

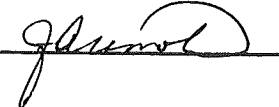
1 Bureau of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

FILED

APR 14 2014

BUREAU OF REAL ESTATE

By 

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 ALL MOUNTAIN PROPERTY)
14 MANAGEMENT INC; and)
15 CAROLYN MARIE CERWONKA,)
16 individually and as designated officer)
17 of All Mountain Property)
18 Management Inc.,)
19 Respondents.)

No. H-38930 LA

STIPULATION
AND
AGREEMENT

18 In the Matter of the Accusation of)
19)
20 CAROLYN MARIE CERWONKA,)
21 Respondent,)
22)

No. H-04457 SD

STIPULATION
AND
AGREEMENT

23 It is hereby stipulated by and between Respondents ALL MOUNTAIN
24 PROPERTY MANAGEMENT INC. and CAROLYN MARIE CERWONKA, individually and
25 as designated officer of A Real Estate & Management Company Inc. (sometimes collectively
26 referred to as "Respondents"), represented by Fred Ray, Esq. and the Complainant, acting by and
27 through Elliott Mac Lennan, Counsel for the Bureau of Real Estate, as follows for the purpose of

1 settling and disposing of (1) the Accusation (H-38930 LA) filed on June 28, 2013, and (2) the
2 Accusation (H-04457 SD) filed on February 14, 2013, consolidated herein in this matter:

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

8 2. Respondents have received, read and understand the Statement to Respondent,
9 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in
10 this proceeding.

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

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

25 5. This Stipulation is made for the purpose of reaching an agreed disposition of
26 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
27 which the Bureau of Real Estate ("Bureau") or another licensing agency of this state, another

1 state or if the federal government is involved, and otherwise shall not be admissible in any other
2 criminal or civil proceeding.

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

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

14 8. Respondents understand that by agreeing to this Stipulation, Respondents agree
15 to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit (H-38930
16 LA) which led to this disciplinary action. The amount of said cost is \$7,598.00.

17
18 9. Respondents have received, read, and understand the "Notice Concerning
19 Costs of Subsequent Audit." Respondents further understand that by agreeing to this Stipulation,
20 the findings set forth below in the Determination of Issues become final, and the Commissioner
21 may charge Respondents for the cost of any subsequent audit conducted pursuant to Business and
22 Professions Code Section 10148 to determine if the violations have been corrected. The
23 maximum cost of the subsequent audit will not exceed \$7,598.00.

24
25 10. Respondents understand that by agreeing to this Stipulation, Respondents
26 agree to pay, pursuant to Business and Professions Code Section 10106, the cost of the
27

1 investigation and enforcement of this matter. The amount of said cost is \$5,503.45.

2 DETERMINATION OF ISSUES

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

5 I.

6 The conduct of ALL MOUNTAIN PROPERTY MANAGEMENT INC. and
7 CAROLYN MARIE CERWONKA (H-38930 LA) as described in Paragraph 4, above, is in
8 violation of Section 10145 of the Business and Professions Code ("Code") and Sections 2832.1,
9 2831, 2831.1, 2831 and 2834 of Title 10, Chapter 6 of the California Code of Regulations
10 ("Regulations") and is a basis for the suspension or revocation of Respondents' license and
11 license rights as a violation of the Real Estate Law pursuant to Code Sections 10177(d) and
12 10177(h).

13 II.

14 The conduct of CAROLYN MARIE CERWONKA (H-38930 LA) as described in
15 Paragraph 4, above, constitutes a failure to keep Mountain Time Resort and RE, Inc. and All
16 Mountain Property Management Inc. in compliance with the Real Estate Law during the time that
17 she was the officer designated by a corporate broker licensee in violation of Code Section
18 10159.2. This conduct is a basis for the suspension or revocation of Respondent's license
19 pursuant to Code Section 10177(h).

20 II.

21 The conduct of CAROLYN MARIE CERWONKA (H-04457 SD), as described in
22 Paragraph 4, above, constitutes a failure to adequately supervise and control her resort and
23 property management brokerage, in violation of Code Section 10177(h). This conduct is a basis
24 for the suspension or revocation of Respondent's license pursuant to said section.
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1 Decision.

2 5. If Respondents pay the monetary penalty and if no further cause for
3 disciplinary action against the real estate license of a 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 sixty (60) days of the ninety (90) day suspension shall be stayed
6 for two (2) years upon the following terms and conditions:

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

17 II.

18 Pursuant to Section 10148 of the Business and Professions Code, Respondents
19 ALL MOUNTAIN PROPERTY MANAGEMENT INC. and CAROLYN MARIE
20 CERWONKA shall pay the Commissioner's reasonable cost for (a) the audit(s) which led to this
21 disciplinary action and (b) a subsequent audit to determine if Respondents are now in
22 compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action
23 is \$7,598.00. In calculating the amount of the Commissioner's reasonable cost, the
24 Commissioner may use the estimated average hourly salary for all persons performing audits of
25 real estate brokers, and shall include an allocation for travel time to and from the auditor's place
26 of work. Said amount for the prior and subsequent audits shall not exceed \$15,196.00.
27

1 Respondents are jointly and severally liable for the cost of the audits.

2 Respondents shall pay such cost within 60 days of receiving an invoice from the
3 Commissioner detailing the activities performed during the audit and the amount of time spent
4 performing those activities.

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

12 III.

13 Pursuant to Section 10106 of the Business and Professions Code, Respondents
14 ALL MOUNTAIN PROPERTY MANAGEMENT INC. and CAROLYN MARIE CERWONKA
15 shall pay the Commissioner's reasonable cost for investigation and enforcement of the matter
16 within sixty (60) days after the effective date of this Decision. The investigation and
17 enforcement cost which led to this disciplinary action is \$5,503.45.

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

25 IV.

26 Respondent CAROLYN MARIE CERWONKA shall within six (6) months from
27 the effective date of the Decision herein, take and pass the Professional Responsibility

1 Examination administered by the Bureau including the payment of the appropriate examination
2 fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of
3 Respondent's license until Respondent passes the examination.

4 V.

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

15 VI.

16 All licenses and licensing rights of CAROLYN MARIE CERWONKA, are
17 indefinitely suspended unless or until Respondent provides proof satisfactory to the
18 Commissioner, of having taken and successfully completed the continuing education course on
19 trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section
20 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes
21 evidence that respondent has successfully completed the trust fund account and handling
22 continuing education course within 120 days prior to the effective date of the Decision in this
23 matter.
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VII.

Prior to the effective of the Decision herein, Respondents shall first provide
evidence satisfactory to the Commissioner that the trust fund shortages set forth in the
Accusation (H-38930 LA), in the amounts of:

Shortage	Account	Date
\$11,865.93	BA 1	April 30, 2012
\$ 570.48	BA 2	April 30, 2012

have been restored, including the identification of the source of funds used to restore the
shortage. If not, all licenses and licensing rights of Respondent are indefinitely suspended unless
or until Respondent provides proof satisfactory to the Commissioner that the trust fund deficit
has been restored.

VIII.

All proof required by this Order, shall be sent to the attention of Elliott Mac
Lennan, Counsel, Legal Section, Bureau of Real Estate, 320 W. Fourth St., Suite 350, Los
Angeles, California 90013-1105.

DATED: 3-7-14

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ELLIOTT MAC LENNAN,
Counsel for Bureau of Real Estate

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EXECUTION OF THE STIPULATION

We have read the Stipulation and have discussed it with our attorney. Its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we are 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 we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

FACSIMILE

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 Bureau at the following facsimile number: Elliott Mac Lennan at (213) 576-6917. Respondents agree, acknowledge and understand that by electronically sending to the Bureau a fax copy of Respondents' actual signature as they appear on the Stipulation, that receipt of the faxed copy by the Bureau shall be as binding on Respondents as if the Bureau had received the original signed Stipulation.

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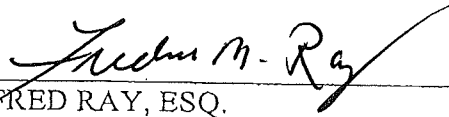
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ALL MOUNTAIN PROPERTY
MANAGEMENT INC.
BY: CAROLYN MARIE CERWONKA D.O.,
Respondent
8
910 DATED: 2/21/14
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12
CAROLYN MARIE CERWONKA, individually
and as designated officer of All Mountain Property
Management Inc., Respondent
13
1415 DATED: 2/21/14
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FRED RAY, ESQ.
Attorney for Respondents
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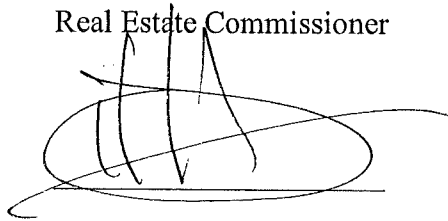
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
Respondents ALL MOUNTAIN PROPERTY MANAGEMENT INC. and CAROLYN MARIE
CERWONKA, individually and as designated officer of All Mountain Property Management Inc.
and shall become effective at 12 o'clock noon on MAY 05 2014

IT IS SO ORDERED APRIL 8, 2014

Real Estate Commissioner

A handwritten signature in black ink, appearing to read 'JEFFREY MASON', is written over a horizontal line. The signature is stylized with a large loop at the end.

By: **JEFFREY MASON**
Chief Deputy Commissioner