

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

**FILED**

NOV 18 2014

BUREAU OF REAL ESTATE

By K. Contreras

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

9 \* \* \*

10 In the Matter of the Accusation of )

11 AMERICAN MARKETING SYSTEMS, INC., )

12 a Corporation, and )

13 ZOYA LEE SMITHTON, )

14 Respondents. )

NO. H-11715 SF

STIPULATION AND AGREEMENT  
IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between Respondents AMERICAN MARKETING  
16 SYSTEMS, INC., (herein "AMSI") and ZOYA LEE SMITHTON (herein "SMITHTON" (herein  
17 collectively "Respondents"), by and through David Wasserman, attorney of record herein for  
18 Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the  
19 Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing  
20 of the Accusation filed on June 12, 2014, in this matter (herein "Accusation"):

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

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

3. Notices of Defense were filed on June 24, 2014, by Respondents, pursuant to

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

9           4. Respondents, pursuant to the DETERMINATION OF ISSUES, set forth  
10 below, hereby admit that the factual allegations in the Accusation filed in this proceeding are true  
11 and correct, and the Real Estate Commissioner shall not be required to provide further evidence  
12 of such allegations.

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

20           6. The Order or any subsequent Order of the Commissioner made pursuant to  
21 this Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger,  
22 or bar to any further administrative or civil proceedings by the Bureau with respect to any matters  
23 which were not specifically alleged to be causes for accusation in this proceeding.

24           7. Respondents understand that by agreeing to this Stipulation and Agreement in  
25 Settlement and Order, Respondents agree to pay, pursuant to Section 10148 of the California  
26 Business and Professions Code (herein "Code"), the cost of the audit which resulted in the  
27

1 determination that Respondents committed the violations found in the Determination of Issues.  
2 The amount of said costs is \$6,790.41.

3 8. Respondents understand that by agreeing to this Stipulation and Agreement in  
4 Settlement and Order, the findings set forth below in the Determination of Issues become final,  
5 and that the Commissioner may charge said Respondents for the costs of any audit conducted  
6 pursuant to Section 10148 of the Code to determine if the trust fund violations found in the  
7 Determination of Issues, below, have been corrected. The maximum costs of said audit shall not  
8 exceed \$6,790.41.

9 9. Respondents further understand that by agreeing to this Stipulation and  
10 Agreement in Settlement and Order, Respondents agree to pay, pursuant to Section 10106(a) of  
11 the Code, investigative and enforcement costs of \$2,470.43 which led to this disciplinary action.

12 DETERMINATION OF ISSUES

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

17 (a) as to Paragraph 8(a), under Section 2831 of the Regulations, in  
18 conjunction with Section 10177(d) of the Code;

19 (b) as to Paragraph 8(b), under Section 10145 of the Code and Section  
20 2831.1 of the Regulations, in conjunction with Section 10177(d) of the  
21 Code;

22 (c) as to Paragraph 8(c), under Section 10176(a) of the Code; and

23 (d) as to Paragraph 8(d), under Section 10140.6 of the Code and Section 2733  
24 of the Regulations, in conjunction with Section 10177(d) of the Code.

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3 ORDER

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5 A. All licenses and licensing rights of Respondent AMSI under the Real Estate  
6 Law are revoked; provided, however, a restricted corporate real estate broker license shall be  
7 issued to Respondent pursuant to Section 10156.5 of the Code if, within 90 days from the  
8 effective date of the Decision entered pursuant to this Order, Respondent, prior to and as a  
9 condition of the issuance of said restricted license makes application for the restricted license  
10 and pays to the Bureau the appropriate fee therefor.

11 The restricted license issued to Respondent shall be subject to all of the  
12 provisions of Section 10156.7 of the Code and to the following limitations, conditions, and  
13 restrictions imposed under authority of Section 10156.6 of that Code:

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

18 2. Respondent shall not be eligible to apply for the issuance of an unrestricted  
19 real estate license or for the removal of any of the conditions, limitations or restrictions of a  
20 restricted license until two (2) years have elapsed from the effective date of this Order.

21 3. Respondent understands that by agreeing to this Stipulation and Agreement in  
22 Settlement and Order, Respondent agrees to pay, jointly and severally with SMITHTON,  
23 pursuant to Section 10148 of the Code, the cost of the audit which resulted in the determination  
24 that Respondent committed the trust fund violations found in the Determination of Issues, above.  
25 The amount of said cost is \$6,790.41. Respondent shall pay such cost within sixty (60) days of  
26 receiving an invoice therefore from the Commissioner. If Respondent fails to pay such cost  
27 within the sixty (60) days, Respondent's real estate license shall automatically be suspended until  
Respondent's payment is made in full. Upon payment in full, the indefinite suspension provided  
for in this paragraph shall be stayed.



1 Section at P.O. Box 137007, Sacramento, CA 95813-7007 or by fax at 916-263-3767, prior to the  
2 effective date of this Order.

3 B. All licenses and licensing rights of Respondent SMITHTON under the Real  
4 Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued  
5 to Respondent pursuant to Section 10156.5 of the Code if, within 90 days from the effective date  
6 of the Decision entered pursuant to this Order, Respondent, prior to and as a condition of the  
7 issuance of said restricted license makes application for the restricted license and pays to the  
8 Bureau the appropriate fee therefor.

9 The restricted license issued to Respondent shall be subject to all of the  
10 provisions of Section 10156.7 of the Code and to the following limitations, conditions, and  
11 restrictions imposed under authority of Section 10156.6 of that Code:

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

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

21 3. Respondent shall not be eligible to apply for the issuance of an  
22 unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions  
23 of a restricted license until two (2) years have elapsed from the effective date of this Order.

24 4. Respondent understands that by agreeing to this Stipulation and Agreement in  
25 Settlement and Order, Respondent agrees to pay, jointly and severally with AMSI, pursuant to  
26 Section 10148 of the Code, the cost of the audit which resulted in the determination that  
27 Respondent committed the trust fund violations found in the Determination of Issues, above.

1 The amount of said cost is \$6,790.41. Respondent shall pay such cost within sixty (60) days of  
2 receiving an invoice therefore from the Commissioner. If Respondent fails to pay such cost  
3 within the sixty (60) days, Respondent's real estate license shall automatically be suspended until  
4 Respondent's payment is made in full. Upon payment in full, the indefinite suspension provided  
5 for in this paragraph shall be stayed.

6 5. Respondent shall pay the Commissioner's costs, not to exceed \$6,790.41,  
7 jointly and severally with AMSI, of any audit conducted pursuant to Section 10148 of the Code  
8 to determine if Respondent has corrected the violations described in the Determination of Issues,  
9 above. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may  
10 use the estimated average hourly salary for all persons performing audits of real estate brokers,  
11 and shall include an allocation for travel time to and from the auditor's place of work.

12 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the  
13 Commissioner detailing the activities performed during the audit and the amount of time spent  
14 performing those activities. If Respondent fails to pay such cost within the sixty (60) days,  
15 Respondent's real estate license shall automatically be suspended until Respondent's payment is  
16 made in full. Upon payment in full, the indefinite suspension provided for in this paragraph shall  
17 be stayed.

18 6. All licenses and licensing rights of Respondent are indefinitely suspended  
19 unless or until Respondent pays, jointly and severally with AMSI, the sum of \$2,470.43, for the  
20 Commissioner's reasonable cost of the investigation and enforcement which led to this  
21 disciplinary action. Said payment shall be in the form of a cashier's check made payable to the  
22 Bureau of Real Estate. The investigative and enforcement costs must be delivered to the Bureau  
23 of Real Estate, Legal Section at P.O. Box 137007, Sacramento, CA 95813-7007, prior to the  
24 effective date of this Order.

25 7. Respondent shall, within nine (9) months from the effective date of the Order,  
26 present evidence satisfactory to the Commissioner that Respondent has, since the most recent  
27 issuance of an original or renewal real estate license, taken and successfully completed the

1 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
2 of a real estate license. If Respondent fails to satisfy this condition Respondent's real estate  
3 license shall automatically be suspended until Respondent presents evidence satisfactory to the  
4 Commissioner of having taken and successfully completed the continuing education  
5 requirements. Proof of completion of the continuing education courses must be delivered to the  
6 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

7 8. Respondent shall, within six (6) months from the issuance of the restricted  
8 license, take and pass the Professional Responsibility Examination administered by the Bureau,  
9 including the payment of the appropriate examination fee. If Respondent fails to satisfy this  
10 condition Respondent's real estate license shall automatically be suspended until Respondent  
11 passes the examination.

12 9-4-14

13 DATED

14   
15 MARY F. CLARKE, Counsel  
16 Bureau of Real Estate

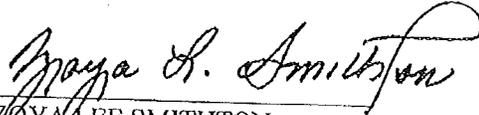
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18 I have read the Stipulation and Agreement in Settlement and Order and its terms  
19 are understood by me and are agreeable and acceptable to me. I understand that I am waiving  
20 rights given to me by the California APA (including but not limited to Sections 11506, 11508,  
21 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive  
22 those rights, including the right of requiring the Commissioner to prove the allegations in the  
23 Accusation at a hearing at which I would have the right to cross-examine witnesses against me  
24 and to present evidence in defense and mitigation of the charges.

25 AMERICAN MARKETING SYSTEMS, Inc.,  
26 Respondent

27 SEPT 4, 2014

DATED

By:   
ZOYA LEE SMITHTON  
Designated Officer Broker

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SEPT. 4, 2014

DATED

*Zoya L. Smithton*

ZOYA LEE SMITHTON

Respondent

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

9. 4. 2014

DATED

*David Wasserman*

DAVID WASSERMAN

Attorney for Respondent

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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

DEC 18

, 2014.

IT IS SO ORDERED

OCTOBER 30

, 2014.

REAL ESTATE COMMISSIONER

*Jeffrey Mason*

By: JEFFREY MASON

Chief Deputy Commissioner