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FILED

JUL 18 2013

BUREAU OF REAL ESTATE

By James B. Peel

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013
4 Telephone: (213) 576-6982

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-38234 LA
12)
12 ALICIA PARK REAL ESTATE, INC.;)
13 and HOWARD ERWIN HARMATZ) STIPULATION AND AGREEMENT
13 individually and as)
14 designated officer of)
14 Alicia Park Real Estate, Inc.,)
15)
15)
16 Respondents.)
17)

18 It is hereby stipulated by and between ALICIA PARK
19 REAL ESTATE, INC. and HOWARD ERWIN HARMATZ (sometimes referred
20 to as Respondents), and the Complainant, acting by and through
21 James R. Peel, Counsel for the Department of Real Estate, as
22 follows for the purpose of settling and disposing of the First
23 Amended Accusation filed on February 5, 2013, in this matter.

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

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

9 3. On July 20, 2012, Respondents filed a Notice of
10 Defense pursuant to Section 11506 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notice of Defense. Respondents acknowledge that they
14 understand that by withdrawing said Notice of Defense they will
15 thereby waive their right to require the Commissioner to prove
16 the allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that they will
18 waive other rights afforded to them in connection with the
19 hearing such as the right to present evidence in defense of the
20 allegations in the Accusation and the right to cross-examine
21 witnesses.

22 4. This Stipulation is based on the factual
23 allegations contained in the Accusation filed in this
24 proceeding. In the interest of expedience and economy,
25 Respondents choose not to contest these factual allegations, but
26 to remain silent and understand that, as a result thereof, these
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1 factual statements, will serve as a prima facie basis for the
2 disciplinary action stipulated to herein. The Real Estate
3 Commissioner shall not be required to provide further evidence
4 to prove such allegations.

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

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

21 7. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation shall not
23 constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department of Real
25 Estate with respect to any conduct which was not specifically
26 alleged to be causes for accusation in this proceeding.
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DETERMINATION OF ISSUES

1
2 By reason of the foregoing stipulations and waivers
3 and solely for the purpose of settlement of the pending
4 Accusation, it is stipulated and agreed that the following
5 determination of issues shall be made:

I

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7 The conduct, acts and/or omissions of Respondents
8 ALICIA PARK REAL ESTATE, INC. and HOWARD ERWIN HARMATZ, as set
9 forth in the Accusation, constitute cause for the suspension or
10 revocation of all of the real estate licenses and license rights
11 of Respondents under the provisions of Sections 10177(d) and
12 10177(g) of the Business and Professions Code ("Code") for
13 violation of Code Section 10145.

ORDER

14
15 All licenses and licensing rights of Respondents
16 ALICIA PARK REAL ESTATE, INC. and HOWARD ERWIN HARMATZ under the
17 Real Estate Law are suspended for a period of thirty (30) days
18 from the effective date of this Decision; provided, however,
19 that thirty (30) days of said suspension shall be stayed for two
20 (2) years upon the following terms and conditions:

- 21
- 22 1. Respondents shall obey all laws, rules and
23 regulations governing the rights, duties and responsibilities of
24 a real estate licensee in the State of California; and
 - 25 2. That no final subsequent determination be made,
26 after hearing or upon stipulation that cause for disciplinary
27 action occurred within two (2) years of the effective date of

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

6 3. Pursuant to Section 10148 of the Business and
7 Professions Code, Respondents ALICIA PARK REAL ESTATE, INC. and
8 HOWARD ERWIN HARMATZ shall pay the Commissioner's reasonable
9 cost for: a) the audit which led to this disciplinary action
10 (\$5,819.88) and b) a subsequent audit to determine if Respondent
11 has corrected the trust fund violations found in paragraphs 1 of
12 the Determination of Issues. In calculating the amount of the
13 Commissioner's reasonable cost, the Commissioner may use the
14 estimated average hourly salary for all persons performing
15 audits of real estate brokers, and shall include an allocation
16 for travel costs, including mileage, time to and from the
17 auditor's place of work and per diem. Respondent shall pay such
18 cost within 60 days of receiving an invoice from the
19 Commissioner detailing the activities performed during the audit
20 and the amount of time spent performing those activities. The
21 Commissioner may, in his discretion, vacate and set aside the
22 stay order if payment is not timely made as provided for herein,
23 or as provided for in a subsequent agreement between the
24 Respondent and the Commissioner. The vacation and the set aside
25 of the stay shall remain in effect until payment is made in
26 full, or until Respondent enters into an agreement satisfactory
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1 to the Commissioner to provide for payment. Should no order
2 vacating the stay be issued, either in accordance with this
3 condition or condition "2" above, the stay imposed shall become
4 permanent.

5
6 DATED: March 19, 2013

James R. Peel
7 JAMES R. PEEL, Counsel for the
Department of Real Estate

8 * * *

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

20 Respondent can signify acceptance and approval of the
21 terms and conditions of this Stipulation and Agreement by faxing
22 a copy of the signature page, as actually signed by Respondent,
23 to the Department at the following telephone/fax number:

24 (213) 576-6917. Respondent agrees, acknowledges and understands
25 that by electronically sending to the Department a fax copy of
26 his or her actual signature as it appears on the Stipulation and
27 Agreement, that receipt of the faxed copy by the Department

1 shall be as binding on Respondents as if the Department had
2 received the original signed Stipulation and Agreement.

3 Further, if the Respondent is represented, the
4 Respondent's counsel can signify his or her agreement to the
5 terms and conditions of the Stipulation and Agreement by
6 submitting that signature via fax.

7 DATED: 3-15-13 *Paul Hunt* Resident
8 ALICIA PARK REAL ESTATE, INC.
9 Respondent

10 DATED: 3-15-13 *Howard Erwin Harmatz*
11 HOWARD ERWIN HARMATZ
12 Respondent

13 * * *

14 The foregoing Stipulation and Agreement is hereby
15 adopted as my Decision and Order in this matter, and shall
16 become effective at 12 o'clock noon on AUG - 7 2013.

17 IT IS SO ORDERED *4/18/2013*

18 Real Estate Commissioner

19 *Wayne S. Bell*
20 WAYNE S. BELL
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shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

Further, if the Respondent is represented, the Respondent's counsel can signify his or her agreement to the terms and conditions of the Stipulation and Agreement by submitting that signature via fax.

DATED: _____
ALICIA PARK REAL ESTATE, INC.
Respondent

DATED: _____
HOWARD ERWIN HARMATZ
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and Order in this matter, and shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED _____.

REAL ESTATE COMMISSIONER

Wayne S. Bell