


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

**FILED**

SEP 28 2015

BUREAU OF REAL ESTATE

By 

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

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10 In the Matter of the Accusation of )  
11 )  
12 MSRE INC., doing business as )  
13 Main Street Realty; and )  
14 WALTER A. ZDAZINSKY, )  
15 individually and as designated )  
16 officer of MSRE Inc., )  
Respondents, )

BRE No. H-38633 LA  
OAH No. L-201320356

STIPULATION  
AND  
AGREEMENT

17 It is hereby stipulated by and between Respondent WALTER A. ZDAZINSKY,  
18 individually and as designated officer of MSRE Inc., (sometimes referred to as "Respondent"),  
19 represented by Frank M. Buda, Esq. and the Complainant, acting by and through Elliott Mac  
20 Lennan, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and  
21 disposing of the First Amended Accusation ("Accusation") filed on December 28, 2012, in this  
22 matter:

23 1. All issues which were to be contested and all evidence which was to be  
24 presented by Complainant and Respondent 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. Respondent has received, read and understands the Statement to Respondent,  
2 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in  
3 this proceeding.

4                   3. Respondent 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 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent  
7 acknowledges that he understands that by withdrawing said Notice of Defense he thereby waives  
8 his 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 he will waive other rights  
10 afforded to him in connection with the hearing such as the right to present evidence in his  
11 defense and the right to cross-examine witnesses.

12                   4. This Stipulation is based on the factual allegations contained in the  
13 Accusation. In the interest of expedience and economy, Respondent chooses not to contest these  
14 allegations, but to remain silent and understand that, as a result thereof, these factual allegations,  
15 without being admitted or denied, will serve as a prima facie basis for the disciplinary action  
16 stipulated to herein. The Real Estate Commissioner shall not be required to provide further  
17 evidence to prove 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 Bureau of Real Estate ("Bureau"), the state or federal government, or any agency of  
21 this state, another state or federal government is involved.

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

1 waiver made herein.

2 7. The Order or any subsequent Order of the Real Estate Commissioner made  
3 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further  
4 administrative or civil proceedings by the Bureau of Real Estate with respect to any matters  
5 which were not specifically alleged to be causes for Accusation in this proceeding but do  
6 constitute a bar, estoppel and merger as to any allegations actually contained in the Accusation  
7 against Respondent herein.

8 8. Respondent understands that by agreeing to this Stipulation, Respondent  
9 agrees to pay pursuant to Business and Professions Code Section 10148, the cost of the audit.  
10 The amount of said cost for the original audit of MSRE Inc. is \$6,490.09.

11 9. Respondent has received, read, and understands the "Notice Concerning Costs  
12 of Subsequent Audit". Respondent further understands that by agreeing to this Stipulation, the  
13 findings set forth below in the Determination of Issues become final, and the Commissioner may  
14 charge Respondent for the cost of any subsequent audit conducted pursuant to Business and  
15 Professions Code Section 10148 to determine if the violations have been corrected. The  
16 maximum cost of the follow-up audit will not exceed \$6,490.09.

17 10. Respondent understands that by agreeing to this Stipulation, Respondent  
18 agrees to pay, pursuant to Business and Professions Code Section 10106, the cost of the  
19 investigation and enforcement of this matter. The amount of said cost is \$2,091.00

20 DETERMINATION OF ISSUES

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

23 I.

24 The conduct, acts or omissions of WALTER A. ZDAZINSKY, as described in  
25 Paragraph 4, herein above, are in violation of Section 10145 of the Business and Professions  
26 Code ("Code") and Sections 2831, 2831.1, and 2831.2 of Title 10, Chapter 6 of the California  
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1 Code of Regulations (“Regulations”) and is a basis for discipline of Respondent’s license and  
2 license rights as a violation of the Real Estate Law pursuant to Code Sections 10177(d) and  
3 10177(h).

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 I.

7 All licenses and licensing rights of Respondent WALTER A. ZDAZINSKY,  
8 under the Real Estate Law are suspended for a period of sixty (60) days from the effective date  
9 of this Decision:

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

12 1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the  
13 Business and Professions Code at the rate of \$83.33 per day for each day of the suspension for a  
14 total monetary penalty of \$2,500.

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

18 3. No further cause for disciplinary action against the real estate license of  
19 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

20 4. If Respondent fails to pay the monetary penalty in accordance with the terms  
21 of the Decision, the Commissioner may, without a hearing, order the immediate execution of all  
22 or any part of the stayed suspension, in which event the Respondent shall not be entitled to any  
23 repayment nor credit, prorated or otherwise, for money paid to the Bureau under the terms of this  
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26  
27

1 this Decision.

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

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

7 1. Respondent shall obey all laws, rules and regulations governing the rights,  
8 duties and responsibilities of a real estate licensee in the State of California; and  
9

10 2. That no final subsequent determination be made after hearing or upon  
11 stipulation, that cause for disciplinary action occurred within two (2) years from the effective  
12 date of this Decision. Should such a determination be made, the Commissioner may, in his  
13 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed  
14 suspension. Should no such determination be made, the stay imposed herein shall become  
15 permanent.  
16

17 II.

18 Pursuant to Section 10148 of the Business and Professions Code, Respondent  
19 WALTER A. ZDAZINSKY shall pay the Commissioner's reasonable cost for (a) the cost of the  
20 audit which led to this disciplinary action and (b) a subsequent audit to determine if WALTER  
21 A. ZDAZINSKY is now in compliance with the Real Estate Law. The cost of the audit which  
22 led to this disciplinary action is \$6,490.09. In calculating the amount of the Commissioner's  
23 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons  
24 performing audits of real estate brokers, and shall include an allocation for travel time to and  
25 from the auditor's place of work. Said amount for the prior and subsequent audits shall not  
26 exceed \$12,980.18. Respondent shall pay such cost within 60 days of receiving an invoice  
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1 from the Commissioner detailing the activities performed during the audit and the amount of  
2 time spent performing those activities.

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

10 III.

11 Pursuant to Section 10106 of the Business and Professions Code, Respondent  
12 WALTER A. ZDAZINSKY, shall pay the Commissioner's reasonable cost for investigation and  
13 enforcement of the matter within sixty (60) days after the effective date of this Decision. The  
14 investigation and enforcement cost which led to this disciplinary action is \$2,091.00.

15 The Commissioner may suspend the license of Respondent pending a hearing  
16 held in accordance with Section 11500, et seq., of the Government Code, if payment is not  
17 timely made as provided for herein, or as provided for in a subsequent agreement between the  
18 Respondent and the Commissioner. The suspension shall remain in effect until payment is  
19 made in full or until Respondent enters into an agreement satisfactory to the Commissioner to  
20 provide for payment, or until a decision providing otherwise is adopted following a hearing held  
21 pursuant to this condition.

22 IV.

23 All licenses and licensing rights of Respondent WALTER A. ZDAZINSKY, are  
24 indefinitely suspended unless or until Respondent provides proof satisfactory to the  
25 Commissioner, of having taken and successfully completed the continuing education course on  
26 trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section  
27

1 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes  
2 evidence that respondent has successfully completed the trust fund account and handling  
3 continuing education course within 120 days prior to the effective date of the Decision in this  
4 matter.

5 V.

6 Respondent WALTER A. ZDAZINSKY shall, within nine (9) months from the  
7 effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner  
8 that Respondent has, since the most recent issuance of an original or renewal real estate license,  
9 taken and successfully completed the continuing education requirements of Article 2.5 of  
10 Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to  
11 satisfy this condition, the Commissioner may order the suspension of the Respondent's license  
12 until Respondent presents such evidence. The Commissioner shall afford Respondent the  
13 opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.  
14

15 VI.

16 During the two (2) period above, Respondent WALTER A. ZDAZINSKY shall  
17 not serve as the designated broker at any California corporate real estate broker unless and until  
18 Respondent is the sole owner of record of the shares of the corporation.  
19

20 VII.

21 Respondent WALTER A. ZDAZINSKY shall, within six (6) months from the  
22 effective date of this Stipulation, present evidence satisfactory to the Real Estate Commissioner  
23 that:  
24

25 (A) With respect to the \$34,496.93 in funds contained in BA1 and BA2 described  
26 Audit Report SD 120004/SD 120007, Respondent shall:  
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1                   (1) Hold such funds in a trust account in Respondent's name until:

2                   (a) The unidentified \$34,496.93 held in trust or any portion thereof has been  
3 identified and disbursed to the owners; and if the owners have not been located pursuant to  
4 paragraph B below, then;

5                   (b) Respondent ZDAZINSKY shall comply with the laws relating to escheatment  
6 of funds to the State of California for unidentified funds.

7                   (B) To the extent that restitution repayment is applicable:

8                   (1) Respondent shall deliver or mail the restitution payments, by certified mail,  
9 return receipt requested, to the beneficiaries' last addresses on file with, known or discernible by  
10 Respondent.  
11

12                   (2) If any of the payments are returned by the Post Office marked "Unable to  
13 Deliver," Respondent shall employ a locator service (which may include the Internet or other  
14 database retrieval search) to attempt and locate the aforesaid borrower- beneficiaries.  
15 Repayments shall then be made to the addresses recommended by the locator service.  
16

17                   (3) If unable to effect repayment after using a locator service, Respondent shall  
18 provide reasonable proof satisfactory to the Commissioner of Respondent's efforts to comply  
19 with the provisions of this Paragraph.

20                   (4) If the Commissioner determines that proof to be unsatisfactory, the  
21 Commissioner shall so advise Respondent, and indicate what additional reasonable efforts should  
22 be made to make repayment to the owner-beneficiaries.  
23

24                   (5) If Respondent fails to satisfy this condition, the Commissioner may order  
25 suspension of Respondent's license until Respondent effects compliance herein and/or may order  
26 that undeliverable or undelivered restitution payments escheat to the State of California.  
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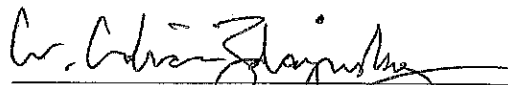
1 right to cross-examine witnesses against me and to present evidence in defense and mitigation of  
2 the charges.

3 MAILING AND FACSIMILE

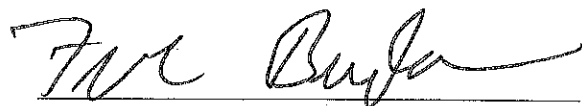
4 Respondent (1) shall mail the original signed signature page of the stipulation  
5 herein to Elliott Mac Lennan: Attention: Legal Section, Bureau of Real Estate, 320 W. Fourth  
6 St., Suite 350, Los Angeles, California 90013-1105. Respondent shall also (2) facsimile a copy  
7 of signed signature page, to the Bureau at the following fax number: (213) 576-6917, Attention:  
8 Elliott Mac Lennan, Esq.

9 A facsimile constitutes acceptance and approval of the terms and conditions of  
10 this stipulation. Respondent agrees, acknowledge and understand that by electronically sending  
11 to the Bureau a facsimile copy of Respondent's actual signature as it appears on the stipulation  
12 that receipt of the facsimile copy by the Bureau shall be as binding on Respondent as if the  
13 Bureau had received the original signed stipulation.

14  
15 DATED: 1/24/14

  
16 WALTER A. ZDZINSKY, Respondent,

17  
18 DATED: 1-28-14

  
19 FRANK M. BUDA, ESQ.  
20 Attorney for Respondent

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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to  
Respondent WALTER A. ZDAZINSKY, and shall become effective at 12 o'clock noon on  
OCT 19, 2015.

IT IS SO ORDERED SEPTEMBER 23, 2015.

Real Estate Commissioner  
  
By: JEFFREY MASON  
Chief Deputy Commissioner