

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

FILED

NOV 24 2015

BUREAU OF REAL ESTATE
By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation

BEACH COMMUNITY ESCROW INC.,)	No. H-39465 LA
doing business as Beach Community)	No. H-39533 LA
Escrow; and KENNETH WAYNE)	
SHISHIDO, individually, and as design-)	
nated officer of Beach Community)	<u>STIPULATION & AGREEMENT</u>
Escrow Inc.,)	
)	
Respondents.)	
_____)	

It is hereby stipulated by and between Respondent BEACH COMMUNITY ESCROW INC. ("BEACH COMMUNITY"), Respondent KENNETH WAYNE SHISHIDO ("SHISHIDO") (sometimes referred to as "Respondents") and Respondents' attorney, Mary Work, and the Complainant, acting by and through Cheryl Keily, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on May 21, 2014, in this matter.

1. All issues which were to be contested and all evidence which was to be

1 presented by Complainant and Respondents at a formal hearing on the Accusation, which
2 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
3 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of
4 this Stipulation and Agreement.
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6 2. Respondents have received, read and understand the Statement to Respondent,
7 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate
8 (“Bureau”) in this proceeding.

9 3. On June 3, 2014, Respondents filed a Notice of Defense, pursuant to Section
10 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
12 Respondents acknowledge that they understand that by withdrawing said Notice of Defense
13 they will thereby waive their right to require the Commissioner of Real Estate
14 (“Commissioner”) to prove the allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that they will waive other rights afforded to
16 them in connection with the hearing, such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine witnesses.
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20 4. This Stipulation is based on the factual allegations contained in the
21 Accusation. In the interest of expedience and economy, Respondents choose not to contest
22 these allegations, but to remain silent and understand that, as a result thereof, these factual
23 allegations, without being admitted or denied, will serve as a prima facie basis for the
24 disciplinary action stipulated to herein. The Commissioner shall not be required to provide
25 further evidence to prove said factual allegations.
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1 5. This Stipulation is made for the purpose of reaching an agreed disposition of
2 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
3 which the Bureau, the state or federal government, or any agency of this state, another state or
4 federal government is involved, and otherwise shall not be admissible in any other criminal or
5 civil proceedings.
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7 6. It is understood by the parties that the Commissioner may adopt the
8 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and
9 sanctions on Respondents' real estate licenses and license rights as set forth in the below
10 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation
11 and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a
12 hearing and proceeding on the Accusation under all the provisions of the APA and shall not be
13 bound by any admission or waiver made herein.
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15 7. The Order or any subsequent Order of the Commissioner made pursuant to
16 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any
17 further administrative or civil proceedings by the Bureau with respect to any matters which
18 were not specifically alleged to be causes for accusation in this proceeding.
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20 8. Respondents acknowledge receipt of service of the Commissioner's Desist and
21 Refrain Order, No. H-39533 LA, filed on July 14, 2014, ("Desist and Refrain Order").
22 Respondents agree that the Desist and Refrain Order may be used by the Bureau in any
23 future administrative proceeding in which Respondents' compliance with the provisions of the
24 Real Estate Law and the Commissioner's Regulations prohibiting the performance of third party
25 escrows where Respondents are not performing those acts in the course of or incidental to a real
26 estate transaction in which Respondents is an agent or a party to a transaction.
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DETERMINATION OF ISSUES

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2 1. The conduct, acts or omissions of Respondent BEACH COMMUNITY, as
3 set forth in the Accusation, constitute cause to suspend or revoke the real estate license and
4 license rights of Respondent BEACH COMMUNITY under the provisions of Code Section
5 10177(d) for violation of Sections 10145, 10159.5 and 10162 of the Code in conjunction with
6 Title 10, Chapter 6 of the California Code of Regulations (“Regulations”), Sections 2715, 2731,
7 2832(e), 2832.1, 2950(d), 2950(f), 2950(g) and 2951.

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9 2. The conduct, acts or omissions of Respondent SHISHIDO, as set forth in the
10 Accusation, constitute cause to suspend or revoke the real estate license and license rights of
11 Respondent SHISHIDO under the provisions of Code Sections 10177(d) for violation of Code
12 Sections 10159.2 and 10177(h), and Section 2725 of the Regulations.

ORDER

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15 WHEREFORE, THE FOLLOWING ORDER is hereby made:

16 I. ALL licenses and licensing rights of Respondents BEACH COMMUNITY
17 and SHISHIDO under the Real Estate Law are suspended for a period of ninety (90) days from
18 the effective date of this Decision.

19
20 A. Provided, however, that if Respondents request, the initial thirty (30) days of
21 said suspension (or a portion thereof) shall be stayed for two (2) years upon condition that:

22 1. Respondents each pay a monetary penalty pursuant to Section 10175.2 of the
23 Business and Professions Code at the rate of \$166.67 per day for each day of the suspension for
24 a total monetary penalty of \$5,000 per respondent.
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1 2. Said payment shall be in the form of a cashier's check or certified check
2 made payable to the Recovery Account of the Real Estate Fund. Said check must be received
3 by the Bureau prior to the effective date of the Decision in this matter.

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

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

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

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

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

18 2. That no final subsequent determination be made after hearing or upon
19 stipulation that cause for disciplinary action occurred within two (2) years from the effective
20 date of this Decision. Should such a determination be made, the Commissioner may, in his
21 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
22 suspension. Should no such determination be made, the stay imposed herein shall become
23 permanent.
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1 II. Pursuant to Section 10148 of the Business and Professions Code,

2 Respondents BEACH COMMUNITY and SHISHIDO shall pay the Commissioner's reasonable
3 cost for (a) the audit which led to this disciplinary action (b) a subsequent audit to determine if
4 Respondent BEACH COMMUNITY is now in compliance with the Real Estate Law.

5 Respondents BEACH COMMUNITY and SHISHIDO shall be jointly and severally liable for
6 the cost of the audit. The cost of the audit which led to this disciplinary action is \$10,536.40.

7 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use
8 the estimated average hourly salary for all persons performing audits of real estate brokers, and
9 shall include an allocation for travel time to and from the auditor's place of work. Said amount
10 for the prior and subsequent audits shall not exceed \$21,072.80.

11 A. Respondents BEACH COMMUNITY and SHISHIDO shall pay such cost

12 within 60 days of receiving an invoice from the Commissioner detailing the activities
13 performed during the audit and the amount of time spent performing those activities.

14 B. The Commissioner may suspend the license of Respondents pending a

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

21 III. Respondents shall pay the Commissioner's reasonable costs for investigation

22 and enforcement of the matter. Respondents shall be jointly and severally liable for the costs
23 for investigation and enforcement. The investigation and enforcement costs which led to this
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1 disciplinary action total \$3,500. Said payment shall be made within ninety (90) days from the
2 effective date of this Decision.

3 A. The Commissioner shall suspend the license of Respondents pending a
4 hearing held in accordance with California Government Code Section 11500, et seq., if
5 payment is not timely made as provided for herein. The suspension shall remain in effect until
6 payment is made in full, or until a decision providing otherwise is adopted following a hearing
7 held pursuant to this condition.
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9 IV. All licenses and licensing rights of Respondent SHISHIDO are indefinitely
10 suspended unless or until Respondent SHISHIDO provides proof satisfactory to the
11 Commissioner, of having taken and successfully completed the continuing education course on
12 trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section
13 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement
14 includes evidence that respondent has successfully completed the trust fund account and
15 handling continuing education course within 120 days prior to the effective date of the Decision
16 in this matter.
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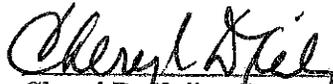
18 V. Respondent SHISHIDO shall, within nine (9) months from the effective date
19 of this Decision, present evidence satisfactory to the Commissioner that Respondent has, since
20 the most recent issuance of an original or renewal real estate license, taken and successfully
21 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
22 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the
23 Commissioner may order the suspension of the restricted license until Respondent presents
24 such evidence. The Commissioner shall afford Respondent the opportunity for a hearing
25 pursuant to the APA to present such evidence.
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VI. Respondent SHISHIDO shall not be a designated officer of a corporate

licensee other than BEACH COMMUNITY unless and until he owns 100% of the corporate stock, or 50% if by way of a community property interest, during the period of the stayed suspension described in Section I, above.

DATED: 10/23/15


Cheryl D. Keily, Counsel
BUREAU OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the APA (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I 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 I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent, to the Bureau at the following telephone/fax number (213) 576-6917. Respondent agrees, acknowledges, and understands that by electronically sending to the Bureau a fax copy of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Bureau shall be as binding on Respondent as if the Bureau had received the original signed Stipulation and Agreement.

DATED: 10/6/15


By: Kenneth Wayne Shishido
for Respondent BEACH COMMUNITY
ESCROW, INC.

DATED: 10/6/15


KENNETH WAYNE SHISHIDO

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I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

DATED: 10/6/15



Mary Work, Esq.
Attorney for Respondents
BEACH COMMUNITY ESCROW INC.
KENNETH WAYNE SHISHIDO

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12.0'clock noon on DEC 14 2015.

IT IS SO ORDERED NOVEMBER 20, 2015.

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner