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1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982 (office)

FILED

SEP -8 2009

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35204 LA
)	
TRISTAR REALTY & INVESTMENTS INC.;)	
doing business as Ace Mortgage,)	
Pin Pint Escrow and Tri Star Realty;)	
and FRANCISCO GUILLERMO HERNANDEZ,)	<u>STIPULATION</u>
individually and as designated)	<u>AND</u>
officer of Tristar Realty &)	<u>AGREEMENT</u>
Investments Inc.,)	
)	
Respondents.)	
)	
)	
)	

It is hereby stipulated by and between Respondents TRISTAR REALTY & INVESTMENTS INC. and FRANCISCO GUILLERMO HERNANDEZ, individually and as designated officer of Tristar Investments & Investments Inc., represented by Aimee Dominguez, Esq. (sometimes collectively referred to as "Respondents"), and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation

1 ("Accusation") filed on August 11, 2008, in this matter:

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

9 2. Respondents have received, read and understand the
10 Statement to Respondent, the Discovery Provisions of the APA and
11 the Accusation filed by the Department of Real Estate in this
12 proceeding.

13 3. Respondents timely filed a Notice of Defense
14 pursuant to Section 11506 of the Government Code for the purpose
15 of requesting a hearing on the allegations in the Accusation.
16 Respondents hereby freely and voluntarily withdraw said Notice of
17 Defense. Respondents acknowledge that they understand that by
18 withdrawing said Notice of Defense they thereby waive their right
19 to require the Commissioner to prove the allegations in the
20 Accusation at a contested hearing held in accordance with the
21 provisions of the APA and that they will waive other rights
22 afforded to them in connection with the hearing such as the right
23 to present evidence in their defense and the right to cross-
24 examine witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondents choose not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation is made for the purpose of
11 reaching an agreed disposition of this proceeding and is
12 expressly limited to this proceeding and any other proceeding or
13 case in which the Department of Real Estate ("Department"), the
14 state or federal government, or any agency of this state, another
15 state or federal government is involved.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 herein.
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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 matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondent herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of the audit. The
12 amount of said cost for the audit is \$2,526.59.

13 9. Respondents have received, read, and understand the
14 "Notice Concerning Costs of Subsequent Audit". Respondents
15 further understand that by agreeing to this Stipulation, the
16 findings set forth below in the Determination of Issues become
17 final, and the Commissioner may charge Respondents for the cost
18 of any subsequent audit conducted pursuant to Business and
19 Professions Code Section 10148 to determine if the violations
20 have been corrected. The maximum cost of the subsequent audit
21 will not exceed \$2,526.59.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:
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I.

4 The conduct, acts or omissions of TRISTAR REALTY &
5 INVESTMENTS INC. and FRANCISCO GUILLERMO HERNANDEZ, as described
6 in Paragraph 4, above, are in violation of Section 10145, of the
7 Business and Professions Code ("Code") and Sections 2831 of Title
8 10, Chapter 6 of the California Code of Regulations
9 ("Regulations") and is a basis for discipline of Respondents'
10 license and license rights as violation of the Real Estate Law
11 pursuant to Code Section 10177(g).
12

ORDER

13 WHEREFORE, THE FOLLOWING ORDER is hereby made:
14

I.

15 The restricted license and licensing rights of
16 Respondent TRISTAR REALTY & INVESTMENTS INC. is hereby revoked
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II.

19 The restricted license and licensing rights of
20 Respondent FRANCISCO GUILLERMO HERNANDEZ, under the Real Estate
21 Law, are suspended for a period of sixty (60) days from the
22 effective date of this Decision.
23

24 A. Provided, however, that if Respondent requests, the
25 initial thirty (30) days of said suspension (or a portion
26 thereof) shall be stayed for two (2) years upon condition that:
27

1 1. Respondent pays a monetary penalty pursuant to
2 Section 10175.2 of the Business and Professions Code at the rate
3 of \$33.33 per day for each day of the suspension for a monetary
4 penalty of \$1,000.

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

10 3. No further cause for disciplinary action against
11 the real estate license of Respondent occurs within two (2) years
12 from the effective date of the Decision in this matter.

13 4. If Respondent fails to pay the monetary penalty in
14 accordance with the terms of the Decision, the Commissioner may,
15 without a hearing, order the immediate execution of all or any
16 part of the stayed suspension, in which event the Respondent
17 shall not be entitled to any repayment nor credit, prorated or
18 otherwise, for money paid to the Department under the terms of
19 this Decision.
20

21 5. If Respondent pays the monetary penalty and if no
22 further cause for disciplinary action against the real estate
23 license of Respondent occurs within two (2) years from the
24 effective date of the Decision, the stay hereby granted shall
25 become permanent.

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1 B. The remaining thirty (30) days of the sixty (60)
2 day suspension shall be stayed for two (2) years upon the
3 following terms and conditions:

4 (a) Respondent shall obey all laws, rules and
5 regulations governing the rights, duties and responsibilities of
6 a real estate licensee in the State of California; and

7 (b) That no final subsequent determination be made
8 after hearing or upon stipulation, that cause for disciplinary
9 action occurred within two (2) years from the effective date of
10 this Decision. Should such a determination be made, the
11 Commissioner may, in his discretion, vacate and set aside the
12 stay order and reimpose all or a portion of the stayed
13 suspension. Should no such determination be made, the stay
14 imposed herein shall become permanent.

15 II.

16 Pursuant to Section 10148 of the Business and
17 Professions Code, Respondents TRISTAR REALTY & INVESTMENTS INC.
18 and FRANCISCO GUILLERMO HERNANDEZ shall pay the Commissioner's
19 reasonable cost for (a) the audit which led to this disciplinary
20 action (b) a subsequent audit to determine if Respondents are now
21 in compliance with the Real Estate Law. The cost of the audit
22 which led to this disciplinary action is \$2,526.59. In
23 calculating the amount of the Commissioner's reasonable cost, the
24 Commissioner may use the estimated average hourly salary for all
25 persons performing audits of real estate brokers, and shall
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1 include an allocation for travel time to and from the auditor's
2 place of work. Said amount for the prior and subsequent audits
3 shall not exceed \$5,053.18.

4 Respondents shall pay such cost within 60 days of
5 receiving an invoice from the Commissioner detailing the
6 activities performed during the audit and the amount of time
7 spent performing those activities.

8 The Commissioner may suspend the license of Respondents
9 pending a hearing held in accordance with Section 11500, et seq.,
10 of the Government Code, if payment is not timely made as provided
11 for herein, or as provided for in a subsequent agreement between
12 the Respondent and the Commissioner. The suspension shall remain
13 in effect until payment is made in full or until Respondents
14 enter into an agreement satisfactory to the Commissioner to
15 provide for payment, or until a decision providing otherwise is
16 adopted following a hearing held pursuant to this condition.

17
18 III.

19 All licenses and licensing rights of Respondent
20 FRANCISCO GUILLERMO HERNANDEZ are indefinitely suspended unless
21 or until Respondent provides proof satisfactory to the
22 Commissioner, of having taken and successfully completed the
23 continuing education course on trust fund accounting and handling
24 specified in paragraph (3) of subdivision (a) of Section 10170.5
25 of the Business and Professions Code. Proof of satisfaction of
26 this requirement includes evidence that Respondent has
27

1 successfully completed the trust fund account and handling
2 continuing education course within 120 days prior to the
3 effective date of the Decision.

4 IV.

5 Respondent FRANCISCO GUILLERMO HERNANDEZ shall, within
6 nine (9) months from the effective date of this Decision, present
7 evidence satisfactory to the Real Estate Commissioner that
8 Respondent has, since the most recent issuance of an original or
9 renewal real estate license, taken and successfully completed the
10 continuing education requirements of Article 2.5 of Chapter 3 of
11 the Real Estate Law for renewal of a real estate license. If
12 Respondent fails to satisfy this condition, the Commissioner may
13 order the suspension of the restricted license until Respondent
14 presents such evidence. The Commissioner shall afford Respondent
15 the opportunity for a hearing pursuant to the Administrative
16 Procedure Act to present such evidence.
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20 DATED: 5-8-09

21 ELI
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

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2 EXECUTION OF THE STIPULATION

3 We have read the Stipulation and discussed it with our
4 counsel. Its terms are understood by us and are agreeable and
5 acceptable to us. We understand that we are waiving rights given
6 to us by the California Administrative Procedure Act (including
7 but not limited to Sections 11506, 11508, 11509 and 11513 of the
8 Government Code), and we willingly, intelligently and voluntarily
9 waive those rights, including the right of requiring the
10 Commissioner to prove the allegations in the Accusation at a
11 hearing at which we would have the right to cross-examine
12 witnesses against us and to present evidence in defense and
13 mitigation of the charges.
14

15 MAILING AND FACSIMILE

16 Respondents (1) shall mail the original signed
17 signature page of the stipulation herein to Elliott Mac Lennan:
18 Attention: Legal Section, Department of Real Estate, 320 W.
19 Fourth St., Suite 350, Los Angeles, California 90013-1105.
20 Respondents shall also (2) facsimile a copy of signed signature
21 page, to the Department at the following telephone/fax number:
22 (213) 576-6917, Attention: Elliott Mac Lennan.
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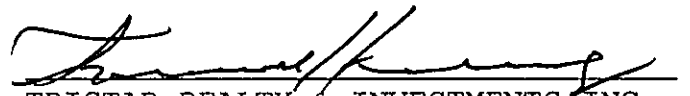
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1 A facsimile constitutes acceptance and approval of the
2 terms and conditions of this stipulation. Respondents agree,
3 acknowledge and understand that by electronically sending to the
4 Department a facsimile copy of Respondents' actual signature as
5 it appears on the stipulation that receipt of the facsimile copy
6 by the Department shall be as binding on Respondents as if the
7 Department had received the original signed stipulation.


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10 DATED: 5/27/09


11 TRISTAR REALTY & INVESTMENTS INC.,
12 a corporate real estate broker,
13 BY: FRANCISCO GUILLERMO HERNANDEZ
14 D.O., Respondent

15 DATED: 5/27/09


16 FRANCISCO GUILLERMO HERNANDEZ,
17 individually and as designated
18 officer of Tristar Realty &
19 Investments Inc., Respondent

20 DATED: 5/27/09


21 AIMEE DOMINGUEZ, ESQ
22 Attorney for Respondent Francisco
23 Guillermo Hernandez
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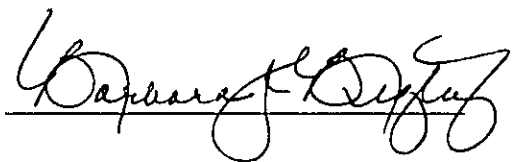
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents TRISTAR REALTY &
INVESTMENTS INC. and FRANCISCO GUILLERMO HERNANDEZ, individually
and as designated officer of Tristar Realty & Investments Inc.
and shall become effective at 12 o'clock noon on
October 30, 2009.

IT IS SO ORDERED 8/17, 2009.

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Blgby
Chief Deputy Commissioner

1.

1 The Complainant, Maria Suarez, acting in her official
2 capacity as a Deputy Real Estate Commissioner of the State of
3 California, makes this Accusation against TRISTAR REALTY &
4 INVESTMENTS INC. and FRANCISCO GUILLERMO HERNANDEZ.
5

2.

6 All references to the "Code" are to the California
7 Business and Professions Code and all references to "Regulations"
8 are to Title 10, Chapter 6, California Code of Regulations.
9

10 LICENSE HISTORY

3.

11 A. At all times mentioned, TRISTAR REALTY INC,
12 ("TRISTAR") was licensed or had license rights issued by the
13 Department of Real Estate ("Department") as a real estate broker.
14 On March 30, 2006, TRISTAR was originally licensed as a real
15 estate broker by and through FRANCISCO GUILLERMO HERNANDEZ.
16

17 B.1 At all times mentioned, FRANCISCO GUILLERMO
18 HERNANDEZ ("HERNANDEZ") was licensed or had license rights issued
19 by the Department as a real estate broker. On May 2, 1990,
20 HERNANDEZ was originally licensed as a real estate salesperson.
21 On April 4, 2004, HERNANDEZ was originally licensed as a real
22 estate broker. From March 30, 2006 to November 19, 2007,
23 HERNANDEZ was the designated officer of TRISTAR.

24 B.2. Effective March 30, 2006, in H-30632, HERNANDEZ'
25 real estate broker application was denied with a right to a
26 restricted broker license, as more fully set forth below in
27 Paragraph 11.

1 C. At all times mentioned herein, TRISTAR was licensed
2 by the Department as a corporate real estate broker by and
3 through HERNANDEZ, as the designated officer and broker
4 responsible, pursuant to Code Section 10159.2 of the Business and
5 Professions Code for supervising the activities requiring a real
6 estate license conducted on behalf TRISTAR of by TRISTAR's
7 officers, agents and employees, including HERNANDEZ.

8
9 BROKERAGE AND LICENSED ACTIVITIES

10 4.

11 At all times mentioned, in the City of Santa Fe
12 Springs, County of Los Angeles, TRISTAR acted as a real estate
13 broker and conducted licensed activities within the meaning of:

14 A. Code Section 10131(a). TRISTAR operated a
15 residential resale brokerage dba Tri Star Realty.

16 B. Code Section 10131(d). TRISTAR operated a mortgage
17 and loan brokerage dba Ace Mortgage; and

18 C. In addition, TRISTAR conducted broker-controlled
19 escrows through its escrow division, Pin Pint Escrow, under the
20 exemption set forth in California Financial Code Section
21 17006(a)(4) for real estate brokers performing escrows incidental
22 to a real estate transaction where the broker is a party and
23 where the broker is performing acts for which a real estate
24 license is required.

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AUDIT EXAMINATION

5.

On March 7, 2008, the Department completed an audit examination of the books and records of TRISTAR pertaining to the residential resale and mortgage and loan activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on April 1, 2006 to November 19, 2007. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 070187 and LA 070273 and the exhibits and work papers attached to said audit report.

TRUST ACCOUNT

6.

During the audit period, TRISTAR did not maintain a trust account.

VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents TRISTAR and HERNANDEZ, acted in violation of the Code and the Regulations in that they:

(a) Failed to maintain a control record in the form of a columnar record in chronological order of all "Trust Funds Received, Not Placed Broker's Trust Account", including earnest

1 money deposits from buyers Ponce, Padilla and Sandin, in
2 violation of Code Section 10145 and Regulation 2831.

3 (b) Failed to place trust funds, including the earnest
4 money deposit for buyer Paez, into a neutral escrow depository or
5 into a trust fund account in the name of the trustee at a bank or
6 other financial institution not later than three business days
7 following receipt of the funds by the broker or by the broker's
8 salesperson, as required by Code Section 10145 and Regulation
9 2832(d); and

10 (c) Misrepresented that they held earnest money
11 deposits from buyers Padilla, Sanchez and Acosta, in violation of
12 Code Section 10176(a).

13 DISCIPLINARY STATUTES AND REGULATIONS

14 8.

15 The conduct of Respondents TRISTAR and HERNANDEZ
16 described in Paragraph 7, above, violated the Code and the
17 Regulations as set forth below:
18

19	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
20	7(a)	Code Section 10145 and Regulation
21		2831
22		
23	7(b)	Code Section 10145 and Regulation
24		2832(d)
25		
26	7(c)	Code Section 10176(a)
27		

1 The foregoing violations constitute cause for the suspension or
2 revocation of the real estate license and license rights of
3 TRISTAR and HERNANDEZ, under the provisions of Code Sections
4 10177(d) and/or 10177(g).

5 NEGLIGENCE

6 9.

7 The overall conduct of Respondents TRISTAR and
8 HERNANDEZ constitutes negligence or incompetence. This conduct
9 and violation are cause for the suspension or revocation of the
10 real estate license and license rights of Respondents TRISTAR and
11 HERNANDEZ pursuant to Code Section 10177(g).

12 SUPERVISION AND COMPLIANCE

13 10.

14 The overall conduct of Respondent HERNANDEZ constitutes
15 a failure on his part, as officer designated by a corporate
16 broker licensee, to exercise the reasonable supervision and
17 control over the licensed activities of TRISTAR, as required by
18 Code Section 10159.2 and Regulation 2725, and to keep TRISTAR in
19 compliance with the Real Estate Law, and is cause for the
20 suspension or revocation of the real estate license and license
21 rights of HERNANDEZ pursuant to the provisions of Code Sections
22 10177(d), 10177(g) and 10177(h).

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PRIOR DEPARTMENT ACTION


11.

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3 On March 25, 2004, in Case No. H-30632 LA, a
4 Stipulation and Waiver became effective against HERNANDEZ, for
5 violation of Code Sections 480 and 10177(b) of Title 10, Chapter
6 6, California Code of Regulations based on a Statement of Issues
7 filed on January 21, 2004. Respondent HERNANDEZ' application for
8 a real estate broker licenses was denied with a right to a
9 restricted broker license on terms and conditions.

10 WHEREFORE, Complainant prays that a hearing be
11 conducted on the allegations of this Accusation and that upon
12 proof thereof, a decision be rendered imposing disciplinary
13 action against the license and license rights of Respondents
14 TRISTAR REALTY & INVESTMENTS INC. and FRANCISCO GUILLERMO
15 HERNANDEZ, under the Real Estate Law (Part 1 of Division 4 of the
16 Business and Professions Code) and for such other and further
17 relief as may be proper under other applicable provisions of law.

18 Dated at Los Angeles, California

19 this *30th day of July 2008*

20 
21 Deputy Real Estate Commissioner

22
23
24 cc: Tristar Realty & Investments Inc.
25 c/o Francisco Guillermo Hernandez D.O.
26 Maria Suarez
27 Sacto
Audits - Isabel Beltran