

BEFORE THE REAL ESTATE COMMISSION

STATE OF COLORADO

Case No. RC 2009-0009

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY ACTION AGAINST THE REAL ESTATE BROKER'S LICENSE OF MAY LE TRAN, LICENSE NO. EA40000763, Respondent.

IT IS HEREBY STIPULATED by and between the Colorado Real Estate Commission (the "Commission") and the Respondent, May Le Tran, (the "Respondent"), as follows:

1. At all times relevant hereto, the Respondent was a licensed real estate broker in the state of Colorado.
2. The Commission has jurisdiction over the Respondent and the subject matter of this action.
3. The Commission commenced an investigation of Respondent's activities.
4. The Commission notified the Respondent of the investigation and Respondent was given the opportunity to give written data, views and arguments concerning the investigation.
5. At its regularly scheduled public meeting on June 3, 2008, the Commission considered the investigative report and found probable cause to refer the Respondent to hearing for violation of the real estate licensing law.
6. On May 6, 2009, a mediation conference was held at the Office of Administrative Courts ("OAC") with Administrative Law Judge ("ALJ") Barbara Henk. The Commission considered Respondent's case and decided on discipline of Respondent's real estate broker's license subject to the agreed upon terms and conditions of this Stipulation and Order.
7. Respondent admits the following:
 - a. On or about March 10, 2006, Respondent was represented by Jerrold Minney ("Minney"). Minney submitted a Contract to Buy and Sell

Real Estate (“the contract”), on behalf of Respondent, for the purchase for property located at 2934 Golden Eagle Circle, Lafayette, Colorado, (“Golden Eagle” or “the property”). The contract was for \$399,000.

b. On or about March 10, 2006, Minney included Additional Provisions (“Additional Provisions”) in the Closing Instructions and Earnest Money Receipt. The Additional Provisions included:

A. Seller shall pay \$87,030 marketing/management fee to Partners Marketing LLC at closing. B. Seller to pay up to \$11,970 towards buyer’s prepaids and closing costs. If buyer’s prepaids and closing costs are less than the \$11,970, the remainder shall be paid to Partners Marketing LLC. C. Seller shall pay 2.2% commission of the net to Prudential Colorado Real Estate. D. Seller shall pay 2.8% of the commission of the net to Broker One Real Estate.

c. Respondent admitted that she purchased the property above list price.

d. The HUD-1 Settlement Statement indicates that Partners Marketing LLC was paid a “Marketing/ Management Fee.” (“Marketing/ Management Fee”). The amount of the Marketing/ Management Fee was approximately \$91,192.36.

e. On or about March 24, 2006, Security Title Guaranty wired approximately \$91,192.36 to Partners Marketing LLC (“Partners Marketing”). Respondent admitted that she was the recipient of the approximately \$87,030.00 of the payment to Partners Marketing.

8. Respondent admits and the Commission finds that Respondent violated § 12-61-113 (l) (k), C.R.S.

9. The statutory authority of the Commission is as follows:

**12-61-113. Investigation – revocation – actions against licensee-
repeal.** (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and the commission, after the holding of a hearing pursuant to section 12-61-114, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(k) Disregarding or violating any provision of this part 1 or part 8 of this

article [§12-61-101 *et seq.*, C.R.S.] violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of part 1 or part 8 of this article [§12-61-101 *et seq.*, C.R.S.] ; violating any lawful commission orders; or aiding and abetting a violation of any rule , regulation, commission order of this part 1 or part 8 of this article [§12-61-101 *et seq.*, C.R.S.].

10. Respondent accepts the following imposition of discipline against Respondent's real estate broker's license pursuant to C.R.S. §§ 12-61-113 and 114, and 24-4-104 and 105.

a. The real estate license of Respondent shall be and hereby is suspended for a period of eighteen (18) months. Such suspension shall commence upon the execution of this Stipulation ("Stipulation") by a representative of the Commission. Upon the effective date of the suspension, Respondent shall refrain from engaging in any act requiring a real estate license as set forth in C.R.S. §§ 12-61-101 and 102.

b. Respondent shall pay a fine to the Commission in the amount of \$7,500.00. Respondent understands and acknowledges that, pursuant to section 24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 15% of this fine. Thus, Respondent shall pay a total amount of \$8,625.00. Said fine shall be payable monthly, over a period of three years, with the first monthly payment of \$239.59 being due immediately upon execution of this Stipulation and Final Agency Order. Monthly payments of \$239.59 are due to the Commission, with a final payment in the amount of \$239.35 due to the Commission. Respondent's failure to pay the fine in full shall be considered a violation of this Stipulation.

PRACTICE RESTRICTION

11. Upon successful completion of the eighteen (18) month suspension, Respondent's real estate broker's license shall be subject to two (2) years practice restrictions. The practice restrictions shall continue until Respondent has met the terms and conditions set forth in this Stipulation and Order for the lifting of the practice restrictions.

12. Restrictions on Respondent's license will not be lifted until Respondent has completed a period of compliance of at least two (2) years ("the compliance period"). The compliance period must be continuous with no violations of the terms set forth in this Stipulation and Final Agency Order.

SUPERVISING BROKER

13. Respondent must have a supervising real estate broker (“supervising broker”) for a period of two (2) years after successful completion of the eighteen (18) month suspension period. Supervision and monitoring of Respondent’s practice must be provided by a qualified real estate broker who has an unrestricted license in all states of licensure, and who has been approved by the Commission.

14. Upon successful completion of the eighteen (18) month suspension period, Respondent shall provide a copy of this Stipulation and Order to the supervising broker. Within three (3) working days of the effective date of successful completion of the eighteen (18) month suspension, or within three (3) working days of obtaining employment after successful completion of the eighteen (18) month suspension, Respondent must submit the name, license number and educational level of the supervising broker for Commission approval. Respondent’s nomination of a supervising broker must be accompanied by (i) a current curriculum vitae provided by the supervising broker, and (ii) a letter from the supervising broker stating that the supervising broker has read this Stipulation and Order, and agrees to perform the functions of the supervising broker. The Commission’s approval of the supervising broker shall not be arbitrarily withheld. The Commission will not approve any supervising broker if he or she is not in good standing with the applicable licensing board, or if he or she is under bona fide investigation calling into question the supervising broker’s qualifications to practice as a real estate broker.

15. Respondent is required to notify the Commission, in writing, within three (3) working days after the commencement or termination of any employment.

16. Within one month of successful completion of the eighteen (18) month suspension period, or within one month of obtaining employment (whichever occurs later), Respondent will submit the following to the Commission for approval:

- i. A copy of Respondent’s job description.
- ii. A description of Respondent’s practice completed by the supervising broker and Respondent, based on the violation(s) of the Act.

17. The Written Practice Monitor Reports shall be submitted directly to the Commission by the supervising broker throughout the two years of Respondent’s restricted practice. Reports shall be submitted quarterly (April Quarterly, July Quarterly, October Quarterly and December Quarterly) or more frequently as required by the Commission. The deadlines for submission to the Commission are as follows: April Quarterly due April 15th; July Quarterly due July 15th; October Quarterly due October 15th; and December Quarterly due January 15th.

18. Written Practice Monitor Reports will include a copy of (i.) Respondent's job description, (ii.) description of Respondent's real estate practice, (iii.) copies of any real estate transaction notes and files, and, (iv.) any additional information as the Commission may reasonably require in order to confirm Respondent's compliance with this Stipulation and Order. Such documents and information shall in all circumstances be treated as confidential as appropriate to the standards of the profession.

19. If during the course of Respondent's employment, Respondent's supervising broker changes, Respondent shall inform the new supervising broker of the existence of this Stipulation and Order within 24 hours of the change. Within one (1) week of the change, Respondent shall submit the name, license number and educational level of the new supervising broker for Commission approval. Respondent shall direct the new supervising broker to provide the Commission, within two (2) weeks of the change, with written confirmation of the new nominated supervising broker's awareness of this Stipulation and Stipulation and Order, his or her agreement with the Stipulation and Order and any change in Respondent's job description.

20. If Respondent changes employment during the pendency of this Order, Respondent shall immediately provide the new employer with a copy of this Order.

21. It is the obligation of Respondent to ensure that all written reports required pursuant to this Stipulation and Order are submitted to the Commission on time. The Respondent's failure to ensure that the required written reports are submitted on time may be deemed a violation of this Stipulation and Order.

22. Any and all costs associated with monitoring shall be borne by Respondent.

23. Any supervising broker who aids or knowingly permits Respondent to violate this Stipulation and Order may be sanctioned pursuant to §§ 12-61-113, 114 and 122, C.R.S.

24. In the event the Commission determines that any report submitted in accordance with this Stipulation and Order is not substantially favorable, Respondent may be deemed to be in violation of this Stipulation and Order.

25. Respondent acknowledges that the Commission may proceed with formal disciplinary action against Respondent upon notification that Respondent has been terminated for any reason, including:

- a. Failing to comply with Respondent's practice restrictions or any of the terms of this Stipulation & Order;
- b. Becoming unable to practice as a real estate broker with reasonable skill and safety;

c. Moving to another state and working as a real estate broker in that state without timely informing that state's Real Estate Commission of Respondent's practice restrictions in Colorado;

d. Falsifying or failing to disclose information that Respondent may have violated any provisions of the Real Estate Practice Act.

26. Respondent agrees that in the event that Respondent is notified that Respondent has been referred back to the Commission for discipline, **Respondent will cease practicing as a real estate broker until the Commission and Respondent enter into a written agreement setting forth the terms and conditions under which Respondent may return to practice.** Respondent retains the right to request a hearing regarding the allegation(s) that resulted in to the referral back to the Commission and appropriate discipline. Any such hearing will be held in accordance with § 24-4-105, C.R.S.

27. Respondent agrees to inform the Commission of any acts committed by Respondent that constitute violations of this Stipulation and Order, including, but not limited to, any failure to comply with the practice restrictions.

28. In the event of relocation to another state, Respondent shall notify the Commission of the change of address within 30 days of such relocation, and hereby gives consent to the Commission that it may notify the Real Estate Commission, or the equivalent regulatory agency in any state to which Respondent relocates, of the existence and terms of, and compliance with this Stipulation and Order.

29. Respondent shall comply with all provisions of the Real Estate Practice Act and all rules and regulations of the Commission.

30. Respondent is aware of and understands the right to receive a formal notice of hearing and charges and to have a formal disciplinary hearing, pursuant to §§ 12-61-114, 24-4-104 and 24-4-105, C.R.S. and the Administrative Procedure Act. Respondent hereby waives those rights, admits the facts set forth in this Stipulation and Order, and requests that this Stipulation and Order be accepted by the Commission with the same force and effect as an Order entered as a result of a formal disciplinary proceeding. Respondent further waives the right to appeal the Stipulation and Order entered herein.

a. Respondent understands that if, during the pendency of this agreement, the Commission has reasonable grounds to believe that Respondent is in violation of either this Stipulation and Order, the Real Estate Practice Act, or both, the Commission may refer Respondent for additional disciplinary action pursuant to the Real Estate Practice Act and the Administrative Procedure Act.

b. In the event this matter is referred to disciplinary hearing for violation of this Stipulation and Order, this Stipulation and Order shall be admissible as evidence. In the event the facts that constitute the alleged violation of this Stipulation and Order are determined to be unproven, no disciplinary action shall be taken by the Commission, and this Stipulation and Order shall remain operative and in full force and effect.

31. This Stipulation and Order is entered into by Respondent voluntarily, after the opportunity to consult with counsel and with full understanding of the legal consequences of this Stipulation and Order.

32. This Stipulation and Order shall become an Order of the Commission when accepted by the Commission and signed by an authorized Commission representative. In the event this Stipulation and Order does not become an Order of the Commission, it shall be void and Respondent shall not be bound by any provisions hereof or admissions herein.

33. If, at the end of Respondent's compliance period, the Commission finds that Respondent adhered to all the terms of this Stipulation and Order, then this proceeding shall be concluded. Respondent will provide proof, in writing, to the Commission of successful completion of the contract. Following receipt of such proof, the Commission will issue Respondent's license to unrestricted status.

LIFTING OF THE PRACTICE RESTRICTIONS

34. Upon successful compliance with all terms set forth above, Respondent may then apply in writing for the lifting of the practice restrictions of Respondent's real estate broker's license.

35. As a specific term and condition of this Stipulation and Order prior to the lifting of the practice restrictions, Respondent must complete 32 (thirty-two) hours of continuing education coursework. Respondent must complete course work in ethics, contracts, current legal issues and brokerage relationships.

36. Additionally, upon Commission's review of Respondent's application for the lifting of the practice restrictions, the Commission shall determine whether additional terms and conditions of licensure, including re-examination and/or the successful completion of a refresher course and/or completion of other educational requirements are required to demonstrate Respondent's continued competency to practice as a real estate broker pursuant to § 24-34-102(8)(d), C.R.S. Respondent agrees to comply with any such examination or educational requirements the Commission in its discretion deems appropriate to assure Respondent's demonstration of

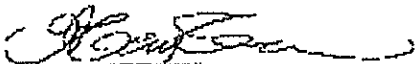
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continued competency. Such examination or educational requirements shall be set forth with specificity in an addendum to this Stipulation and Order prior to the lifting of the practice restrictions.

37. On the date upon which this Stipulation is executed by an authorized representative of the Commission, it shall become the Final Agency Order of the Commission.

APPLICANT

COLORADO REAL ESTATE COMMISSION


MAY LE TRAN,
RESPONDENT

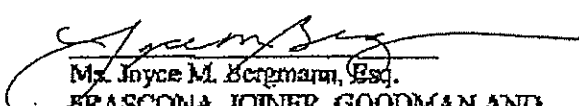
By: 
MARCIA WATERS, Director
1560 Broadway, Suite
Denver, Colorado 80202

Effective Date: This 3rd day of June,
2009.

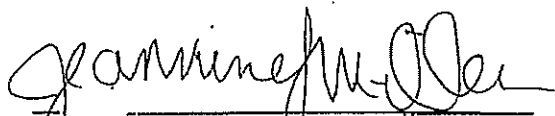
APPROVED AS TO FORM:

JOYCE M. BERGMANN, ESQ.

JOHN W. SETHURS
Attorney General


Ms. Joyce M. Bergmann, Esq.
FRASCONA, JOINER, GOODMAN AND
GREENSTEIN, P.C.
4750 Table Mesa Drive
Boulder, Colorado 80305-5500

Attorneys for May Le Tran,
Respondent



JOANNE L. MILLER, #31097
Assistant Attorney General
Business and Licensing Section

Attorneys for the State Board of Nursing

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5464
FAX: (303) 866-5395

*Counsel of Record

Colorado Real Estate Commission