1 2	320 West 4th Street, Ste. 350	LED		
3	³ Telephone: (213) 576-6982	MAY 222014		
4		NU OF REAL ESTATE		
5		aunoh		
6	6			
7	7			
8	8 BEFORE THE BUREAU OF REAL E	BEFORE THE BUREAU OF REAL ESTATE		
9	9 STATE OF CALIFORNIA	STATE OF CALIFORNIA		
10	10 ***			
11	11 In the Matter of the Accusation of	No. H-38889 LA		
12	KANDAL WESLEY BANAGAS,			
13	13 doing business as Starcrest Property) Management, and Starcrest Properties,)	<u>STIPULATION</u> <u>AND</u>		
14		AGREEMENT		
15				
16	16 Respondents,			
17	¹⁷ It is hereby stipulated by and between Responden	t RANDALL WESLEY		
18	¹⁸ BANAGAS, (sometimes referred to as "Respondent,") and the C	Complainant, acting by and		
19	¹⁹ through Elliott Mac Lennan, Counsel for the Bureau of Real Est			
20	20			
21	²¹ of settling and disposing of the Accusation ("Accusation") filed	on March 30, 2013, in this		
22	22 matter:			
23	1. All issues which were to be contested and all e	evidence which was to be		
24	²⁴ presented by Complainant and Respondent at a formal hearing of	n the Accusation, which hearing		
25				
26	26			
27	²⁷ shall instead and in place thereof be submitted solely on the basis	s ot the provisions of this		

Stipulation and Agreement ("Stipulation.")

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

5 6

7

8

9

10

11

12

13

14

17

19

20

21

22

23

24

25

26

27

1

2

3

4

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

4. This Stipulation is based on the factual allegations contained in the 15 Accusation. In the interest of expedience and economy, Respondent chooses not to contest 16 these allegations, but to remain silent and understands that, as a result thereof, these factual 18 allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

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

- 2 -

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

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

16 8. Respondent understands that by agreeing to this Stipulation, Respondent
17 agrees to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit is
18 \$6,274.34.

9. Respondent has received, read, and understood the "Notice Concerning Costs
of Subsequent Audit". Respondent further understands that by agreeing to this Stipulation, the
findings set forth below in the Determination of Issues become final, and the Commissioner
may charge Respondent for the cost of any subsequent audit conducted pursuant to Business and
Professions Code Section 10148 to determine if the violations have been corrected. The
maximum cost of the follow-up audit will not exceed \$6,274.34.

27

19

1

2

3

4

5

б

7

8

10. Respondent understands that by agreeing to this Stipulation, Respondent		
² agrees to pay, pursuant to Business and Professions Code Section 10106, the cost of the		
³ investigation and enforcement of this matter. The amount of said cost is \$1,880.05.		
4 DETERMINATION OF ISSUES		
By reason of the foregoing, it is stipulated and agreed that the following		
determination of issues shall be made:		
The conduct, acts and omissions of Respondent RANDALL WESLEY		
BANAGAS, as described in Paragraph 4, above, is in violation of Section <u>10145</u> of the Business		
and Professions Code ("Code") and Sections <u>2831.2</u> and <u>2832(a)</u> of Title 10, Chapter 6 of the		
California Code of Regulations ("Regulations") and is a basis for discipline of Respondent's		
license and license rights as a violation of the Real Estate Law pursuant to Code Sections 10130,		
10177(d), 10177(g) and 10177(h).		
ORDER		
WHEREFORE, THE FOLLOWING ORDER is hereby made:		
I.		
All licenses and licensing rights of Respondent RANDALL WESLEY		
BANAGAS under the Real Estate Law are suspended for a period of sixty (60) days from the		
effective date of this Decision.		
A. Provided, however, that if Respondent requests, the initial thirty (30) days of		
said suspension (or a portion thereof) shall be stayed upon condition that:		
1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the		
Business and Professions Code at the rate of \$66.67 per day for each day of the suspension for a		
total monetary penalty of \$2,000.		
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		
Bureau prior to the effective date of the Decision in this matter.		

1	3. No further cause for disciplinary action against the real estate license of	
2	Respondent occurs within two (2) years from the effective date of the Decision in this matter.	
3	4. If Respondent fails to pay the monetary penalty in accordance with the terms	
4	of the Decision, the Commissioner may, without a hearing, order the immediate execution of all	T
5	or any part of the stayed suspension, in which event the Respondent shall not be entitled to any	
6	repayment nor credit, prorated or otherwise, for money paid to the Bureau under the terms of	
7	this Decision.	
8	5. If Respondent pays the monetary penalty and if no further cause for	
9	disciplinary action against the real estate license of Respondent occurs within two (2) years from	
10	the effective date of the Decision, the stay hereby granted shall become permanent.	
11	B. The remaining thirty (30) days of the sixty (60) day suspension shall be	
12	stayed for two (2) years upon the following terms and conditions:	
13	1. Respondent shall obey all laws, rules and regulations governing the rights,	
14	duties and responsibilities of a real estate licensee in the State of California; and	
15	2. That no final subsequent determination be made after hearing or upon	
16	stipulation, which cause for disciplinary action occurred within two (2) years from the effective	
17	date of this Decision. Should such a determination be made, the Commissioner may, in his	
18	discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed	
19	suspension. Should no such determination be made, the stay imposed herein shall become	
20	permanent.	
21	II.	
22	Pursuant to Section 10148 of the Business and Professions Code, Respondent	
23	RANDALL WESLEY BANAGAS shall pay the Commissioner's reasonable cost for (a) the	
24	audit which led to this disciplinary action and (b) a subsequent audit to determine if Respondent	
25	is now in compliance with the Real Estate Law. The cost of the audit which led to this	
26	disciplinary action is \$6,274.34. In calculating the amount of the Commissioner's reasonable	
27	cost, the Commissioner may use the estimated average hourly salary for all persons performing	
	- 5 -	
	e e e e e e e e e e e e e e e e e e e	

1 audits of real estate brokers, and shall include an allocation for travel time to and from the 2 auditor's place of work. Said amount for the prior and subsequent audits shall not exceed 3 \$12,548.68. Respondent shall pay such cost within 60 days of receiving an invoice from the 4 Commissioner detailing the activities performed during the audit and the amount of time spent 5 performing those activities.

6 The Commissioner may suspend the license of Respondent pending a hearing 7 held in accordance with Section 11500, et seq., of the Government Code, if payment is not 8 timely made as provided for herein, or as provided for in a subsequent agreement between the 9 Respondent and the Commissioner. The suspension shall remain in effect until payment is 10 made in full or until Respondent enters into an agreement satisfactory to the Commissioner to 11 provide for payment, or until a decision providing otherwise is adopted following a hearing held 12 pursuant to this condition.

13

III.

14All licenses and licensing rights of Respondent are indefinitely suspended unless 15 or until Respondent pays the sum of \$1,880.05.for the Commissioner's reasonable cost of the 16 investigation and enforcement which led to this disciplinary action. Said payment shall be in the 17 form of a cashier's check made payable to the Real Estate Fund. Said check must be received by 18 the Bureau prior to the effective date of the Order in this matter.

19

20 21

23

24

25

26

All licenses and licensing rights of Respondent are indefinitely suspended unless

IV.

or until Respondent provides proof satisfactory to the Commissioner, of having taken and 22 successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision.

6 -

27

///

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

VI.

Respondent 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 his license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

VII.

As a further condition for the Commissioner to enter into this Stipulation, Respondent shall provide evidence satisfactory to the Real Estate Commissioner that Respondent has repaid to property owners, or their successors in interest, the amounts set forth in the table below. Proof of repayment must be received by the Bureau prior to the effective date of the Decision in this matter.

All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent provides evidence to the Commissioner sufficient to demonstrate that repayment to the property managers has been made.

7

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

///

///

1	Table: Property Owner Repayment					
2 3		Property Owner	Amount			
4		Huaninan M.	\$ 50.00			
5		Carole P.	\$155.00			
6		Ron C.	\$ 55.00			
7		Ray S.	\$ 45.00			
8		Doug R.	\$ 63.00			
9		Andy L.	\$ 50.00			
10 11		Total	\$418.00			
12		L				
13	VIII.					
14		All proof required by this Decision, shall be sent to the attention of Elliott Mac				
15	Lennan, Counsel, Legal Section, Bureau of Real Estate, 320 W. Fourth St., Suite 350, Los					
16	Angeles, California 90013-1105.					
17						
18	DATED): 62-10-14	Env			
19			ELLIOTT MAC LENNAN, Counsel for Bureau of Real Estate			
20	111		Buleau of Real Estate			
21						
22						
23						
24 25	141					
25						
27	///					
			- 8 -			
ļ						

a e

t			
1	* * *		
2	EXECUTION OF THE STIPULATION		
3	I have read the Stipulation. Its terms are understood by me and are agreeable		
4	and acceptable to me. I understand that I am waiving rights given to me by the California		
5	Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and		
. 6	11513 of the Government Code), and I willingly, intelligently and voluntarily waive those		
7	rights, including the right of requiring the Commissioner to prove the allegations in the		
8	Accusation at a hearing at which I would have the right to cross-examine witnesses against me		
9	and to present evidence in defense and mitigation of the charges.		
10	MAILING/FACSIMILE		
11	Respondent (1) shall mail the original signed signature page of the stipulation		
12	herein to Elliott Mac Lennan: Attention: Legal Section, Bureau of Real Estate, 320 W. Fourth		
13	St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondent (2) shall also		
14	facsimile a copy of signed signature page, to the Bureau at the following fax number: (213) 576-		
15	6917, Attention: Elliott Mac Lennan.		
16	A facsimile constitutes acceptance and approval of the terms and conditions of		
17	this stipulation. Respondent agrees, acknowledges and understands that by electronically		
18	sending to the Bureau a facsimile copy of Respondent' actual signature as it appears on the		
19	stipulation that receipt of the facsimile copy by the Bureau shall be as binding on Respondent as		
20	if the Bureau had received the original signed stipulation.		
21			
22			
23			
24	DATED: 2/7/14		
25	RANDALL WESLEY BANAGAS, Respondent		
26			
27			
	- 9 -		

* * * The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent RANDALL WESLEY BANAGAS and shall become effective at 12 o'clock noon JUN 1 2 2014 on IT IS SO ORDERED 2014. ESTATE COMMISSIONER RH By: JEFFREY MASON Chief Deputy Commissioner - 10 -