

FILED

NOV 10 2011

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
4
5 Telephone: (916) 227-0789
6

DEPARTMENT OF REAL ESTATE

[Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 ***

10 In the Matter of the Accusation of

11
12 DIAMOND RESORTS INTERNATIONAL
13 MARKETING, INC., a California
14 Corporation ANITA MARIE BOEL and
15 CRAIG RODNEY WESCOTT,
16 Respondents.

No. H-5541 SAC

OAH No. 2011050381

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER
AS TO DIAMOND RESORTS
INTERNATIONAL MARKETING,
INC. ONLY

17
18 It is hereby stipulated by and between DIAMOND RESORTS INTERNATIONAL
19 MARKETING, INC. (Respondent) represented by David C. Sampson, Esq. and the Complainant,
20 acting by and through Angela L. Cash, Counsel for the Department of Real Estate, as follows for
21 the purpose of settling and disposing of the Accusation filed on January 28, 2011 in this matter:

22 1. All issues which were to be contested and all evidence which was to be
23 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing
24 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
25 shall instead and in place thereof be submitted solely on the basis of the provisions of this
26 Stipulation and Agreement in Settlement.
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1 2. Respondent has received, read and understands the Statement to
2 Respondent, and the Discovery Provisions of the APA filed by the Department of Real Estate in
3 this proceeding.

4 3. Respondent filed a Notice of Defense pursuant to Section 11505 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that it understands that by withdrawing said Notice of Defense it will thereby
8 waive its right to require the Commissioner to prove the allegations in the Accusation at a
9 contested hearing held in accordance with the provisions of the APA, and that it will waive other
10 rights afforded to it in connection with the hearing such as the right to present evidence in
11 defense of the allegations in the Accusation and the right to cross-examine witnesses.

12 4. This stipulation is based on the factual allegations contained in the
13 Accusation. In the interest of expediency and economy, Respondent chooses not to contest these
14 factual allegations, but to remain silent and understands that, as a result thereof, these factual
15 allegations, without being admitted or denied, will serve as a prima facie basis for the
16 "Determination of Issues" and "Order" set forth below. The Real Estate Commissioner shall not
17 be required to provide further evidence to prove such allegations.

18 5. This Stipulation and Respondent's decision not to contest the Accusation
19 are made for the purpose of reaching an agreed disposition of this proceeding and are expressly
20 limited to this proceeding and any other proceeding or case in which the Department of Real
21 Estate (the Department) is a party.

22 6. It is understood by the parties that the Real Estate Commissioner may
23 adopt the Stipulation and Agreement as her decision in this matter thereby imposing the penalty
24 and sanctions on the real estate licenses and license rights of Respondent as set forth in the
25 below "Order". In the event that the Commissioner in her discretion does not adopt the
26 Stipulation and Agreement in Settlement, it shall be void and of no effect, and Respondent shall
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1 retain the right to a hearing and proceeding on the Accusation under all the provisions of the
2 APA and shall not be bound by any admission or waiver made herein.

3 7. The Order or any subsequent Order of the Real Estate Commissioner made
4 pursuant to this Stipulation and Agreement in Settlement shall not constitute an estoppel, merger
5 or bar to any further administrative or civil proceedings by the Department with respect to any
6 matters which were not specifically alleged to be causes for accusation in this proceeding.

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations, admissions, and waivers, and for the
9 purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
10 that the following determinations of issues shall be made:

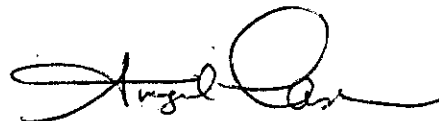
11 The acts and/or omissions of Respondent DIAMOND RESORTS
12 INTERNATIONAL MARKETING, INC. as stipulated above constitute grounds for disciplinary
13 action against the real estate licenses and license rights of Respondent under the provision of
14 Sections 10177(d) and 10177(g) of the California Business and Professions Code (the Code).

15 ORDER

16 All licenses and licensing rights of Respondent DIAMOND RESORTS
17 INTERNATIONAL MARKETING, INC. are publicly reprovved pursuant to Section 495 of the
18 Code on the condition that Respondent DIAMOND RESORTS INTERNATIONAL
19 MARKETING, INC. submits proof satisfactory to the Commissioner of having rescinded the
20 Purchase and Security Agreement (Agreement) entered into with Jacqueline Jackson (Contract
21 Number 1749053) and refunded \$10,977.30 to Jacqueline Jackson. Respondent must submit
22 proof of said rescission of the Agreement and refund to the Department prior to the effective
23 date of the Order.

24 11/9/11

25 DATED

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25 ANGELA L. CASH
26 Counsel for Complainant

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Respondent has read the Stipulation and Agreement in Settlement and its terms are understood by Respondent and are agreeable and acceptable to Respondent. Respondent understands that it is waiving rights given to Respondent by the APA, and Respondent willingly and voluntarily waives those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which Respondent would have the right to cross-examine witnesses against Respondent and to present evidence in defense and mitigation of the charges.

11/7/11
DATED

Elvis Herman
DIAMOND RESORTS INTERNATIONAL
MARKETING, INC.
Respondent

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

11/9/11
DATED

David C. Sampson
DAVID C. SAMPSON
Attorney for Respondent

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted as my Decision and shall become effective at 12 o'clock noon on

DEC - 1 2011

IT IS SO ORDERED 11-9-11

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

SB

1 DEPARTMENT OF REAL ESTATE
2 P. O. BOX 187007
3 SACRAMENTO, CA 95818-7007

4 TELEPHONE: (916) 227-0789

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of

12 DIAMOND RESORTS INTERNATIONAL
13 MARKETING, INC., a California Corporation,
14 ANITA MARIE BOEL and CRAIG RODNEY
15 WESCOTT,

Respondents.

No. H-5541 SAC

OAH No. 2011050381

16 DISMISSAL

17 The Accusation herein filed against ANITA MARIE BOEL and CRAIG
18 RODNEY WESCOTT on January 28, 2011 is DISMISSED.

19 IT IS SO ORDERED 11-9-11

20 BARBARA J. BIGBY
21 Acting Real Estate Commissioner

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FILED

JAN 28 2011

DEPARTMENT OF REAL ESTATE
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ANGELA L. CASH, Counsel
State Bar No. 230882
Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
DIAMOND RESORTS INTERNATIONAL)
MARKETING, INC., a California)
Corporation, ANITA MARIE BOEL and)
CRAIG RODNEY WESCOTT,)
Respondents.)

No. H-5541 SAC
ACCUSATION

The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against DIAMOND RESORTS INTERNATIONAL MARKETING, INC., a California Corporation (hereinafter "DIAMOND RESORTS"), ANITA MARIE BOEL (hereinafter "BOEL"), and CRAIG RODNEY WESCOTT (hereinafter "WESCOTT") (collectively referred to as "Respondents") is informed and alleges as follows:

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Complainant makes this Accusation in her official capacity.

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Respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code").

3

At all times herein mentioned, Respondent DIAMOND RESORTS was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent BOEL as designated officer-broker of Respondent DIAMOND RESORTS to qualify said corporation and to act for said corporation as a real estate broker.

4

At all times herein mentioned, Respondent BOEL was licensed as a real estate broker individually and beginning on or about June 27, 1998 as the designated broker-officer for Respondent DIAMOND RESORTS. As said designated officer-broker, Respondent BOEL was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent DIAMOND RESORTS for which a license is required.

5

At all times herein mentioned, Respondents acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(a) of the Code, including the operation and conduct of a timeshare resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and sale of real property consisting of timeshare interests.

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2 Whenever reference is made in an allegation in this Accusation to an act or
3 omission of Respondent DIAMOND RESORTS, such allegation shall be deemed to mean that
4 the officers, directors, employees, agents and real estate licensees employed by or associated
5 with Respondent DIAMOND RESORTS committed such act or omission while engaged in the
6 furtherance of the business or operations of Respondent DIAMOND RESORTS and while
7 acting within the course and scope of their corporate authority and employment.

8
9 At all times material herein, Respondent DIAMOND RESORTS employed
10 Respondent WESCOTT to perform the acts and conduct the activities described in Paragraph 5,
11 above, and compensated Respondent WESCOTT for performing such acts and conducting such
12 activities.

13
14 On approximately March 6, 2008, the Department issued an Amended Time-
15 Share Plan Public Report ("public report") to Diamond Resorts California Collection
16 Development, LLC (hereinafter "Diamond Resorts LLC"), File Number 124032HS-A04. The
17 public report authorized Diamond Resorts LLC and its agents to offer for sale, negotiate the sale
18 and sell time-share interests (as defined by Section 11212 of the Business and Professions Code)
19 covered by the public report and determined according to a point system (as defined by Section
20 11233 of the Business and Professions Code). These time share interests are located in a time-
21 share plan known as or commonly called "Diamond Resorts California Collection" ("time share
22 plan") and the minimum number of points that may be purchased by a purchaser is 5,000.

23
24 In approximately July 2008, in the course of the activities and employment
25 described in Paragraph 7, above, without first being licensed by the Department either as a real
26 estate salesperson or as a real estate broker, Respondent WESCOTT solicited and obtained

27 ///

1 execution by Jacquelyne Jackson ("Jackson"), purchase of 3,500 points to use within the time
2 share plan.

3 10

4 By selling the timeshare points mentioned above in Paragraph 9, a material
5 change was made in the setup of the offering described in the public report identified above in
6 paragraph 8, without first notifying the Department in writing of such intended change.

7 11

8 Respondent BOEL failed to exercise reasonable supervision over the acts of
9 Respondent WESCOTT in such a manner as to allow the acts and events described in Paragraphs
10 9 and 10, above, to occur.

11 12

12 The acts and omissions of Respondent BOEL violate Section 10159.2
13 (Responsibility/Directing Officer) of the Code and Section 2725 (Broker Supervision) of Title
14 10, Chapter 6, California Code of Regulations and constitute grounds for disciplinary action
15 under the provisions of Sections 10177(d) (Willful Disregard/Violation of Real Estate Law) and
16 10177(h) (Broker Supervision) of the Code.

17 13

18 The acts and omissions of Respondents described in Paragraphs 9 and 10, above,
19 violate Sections 11012 (Notice of Change in Setup of Offering) of the Code and constitute cause
20 for the suspension or revocation of the licenses and license rights of Respondents under Section
21 10177(d) (Willful Disregard/Violation of Real Estate Law) of the Code.

22 14

23 The acts and omissions of Respondent WESCOTT as described in Paragraphs 9
24 and 10, above, are grounds for the suspension or revocation of the licenses and license rights of
25 Respondent DIAMOND RESORTS under the provisions of Section 10137 (Unlawful
26 Employment) of the Code and constitute cause for the suspension or revocation of the licenses
27 and license rights of Respondent DIAMOND RESORTS under Section 10177(d) of the Code.

The acts and omissions of Respondents described in Paragraphs 9 and 10, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondents under Section 10177(g) (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license) of the Code.

The acts and omissions of Respondent WESCOTT described in Paragraphs 9 and 10, above, violate Section 10130 of the Code and constitute cause for the suspension or revocation of the licenses and license rights of Respondent WESCOTT under Section 10177(d) of the Code.

PRIOR DISCIPLINARY ACTION

Effective March 10, 1999, in Case No. H-1390 FRESNO, the Real Estate Commissioner suspended the real estate broker license of Respondent DIAMOND RESORTS (formerly named Resort Marketing International, Inc.) for violation of Sections 10177(g) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other provisions of law.


TRICIA SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 25th day of January, 2011