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MAY 22 2009

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4
5 Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-35385 LA
JAY STEVEN ROSENTHAL, doing	)	
business as Rosenthal & Associates,	)	
Respondent.	)	<u>STIPULATION</u>
	)	<u>AND</u>
	)	<u>AGREEMENT</u>

16 It is hereby stipulated by and between JAY STEVEN
17 ROSENTHAL (sometimes referred to as "Respondent"), represented by
18 Mary E. Work, Esq. and the Complainant, acting by and through
19 Elliott Mac Lennan, Counsel for the Department of Real Estate, as
20 follows for the purpose of settling and disposing of the
21 Accusation filed on October 15, 2008, in this matter:

- 22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act ("APA"), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement (Stipulation).

3 2. Respondent has received, read and understands the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. Respondent filed a Notice of Defense pursuant to
8 Section 11506 of the Government Code for the purpose of
9 requesting a hearing on the allegations in the Accusation.
10 Respondent hereby freely and voluntarily withdraws said Notice of
11 Defense. Respondent acknowledges that he understands that by
12 withdrawing said Notice of Defense he thereby waives his right to
13 require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that he will waive other rights
16 afforded to him in connection with the hearing such as the right
17 to present evidence in his defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interest of
21 expedience and economy, Respondent chooses not to contest these
22 allegations, but to remain silent and understands that, as a
23 result thereof, these allegations, without being admitted or
24 denied, will serve as a prima facie basis for the disciplinary
25 action stipulated to herein. The Real Estate Commissioner shall
26 not be required to provide further evidence to prove said
27 allegations.

1 5. This Stipulation is made for the purpose of
2 reaching an agreed disposition of this proceeding and is
3 expressly limited to this proceeding and any other proceeding or
4 case in which the Department of Real Estate ("Department"), or
5 another licensing agency of this state, another state or if the
6 federal government is involved, and otherwise shall not be
7 admissible in any other criminal or civil proceeding.

8 6. It is understood by the parties that the Real
9 Estate Commissioner may adopt this Stipulation as his Decision
10 in this matter thereby imposing the penalty and sanctions on
11 Respondent's real estate licenses and license rights as set forth
12 in the "Order" herein below. In the event that the Commissioner,
13 in his discretion, does not adopt the Stipulation, it shall be
14 void and of no effect and Respondent shall retain the right to
15 a hearing and proceeding on the Accusation under the provisions
16 of the APA and shall not be bound by any stipulation or waiver
17 made herein.

18 7. The Order or any subsequent Order of the Real
19 Estate Commissioner made pursuant to this Stipulation shall not
20 constitute an estoppel, merger or bar to any further
21 administrative or civil proceedings by the Department of Real
22 Estate with respect to any matters which were not specifically
23 alleged to be causes for Accusation in this proceeding but do
24 constitute a bar, estoppel and merger as to any allegations
25 actually contained in the Accusation against Respondent herein.

DETERMINATION OF ISSUES

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

The conduct, acts and/or omissions of JAY STEVEN ROSENTHAL as described in Paragraph 4, above, constitutes a violation of Business and Professions Code ("Code") Section 10145 and violations of Title 10, Chapter 6, California Code of Regulations Sections 2830.1, 2832(a) and 2834 and is a basis for discipline of Respondent's license pursuant to Sections 10177(d) and 10177(g) of the Business and Professions Code.

ORDER

WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

I.

The real estate broker license and license rights of Respondent JAY STEVEN ROSENTHAL under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent, pursuant to Section 10156.5 of the Business and Professions Code, if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and the following

1 limitations, conditions and restrictions imposed under authority
2 of Section 10156.6 of that Code:

3 1. The restricted salesperson license issued to
4 Respondent may be suspended prior to hearing by Order of the Real
5 Estate Commissioner in the event of Respondent's conviction or
6 plea of nolo contendere to a crime which is substantially related
7 to Respondent's fitness or capacity as a real estate licensee.

8 2. The restricted salesperson license issued to
9 Respondent may be suspended prior to hearing by Order of the Real
10 Estate Commissioner on evidence satisfactory to the Commissioner
11 that Respondent has violated provisions of the California Real
12 Estate Law, the Subdivided Lands Law, Regulations of the Real
13 Estate Commissioner or conditions attaching to the restricted
14 license.

15 3. Respondent shall not be eligible to apply for the
16 issuance of an unrestricted real estate license nor for the
17 removal of any of the conditions, limitations or restrictions of
18 a restricted license until three (3) years has elapsed from the
19 effective date of this Decision.
20

21 4. Respondent shall submit with any application for
22 license under an employing broker, or any application for
23 transfer to a new employing broker, a statement signed by the
24 prospective employing real estate broker on a form approved by
25 the Department of Real Estate which shall certify:

26 ///

1 (a) That the employing broker has read
2 the Decision of the Commissioner which granted the right to a
3 restricted license; and

4 (b) That the employing broker will exercise
5 close supervision over the performance by the restricted licensee
6 relating to activities for which a real estate license is
7 required.

8 II.

9 All licenses and licensing rights of Respondent JAY
10 STEVEN ROSENTHAL under the Real Estate Law are suspended for a
11 period of sixty (60) days from the effective date of this
12 Decision.

13 A. Provided, however, that if Respondent requests, the
14 initial thirty (30) days of said suspension (or a portion
15 thereof) shall be stayed for two (2) years upon condition that:

16 1. Respondent pays a monetary penalty pursuant to
17 Section 10175.2 of the Business and Professions Code at the rate
18 of \$333.33 per day for each day of the suspension for a total
19 monetary penalty of \$10,000.

20 2. Said payment shall be in the form of a cashier's
21 check or certified check made payable to the Recovery Account of
22 the Real Estate Fund. Said check must be received by the
23 Department prior to the effective date of the Decision in this
24 matter.
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1 3. No further cause for disciplinary action against
2 the real estate license of Respondent occurs within two (2) years
3 from the effective date of the Decision in this matter.

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

11 5. If Respondent pays the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 license of Respondent occurs within two (2) years from the
14 effective date of the Decision, the stay hereby granted shall
15 become permanent.

16 6. The remaining thirty (30) days of the sixty (60)
17 day suspension shall be stayed for two (2) years upon the
18 following terms and conditions:

19 (a) Respondent shall obey all laws, rules and
20 regulations governing the rights, duties and responsibilities of
21 a real estate licensee in the State of California; and

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

5 III.

6 All licenses and licensing rights of Respondent JAY
7 STEVEN ROSENTHAL are indefinitely suspended unless or until
8 Respondent provides proof satisfactory to the Commissioner, of
9 having taken and successfully completed the continuing education
10 course on trust fund accounting and handling specified in
11 paragraph (3) of subdivision (a) of Section 10170.5 of the
12 Business and Professions Code. Proof of satisfaction of this
13 requirement includes evidence that respondent has successfully
14 completed the trust fund account and handling continuing
15 education course within 120 days prior to the effective date of
16 the Decision in this matter.

17 IV.

18 Respondent shall within six (6) months from the
19 effective date of the Decision herein, take and pass the
20 Professional Responsibility Examination administered by the
21 Department including the payment of the appropriate examination
22 fee. If Respondent fails to satisfy this condition, the
23 Commissioner may order suspension of Respondent's restricted
24 license until Respondent passes the examination.
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V.

Respondent JAY STEVEN ROSENTHAL shall, within nine (9)
months from the effective date of this Decision, present evidence
satisfactory to the Real Estate Commissioner that Respondent has,
since the most recent issuance of an original or renewal real
estate license, taken and successfully completed the continuing
education requirements of Article 2.5 of Chapter 3 of the Real
Estate Law for renewal of a real estate license. If Respondent
fails to satisfy this condition, the Commissioner may order the
suspension of Respondent's restricted license until Respondent
presents such evidence. The Commissioner shall afford Respondent
the opportunity for a hearing pursuant to the Administrative
Procedure Act to present such evidence.

DATED: 3-18-19

ELL
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

* * * *

EXECUTION OF THE STIPULATION

I have read the Stipulation and discussed it with my
counsel. 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 California Administrative Procedure Act (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

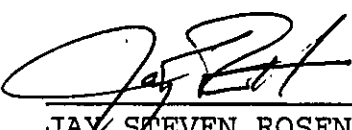
1 Commissioner to prove the allegations in the Accusation at a
2 hearing at which I would have the right to cross-examine
3 witnesses against me and to present evidence in defense and
4 mitigation of the charges.

5 MAILING AND FACSIMILE

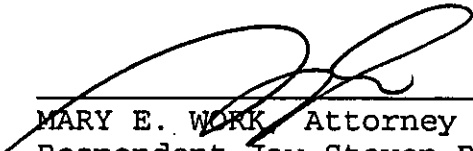
6 Respondent (1) shall mail the original signed signature
7 page of the stipulation herein to Elliott Mac Lennan: Attention:
8 Legal Section, Department of Real Estate, 320 W. Fourth St.,
9 Suite 350, Los Angeles, California 90013-1105. Additionally,
10 Respondent shall also (2) facsimile a copy of signed signature
11 page, to the Department at the following telephone/fax number:
12 (213) 576-6917, Attention: Elliott Mac Lennan. A facsimile
13 constitutes acceptance and approval of the terms and conditions
14 of this stipulation.

15 Respondent agrees, acknowledges and understands that by
16 electronically sending to the Department a facsimile copy of
17 Respondent's actual signature as it appears on the stipulation
18 that receipt of the facsimile copy by the Department shall be as
19 binding on Respondent as if the Department had received the
20 original signed stipulation.
21

22 DATED: 3/28/09

23 
JAY STEVEN ROSENTHAL, Respondent

24
25 DATED: 3/31/09

26 
MARY E. WORK Attorney for
27 Respondent Jay Steven Rosenthal

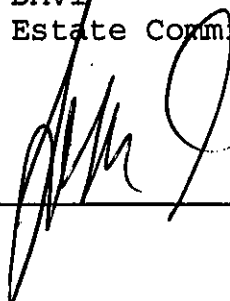
* * *

1 The foregoing Stipulation and Agreement is hereby
2
3 adopted as my Decision and shall become effective at
4 12 o'clock noon on _____ June 22, 2009.

5 IT IS SO ORDERED 5-15-09 2009.

6 JEFF DAVIS
7 Real Estate Commissioner

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Noted

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105
5
6 Telephone: (213) 576-6911 (direct)
7 -or- (213) 576-6982 (office)
8

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OCT 15 2008

DEPARTMENT OF REAL ESTATE
BY: *Hely*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of	)	No. H-35385 LA
	)	
12 JAY STEVEN ROSENTHAL, doing	)	<u>A C C U S A T I O N</u>
13 business as Rosenthal &	)	
14 Associates,	)	
	)	
15 Respondent.	)	

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, acting in her official
18 capacity, for cause of Accusation against JAY STEVEN ROSENTHAL
19 dba Rosenthal & Associates, is informed and alleges as follows:

20 1.

21 All references to the "Code" are to the California
22 Business and Professions Code and all references to "Regulations"
23 are to Title 10, Chapter 6, California Code of Regulations.

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1 LICENSE HISTORY

2 2.

3 At all times mentioned, JAY STEVEN ROSENTHAL
4 ("ROSENTHAL"), was licensed or had license rights issued by the
5 Department of Real Estate ("Department") as a real estate broker.
6 On October 5, 1984, ROSENTHAL was originally licensed as a real
7 estate salesperson. On March 4, 1987, ROSENTHAL was originally
8 licensed as a real estate broker.

9 LICENSED ACTIVITIES AND BROKERAGE

10 3.

11 At all times mentioned, in Studio City, County of Los
12 Angeles, ROSENTHAL dba Rosenthal & Associates engaged in the
13 business of, acted in the capacity of, advertised or assumed to
14 act as a real estate broker, including the operation and conduct
15 of a property management business with the public wherein, for or
16 in expectation of compensation, for another or others,
17 Respondents leased or rented or offered to lease or rent, or
18 placed for rent, or solicited listings of places for rent, or
19 solicited for prospective tenants, or collected rents from real
20 property, or improvements thereon.

21 AUDIT EXAMINATION

22 4.

23 On May 30, 2008, the Department completed an audit
24 examination of the books and records of ROSENTHAL, pertaining to
25 the property management activities described in Paragraph 3, that
26 require a real estate license. The audit examination covered a
27

1 period of time beginning on December 1, 2005 and November 30,
2 2007. The audit examination revealed violations of the Code and
3 the Regulations as set forth below, and more fully discussed in
4 Audit Report LA 070156 and the exhibits and workpapers attached
5 thereto.

6 TRUST ACCOUNTS

7 5.

8 At all times mentioned, in connection with the
9 activities described in Paragraph 4, above, ROSENTHAL accepted or
10 received funds including funds in trust (hereinafter "trust
11 funds") from or on behalf of actual or prospective parties to
12 transactions handled by ROSENTHAL including property owners and
13 tenants.
14

15 "Jay S. Rosenthal dba Rosenthal & Associates (Chevy Chase)
16 0012131777"
17 Cal National Bank
Toluca Lake, CA 91602 (B/A #1)

18 "Kester Village Inc.
19 0012129763"
20 Cal National Bank
Toluca Lake, CA 91602 (B/A #2)

21
22 "Jay S. Rosenthal dba Rosenthal & Associates (Stocker Open)
23 0012117370"
24 Cal National Bank
Toluca Lake, CA 91602 (B/A #3)

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1 "Jay S. Rosenthal dba Rosenthal & Associates (Bellingham Trust
Account)
0012117131"
2 Cal National Bank
3 Toluca Lake, CA 91602 (T/A #4)

4
5 "Jay S. Rosenthal dba Rosenthal & Associates (Laurelwood Account)
0012132221"
6 Cal National Bank
7 Toluca Lake, CA 91602 (B/A #5)

8 VIOLATIONS OF THE REAL ESTATE LAW

9 6.

10 With respect to the licensed activities referred to in
11 Paragraphs 3 and 5, and the audit examination including the
12 exhibits and workpapers referred to in Paragraph 4, it is alleged
13 that ROSENTHAL:

14 (a)(1) Converted \$1,509 in trust funds in the form of
15 rental receipts due and owing to property owner Helen Jameson,
16 for the real property located at 11833-37 Laurelwood Drive,
17 Studio City, in particular, Unit 15 for tenant Donna M. Mueller,
18 re check number 221, for the January 2007 rent, in violation of
19 Code Sections 10145, 10176(i) and /or 10177(g) and Regulation
20 2832.

21 (a)(2) Misrepresented to Helen Jameson that Donna M.
22 Muller did not pay the rent due on Unit 15, when in fact
23 ROSENTHAL had received \$1,509 via Check number 221, deposited
24 said check into B/A #5, closed out B/A #5, and placed said funds
25 into ROSENTHAL's home safe, in violation of Code Sections 10145,
26 10176(a), 10176(i) and /or 10177(g).

27 ///

1 (b) Permitted Avanele D. Bush, an unlicensed and
2 unbonded person, to be authorized signatory on B/A #2, in
3 violation of Code Section 10145 and Regulation 2834.

4 (c) Bank Accounts used to deposit trust funds, to wit,
5 B/A #1, B/A #2, B/A #3 B/A #5, were not in the name of the broker
6 as trustee at a bank or other financial institution, nor
7 designated as trust accounts, in violation of Code Section 10145
8 and Regulation 2832(a); and

9 (d)(1) Deposited trust funds into interest-bearing
10 accounts without written authorization from property owner
11 principals, in violation of Code Section 10145(d)(4) and
12 Regulation 2830.1(a) and (d).

13 (d)(2) Benefited from interest inured on the trust
14 accounts that ROSENTHAL failed to designate as interest bearing
15 accounts, in violation of Code Section 10145(d)(5) and Regulation
16 2830.1(a) and (e).

17 DISCIPLINARY STATUTES AND REGULATIONS

18 7.

19 The conduct of Respondent ROSENTHAL described in
20 Paragraph 6, above, violated the Code and the Regulations as set
21 forth:
22

23 PARAGRAPH

PROVISIONS VIOLATED

24 6(a)

25 Code Sections 10145, 10176(a), 10176(i)
26 and /or 10177(g) and Regulation 2832
27

1 6(b) Code Section 10145 and Regulation 2834

2
3
4 6(c) Code Section 10145 and Regulation
5 2832(a)

6
7 6(d) Code Section 10145(d) and Regulation
8 2830.1

9
10 Each of the foregoing violations constitute cause for the
11 suspension or revocation of the real estate license and license
12 rights of Respondent ROSENTHAL under the provisions of Code
13 Sections 10176(a) for substantial misrepresentation, 10176(i) for
14 conversion, fraud and dishonest dealing, 10177(d) for violation
15 of the Real Estate Law, and/or 10177(g) for negligence or
16 incompetence.

17 NEGLIGENT MISREPRESENTATION

18 8.

19 Respondent ROSENTHAL intentionally engaged in the
20 conduct above set forth in Paragraph 6. Alternatively,
21 Respondent ROSENTHAL engaged in deceit by way of negligent
22 misrepresentation, in violation of and Code Sections 10176(a) for
23 misrepresentation, 10176(i) for fraud and dishonest dealing
24 and/or 10177(g) for negligence.

25 ///

26 ///

1 NEGLIGENCE OR INCOMPETENCE

2 9.

3 The overall conduct of Respondent ROSENTHAL constitutes
4 negligence or incompetence. This conduct and violation are cause
5 for the suspension or revocation of the real estate license and
6 license rights of Respondent pursuant to Code Section 10177(g).

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against the license and license rights of Respondent JAY
11 STEVEN ROSENTHAL, under the Real Estate Law (Part 1 of Division 4
12 of the Business and Professions Code) and for such other and
13 further relief as may be proper under other applicable provisions
14 of law.
15

16 Dated at Los Angeles, California

17 this *7th* day of *October* 2008.
18

19
20 
21 Deputy Real Estate Commissioner
22
23
24

25 cc: Jay Steven Rosenthal
26 Maria Suarez
27 Sacto
Audits - Robert S. Brody
Veronica Kilpatrick