

1 Bureau of Real Estate  
2 P.O. Box 137007  
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8672

**FILED**

JUL 11 2017

BUREAU OF REAL ESTATE  
By B. Nicholas

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

10 \* \* \*

11 In the Matter of the Accusation of

12 ACW ENTERPRISES and  
13 ERIK IBARRA,

14 Respondents.

No. H-11980 SF

STIPULATION AND  
AGREEMENT

15 It is hereby stipulated by and between ACW ENTERPRISES (ACW) and ERIK  
16 IBARRA (IBARRA) (collectively referred to as "Respondents"), represented by Frank M. Buda,  
17 and the Complainant, acting by and through Truly Sughrue, Counsel for the Bureau of Real  
18 Estate (Bureau), as follows for the purpose of settling and disposing the First Amended  
19 Accusation (Accusation) filed on April 10, 2017, in this matter:

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

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

27

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

10                   4.       This Stipulation and Agreement is based on the factual allegations  
11 contained in the Accusation. In the interest of expediency and economy, Respondents choose not  
12 to contest these factual allegations, but to remain silent and understand that, as a result thereof,  
13 these factual statements will serve as a prima facie basis for the "Determination of Issues" and  
14 "Order" set forth below. The Commissioner shall not be required to provide further evidence to  
15 prove such allegations.

16                   5.       This Stipulation and Agreement and Respondents' decision not to contest  
17 the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and  
18 are expressly limited to this proceeding and any other proceeding or case in which the Bureau,  
19 the state or federal government, an agency of this state, or an agency of another state is involved.

20                   6.       Respondents understand that by agreeing to this Stipulation and  
21 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and  
22 Professions Code (Code), the cost of the audit, which resulted in the determination that  
23 Respondents committed the trust fund handling violation(s) found in the Determination of  
24 Issues. The amount of said costs is \$5,194.70.

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

1           7.       Respondents further understand that by agreeing to this Stipulation and  
2 Agreement, the findings set forth below in the Determination of Issues become final, and that  
3 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to  
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum  
5 costs of said audit shall not exceed \$6,493.38.

6           8.       It is understood by the parties that the Commissioner may adopt the  
7 Stipulation and Agreement as his Decision and Order in this matter thereby imposing the penalty  
8 and sanctions on the real estate licenses and license rights of Respondents as set forth in the  
9 below "Order". In the event that the Commissioner in his discretion does not adopt the  
10 Stipulation and Agreement, it shall be void and of no effect, and Respondents shall retain the  
11 right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall  
12 not be bound by any admission or waiver made herein.

13           9.       The Order or any subsequent Order of the Commissioner made pursuant to  
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further  
15 administrative or civil proceedings by the Bureau with respect to any matters which were not  
16 specifically alleged in Accusation H-11980 SF.

17   \* \* \*

18   DETERMINATION OF ISSUES

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

22   I

23           The acts and omissions of Respondents as described in the First Cause of Action  
24 in the Accusation are grounds for the suspension or revocation of Respondents' licenses and  
25 license rights under the following sections of the Code and Title 10 of the California Code of  
26 Regulations (Regulations):

27       ///

1 As to Paragraph 8(a), under Section 10177(d) of the Code in conjunction with  
2 10145 of the Code in and Section 2832.1 of the Regulations;

3 As to Paragraph 8(b), under Section 10177(d) of the Code in conjunction with  
4 Section 10145 of the Code and Section 2832.1 of the Regulations;

5 As to Paragraph 8(c), under Section 10177(d) of the Code in conjunction with  
6 Section 10145 of the Code and Section 2832 of the Regulations;

7 As to Paragraph 8(d), under Section 10177(d) of the Code in conjunction with  
8 Section 10145(g) of the Code and Section 2831.1 of the Regulations;

9 As to Paragraph 8(e), under Section 10177(d) of the Code in conjunction with  
10 Section 2831.2 of the Regulations; and,

11 As to Paragraph 8(f), under Section 10177(d) of the Code in conjunction with  
12 Section 10140.6(b) of the Code and Section 2773 of the Regulations.

13 II

14 The acts and omissions of IBARRA as described in the Second Cause of Action  
15 in the Accusation are grounds for the suspension or revocation of IBARRA's licenses and  
16 license rights under Section 10177(h) of the Code.

17 \* \* \*

18 ORDER

19 I

20 All licenses and licensing rights of ACW under the Real Estate Law are  
21 suspended for a period of sixty (60) days from the effective date of this Order; provided,  
22 however, that:

23 1) Thirty (30) days of said suspension shall be stayed, upon the condition that ACW  
24 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section  
25 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty  
26 of \$1,500.

1           a) Said payment shall be in the form of a cashier's check made payable to the  
2 Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag Section  
3 at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

4           b) No further cause for disciplinary action against the Real Estate licenses of acw  
5 occurs within two (2) years from the effective date of the decision in this matter.

6           c) If ACW fails to pay the monetary penalty as provided above prior to the effective  
7 date of this Order, the stay of the suspension shall be vacated as to that ACW and the order of  
8 suspension shall be immediately executed, under this Order, in which event the said ACW shall  
9 not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the  
10 Bureau under the terms of this Order.

11           d) If ACW pays the monetary penalty and any other moneys due under this  
12 Stipulation and Agreement and if no further cause for disciplinary action against the real estate  
13 license of said ACW occurs within two (2) years from the effective date of this Order, the entire  
14 stay hereby granted this Order, as to said ACW only, shall become permanent.

15 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the  
16 following terms and conditions:

17           a) ACW shall obey all laws, rules and regulations governing the rights, duties and  
18 responsibilities of a real estate licensee in the State of California; and,

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

24 II

25           All licenses and licensing rights of IBARRA under the Real Estate Law are  
26 suspended for a period of sixty (60) days from the effective date of this Order; provided,  
27 however, that:

1) Thirty (30) days of said suspension shall be stayed, upon the condition that  
IBARRA petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant  
to Section 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total  
monetary penalty of \$1,500.

a) Said payment shall be in the form of a cashier's check made payable to the  
Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate, Flag Section  
at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

b) No further cause for disciplinary action against the Real Estate licenses of  
IBARRA occurs within two (2) years from the effective date of the decision in this matter.

c) If IBARRA fails to pay the monetary penalty as provided above prior to the  
effective date of this Order, the stay of the suspension shall be vacated as to that IBARRA and  
the order of suspension shall be immediately executed, under this Order, in which event the said  
IBARRA shall not be entitled to any repayment nor credit, prorated or otherwise, for the money  
paid to the Bureau under the terms of this Order.

d) If IBARRA pays the monetary penalty and any other moneys due under this  
Stipulation and Agreement and if no further cause for disciplinary action against the real estate  
license of said IBARRA occurs within two (2) years from the effective date of this Order, the  
entire stay hereby granted this Order, as to said IBARRA only, shall become permanent.

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

a) IBARRA shall obey all laws, rules and regulations governing the rights, duties  
and responsibilities of a real estate licensee in the State of California; and,

b) That no final subsequent determination be made, after hearing or upon stipulation,  
that cause for disciplinary action occurred within two (2) years from the effective date of this  
Order. 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.

1 3) All licenses and licensing rights of IBARRA are indefinitely suspended unless or  
2 until IBARRA provides proof satisfactory to the Commissioner, of having taken and successfully  
3 completed the continuing education course on trust fund accounting and handling specified in  
4 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these  
5 requirements includes evidence that IBARRA has successfully completed the trust fund account  
6 and handling continuing education courses, no earlier than 120 days prior to the effective date of  
7 the Decision and Order in this matter. Proof of completion of the trust fund accounting and  
8 handling course must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box  
9 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of  
10 this Decision and Order.

11 4) All licenses and licensing rights of IBARRA are indefinitely suspended unless or  
12 until IBARRA provides proof satisfactory to the Commissioner, of having taken and successfully  
13 completed the continuing education course on risk management specified in paragraph (3) of  
14 subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these requirements  
15 includes evidence that IBARRA has successfully completed the risk management continuing  
16 education courses, no earlier than 120 days prior to the effective date of the Decision and Order  
17 in this matter. Proof of completion of the risk management course must be delivered to the  
18 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax  
19 at 916-263-8758, prior to the effective date of this Decision and Order.

20 III

21 1) Pursuant to Section 10148 of the Code, Respondents shall jointly and severally  
22 pay the sum of \$5,194.70 for the Commissioner's cost of the audit which led to this disciplinary  
23 action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore  
24 from the Commissioner. Payment of audit costs should not be made until Respondents receive  
25 the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for  
26 herein, Respondents' real estate license shall automatically be suspended until payment is made  
27 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to

1 this condition.

2) Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's  
3 reasonable cost, not to exceed \$6,493.38, for an audit to determine if Respondents have corrected  
4 the violation(s) found in the Determination of Issues. In calculating the amount of the  
5 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary  
6 for all persons performing audits of real estate brokers, and shall include an allocation for travel  
7 time to and from the auditor's place of work. Respondents shall pay such cost within sixty (60)  
8 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should  
9 not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition  
10 in a timely manner as provided for herein, Respondents' real estate license shall automatically be  
11 suspended until payment is made in full, or until a decision providing otherwise is adopted  
12 following a hearing held pursuant to this condition.

13

14

15 DATED

16

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19 I have read the Stipulation and Agreement, discussed it with my counsel, and its  
20 terms are understood by me and are agreeable and acceptable to me. I understand that I am  
21 waiving rights given to me by the California Administrative Procedure Act, and I willingly,  
22 intelligently and voluntarily waive those rights, including the right of requiring the  
23 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the  
24 right to cross-examine witnesses against me and to present evidence in defense and mitigation of  
25 the charges.

26

27

28

Respondent and Respondent's attorney further agree to send the original signed  
Stipulation by mail to the following address no later than one (1) week from the date the

15-May-17  
TRULY SUGHRUE  
Counsel for Complainant

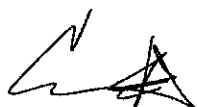
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1 Stipulation is signed by Respondent and Respondent's attorney: *Bureau of Real Estate, Legal*  
2 *Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and Respondent's  
3 attorney understand and agree that if they fail to return the original signed Stipulation by the due  
4 date, Complainant retains the right to set this matter for hearing.

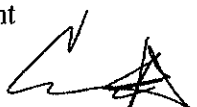
5 04/19/17

6 DATED

  
Erik Ibarra, on behalf of  
ACW ENTERPRISES.  
Respondent

8 04/19/17

9 DATED

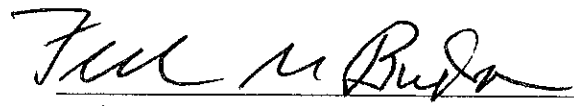
  
ERIK IBARRA  
Respondent

11 \*\*\*

12 *I have reviewed the Stipulation and Agreement as to form and content and have*  
13 *advised my clients accordingly.*

14 4-19-17

15 DATED

  
FRANK M. BUDA  
Attorney for Respondents

17 \*\*\*

18 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
19 Order and shall become effective at 12 o'clock noon on **AUG 01 2017**

20  
21 IT IS SO ORDERED 7/7/2017

22 WAYNE S. BELL  
23 REAL ESTATE COMMISSIONER  
24  
25   
26  
27