

FILED

OCT 25 2016

BUREAU OF REAL ESTATE

By B. Nicholas

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670
5 Fax: (916) 263-3767

6
7 BEFORE THE BUREAU OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)
11)
12 ADVANCED MARKET REALTY, INC. and)
13 DANA EARL HOWELL,)
14)
15 Respondents.)

NO. H-2998 FR

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between Respondents ADVANCED MARKET
17 REALTY, INC. (herein "AMRI") and DANA EARL HOWELL (herein "HOWELL") (herein
18 collectively, "Respondents") acting by and through David R. McNamara, attorney of record for
19 Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the
20 Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing
21 the Accusation filed on March 15, 2016, in this matter (herein "Accusation"):

22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
24 was to be held in accordance with the provisions of the Administrative Procedure Act (herein
25 "APA"), shall instead and in place thereof be submitted on the basis of the provisions of this
26 Stipulation and Agreement in Settlement and Order (herein "Stipulation").
27

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

3 3. A Notices of Defense were filed on March 28, 2016 by Respondents pursuant
4 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
5 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices
6 of Defense. Respondents acknowledge they understand that by withdrawing said Notices of
7 Defense they will thereby waive their rights to require the Real Estate Commissioner (herein "the
8 Commissioner") to prove the allegations in the Accusation at a contested hearing held in
9 accordance with the provisions of the APA and that they will waive other rights afforded to them
10 in connection with the hearing such as the right to present evidence in defense of the allegations
11 in the Accusation and the right to cross-examine witnesses.

12 4. Respondents, pursuant to the "Determination of Issues" set forth below,
13 hereby admit that the factual allegations in the Accusation (except Section 10137 of the
14 California Business and Professions Code (herein "the Code" and the fact that Charizma M. was
15 not an employee during the time in question) filed in this proceeding are true and correct and the
16 Commissioner shall not be required to provide further evidence of such allegations.

17 5. It is understood by the parties that the Commissioner may adopt this
18 Stipulation as his decision in this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth in the below "Order." In the event
20 the Commissioner in his discretion does not adopt this Stipulation, it shall be void and of no
21 effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation
22 under all the provisions of the APA and shall not be bound by any admission or waiver made
23 herein.

24 6. The "Order" or any subsequent Order of the Commissioner made pursuant to
25 this Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or
26 civil proceedings by the Bureau with respect to any matters which were not specifically alleged to
27

1 be causes for accusation in this proceeding.

2 7. Respondents understand that by agreeing to this Stipulation, Respondents
3 agree to pay, jointly and severally, pursuant to Section 10148 of the Code, the cost of the audit
4 which resulted in the determination that Respondents committed the violations found in the
5 "Determination of Issues" below. The amount of said cost is \$5,302.65.

6 8. Respondents understand that by agreeing to this Stipulation, the findings set
7 forth below in the "Determination of Issues" become final, and that the Commissioner may
8 charge Respondents for the cost of any audit conducted pursuant to Section 10148 of the Code to
9 determine if the trust fund violations found in the "Determination of Issues," below, have been
10 corrected. The maximum cost of said audit shall not exceed \$6,628.31.

11 9. Respondents further understand that by agreeing to this Stipulation,
12 Respondents agree to pay, jointly and severally, pursuant to Section 10106(a) of the Code,
13 investigative and enforcement costs of \$4,464.45 which led to this disciplinary action.

14 DETERMINATION OF ISSUES

15 The acts and/or omissions of Respondents as described in the Accusation (except
16 Section 10137 of the Code) are grounds for the suspension or revocation of the licenses and
17 license rights of Respondents under the following provisions of the Code and/or Chapter 6, Title
18 10, California Code of Regulations (herein "the Regulations"):

- 19 (a) as to Paragraph 8(a) under Section 10145 of the Code and Section
20 2832.1 of the Regulations, in conjunction with Section 10177(d) of
21 the Code;
- 22 (b) as to Paragraph 8(b) under Section 10145 of the Code and Section
23 2832 of the Regulations, in conjunction with Section 10177(d) of the
24 Code;
- 25 (c) as to Paragraph 8(c) under Section 2831 of the Regulations, in
26 conjunction with Section 10177(d) of the Code;
- 27

- 1 (d) as to Paragraph 8(d) under Section 10145 of the Code and Section
2 2831.1 of the Regulations, in conjunction with Section 10177(d) of the
3 Code;
- 4 (e) as to Paragraph 8(e) under Section 10145 of the Code and Section
5 2831.2 of the Regulations, in conjunction with Section 10177(d) of
6 the Code;
- 7 (f) as to Paragraph 8(f) and HOWELL, under Section 10145(a)(2) of the
8 Code, in conjunction with Section 10177(d) of the Code;
- 9 (g) as to Paragraph 8(g) under Section 10145(a)(2) of the Code and
10 Section 2834 of the Regulations, in conjunction with Section
11 10177(d) of the Code;
- 12 (h) as to Paragraph 8(h) under Section 10176(e) of the Code and Section
13 2835 of the Regulations, in conjunction with Section 10177(d) of the
14 Code;
- 15 (i) as to Paragraph 8(i) under Section 10140.6(b) of the Code and
16 Section 2773 of the Regulations, in conjunction with
17 Section 10177(d) of the Code;
- 18 (j) as to Paragraph 8(j) under Section 10130 of the Code, in conjunction
19 with Section 10177(d) of the Code; and
- 20 (k) as to Paragraph 9, Respondent HOWELL, under Sections and
21 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the
22 Regulations, in conjunction with Section 10177(d) of the Code.

23 ORDER

24 I

25 All licenses and licensing rights of Respondent AMRI under the Real
26 Estate Law are suspended for a period of 60 days from the effective date of this Decision;
27

1 provided, however, that:

2 1) 30 days of said suspension shall be stayed, upon the condition that
3 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
4 pursuant to Section 10175.2 of the Code at a rate of \$100.00 per day for a total monetary penalty
5 of \$3,000.00.

6 a) Said payment shall be in the form of a cashier's check made payable
7 **to the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate,**
8 **Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of**
9 **this Decision.**

10 b) No further cause for disciplinary action against the Real Estate license of
11 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

12 c) If Respondent fails to pay the monetary penalty in accordance with the
13 terms and conditions of this Decision, the suspension shall go into effect automatically.

14 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money
15 paid to the Bureau under the terms of this Decision

16 d) If Respondent pays the monetary penalty and any other moneys due under
17 this Stipulation and if no further cause for disciplinary action against the real estate license of
18 Respondent occurs within two (2) years from the effective date of this Decision, the entire stay
19 hereby granted pursuant to this Decision shall become permanent.

20 2) 30 days of said suspension shall be stayed for two (2) years upon the
21 following terms and conditions:

22 a) Respondent shall obey all laws, rules and regulations governing the rights,
23 duties and responsibilities of a real estate licensee in the State of California; and,

24 b) That no final subsequent determination be made, after hearing or upon
25 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
26 date of this Decision. Should such a determination be made, the Commissioner may, in his
27

1 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
2 suspension. Should no such determination be made, the stay imposed herein shall become
3 permanent.

4 3) Pursuant to Section 10148 of the Code, Respondent AMRI, jointly and
5 severally with Respondent HOWELL, shall pay the sum of \$5,302.65 for the Commissioner's
6 cost of the audit which led to this disciplinary action. **Respondent shall pay such cost within**
7 **sixty (60) days of receiving an invoice therefore from the Commissioner.** Payment of audit
8 costs should not be made until Respondent receives the invoice. If Respondent fails to satisfy
9 this condition in a timely manner as provided for herein, Respondent's real estate license shall
10 automatically be suspended until payment is made in full, or until a decision providing otherwise
11 is adopted following a hearing held pursuant to this condition.

12 4) Pursuant to Section 10148 of the Code, Respondent AMRI, jointly and
13 severally with Respondent HOWELL, shall pay the Commissioner's reasonable cost, not to
14 exceed \$6,628.31, for an audit to determine if Respondent has corrected the violations found in
15 the "Determination of Issues." In calculating the amount of the Commissioner's reasonable cost,
16 the Commissioner may use the estimated average hourly salary for all persons performing audits
17 of real estate brokers, and shall include an allocation for travel time to and from the auditor's
18 place of work. **Respondent shall pay such cost within sixty (60) days of receiving an invoice**
19 **therefore from the Commissioner.** Payment of the audit costs should not be made until
20 Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner
21 as provided for herein, Respondent's real estate license shall automatically be suspended until
22 payment is made in full, or until a decision providing otherwise is adopted following a hearing
23 held pursuant to this condition.

24 5) All licenses and licensing rights of Respondent AMRI are indefinitely
25 suspended unless or until Respondent AMRI, jointly and severally with Respondent HOWELL,
26 pays the sum of \$4,464.45 for the Commissioner's reasonable cost of the investigation and
27

1 enforcement which led to this disciplinary action. Said payment shall be in the form of a
2 cashier's check made payable to the Bureau of Real Estate. **The investigative and enforcement**
3 **costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,**
4 **Sacramento, CA 95813-7013, prior to the effective date of this Decision.**

5 II

6 All licenses and licensing rights of Respondent HOWELL under the Real Estate
7 Law are revoked; provided, however, a restricted real estate broker license shall be issued to
8 Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefor
9 and pays to the Bureau the appropriate fee for the restricted license within 90 days from the
10 effective date of this Decision. The restricted license issued to Respondent shall be subject to all
11 of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and
12 restrictions imposed under authority of Section 10156.6 of that Code:

13 1. The restricted license issued to Respondent may be suspended prior to hearing
14 by Order of the Commissioner in the event of Respondent's conviction or plea of nolo contendere
15 to a crime which is substantially related to Respondent's fitness or capacity as a real estate
16 licensee.

17 2. The restricted license issued to Respondent may be suspended prior to hearing
18 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
19 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
20 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
21 license.

22 3. Respondent shall not be eligible to apply for the issuance of an
23 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions
24 of a restricted license until two (2) years have elapsed from the effective date of this Decision

25 4. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
26 severally with Respondent AMRI, the sum of \$5,302.65 for the Commissioner's cost of the audit
27

1 which led to this disciplinary action. **Respondent shall pay such cost within sixty (60) days of**
2 **receiving an invoice therefore from the Commissioner.** Payment of audit costs should not be
3 made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a
4 timely manner as provided for herein, Respondent's real estate license shall automatically be
5 suspended until payment is made in full, or until a decision providing otherwise is adopted
6 following a hearing held pursuant to this condition.

7 5. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
8 severally with Respondent AMRI, the Commissioner's reasonable cost, not to exceed \$6,628.31,
9 for an audit to determine if Respondent has corrected the violation(s) found in the Determination
10 of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner
11 may use the estimated average hourly salary for all persons performing audits of real estate
12 brokers, and shall include an allocation for travel time to and from the auditor's place of work.

13 **Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from**
14 **the Commissioner.** Payment of the audit costs should not be made until Respondent receives
15 the invoice. If Respondent fails to satisfy this condition in a timely manner as provided for
16 herein, Respondent's real estate license shall automatically be suspended until payment is made
17 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to
18 this condition.

19 6. All licenses and licensing rights of Respondent are indefinitely suspended
20 unless or until Respondent, jointly and severally with Respondent AMRI, pays the sum of
21 \$4,464.45 for the Commissioner's reasonable cost of the investigation and enforcement which
22 led to this disciplinary action. Said payment shall be in the form of a cashier's check made
23 payable to the Bureau of Real Estate. **The investigative and enforcement costs must be**
24 **delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA**
25 **95813-7013, prior to the effective date of this Decision.**

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

7. Respondent shall, within nine (9) months from the effective date of this

Decision, present evidence satisfactory to the 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, Respondent's real estate license shall automatically be suspended until Respondent presents evidence satisfactory to the Commissioner of having taken and successfully completed the continuing education requirements. **Proof of completion of the continuing education courses must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.**

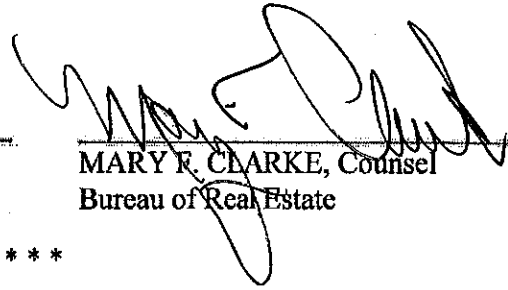
8. Respondent shall, within six (6) months from the effective date of this

Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, Respondent's real estate license shall automatically be suspended until Respondent passes the examination.

9. All licenses and licensing rights of Respondent HOWELL are indefinitely

suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and 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 these requirements includes evidence that Respondent has successfully completed the trust fund account and handling continuing education courses, no earlier than 120 days prior to the effective date of the Decision in this matter. **Proof of completion of the trust fund accounting and handling course must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Decision.**

7/21/16
DATED



MARY F. CLARKE, Counsel
Bureau of Real Estate

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation by faxing or electronically e-mailing a copy of the signature page, as actually signed by Respondent, to the Bureau at fax number (916) 263-3767. Respondent agrees, acknowledges and understands that by electronically sending to the Bureau a fax or other electronic copy of Respondent's actual signature as it appears on the Stipulation, that receipt of the faxed or e-mailed copy by the Bureau shall be as binding on Respondent as if the Bureau had received the original signed Stipulation.

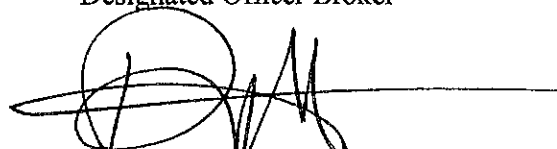
I have read this Stipulation and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California APA (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, 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.

ADVANCED MARKET REALTY, INC.
Respondent

7-19-16
DATED

By: 
DANA EARL HOWELL
Designated Officer Broker

7-19-16
DATED


DANA EARL HOWELL
Respondent

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

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

7-21-16

DATED

David R. McNamara

DAVID R. McNAMARA
Attorney for Respondent

The foregoing Stipulation and Agreement in Settlement and Order is hereby
adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
NOV 15 2016, 2016.

IT IS SO ORDERED 10/23/2016, 2016.

REAL ESTATE COMMISSIONER

Wayne S. Bell
WAYNE S. BELL