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2 Department of Real Estate
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FILED

JUN 28 2012

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA.

10 * * *

11 In the Matter of the Accusation of)	No. H-37824 LA
)	
12 EINSTEIN MORTGAGE AND REALTY INC.)	<u>STIPULATION</u>
13 doing business as Einstein Realty; and)	<u>AND</u>
14 SALIM KABIR, individually and as designated)	<u>AGREEMENT</u>
15 officer of Einstein Mortgage and Realty Inc.,)	
)	
16 Respondents.)	

17 It is hereby stipulated by and between Respondents EINSTEIN MORTGAGE
18 AND REALTY INC. and SALIM KABIR, individually and as designated officer of Einstein
19 Mortgage and Realty Inc., (sometimes collectively referred to as "Respondents"), represented by
20 Steve Vondran, Esq. and the Complainant, acting by and through Elliott Mac Lennan, Counsel
21 for the Department of Real Estate, as follows for the purpose of settling and disposing of the
22 Accusation filed on February 1, 2012, in this matter:

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

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

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

12 4. This Stipulation is based on the factual allegations contained in the Accusation.
13 In the interest of expedience and economy, Respondents choose not to contest these allegations,
14 but to remain silent and understand that, as a result thereof, these factual allegations, without
15 being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to
16 herein. The Real Estate Commissioner shall not be required to provide further evidence to prove
17 said factual allegations.

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

23 6. It is understood by the parties that the Real Estate Commissioner may adopt
24 this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on
25 Respondents' real estate licenses and license rights as set forth in the below "Order". In the event
26 that the Commissioner in the Commissioner's discretion does not adopt the Stipulation, the
27 Stipulation shall be void and of no effect and Respondents shall retain the right to a hearing and

1 proceeding on the Accusation under the provisions of the APA and shall not be bound by any
2 stipulation or waiver made herein.

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

7 8. Respondents understand that by agreeing to this Stipulation, Respondents agree
8 to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit which led
9 to this disciplinary action. The amount of said cost is \$9,845.70.

10 9. Respondents have received, read, and understand the "Notice Concerning
11 Costs of Subsequent Audit". Respondents further understand that by agreeing to this Stipulation,
12 the findings set forth below in the Determination of Issues become final, and the Commissioner
13 may charge Respondents for the cost of any subsequent audit conducted pursuant to Business and
14 Professions Code Section 10148 to determine if the violations have been corrected. The
15 maximum cost of the subsequent audit will not exceed \$9,845.70.

16 DETERMINATION OF ISSUES

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

19 I.

20 The conduct of EINSTEIN MORTGAGE AND REALTY INC. as described in
21 Paragraph 4, above, is in violation of Sections 10145, 10148, 10160 and 10163 of the Business
22 and Professions Code ("Code") and Sections 2715, 2731, 2753, 2831, 2831.2, 2832(a), 2832.1
23 and 2834 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a
24 basis for the suspension or revocation of Respondent's license and license rights as a violation of
25 the Real Estate Law pursuant to Code Sections 10177(d).

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1 II.

2 The conduct of SALIM KABIR, as described in Paragraph 4, above, constitutes a
3 failure to keep Einstein Mortgage and Realty Inc. in compliance with the Real Estate Law during
4 the time that he was the officer designated by a corporate broker licensee in violation of Section
5 10159.2 of the Code. This conduct is a basis for the suspension or revocation of Respondent's
6 license pursuant to Code Sections 10177(d), 10177(g) and 10177(h).

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8 ORDER

9 WHEREFORE, THE FOLLOWING ORDER is hereby made:

10 I.

11 All licenses and licensing rights of Respondents EINSTEIN MORTGAGE AND
12 REALTY INC. and SALIM KABIR, under the Real Estate Law are revoked; provided, however,
13 restricted real estate broker licenses shall be issued to said Respondents, pursuant to Section
14 10156.5 of the Business and Professions Code if Respondents:

15 (A) Make application thereof and pays to the Department of Real Estate the
16 appropriate fee for the restricted license within ninety (90) days from the effective date of this

17 Decision.

18 (B) Respondent SALIM KABIR shall, prior to and as a condition of the issuance
19 of the restricted license, submit proof satisfactory to the Commissioner of having taken and
20 successfully completed the continuing education course on trust fund accounting and handling
21 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
22 Code. Proof of satisfaction of this requirement includes evidence that Respondent has
23 successfully completed the trust fund account and handling continuing education course within
24 120 days prior to the effective date of the Decision in this matter.

25 The restricted licenses issued to Respondents shall be subject to all of the
26 provisions of Section 10156.7 of the Business and Professions Code and to the followings
27 limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

5 2. The restricted licenses issued to Respondents may be suspended prior to
6 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner
7 that a Respondent has violated provisions of the California Real Estate Law, the Subdivided
8 Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
9 license.

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

13 4. Respondent SALIM KABIR shall within six (6) months from the effective date
14 of the restricted license, take and pass the Professional Responsibility Examination administered
15 by the Department including the payment of the appropriate examination fee. If Respondent fails
16 to satisfy this condition, the Commissioner may order suspension of the restricted license until
17 respondent passes the examination.

18 5. Respondent SALIM KABIR shall, within nine (9) months from the effective
19 date of this Decision, present evidence satisfactory to the Real Estate Commissioner that
20 Respondent has, since the most recent issuance of an original or renewal real estate license, taken
21 and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
22 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
23 condition, the Commissioner may order the suspension of his license until the Respondent
24 presents such evidence. The Commissioner shall afford Respondent the opportunity for a
25 hearing pursuant to the Administrative Procedure Act to present such evidence.

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1 The Commissioner may suspend the license of Respondents pending a hearing
2 held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely
3 made as provided for herein, or as provided for in a subsequent agreement between the
4 Respondents and the Commissioner. The suspension shall remain in effect until payment is
5 made in full or until a Respondent enters into an agreement satisfactory to the Commissioner to
6 provide for payment, or until a decision providing otherwise is adopted following a hearing held
7 pursuant to this condition.

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10 DATED: 4-10-12

ELI
11 ELLIOTT MAC LENNAN, Counsel for
12 the Department of Real Estate

13 * * *

14 EXECUTION OF THE STIPULATION

15 We have read the Stipulation and have discussed it with our attorney. Its terms are
16 understood by us and are agreeable and acceptable to us. We understand that we are waiving
17 rights given to us by the California Administrative Procedure Act (including but not limited to
18 Sections 11506, 11508, 11509 and 11513 of the Government Code), and we are willingly,
19 intelligently and voluntarily waive those rights, including the right of requiring the
20 Commissioner to prove the allegations in the Accusation at a hearing at which we would have the
21 right to cross-examine witnesses against us and to present evidence in defense and mitigation of
22 the charges.

23 FACSIMILE

24 Respondents can signify acceptance and approval of the terms and conditions of
25 this Stipulation by faxing a copy of its signature page, as actually signed by Respondents, to the
26 Department at the following facsimile number: Elliott Mac Lennan at (213) 576-6917.
27 Respondents agree, acknowledge and understand that by electronically sending to the Department

1 a fax copy of Respondents' actual signature as they appear on the Stipulation, that receipt of the
2 faxed copy by the Department shall be as binding on Respondents as if the Department had
3 received the original signed Stipulation.
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6 DATED: 5/14/12
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Salim Kabir
EINSTEIN MORTGAGE AND REALTY INC.,
BY: SALIM KABIR,
Respondent
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11 DATED: 5/14/12
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Salim Kabir
SALIM KABIR, individually and as designated
officer of Einstein Mortgage and Realty Inc.,
Respondent
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16 DATED: 5/25/12
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Steve Vondran
STEVE VONDRAN, ESQ.
Attorney for Respondents
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
Respondents EINSTEIN MORTGAGE AND REALTY INC. and SALIM KABIR, individually
and as designated officer of Einstein Mortgage and Realty Inc. and shall become effective at 12
o'clock noon on July 27, 2012.

IT IS SO ORDERED June 21, 2012.

REAL ESTATE COMMISSIONER


By WAYNE S. BELL
Chief Counsel