

1 Bureau of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105
4 Telephone: (213) 576-6982

FILED

DEC 16 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 KMSM INC.; doing business as)
14 The Kennedy Group; and)
15 MICHAEL DAVID FERRAIZ,)
16 individually and as designated officer)
17 of KMSM Inc.,)
Respondents.)

No. H-39356 LA

STIPULATION
AND
AGREEMENT

18 It is hereby stipulated by and between Respondents KMSM INC. and MICHAEL
19 DAVID FERRAIZ, individually and as designated officer of KMSM Inc. (sometimes
20 collectively referred to as "Respondents") represented by Lawrence P. Adamsky, Esq. and the
21 Complainant, acting by and through Elliott Mac Lennan, Counsel for the Bureau of Real Estate,
22 as follows for the purpose of settling and disposing of the First Amended Accusation
23 ("Accusation") filed on April 28, 2014, in this matter:

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

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

7 3. Respondents filed a Notice of Defense pursuant to Section 11506 of the
8 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
9 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
10 acknowledge that they understand that by withdrawing said Notice of Defense they thereby
11 waive their right to require the Commissioner to prove the allegations in the Accusation at a
12 contested hearing held in accordance with the provisions of the APA and that they will waive
13 other rights afforded to them in connection with the hearing such as the right to present evidence
14 in their defense and the right to cross-examine witnesses.
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16 4. This Stipulation is based on the factual allegations contained in the
17 Accusation. In the interest of expedience and economy, Respondents choose not to contest
18 these allegations, but to remain silent and understand that, as a result thereof, these factual
19 allegations, without being admitted or denied, will serve as a prima facie basis for the
20 disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to
21 provide further evidence to prove said factual allegations.
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23 5. This Stipulation is made for the purpose of reaching an agreed disposition of
24 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
25 which the Bureau of Real Estate ("Bureau") or another licensing agency of this state, another
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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
6 event that the Commissioner in the Commissioner's discretion does not adopt the Stipulation,
7 the Stipulation shall be void and of no effect and Respondents shall retain the right to a hearing
8 and proceeding on the Accusation under the provisions of the APA and shall not be bound by
9 any stipulation or waiver made herein.
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11 7. The Order or any subsequent Order of the Real Estate Commissioner made
12 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further
13 administrative or civil proceedings by the Bureau of Real Estate with respect to any matters
14 which were not specifically alleged to be causes for accusation in this proceeding.
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16 8. Respondents understand that by agreeing to this Stipulation, Respondents
17 agree to pay, pursuant to Business and Professions Code Section 10148, the cost of the original
18 audit which led to this disciplinary action. The amount of said cost is \$12,890.62.
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20 9. Respondents have received, read, and understand the "Notice Concerning
21 Costs of Subsequent Audit." Respondents further understand that by agreeing to this
22 Stipulation, the findings set forth below in the Determination of Issues become final, and the
23 Commissioner may charge Respondents for the cost of any subsequent audit conducted pursuant
24 to Business and Professions Code Section 10148 to determine if the violations have been
25 corrected. The maximum cost of the subsequent audit shall not exceed \$12,890.62.
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27 10. Respondents understand that by agreeing to this Stipulation, Respondents

1 agree to pay, pursuant to Business and Professions Code Section 10106, the cost of the
2 investigation and enforcement of this matter. The amount of said cost is \$4,337.15

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4 DETERMINATION OF ISSUES

5 By reason of the foregoing, it is stipulated and agreed that the following
6 Determination of Issues shall be made:

7 I.

(Audit LA 120099)
Property Management Audit

9 The conduct of KMSM INC. and MICHAEL DAVID FERRAIZ, as described in
10 Paragraph 4 of the Stipulation, above, is in violation of Code Sections 10145(a), 10145(d),
11 10145(e), 10148, 10162 and 10176(e) and Sections 2715, 2832.1, 2831, 2831.1, 2831.2, 2832,
12 2832(d), and 2834 of Title 10, Chapter 6 of the California Code of Regulations (“Regulations”)
13 and is a basis for suspension or revocation of Respondents’ license and license rights as a
14 violation of the Real Estate Law pursuant to Code Section 10177(d).

15 II.

(Audit LA 120099)
Property Management Audit

17 The conduct of MICHAEL DAVID FERRAIZ, as described in Paragraph 4 of
18 the Stipulation, above, constitutes a failure to supervise and to keep KMSM INC. in compliance
19 with the Real Estate Law during the time that said Respondent MICHAEL DAVID FERRAIZ
20 was the officer designated by a corporate broker licensee, in violation of Code Section 10159.2
21 and Regulation 2725 and is a basis for suspension or revocation of Respondent MICHAEL
22 DAVID FERRAIZ’ license and license rights as a violation of the Real Estate Law pursuant to
23 Code Section 10177(h)

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1 from the effective date of the Decision, the stay hereby granted shall become permanent.

2 B. The remaining sixty (60) days of the ninety (90) day suspension shall be
3 stayed for two (2) years upon the following terms and conditions:

4 1. Respondents shall obey all laws, rules and regulations governing the rights,
5 duties and responsibilities of a real estate licensee in the State of California; and

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

15 Pursuant to Section 10148 of the Business and Professions Code, Respondents
16 KMSM INC. and MICHAEL DAVID FERRAIZ shall pay the Commissioner's reasonable cost
17 for (a) the audit which led to this disciplinary action and (b) a subsequent audit to determine if
18 Respondents are now in compliance with the Real Estate Law. The cost of the audit which led
19 to this disciplinary action is \$12,890.62. In calculating the amount of the Commissioner's
20 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
21 performing audits of real estate brokers, and shall include an allocation for travel time to and
22 from the auditor's place of work. Said amount for the prior and subsequent audits shall not
23 exceed \$25,781.24. Respondents are jointly and severally liable for the cost of the audit.
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25 Respondents shall pay such cost within 60 days of receiving an invoice from the
26 Commissioner detailing the activities performed during the audit and the amount of time spent
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1 performing those activities.

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

11 All licenses and licensing rights of Respondents KMSM INC. and MICHAEL
12 DAVID FERRAIZ, are indefinitely suspended unless or until Respondents pay the sum of
13 \$4,337.15 for the Commissioner's reasonable cost of the investigation and enforcement which
14 led to this disciplinary action by the effective date. Said payment must be received by the
15 Bureau prior to the effective date of the Order in this matter.
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17 IV.

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

2 V.

3 All licenses and licensing rights of MICHAEL DAVID FERRAIZ are
4 indefinitely suspended unless or until Respondent provides proof satisfactory to the
5 Commissioner of having taken and successfully completed the continuing education course on
6 trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section
7 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement
8 includes evidence that Respondent has successfully completed the trust fund account and
9 handling continuing education course within 120 days prior to the effective date of the Decision
10 in this matter.

11 VI.

12 All licenses and licensing rights of Respondents are indefinitely suspended unless
13 or until Respondents provide proof satisfactory to the Commissioner that the trust fund shortage
14 of \$96,127.77 set forth in the Accusation has been restored, including the identification of the
15 source of funds used to cure the shortage. On May 11, 2013, \$23,522.86 was restored to KMSM
16 INC.'s trust account, BA 1. A balance of \$72,598.10, remains to be restored to BA 1 or verified
17 as restored to BA 1.

18 VII.

19 As a further condition for the Commissioner to enter into this Stipulation,
20 Respondents shall provide evidence satisfactory to the Real Estate Commissioner that accrued
21 interest in the amount of \$294.18 has been restored to KMSM's trust account BA 2, prior to the
22 effective date of the Decision.
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GENERAL PROVISIONS

VIII.

As a further condition for the Commissioner to enter into this Stipulation,

Respondents shall provide evidence satisfactory to the Real Estate Commissioner that all violations cited in the Determination of Issues have been corrected prior to the effective date of the Decision.

IX.

All proof required by this Decision shall be sent to the attention of Elliott Mac

Lennan, Counsel, Legal Section, Bureau of Real Estate, 320 West 4th St., Suite 350, Los Angeles, California 90013-1105. All checks, unless otherwise specified, are payable to the Bureau of Real Estate.

DATED: 10.22.14

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ELLIOTT MAC LENNAN,
Counsel for Bureau of Real Estate

* * *

EXECUTION OF THE STIPULATION

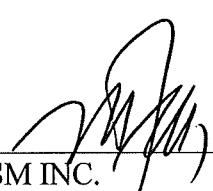
We have read the Stipulation and have discussed it with our attorney. Its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 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.

MAILING/FACSIMILE

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

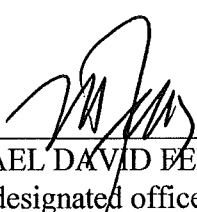
7
8 A facsimile constitutes acceptance and approval of the terms and conditions of
9 this Stipulation. Respondents agree, acknowledge and understand that by electronically sending
10 to the Bureau of Real Estate a facsimile copy of Respondents' actual signatures as they appear
11 on the Stipulation that receipt of the facsimile copy by the Bureau shall be as binding on
12 Respondents as if the Bureau of Real Estate had received the original signed Stipulation.
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16 DATED: 10/10/14




KMSM INC.
BY: MICHAEL DAVID FERRAIZ, D.O.
Respondent

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20 DATED: 10/10/14



MICHAEL DAVID FERRAIZ, individually
and as designated officer of KMSM INC.
Respondent

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25 DATED: 10.22.2014

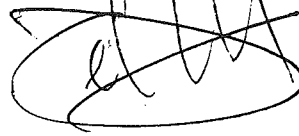


LAWRENCE P. ADAMSKY, ESQ.
Attorney for Respondents

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2 The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
3 Respondents KMSM INC. and MICHAEL DAVID FERRAIZ, individually and as designated
4 officer of KMSM Inc. and shall become effective at 12 o'clock noon on
5 JANUARY 5, 2015

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7 IT IS SO ORDERED NOVEMBER 29, 2014

8
9 REAL ESTATE COMMISSIONER

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12 _____
13 By: JEFFREY MASON
14 Chief Deputy Commissioner