

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013

4 Telephone: (213) 576-6982

FILED
JUN 19 2008
DEPARTMENT OF REAL ESTATE

[Handwritten signature]

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-33507 LA
12	MHP, INC.; and)	L-2008 030 142
13	HENRY ROBERT AYALA,)	<u>STIPULATION AND AGREEMENT</u>
14	individually and as)	
15	designated officer of)	
16	MHP, Inc.,)	
17	Respondents.)	

18 It is hereby stipulated by and between MHP, INC., and
19 HENRY ROBERT AYALA (sometimes referred to as Respondents), and
20 their attorney Gary Einstein, and the Complainant, acting by and
21 through James R. Peel, Counsel for the Department of Real
22 Estate, as follows for the purpose of settling and disposing of
23 the Accusation filed on December 5, 2006, in this matter.
24

25 ///
26 ///

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and
3 Respondents at a formal hearing on the Accusation, which hearing
4 was to be held in accordance with the provisions of the
5 Administrative Procedure Act ("APA"), shall instead and in place
6 thereof be submitted solely on the basis of the provisions of
7 this Stipulation and Agreement ("Stipulation").

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the
10 Administrative Procedure Act ("APA") and the Accusation filed by
11 the Department of Real Estate in this proceeding.

12 3. On February 21, 2008, Respondents filed a Notice
13 of Defense pursuant to Section 11506 of the Government Code for
14 the purpose of requesting a hearing on the allegations in the
15 Accusation. Respondents hereby freely and voluntarily withdraw
16 said Notice of Defense. Respondents acknowledge that they
17 understand that by withdrawing said Notice of Defense they will
18 thereby waive their right to require the Commissioner to prove
19 the allegations in the Accusation at a contested hearing held in
20 accordance with the provisions of the APA and that they will
21 waive other rights afforded to them in connection with the
22 hearing, such as the right to present evidence in defense of the
23 allegations in the Accusation and the right to cross-examine
24 witnesses.
25
26
27

1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation filed in this
3 proceeding. In the interest of expedience and economy,
4 Respondents choose not to contest these factual allegations, but
5 to remain silent and understand that, as a result thereof, these
6 factual statements, will serve as a prima facie basis for the
7 disciplinary action stipulated to herein. The Real Estate
8 Commissioner shall not be required to provide further evidence
9 to prove such allegations.

10 5. This Stipulation and Respondents' decision not to
11 contest the Accusation is made for the purpose of reaching an
12 agreed disposition of this proceeding and is expressly limited
13 to this proceeding and any other proceeding or case in which the
14 Department of Real Estate ("Department"), the state or federal
15 government, or an agency of this state, another state or the
16 federal government is involved.

17 6. It is understood by the parties that the Real
18 Estate Commissioner may adopt the Stipulation as his decision
19 in this matter thereby imposing the penalty and sanctions on
20 Respondents' real estate licenses and license rights as set
21 forth in the below "Order". In the event that the Commissioner
22 in his discretion does not adopt the Stipulation, the
23 Stipulation shall be void and of no effect, and Respondents
24 shall retain the right to a hearing on the Accusation under all
25 the provisions of the APA and shall not be bound by any
26 stipulation or waiver made herein.
27

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

7 DETERMINATION OF ISSUES

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

12 I

13 The conduct, acts and/or omissions of Respondents
14 MHP, INC., and HENRY ROBERT AYALA, as set forth in the
15 Accusation, constitute cause for the suspension or revocation of
16 all of the real estate licenses and license rights of
17 Respondents under the provisions of Section 10177(d) of the
18 Business and Professions Code ("Code") for violation of Code
19 Section 10145(a), and Regulations 2831, 2831.1, 2832, and
20 2832.1, Title 10, Chapter 6, California Code of Regulations.
21

22 ///

23 ///

24 ///

25 ///

26 ///

27

II

1
2 The conduct, acts and/or omissions of Respondent HENRY
3 ROBERT AYALA, as set forth in the Accusation, constitute cause
4 for the suspension or revocation of all of the real estate
5 licenses and license rights of Respondent under the provisions
6 of Section 10177(d) of the Code for violation of Code Section
7 10159.2.

8 ORDER

9 All licenses and licensing rights of Respondents MHP,
10 INC., and HENRY ROBERT AYALA under the Real Estate Law are
11 suspended for a period of sixty (60) days from the effective
12 date of this Decision; provided, however, that thirty (30) days
13 of said suspension shall be stayed for two (2) years upon the
14 following terms and conditions:

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

18 2. That no final subsequent determination be made,
19 after hearing or upon stipulation that cause for disciplinary
20 action occurred within two (2) years of the effective date of
21 this Decision. Should such a determination be made, the
22 Commissioner may, in his discretion, vacate and set aside the
23 stay order and reimpose all or a portion of the stayed
24 suspension. Should no such determination be made, the stay
25 imposed herein shall become permanent.
26
27

1 3. Provided, however, that if Respondents petition,
2 the remaining thirty (30) days of said sixty (60) day suspension
3 shall be stayed upon condition that:

4 a. Respondents pay a monetary penalty pursuant to
5 Section 10175.2 of the Business and Professions Code at the rate
6 of \$33 for each day of the suspension for a total monetary
7 penalty of \$990 (\$1,980 for both Respondents).

8 b. Said payment shall be in the form of a
9 cashier's check or certified check made payable to the Recovery
10 Account of the Real Estate Fund. Said check must be received by
11 the Department prior to the effective date of the Decision in
12 this matter.

13 c. No further cause for disciplinary action
14 against the real estate licenses of Respondent occurs within two
15 (2) years from the effective date of the Decision in this
16 matter..

17 d. If Respondents fail to pay the monetary
18 penalty in accordance with the terms and conditions of the
19 Decision, the Commissioner may, without a hearing, order the
20 immediate execution of all or any part of the stayed suspension
21 in which event the Respondents shall not be entitled to any
22 repayment nor credit, prorated or otherwise, for money paid to
23 the Department under the terms of this Decision.

24 ///

25 ///

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

6 4. Respondent HENRY ROBERT AYALA shall, within six
7 months from the effective date of this Decision, take and pass
8 the Professional Responsibility Examination administered by the
9 Department including the payment of the appropriate examination
10 fee. If Respondent fails to satisfy this condition, the
11 Commissioner may order suspension of Respondent's licenses until
12 Respondent passes the examination.

13 5. Pursuant to Section 10148 of the Business and
14 Professions Code, Respondents MHP, INC. and HENRY ROBERT AYALA
15 shall pay the Commissioner's reasonable cost for the audit which
16 led to this disciplinary action and Respondent MHP, INC. shall
17 pay the Commissioner's reasonable cost for a subsequent audit to
18 determine if Respondent MHP, INC. has corrected the violations
19 found in the Determination of Issues. In calculating the amount
20 of the Commissioner's reasonable cost, the Commissioner may use
21 the estimated average hourly salary for all persons performing
22 audits of real estate brokers, and shall include an allocation
23 for travel costs, including mileage, time to and from the
24 auditor's place of work and per diem. Respondents shall pay
25 such cost within 45 days of receiving an invoice from the
26 Commissioner detailing the activities performed during the audit
27

1 and the amount of time spent performing those activities. The
2 Commissioner may, in his discretion, vacate and set aside the
3 stay order, if payment is not timely made as provided for
4 herein, or as provided for in a subsequent agreement between the
5 Respondents and the Commissioner. The vacation and the set
6 aside of the stay shall remain in effect until payment is made
7 in full, or until Respondents enter into an agreement
8 satisfactory to the Commissioner to provide for payment. Should
9 no order vacating the stay be issued, either in accordance with
10 this condition or condition "2", the stay imposed herein shall
11 become permanent.

12 6. Respondent HENRY ROBERT AYALA shall, within six
13 months from the effective date of this Decision, present
14 evidence satisfactory to the Real Estate Commissioner that
15 Respondent has taken and completed the trust fund accounting and
16 handling course specified in paragraph (3), subdivision (a) of
17 Section 10170.5 of the Code. Proof of satisfaction of this
18 requirement includes evidence that Respondent has successfully
19 completed the trust fund account and handling continuing
20 education course within 120 days prior to the effective date of
21 the Decision in this matter.
22

23
24
25 DATED: May 8, 2008

James R. Peel
JAMES R. PEEL, Counsel for the
Department of Real Estate

* * *

1 We have read the Stipulation and Agreement, have
2 discussed it with our counsel, and its terms are understood by
3 us and are agreeable and acceptable to us. We understand that
4 we are waiving rights given to us by the California
5 Administrative Procedure Act (including but not limited to
6 Sections 11506, 11508, 11509 and 11513 of the Government Code),
7 and we willingly, intelligently and voluntarily waive those
8 rights, including the right of requiring the Commissioner to
9 prove the allegations in the Accusation at a hearing at which we
10 would have the right to cross-examine witnesses against us and
11 to present evidence in defense and mitigation of the charges.
12

13 Respondents can signify acceptance and approval of the
14 terms and conditions of this Stipulation and Agreement by faxing
15 a copy of the signature page, as actually signed by Respondents,
16 to the Department at the following telephone/fax number:
17

18 (213) 576-6917. Respondents agree, acknowledge and understand
19 that by electronically sending to the Department a fax copy of
20 his or her actual signature as it appears on the Stipulation and
21 Agreement, that receipt of the faxed copy by the Department
22 shall be as binding on Respondents as if the Department had
23 received the original signed Stipulation and Agreement.

24 ///

25 ///

26 ///

27

MAY-06-08 TUE 11:21 AM

Further, if the Respondents are represented, the Respondents' counsel can signify his or her agreement to the terms and conditions of the Stipulation and Agreement by submitting that signature via fax.

DATED: 05/06/08

[Signature]
MHP, INC.,
Respondent

DATED: 5/6/08

[Signature]
HENRY ROBERT AYALA
Respondent

DATED: 5-6-08

[Signature]
GARY EINSTEIN
Counsel for Respondents

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and Order in this matter, and shall become effective at 12 o'clock noon on July 9, 2008.

IT IS SO ORDERED 6-11-08

JEFF DAVI
Real Estate Commissioner

[Signature]

SAND
PLAN

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
DEC - 5 2006
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-33507 LA
12 MHP, INC.; and)
13 HENRY ROBERT AYALA,) A C C U S A T I O N
14 individually and as)
15 designated officer of)
16 MHP, Inc.,)
17 Respondents.)

17 The Complainant, Janice A. Waddell, a Deputy Real
18 Estate Commissioner of the State of California, for cause of
19 accusation against MHP, INC.; and HENRY ROBERT AYALA,
20 individually and as designated officer of MHP, Inc., alleges as
21 follows:

22 I

23 The Complainant, Janice A. Waddell, acting in her
24 official capacity as a Deputy Real Estate Commissioner of the
25 State of California, makes this Accusation against MHP, INC.; and
26 HENRY ROBERT AYALA, individually and as designated officer of
27 MHP, Inc.

1 II

2 MHP, INC.; and HENRY ROBERT AYALA, individually and as
3 designated officer of said corporation (hereinafter referred to
4 as "Respondents", are presently licensed and/or have license
5 rights under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code) (hereinafter Code).

7 III

8 At all times herein mentioned, Respondent MHP, INC.,
9 was licensed as a real estate broker with Respondent HENRY ROBERT
10 AYALA as its designated officer.

11 IV

12 At all times material herein, Respondents MHP, INC.,
13 and HENRY ROBERT AYALA engaged in the business of, acted in the
14 capacity of, advertised or assumed to act as a real estate broker
15 in the State of California, within the meaning of Section
16 10131(a) of the Code including negotiating the sale of real
17 property. Respondent MHP, INC., engaged in escrow activities
18 pursuant to the exemption provided by Financial Code Section
19 17006(a)(4).

20 V

21 On or about October 22, 2004, the Department completed
22 an examination of Respondent MHP, INC.'s books and records
23 pertaining to the activities described in Paragraph IV above,
24 covering a period from April 1, 2004, through July 31, 2004,
25 which examination revealed violations of the Code and of Title
26 10, Chapter 6, California Code of Regulations (hereinafter
27 Regulations) as set forth below.

1 VI

2 The examination described in Paragraph V, above,
3 determined that, in connection with the activities described in
4 Paragraph IV above, Respondent MHP, INC., accepted or received
5 funds, including funds in trust (hereinafter "trust funds") from
6 or on behalf of principals and thereafter made deposit or
7 disbursement of such funds.

8 VII

9 In the course of activities described in Paragraphs IV
10 through VI and during the examination period described in
11 Paragraph V, Respondent MHP, INC., acted in violation of the Code
12 and the Regulations as follows, and as more specifically set
13 forth in Audit Report Nos. LA 040047 and LA 040048 and related
14 exhibits:

15 (1) Violated Section 10145(a) and Regulation 2832.1 by
16 maintaining a trust account shortage of \$8,642.33 as of July 31,
17 2004.

18 (2) Violated Code Section 10145 and Regulations
19 2832/2950(f) by failing to deposit trust funds received in
20 connection with the broker escrow activity into the trust account
21 by the next business day following receipt of the funds. The
22 trust account was not designated as a trust account.

23 (3) Violated Regulation 2831 by failing to maintain
24 trust account control records that were complete and accurate.

25 (4) Violated Regulation 2831.1 by maintaining separate
26 records for each escrow transaction that were not always accurate
27 and complete.

1 (5) Violated Regulation 2950(h) by failing to advise
2 all parties in writing of its ownership interest in the agency
3 handling the escrow.

4 VIII

5 The conduct of Respondents MHP, INC., and HENRY ROBERT
6 AYALA, as alleged above, subjects their real estate licenses and
7 license rights to suspension or revocation pursuant to Section
8 10177(d) and/or 10177(g) of the Code.

9 IX

10 The conduct of Respondent HENRY ROBERT AYALA, as
11 alleged above, is in violation of Code Section 10154.2 and
12 subjects his real estate licenses and license rights to
13 suspension or revocation pursuant to Sections 10177(g), 10177(h)
14 and 10177(d) of the Code.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 MHP, INC.; and HENRY ROBERT AYALA, individually and as designated
6 officer of MHP, Inc., under the Real Estate Law (Part 1 of
7 Division 4 of the Business and Professions Code) and for such
8 other and further relief as may be proper under other applicable
9 provisions of law.

10 Dated at Los Angeles, California,
11 this 30 day of October, 2006.

12
13
14 
15 JANICE A. WADDELL
16 Deputy Real Estate Commissioner
17
18
19
20
21
22
23

24 cc: MHP, Inc.
25 Henry Robert Ayala
26 Janice A. Waddell
27 L.A. Audit Section
Sacto.