

JAN 18 2013

Telephone: (213) 576-6982

BY: Jama B. Horn

STATE OF CALIFORNIA

* * *

OAH No: 2011120727

STIPULATION AND AGREEMENT

Respondents.

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

1 held in accordance with the provisions of the Administrative
2 Procedure Act ("APA"), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement ("Stipulation").

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

9 3. Respondents timely filed a Notice of Defense
10 pursuant to Section 11506 of the Government Code for the purpose
11 of requesting a hearing on the allegations in the Accusation.
12 Respondents hereby freely and voluntarily withdraw said Notice of
13 Defense. Respondents acknowledge that they understand that by
14 withdrawing said Notice of Defense they thereby waive the right
15 to require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA and that they will waive other rights
18 afforded to them in connection with the hearing such as the right
19 to present evidence in their defense of the allegations in the
20 Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interest of
23 expedience and economy, Respondents choose not to contest these
24 allegations, but to remain silent and understand that, as a
25 result thereof, these factual allegations, without being admitted
26 or denied, will serve as a prima facie basis for the disciplinary
27 action stipulated to herein. The Real Estate Commissioner shall

1 not be required to provide further evidence to prove said factual
2 allegations.

3 5. This Stipulation is made for the purpose of
4 reaching an agreed disposition of this proceeding and is
5 expressly limited to this proceeding and any other proceeding or
6 case in which the Department of Real Estate ("Department"), the
7 state or federal government, or any agency of this state, another
8 state or federal government is a party.

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

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

27 8. Respondents understand that by agreeing to this

1 Stipulation, Respondents agree to pay, pursuant to Business and
2 Professions Code Section 10148, the cost of the audits which led
3 to this disciplinary action. The amount of said cost is \$2,156.

4 9. Respondents have received, read, and understand the
5 "Notice Concerning Costs of Subsequent Audit." Respondents
6 further understand that by agreeing to this Stipulation, the
7 findings set forth below in the Determination of Issues become
8 final, and the Commissioner may charge Respondents for the cost
9 of any subsequent audit conducted pursuant to Business and
10 Professions Code Section 10148 to determine if the violations
11 have been corrected. The maximum cost of the subsequent audit
12 will not exceed \$2,156

13 DETERMINATION OF ISSUES

14 By reason of the foregoing, it is stipulated and agreed
15 that the following determination of issues shall be made:

16 I.

17 The conduct of STATEWIDE PROPERTY SERVICES INC as
18 described in Paragraph 4, hereinabove, is in violation of
19 Business and Professions Code Sections 10145 and 10148 and
20 provides a basis for discipline of its license and license rights
21 pursuant to Business and Professions Code Section 10177(d).

22 II.

23 The conduct of DAVID RUSSELL DANIEL, as described in
24 Paragraph 4, hereinabove, is in violation of Business and
25 Professions Code Sections 10145 and 10148 and provides a basis
26 for discipline of his license and license rights pursuant to
27 Business and Professions Code Section 10177(d).

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1 the suspension for a total monetary penalty of \$1,500.

2 2. Said payment shall be in the form of a cashier's
3 check or certified check made payable to the Recovery Account of
4 the Real Estate Fund. Said check must be received by the
5 Department prior to the effective date of the Decision in this
6 matter.

7 3. No further cause for disciplinary action against
8 the real estate license of Respondent occurs within two years
9 from the effective date of the Decision in this matter.

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

17 5. If Respondent pays the monetary penalty and if no
18 further cause for disciplinary action against the real estate
19 license of Respondent occurs within two years from the effective
20 date of the Decision, the stay hereby granted shall become
21 permanent.

22 C.

23 Pursuant to Section 10148 of the Business and
24 Professions Code, Respondent shall pay the Commissioner's
25 reasonable cost for: a) the audit which led to this disciplinary
26 action and b) a subsequent audit to determine if Respondent has
27 corrected the trust fund violations found in the Determination

1 of Issues. In calculating the amount of the Commissioner's
2 reasonable cost, the Commissioner may use the estimated average
3 hourly salary for all persons performing audits of real estate
4 brokers, and shall include an allocation for travel costs,
5 including mileage, time to and from the auditor's place of work
6 and per diem. Respondent shall pay such costs within 60 days of
7 receiving an invoice from the Commissioner detailing the
8 activities performed during the audit and the amount of time
9 spent performing those activities. The Commissioner may, in his
10 discretion, vacate and set aside the stay order, if payment is
11 not timely made as provided for herein, or as provided for in a
12 subsequent agreement between the Respondent and the
13 Commissioner. The vacation and the set aside of the stay shall
14 remain in effect until payment is made in full, or until
15 Respondent enters into an agreement satisfactory to the
16 Commissioner to provide for payment.

17 II.

18 A.

19 All licenses and licensing rights of Respondent DAVID
20 RUSSELL DANIEL. under the Real Estate Law are suspended for a
21 period of ninety (90) days from the effective date of this
22 Decision; provided, however, that sixty (60) days of said
23 suspension, shall be stayed for two (2) years upon the following
24 terms and conditions:

25 1. Respondent shall obey all laws, rules and
26 regulations governing the rights, duties and responsibilities of
27 a real estate licensee in the State of California; and

2. That no final subsequent determination be made,
after hearing or upon stipulation that cause for disciplinary
action occurred within two (2) years of the effective date of
this Decision. 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.

B.

If Respondent DAVID RUSSELL DANIEL. petitions, an
additional 30 days shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to
Section 10175.2 of the Code at the rate of \$50 for each day of
the suspension for a total monetary penalty of \$1,500.

2. Said payment shall be in the form of a cashier's
check or certified check made payable to the Recovery Account of
the Real Estate Fund. Said check must be received by the
Department prior to the effective date of the Decision in this
matter.

3. No further cause for disciplinary action against the
real estate license of Respondent occurs within two years from
the effective date of the Decision in this matter.

3. If Respondent fails to pay the monetary penalty in
accordance with the terms and conditions of the Decision, the
Commissioner may, without a hearing, order the immediate
execution of all or any part of the stayed suspension in which
event the Respondent shall not be entitled to any repayment nor

1 credit, prorated or otherwise, for money paid to the Department
2 under the terms of this Decision.

3 4. If Respondent pays the monetary penalty and if no
4 further cause for disciplinary action against the real estate
5 license of Respondent occurs within two years from the effective
6 date of the Decision, the stay hereby granted shall become
7 permanent.

8 C.

9 Pursuant to Section 10148 of the Business and
10 Professions Code, Respondent shall pay the Commissioner's
11 reasonable cost for: a) the audit which led to this disciplinary
12 action and b) a subsequent audit to determine if Respondent has
13 corrected the trust fund violations found in the Determination
14 of Issues. In calculating the amount of the Commissioner's
15 reasonable cost, the Commissioner may use the estimated average
16 hourly salary for all persons performing audits of real estate
17 brokers, and shall include an allocation for travel costs,
18 including mileage, time to and from the auditor's place of work
19 and per diem. Respondent shall pay such costs within 60 days of
20 receiving an invoice from the Commissioner detailing the
21 activities performed during the audit and the amount of time
22 spent performing those activities. The Commissioner may, in his
23 discretion, vacate and set aside the stay order, if payment is
24 not timely made as provided for herein, or as provided for in a
25 subsequent agreement between the Respondent and the
26 Commissioner. The vacation and the set aside of the stay shall
27 remain in effect until payment is made in full, or until

1 Respondent enters into an agreement satisfactory to the
2 Commissioner to provide for payment.

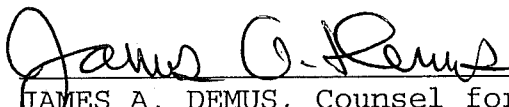
3 D.

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

15 III.

16 All proof of payment and completed coursework shall be
17 submitted to Department Counsel James A. Demus, Attention: Legal
18 Section, Department of Real Estate, 320 W. Fourth St., Suite 350,
19 Los Angeles, California 90013-1105, on or before the dates set
20 forth above.

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22 DATED: 11/27/12


23 JAMES A. DEMUS, Counsel for

24 the Department of Real Estate

25 EXECUTION OF THE STIPULATION

26 I have read the Stipulation and discussed it with my
27 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 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.

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of its signature page, as actually signed by Respondents, to the Department at the following telephone/fax number: James A. Demus at (213) 576-6917. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation.

DATED: 11/26/12

DDaniel
DAVID RUSSELL DANIEL, as Designated
Officer of STATEWIDE PROPERTY
SERVICES INC

DATED: 11/26/12

DDaniel
DAVID RUSSELL DANIEL, Respondent

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3 DATED:

11-26-12



FRANK M. BUDA
Attorney for Respondents

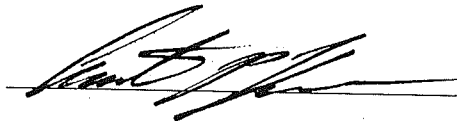
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7 The foregoing Stipulation and Agreement is hereby
8 adopted as my Decision as to Respondents STATEWIDE PROPERTY
9 SERVICES INC and DAVUD RYSELL DANIEL and shall become effective
10 at 12 o'clock noon on FEB 19 2013

11 IT IS SO ORDERED

4/15/13

12 Real Estate Commissioner

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15 By: Awet P. Kidane
16 Chief Deputy Commissioner
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