be delivered to the Department of Real Estate,
23 Flag 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 license
26 of FOY occurs within two (2) years from the effective date of the Order in this matter.

27 c. If FOY fails to pay the monetary penalty in accordance with the terms

1 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
2 execution of all or any part of the stayed suspension, in which event, FOY shall not be entitled to
3 any repayment nor credit, prorated or otherwise, for money paid to the Department under the
4 terms of this decision.

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

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

10 a. FOY 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
13 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
14 effective date of this Order. Should such a determination be made, the Commissioner may, in
15 his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
16 suspension. Should no such determination be made, the stay imposed herein shall become
17 permanent.

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

27 III.

1 AS TO MRI AND FOY JOINTLY AND SEVERALLY

2 1. Pursuant to Section 10148 of the Code, Respondents, jointly and severally,
3 shall pay the sum of \$4,122.00 for the Commissioner's cost of the audit which led to this
4 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
5 invoice therefore from the Commissioner. The Commissioner shall indefinitely suspend all
6 licenses and licensing rights of Respondents pending a hearing held in accordance with Section
7 11500, et seq., of the Government Code, if payment is not timely made as provided for herein,
8 or as provided for in a subsequent agreement between Respondents and the Commissioner.
9 The suspension shall remain in effect until payment is made in full or until Respondents enter
10 into an agreement satisfactory to the Commissioner to provide for payment, or until a decision
11 providing otherwise is adopted following a hearing held pursuant to this condition.

12 2. Respondents, jointly and severally, shall pay the Commissioner's costs, not
13 to exceed \$5,152.50, of any audit conducted pursuant to Section 10148 of the Code to
14 determine if Respondents have corrected the violations described in the Determination of
15 Issues, above, and any other violations found in the audit which led to this disciplinary action.
16 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
17 the estimated average hourly salary for all persons performing audits of real estate brokers, and
18 shall include an allocation for travel time to and from the auditor's place of work. Respondents
19 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
20 Commissioner detailing the activities performed during the audit and the amount of time spent
21 performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the
22 Commissioner shall indefinitely suspend all licenses and licensing rights of Respondents under
23 the Real Estate Law until payment is made in full or until Respondents enter into an agreement
24 satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite
25 suspension provided for in this paragraph shall be stayed.

26 3. All licenses and licensing rights of Respondents, are indefinitely suspended
27 unless or until Respondents, jointly and severally, pay the sum of \$1,998.20 for the

1 Commissioner's reasonable cost of the investigation and enforcement which led to this
2 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
3 made payable to the Real Estate Fund. The investigative and enforcement costs must be
4 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA
5 95813-7013, prior to the effective date of this Order.

6 8/4/22

7 DATED

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KYLE JONES, Counsel
Department of Real Estate

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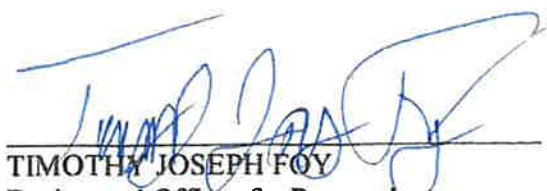
10 I have read the Stipulation and Agreement in Settlement and Order and its terms
11 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
12 rights given to me by the California Administrative Procedure Act (including but not limited to
13 Sections 11506, 11508,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

18 Respondent can signify acceptance and approval of the terms and conditions of
19 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
20 Respondent, to the Department at fax number (916) 576-7840 or by e-mail to
21 kyle.jones@dre.ca.gov. Respondent agrees, acknowledges, and understands that by
22 electronically sending to the Department a copy of Respondent's actual signature as it appears
23 on the Stipulation and Agreement, that receipt of the copy by the Department shall be as
24 binding on Respondent as if the Department had received the original signed Stipulation and
25 Agreement.

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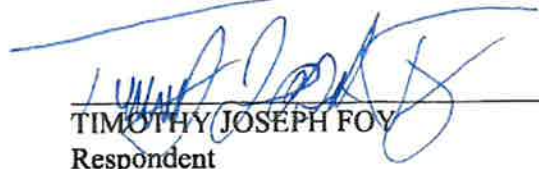
DATED



TIMOTHY JOSEPH FOY
Designated Officer for Respondent,
MIDTOWN REALTY, INC.

8.3.22

DATED



TIMOTHY JOSEPH FOY
Respondent

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

8/3/22

DATED



JOSHUA ROSENTHAL,
Attorney for Respondents,
MIDTOWN REALTY, INC.
And TIMOTHY JOSEPH FOY

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 31 2022.

IT IS SO ORDERED 10.4.22, 2022.


DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER