

SAETO
Flag

FILED

1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105

MAY 24 2012

4 Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: Guozhipe Valencia

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 AMERICAN HOME MODIFICATION INC)
14 and JASON ANTHONY MUCHA,)
15 individually and as designated)
16 officer of American Home)
Modification Inc,)
Respondents.)

No. H-37477 LA
2011090777

STIPULATION
AND
AGREEMENT

17 It is hereby stipulated by and between Respondent
18 JASON ANTHONY MUCHA, represented by Mark A. Nialis, Esq. and the
19 Complainant, acting by and through James A. Demus, Counsel for
20 the Department of Real Estate, as follows for the purpose of
21 settling and disposing of the Accusation ("Accusation") filed on
22 August 25, 2011, in this matter:

- 24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

1 Procedure Act ("APA"), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement ("Stipulation").

4 2. Respondent has received, read and understands the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department of Real Estate in this
7 proceeding.

8 3. Respondent timely filed a Notice of Defense
9 pursuant to Section 11506 of the Government Code for the purpose
10 of requesting a hearing on the allegations in the Accusation.
11 Respondent hereby freely and voluntarily withdraws said Notice of
12 Defense. Respondent acknowledges that he understands that by
13 withdrawing said Notice of Defense he thereby waives the right to
14 require the Commissioner to prove the allegations in the
15 Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that he will waive other rights
17 afforded to him in connection with the hearing such as the right
18 to present evidence in his defense of the allegations in the
19 Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interest of
23 expedience and economy, Respondent chooses not to contest these
24 allegations, but to remain silent and understand that, as a
25 result thereof, these factual allegations, without being admitted
26 or denied, will serve as a prima facie basis for the disciplinary
27

1 action stipulated to herein. The Real Estate Commissioner shall
2 not be required to provide further evidence to prove said factual
3 allegations.

4 5. This Stipulation is made for the purpose of
5 reaching an agreed disposition of this proceeding and is
6 expressly limited to this proceeding and any other proceeding or
7 case in which the Department of Real Estate ("Department"), the
8 state or federal government, or any agency of this state, another
9 state or federal government is a party.

10 6. It is understood by the parties that the Real
11 Estate Commissioner may adopt this Stipulation as her Decision in
12 this matter thereby imposing the penalty and sanctions on
13 Respondent's real estate license and license rights as set forth
14 in the "Order" herein below. In the event that the Commissioner
15 in her discretion does not adopt the Stipulation, it shall be
16 void and of no effect and Respondent shall retain the right to a
17 hearing and proceeding on the Accusation under the provisions of
18 the APA and shall not be bound by any stipulation or waiver made
19 herein.
20

21 7. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation shall not
23 constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department of Real
25 Estate with respect to any matters which were not specifically
26 alleged to be causes for Accusation in this proceeding but do
27

1 constitute a bar, estoppel and merger as to any allegations
2 actually contained in the Accusation against Respondent herein.

3 8. Respondent understands that by agreeing to this
4 Stipulation, Respondent agrees to pay, pursuant to Business and
5 Professions Code Section 10148, the cost of the audit which led
6 to this disciplinary action. The cost of said audit was
7 \$4,135.10.

8 9. Respondent has received, read, and understands the
9 "Notice Concerning Costs of Subsequent Audit." Respondent
10 further understands that by agreeing to this Stipulation, the
11 findings set forth below in the Determination of Issues become
12 final, and the Commissioner may charge Respondent for the cost of
13 any subsequent audit conducted pursuant to Business and
14 Professions Code Section 10148 to determine if the violations
15 have been corrected. The maximum cost of the subsequent audit
16 will not exceed \$4,135.10.

17
18 DETERMINATION OF ISSUES

19 By reason of the foregoing, it is stipulated and agreed
20 that the following determination of issues shall be made:

21 The conduct of JASON ANTHONY MUCHA as described in
22 Paragraph 4 above, is in violation of Business and Professions
23 Code ("Code") Sections 10137, 10145, and 10159.2 and provides a
24 basis for discipline of Respondent's license and license rights
25 as violations of the Real Estate law pursuant to Code Sections
26 10137, 10177(d), 10177(g) and 10177(h).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondent JASON ANTHONY MUCHA under the Real Estate Law are suspended for a period of one hundred twenty (120) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension, shall be stayed for two (2) years upon the following terms and conditions:

A.

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. 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.

B.

If Respondent petitions, an additional 60 days shall be stayed upon condition that:

1 1. Respondent pays a monetary penalty pursuant to
2 Section 10175.2 of the Code at the rate of \$50 for each day of
3 the suspension for a total monetary penalty of \$3,000.

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

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

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

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

25 ///

26 ///

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

II.

Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such costs within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in her discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

III

25
26
27

Respondent JASON ANTHONY MUCHA shall within six (6) months from the effective date of the Decision herein, take and

1 pass the Professional Responsibility Examination administered by
2 the Department, including the payment of the appropriate
3 examination fee. If Respondent JASON ANTHONY MUCHA fails to
4 satisfy this condition, the Commissioner may order suspension of
5 Respondent JASON ANTHONY MUCHA's license until Respondent passes
6 the examination.

7 IV

8 All licenses and licensing rights of Respondent JASON
9 ANTHONY MUCHA are indefinitely suspended unless or until
10 Respondent provides proof satisfactory to the Commissioner, of
11 having taken and successfully completed the continuing education
12 course on trust fund accounting and handling specified in
13 paragraph (3) of subdivision (a) of Section 10170.5 of the
14 Business and Professions Code. Proof of satisfaction of this
15 requirement includes evidence that respondent has successfully
16 completed the trust fund account and handling continuing
17 education course within 120 days prior to the effective date of
18 the Decision in this matter.
19

20 V

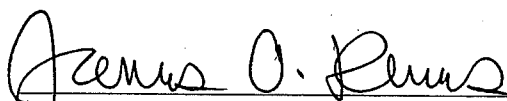
21 If, by the effective date of the Decision herein,
22 Respondent fails to provide proof satisfactory to the
23 Commissioner of restitution as set forth below, the Commissioner
24 may order suspension of Respondent's license until Respondent
25 provides proof of restitution satisfactory to the Commissioner:
26
27

Name	Restitution Amount
Mario Flores	\$1,500
Erika May	\$2,250
Kathleen Correa	\$1,500
Aurora Ramirez	\$1,500
James Henderson	\$1,500
Ramiro Rivera	\$1,500
Gilberto Garcia	\$1,500
Clarence Allen	\$1,500
Jose Zuniga	\$1,750
Sheldon Vess	\$875
Barbara Johnson	\$1,500
Alejandro Alencaster	\$1,500
Cruz Robles	\$1,500
Socrates Socratous	\$1,750
Margaret Robledo	\$1,500

VI

All proof of payment and completed coursework shall be
submitted to Department Counsel James A. Demus, Attention: Legal
Section, Department of Real Estate, 320 W. Fourth St., Suite 350,
Los Angeles, California 90013-1105, on or before the dates set
forth above.

DATED: 4/23/12



JAMES A. DEMUS, Counsel for
the Department of Real Estate

EXECUTION OF THE STIPULATION

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

13
14 Respondent can signify acceptance and approval of the
15 terms and conditions of this Stipulation by faxing a copy of its
16 signature page, as actually signed by Respondent, to the
17 Department at the following telephone/fax number: James A. Demus
18 at (213) 576-6917. Respondent agrees, acknowledges and
19 understands that by electronically sending to the Department a
20 fax copy of Respondent's actual signature as it appears on the
21 Stipulation that receipt of the faxed copy by the Department
22 shall be as binding on Respondent as if the Department had
23 received the original signed Stipulation.

24
25
26 DATED: 4-11-12



JASON ANTHONY MUCHA, Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED: April 11, 2012

Mark Nialis
MARK A. NIALIS
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent JASON ANTHONY MUCHA and
shall become effective at 12 o'clock noon on

JUN 25 2012

IT IS SO ORDERED 5/18/2012

Real Estate Commissioner

Wayne S. Bell

By WAYNE S. BELL
Chief Counsel