

FILED

FEB 22 2012

Department of Real Estate
BY: 

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	CASE NO. H-5584 SAC
E MORI REALTY, INC., and)	
ERIC SCHAUH MORI,)	OAH NO. 2011050820
)	
)	
Respondents.)	

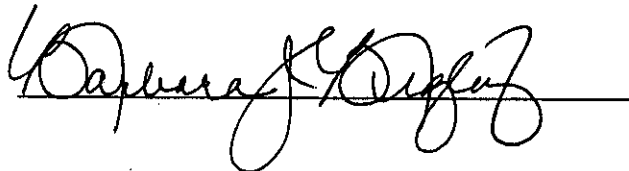
DECISION

The Proposed Decision dated January 12, 2012, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on MAR 13 2012

IT IS SO ORDERED 2/17/12

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

E MORI REALTY, INC., and
ERIC SCHAUB MORI,

Respondents.

Case No. H-5584 SAC

OAH No. 2011050820

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 13, 2011, in Sacramento, California.

Richard K. Uno, Counsel, Department of Real Estate (department), represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California.

Eric Schaub Mori (respondent Mori), designated officer for E Mori Realty, Inc. (respondent EMR) was present and was represented by J. Anne Rawlins, Attorney at Law, 331 J Street, #200, Sacramento, California 95814.¹ Respondents Mori and EMR are collectively referred to herein as "respondents."

Evidence was received, the record was closed, and the matter was submitted on December 13, 2011.

FACTUAL FINDINGS

1. On September 1, 1995, the department issued a real estate salesperson license to respondent Mori. The department then issued a broker license, License Number B01201046, to respondent Mori on January 19, 2002. Respondent Mori's broker license will expire on January 18, 2014, unless renewed.

¹ Adrienne Elena Lopez was originally named as a respondent in this matter. Complainant reached a settlement with Ms. Lopez, and she is no longer a party to this proceeding. Ms. Lopez is hereinafter referred to as "Lopez."

2. On April 25, 2002, the department issued a corporate real estate broker license, License Number C01334677, to respondent EMR. Respondent Mori is the designated officer for respondent EMR. The license expires on April 24, 2014, unless renewed.

3. On April 15, 2011, complainant made and filed the Accusation in her official capacity. Complainant seeks disciplinary action against respondent Mori's real estate broker license and respondent EMR's corporate real estate broker license based on unlicensed property management services performed by Lopez, trust fund mishandling, and failure to supervise.

4. On May 11, 2011, respondent Mori timely filed a Notice of Defense to contest the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Background

5. The department issued Lopez a real estate salesperson license, License Number S01006201, on October 29, 1988. The license expires on October 28, 2012, unless renewed.

6. On January 2, 2008, respondents entered into an independent contractor agreement with Lopez, which provided the following terms, in part:

A. Broker and Associate-Licensee intend that ... (i) this Agreement does not constitute an employment agreement by either party; (ii) Broker and Associate-Licensee are independent contracting parties with respect to all services rendered under this agreement...

[¶]...[¶]

D. Except as required by law (i) Associate-Licensee retains sole and absolute discretion and judgment in the methods, techniques, and procedures to be used in soliciting and obtaining listings, sales, exchanges, leases, rentals, or other transactions,² and in carrying out Associate-Licensee's selling and soliciting activities... (iii) Associate-Licensee has no authority to bind Broker by any promise or representation and (iv) Broker shall not be liable for any obligation or liability incurred by Associate-Licensee.

² Clause 16 of the independent contractor agreement defined "transaction" as a sale, exchange, lease, or rental of real property, a business opportunity, or a manufactured home, which may lawfully be brokered by a real estate licensee.

While the independent contractor agreement between respondents and Lopez authorized Lopez to engage in real estate salesperson activities, it did not authorize Lopez to engage in property management services. To do so would have required Lopez to hold a real estate broker's license. (Bus. & Prof. Code, § 10131, subd. (b).) Lopez did not hold a real estate broker's license to conduct property management activities.

7. On or about June 6, 2009, Lopez established a trust account entitled "AEL Broker Trust Account Property Management" with Washington Mutual, a division of JPMorgan Chase Bank, N.A. Lopez was the sole signatory on the account. Neither respondent Mori nor respondent EMR were named or identified as the brokers on the account. She also established the branch office of AEL Property Management at 8789 Auburn Folsom Road, Suite C, Granite Bay, California 95746-6287.

8. On or after May 20, 2009, Lopez conducted property management services doing business as AEL Property Management, while working under respondent EMR's broker license. AEL Property Management, under Lopez's management and control, managed 31 properties for 13 owners. AEL Property Management collected rents, advertised the properties, screened tenants, and was responsible for repairs to the properties. The property management fees generally ranged from eight to ten percent of collected rents, and a flat amount, ranging from \$65 to \$110.

Wrongful Acts by Lopez Attributed to Respondent EMR

9. From April 26, 2010 to July 12, 2010, the department conducted an audit of AEL Property Management in Granite Bay. The department's auditor, Rena Terazi (Terazi), examined records for the period January 30, 2009, to March 30, 2010 (the audit period). As a result of Terazi's audit, the department found, and the evidence established, that respondent EMR, through its real estate salesperson Lopez:

- (a) failed to establish the AEL Property Management trust account under the name of respondent EMR; and,
- (b) failed to place the designated officer, respondent, as a signatory on the trust account; and,
- (c) failed to maintain a record of trust funds received and paid out; and,
- (d) failed to reconcile the control records and the separate beneficiary records on a monthly basis; and,
- (e) failed to register the fictitious business name of AEL Property Management with the department; and,
- (f) failed to notify the department of the branch office in Granite Bay, California.

Because Lopez, and accordingly respondent EMR, failed to maintain required records, an account reconciliation was not determined for the trust account, and thus accountability could not be established as required by Business and Professions Code section 2831.2.

Wrongful Acts by Lopez Attributed to Respondents

10. As the designated officer for respondent EMR, respondent Mori is responsible for the supervision and control of the activities conducted on behalf of the corporation by its officer and employees, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required. (Bus. & Prof. Code, § 10159.2.) Furthermore, as the officer designated by a corporate broker licensee, respondent Mori is to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. Respondents entered into an independent contractor agreement with Lopez, wherein Lopez was authorized to perform real estate salesperson activities, not property management activities, under the real estate broker license of respondent EMR. Although Lopez was an independent contractor and not an employee of respondent EMR, she was a licensed real estate salesperson working under respondent EMR's broker license. Even though the independent contractor agreement stated that respondents were not responsible for any liabilities or obligations that Lopez incurred as a licensed real estate salesperson, respondent Mori still had a responsibility to exercise supervision and control over activities conducted by Lopez under his and respondent EMR's broker licenses.

Factors in Mitigation

11. Lopez admitted that she believed that there was a misunderstanding between her and respondent Mori regarding Lopez doing business as AEL Property Management. However, this was more than just a misunderstanding. Lopez failed to communicate with respondent Mori of her intent to perform property management activities under respondent EMR's broker license.

12. Respondent Mori did not know that Lopez established the AEL Property Management trust account, and Lopez did not inform or notify respondent Mori about the account. Respondent Mori did not know about the branch office, and Lopez did not inform respondent Mori of the office. Lopez did not discuss providing property management services, doing business as AEL Property Management, with respondent Mori. She assumed that it would be all right because she "knew several realtors that "DBA" with their brokers from various broker real estate offices in the Sacramento area." She further assumed that since she worked under a broker, she could perform property management services "if it came [her] way."

13. Respondents' office is located in Torrance, California. Lopez and AEL Property Management were located in Granite Bay, California. Respondent Mori does not conduct property management services in Southern California. Respondent Mori did not visit Lopez's branch office in Granite Bay because he was unaware of it. He thought that

Lopez was solely conducting real estate salesperson activities under respondent EMR's broker license. Respondent Mori did not have any discussions with Lopez about her property management activities. Lopez did not inform or notify respondent Mori about setting up the branch office in Granite Bay.

14. In her Employment Verification form dated May 20, 2009, submitted to the department in support of her real estate broker license application, Lopez was required to provide a detailed explanation of the type of licensed real estate experience she had. She stated:

Working in prop. mgt. Also, work with investors in seeking multi units and purchasing. Work with buyers in finding homes.

Lopez also stated that she had other employment or business activity by stating "Prop. Mgt since 1993." Lopez indicated that she worked in property management full-time, from January 2, 2008 to present. However, in her declaration to the department dated March 29, 2010, Lopez stated that she "piddled" in the property management field, and that her main focus in the real estate industry has always been real estate sales. Respondent Mori signed and dated the bottom of the form, certifying under penalty of perjury to the nature and scope of Lopez's activities while employed by respondent EMR as a real estate salesperson. At hearing, respondent Mori stated that he "took her word for it and certified it." Respondent Mori has 250 associates, all with different jobs. Respondent Mori assumed that Lopez's job in property management was her "other job," and she was getting leads from that job. Respondent Mori believed that Lopez was conducting her property management activities under another broker. Respondent Mori did not know Lopez intended to operate under AEL Property Management using respondent EMR's broker license. Respondent Mori did not receive any payments from AEL Property Management, and did not receive any correspondence from Lopez that she was operating AEL Property Management. Nothing led him to believe that Lopez was acting as anything other than as a real estate salesperson.

Despite Lopez's lack of notice, communication and information to respondent Mori, respondent Mori still had an affirmative duty to supervise the acts of his salespersons, and as the officer designated by a corporate broker, respondent Mori was required to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. A real estate salesperson can only work under one broker. (Bus. & Prof. Code § 10137.) Lopez's work in property management should have raised a "red flag" for respondent Mori, compelling respondent Mori to inquire further about Lopez's property management activities while acting under respondent EMR's broker license. Here, as a real estate salesperson, Lopez was not authorized to perform property management activities. Because Lopez was acting under the broker's license of respondent EMR, respondent Mori had a duty of reasonable supervision and control over her work. Respondent Mori failed to exercise the type of reasonable supervision and control over Lopez that is expected of a broker.

15. Respondent Mori has been licensed as a real estate broker since 2002. Respondent EMR has held a corporate broker's license since 2002. Respondent EMR has held a corporate broker's license since 2002. Neither respondent Mori nor respondent EMR have a history of prior discipline with the department.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 10177, subdivisions (d), (g) and (h) state, in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following ...

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] ... [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

2. Business and Professions Code section 10145 provides for the handling of trust funds accepted by a real estate broker. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions entitled to the funds. Under subdivision (g), the broker shall maintain a separate record of the receipt and disposition of all funds, including interest earned on the funds.

3. Business and Professions Code section 10159.2 provides, in pertinent part:

The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

4. Business and Professions Code section 10163 states:

If the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch license office.

5. California Code of Regulations, Title 10, section 2725, provides, in pertinent part, that a broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures, and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

6. California Code of Regulations, Title 10, section 2731, provides, in pertinent part, that a licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

7. California Code of Regulations, Title 10, section 2831, provides, in pertinent part:

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information:

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited into an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records...

8. California Code of Regulations, Title 10, section 2831.2, states:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and

disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

9. California Code of Regulations, Title 10, section 2832, addresses trust fund handling, and requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker.

10. California Code of Regulations, Title 10, section 2834, provides, in part:

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) A salesperson licensed to the broker.

(2) A person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.

[9]...[9]

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

(1) an officer through whom the corporation is licensed ...

(2) one of the persons enumerated ... above...

Cause for Discipline

11. Cause for discipline of respondent EMR's real estate broker license was established pursuant to Business and Professions Code section 10177, subdivision (d), by reason of Findings 6 to 9, in that respondent EMR, by and through the actions of Lopez, willfully disregarded or violated the Real Estate Law as follows: failure to register fictitious business name (Cal. Code Regs., tit. 10, § 2731); failure to establish control records for trust account (Cal. Code Regs., tit. 10, § 2831); failure to include broker as trust fund signatory (Cal. Code Regs., tit. 10, § 2834); hiring an unlicensed person performing acts for which a broker license is required (Bus. & Prof. Code, § 10137); failure to comply with the

requirements for trust fund handling (Bus. & Prof. Code, § 10145); and failure to register branch office (Bus. & Prof. Code, § 10163).

12. Cause for discipline of respondent EMR's real estate broker license was established pursuant to Business and Professions Code section 10177, subdivision (g), by reason of Findings 6 to 9, in that respondent EMR, through the actions of its agent Lopez, demonstrated negligence or incompetence in performing an act for which she is required to hold a license.

13. Cause for discipline of respondent Mori's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (d), by reason of Findings 6 to 8, 10 and 14, in that respondent Mori willfully disregarded or violated the Real Estate Law by failing to exercise reasonable supervision over the activities of his salesperson (Cal. Code Regs., tit. 10, § 2725) and failing to be responsible for the supervision and control of the activities conducted on behalf of the corporation (Bus. & Prof. Code, § 10145).

14. Cause for discipline of respondent Mori's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (h), by reason of Findings 6 to 8, 10 and 14, in that respondent Mori failed to exercise reasonable supervision over the activities of his salesperson, or as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a license is required.

Conclusion

9. Respondents' conduct was serious in this case, in that there was a failure to supervise and control Lopez's property management activities, including failure to administer the trust account, which were transacted under respondent EMR's broker license. Although respondent Mori did not know of Lopez's activities, as a broker and the officer designated by respondent EMR, he should have supervised and controlled Lopez's activities, which were carried out on behalf of the corporation. Even though there was no evidence that any clients were harmed by respondents' conduct, the potential for harm is great, considering that respondents have over 250 real estate salespersons working for the company. Respondents have no history of discipline with the department. This appears to be an isolated case. Some discipline is necessary, however, in order to prevent the lack of supervision and control of real estate salespersons in the future. It would not be contrary to the public interest, safety and welfare to suspend respondents' licenses for a period of three months.

ORDER

All licenses and licensing rights of respondents E Mori Realty, Inc. and Eric Schaub Mori and under the Real Estate Law, and by reason of Legal Conclusions 11 through 14, are suspended for a period of three months (90 days) from the effective date of this Decision;

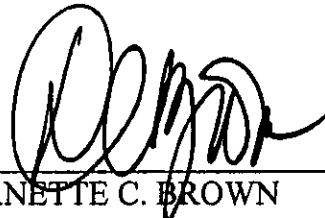
provided, however, that said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondents E Mori Realty, Inc. and Eric Schaub Mori shall obey all laws,
rules and regulations governing the rights, duties and responsibilities of a real estate licensee
in the State of California; and,

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

3. Respondent Eric Schaub Mori shall, within six months from the effective date
of this Decision, take and pass the Professional Responsibility Examination administered by
the Department including the payment of the appropriate examination fee. If respondent Eric
Schaub Mori fails to satisfy this condition, the Commissioner may order suspension of
respondent Eric Schaub Mori's license until he passes the examination.

DATED: January 12, 2012



DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

January 11, 2012

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

4 Telephone: (916) 227-0789

By  _____

5
6
7
8 **BEFORE THE DEPARTMENT OF REAL ESTATE**
9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of)	NO. H-5584 SAC
)	
12 E. MORI REALTY, INC., ERIC SCHAUB MORI)	
13 and ADRIENNE ELENA LOPEZ,)	<u>STIPULATION AND AGREEMENT</u>
)	<u>IN SETTLEMENT</u>
)	<u>AND ORDER</u>
14)	
15 Respondents.)	
16 _____)	

17 It is hereby stipulated by and between ADRIENNE ELENA LOPEZ
18 (hereinafter "Respondent"), and the Complainant, acting by and through Richard K. Uno,
19 Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing
20 of the Accusation filed on April 19, 2011, in this matter:

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

26 ///

27 ///

1 2. Respondent has received, read and understands the Statement to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of
3 Real Estate in this proceeding.

4 3. A Notice of Defense was filed on May 3, 2011 by Respondent, pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
6 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
7 Respondent acknowledges that she understands that by withdrawing said Notice of Defense she
8 will thereby waive her right to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that she
10 will waive other rights afforded to her in connection with the hearing such as the right to present
11 evidence in 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 interests of expedience and economy, Respondent chooses not to contest
14 these allegations, but to remain silent and understand that, as a result thereof, these factual
15 allegations, without being admitted or denied, will serve as a prima facie basis for the
16 disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to
17 provide further evidence to prove said factual allegations.

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

25 6. The Order or any subsequent Order of the Real Estate Commissioner
26 made pursuant to this Stipulation and Agreement in Settlement and Order shall not constitute an
27 estoppel, merger or bar to any further administrative or civil proceedings by the Department of

1 Real Estate with respect to any matters which were not specifically alleged to be causes for
2 accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulation, admission and waiver and solely for the
5 purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
6 that the facts alleged above are grounds for the suspension or revocation of the license and
7 license rights of Respondent under Section 10130 of the Business and Professions Code.

8 ORDER

9 All licenses and licensing rights of Respondent ADRIENNE ELENA LOPEZ
10 under the Real Estate Law are suspended for a period of sixty (60) days from the effective date
11 of this Order; provided, however, that:

12 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon
13 the following terms and conditions:

14 A. Respondent shall obey all laws, rules and regulations governing
15 the rights, duties and responsibilities of a real estate licensee in the State of California; and

16 B. That no final subsequent determination be made, after hearing or
17 upon stipulation, that cause for disciplinary action occurred within two (2) years from the
18 effective date of this Order. Should such a determination be made, the Commissioner may, in
19 her discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
20 suspension. Should no such determination be made, the stay imposed herein shall become
21 permanent.

22 ///

23 //

24 /

25

26

27

1 2. Thirty (30) days of said suspension shall be stayed upon the condition that
2 Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
3 pursuant to Section 10175.2 of the Code at an equal rate of \$100.00 for each day of the thirty
4 (30) day suspension for a total monetary penalty of \$3,000.00:

5 A. Said payment shall be in the form of a cashier's check or certified
6 check made payable to the Recovery Account of the Real Estate Fund. Said check must be
7 delivered to the Department prior to the effective date of the Order in this matter.

8 B. No further cause for disciplinary action against the real estate
9 license of said Respondent occurs within two (2) years from the effective date of the decision in
10 this matter.

11 C. If Respondent fails to pay the monetary penalty as provided above
12 prior to the effective date of this Order, the stay of the suspension shall be vacated and the order
13 of suspension shall be immediately executed, under this Paragraph I of this Order, in which
14 event Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for
15 the money paid to the Department under the terms of this Order.

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

21 3. Respondent shall, within six (6) months from the effective date of this
22 Decision, take and pass the Professional Responsibility Examination administered by the
23 Department including the payment of the appropriate examination fee. If Respondent fails to
24 satisfy this condition, the Commissioner may order suspension of Respondent's license until
25 Respondent passes the examination.

26 4. All licensees and licensing rights of Respondent are indefinitely
27 suspended unless or until Respondent provides a letter from her supervising broker that

1 confirms that all of her property management activity is under her license and that she has
2 corrected the trust fund handling violations that were found by the audit.

3
4 DATED: 12/12/11

Richard K. Uno
5 RICHARD K. UNO, Counsel
6 DEPARTMENT OF REAL ESTATE

7 * * *

8 I have read the Stipulation and Agreement in Settlement and Order, have
9 discussed it with my counsel, and its terms are understood by me and are agreeable and
10 acceptable to me. I understand that I am waiving rights given to me by the California
11 Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and
12 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those
13 rights, including the right of requiring the Commissioner to prove the allegations in the
14 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
15 and to present evidence in defense and mitigation of the charges.

16 DATED: 12/8/11

Adrienne Elena Lopez
17 ADRIENNE ELENA LOPEZ
18 Respondent

19 * * *

20 The foregoing Stipulation and Agreement in Settlement and Order is hereby
21 adopted by the Real Estate Commissioner as his Decision and Order and shall become effective
22 at 12 o'clock noon on FEB - 1 2012

23 IT IS SO ORDERED 1/9/12

24 BARBARA J. BIGBY
25 Acting Real Estate Commissioner
26 Barbara J. Bigby
27

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

FILED
APR 18 2011

DEPARTMENT OF REAL ESTATE
By R. Mar

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-5584 SAC
13 E MORI REALTY, INC.,)
14 ERIC SCHAUB MORI and) ACCUSATION
15 ADRIENNE ELENA LOPEZ,)
16 Respondents.)

17 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
18 of the State of California, for Accusation against Respondent E MORI REALTY, INC. (EMR),
19 Respondent ERIC SCHAUB MORI (MORI) and Respondent ADRIENNE ELENA LOPEZ
20 (LOPEZ), is informed and alleges as follows:

21 1

22 The Complainant makes this Accusation against Respondents in her official
23 capacity.

24 2

25 EMR is presently licensed and/or has license rights under the Real Estate Law,
26 Part 1 of Division 4 of the California Business and Professions Code (the Code) as a corporate
27 real estate broker.

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

3

MORI is presently licensed by the Department of Real Estate (the Department) as a real estate broker.

4

LOPEZ is presently licensed by the Department as a real estate salesperson, but at no time mentioned herein was licensed as a real estate broker.

5

At all times during the audit period, MORI was licensed by the Department as the designated broker/officer of EMR. As the designated broker/officer, MORI was 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 EMR for which a real estate license is required.

6

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, collected rents from tenants on behalf of landlords, ordered repairs on, offered to rent and performed other duties regarding property owned by landlords.

7

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

///
///
///

1 FIRST CAUSE OF ACTION

2 8

3 Beginning on April 26, 2010 through July 12, 2010, an audit was conducted of
4 EMR's branch office located at 8789 Auburn Folsom Boulevard, Suite #C, Granite Bay,
5 California, where the auditor examined records for the period of January 30, 2009 through
6 March 30, 2010 (the audit period).

7 9

8 While acting as a real estate broker as described in Paragraph 6, above, and
9 within the audit period, EMR accepted or received funds in trust (trust funds) from tenants on
10 behalf of landlords in connection with the property management activities, deposited or caused
11 to be deposited those funds into a bank account maintained by EMR as follows:

12 Chase Bank C/O Washington Mutual Bank, JP Morgan Chase Bank, N. A.
13 Citibank, P. O. Box 2601780, Baton Rouge, LA 70826-0180, Account No. 861-127325-6,
14 entitled "AEL Broker Trust Account Property Management" (Trust Account #1), and thereafter
15 from time to time made disbursements of said trust funds.

16 10

17 In the course of the activities described in Paragraph 6, in connection with the
18 collection and disbursement of trust funds, EMR:

- 19 (a) Failed to designate Trust Account #1 as trust accounts in the name of the
20 broker E. MORI REALTY, INC., as required by Section 2832 of Chapter
21 6, Title-10, California Code of Regulations (Regulations);
22 (b) Failed to place the designated officer, ERIC SCHAUB MORI as a
23 signatory as required by Section 2834 of the Regulations;
24 (c) Failed to maintain a record of trust funds received and paid out as
25 required by Section 2831 of the Regulations and Section 10145 of the
26 Code;

27 ///

- 1 (d) Failed to reconcile the control records and the separate beneficiary
- 2 records on a monthly basis as required by Section 2831.2 of the
- 3 Regulations;
- 4 (e) Because EMR failed to maintain required records, accountability could
- 5 not be established as required by Section 10145 of the Code;
- 6 (f) Failed to register the fictitious business name AEL Property Management
- 7 as required by Section 2731 of the Regulations;
- 8 (g) Failed to notify the Department of the branch office located on 8789
- 9 Auburn Folsom Boulevard, Suite #C, Granite Bay, California as required
- 10 by Section 10163 of the Code.

11 11

12 The acts and/or omissions of EMR as alleged above violate Sections 2731
13 (Registering Fictitious Business Name), 2831 (Control Records), 2831.2 (Monthly
14 Reconciliation), 2832 (Designation of Trust Account), and 2834 (Trust Fund Signatory) of the
15 Regulations and Sections 10145 (Trust Fund Handling) and 10163 (Registering Branch Office)
16 of the Code and are grounds for discipline under Sections 10177(d) (Willful Violation/Disregard
17 Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

18 SECOND CAUSE OF ACTION

19 12

20 Complainant refers to Paragraphs 1 through 11, above, and incorporates them
21 herein by reference.

22 13

23 At no time within the last three years did the Department license LOPEZ as a
24 real estate broker.

25 ///
26 ///
27 ///

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

14

Within the three year period prior to the filing of this Accusation, Respondent EMR employed and compensated Respondent LOPEZ to perform the activities requiring a real estate license as alleged in Paragraph 6, above.

15

Within the last three years before the filing of this Accusation, LOPEZ engaged in property management activities including leasing or renting, soliciting places for rent, soliciting prospective tenants; collecting rents from tenants and ordering repairs on properties owned by landlords on behalf of EMR, including, but not limited to that certain real property known as 5307 Alvoca Way, Sacramento, California.

16

The facts alleged above constitute cause for the suspension or revocation of the licenses and license rights of Respondent EMR under Section 10137 (Hiring Unlicensed Person) of the Code and constitute cause for the suspension or revocation of the licenses and license rights of Respondent LOPEZ under Section 10130 (Unlicensed Activity) of the Code.

THIRD CAUSE OF ACTION

17

Complainant refers to Paragraphs 1 through 16, above, and incorporates them herein by reference.

18

At all times during the audit period, MORI was responsible, as the designated broker/officer of EMR, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. MORI failed to exercise reasonable supervision and control over the property management brokering activities of EMR. In particular, MORI permitted, ratified and/or caused the conduct described in the First and Second Causes of Action, above, to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, supervision of employees, and the implementation of policies, rules,

1 procedures, and systems to ensure the compliance of the corporation with the Real Estate Law
2 and the Regulations.

3 19

4 The above acts and/or omissions of MORI violate Section 2725 (Broker
5 Supervision) of the Regulations and Section 10159.2 (Designated Officer Responsibility) of the
6 Code and are grounds for disciplinary action under the provisions of Sections 10177(d) and (h)
7 (Broker Failure to Supervise) of the Code.

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

13
14 
15 TRICIA D. SOMMERS
16 Deputy Real Estate Commissioner

17 Dated at Sacramento, California,
18 this 15th day of April, 2011.