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JAN 22 2013

1 Department of Real Estate
2 320 West Fourth Street, #350
3 Los Angeles, California 90013

DEPARTMENT OF REAL ESTATE
BY: James B. Buda

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	DRE No. H-38033 LA
)	OAH No. 2012050853
12)	
13 ORLANDO IBANEZ,)	
)	<u>STIPULATION AND</u>
14 Respondent.)	<u>AGREEMENT</u>
)	
15)	

16 It is hereby stipulated by and between ORLANDO IBANEZ,
17 represented by Frank M. Buda, and the Complainant, acting by and
18 through James A. Demus, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of
20 the Accusation in this matter, filed on April 10, 2012:

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

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

7 3. Respondent filed a Notice of Defense pursuant to
8 Section 11506 of the Government Code for the purpose of
9 requesting a hearing on the allegations in the Accusation.

10 Respondent hereby freely and voluntarily withdraws said Notice of
11 Defense. Respondent acknowledges that he understands that by
12 withdrawing said Notice of Defense, he thereby waives his right
13 to require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that he will waive other rights
16 afforded to him in connection with the hearing such as the right
17 to present evidence in his defense and the right to cross-examine
18 witnesses.

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interest of
21 expedience and economy, Respondent chooses not to contest these
22 allegations, but to remain silent and understands that, as a
23 result thereof, these factual allegations, without being admitted
24 or denied, will serve as a prima facie basis for the disciplinary
25 action stipulated to herein. The Real Estate Commissioner shall
26 not be required to provide further evidence to prove said factual
27 allegations.

1 5. This Stipulation is based on Respondent's decision
2 not to contest the allegations set forth in the Accusation as a
3 result of the agreement negotiated between the parties. This
4 Stipulation is expressly limited to this proceeding and any
5 further proceeding initiated by or brought before the Department
6 of Real Estate based upon the factual allegations in the
7 Accusation and is made for the sole purpose of reaching an agreed
8 disposition of this proceeding. The decision of Respondent not
9 to contest the allegations contained in the "Order" herein below,
10 is made solely for the purpose of effectuating this Stipulation.
11 It is the intent and understanding of the parties that this
12 Stipulation shall not be binding or admissible against
13 Respondents in any action against Respondent by third parties.

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

24 7. The Order or any subsequent Order of the Real
25 Estate Commissioner made pursuant to this Stipulation shall not
26 constitute an estoppel, merger or bar to any further
27 administrative or civil proceedings by the Department of Real

1 Estate with respect to any matters which were not specifically
2 alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations and solely for
5 the purpose of settlement of the Accusation without a hearing, it
6 is stipulated and agreed that the following determination of
7 issues shall be made:

8 The conduct of ORLANDO IBANEZ, as described in
9 Paragraph 4, above, is a basis for discipline of ORLANDO IBANEZ'S
10 license and license rights pursuant to Sections 10137 and
11 10177(d) of the Business and Professions Code ("Code").

12 ORDER

13 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE
14 WRITTEN STIPULATION OF THE PARTIES:

15 I.

16 All licenses and licensing rights of Respondent
17 ORLANDO IBANEZ under the Real Estate Law are suspended for a
18 period of sixty (60) days from the effective date of this
19 Decision; provided, however, that sixty (60) days of said
20 suspension, shall be stayed for two (2) years upon the
21 following terms and conditions:

22 1. Respondent shall obey all laws, rules and
23 regulations governing the rights, duties and responsibilities of
24 a real estate licensee in the State of California; and

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

1 this Decision. Should such a determination be made, the
2 Commissioner may, in his discretion, vacate and set aside the
3 stay order and reimpose all or a portion of the stayed
4 suspension. Should no such determination be made, the stay
5 imposed herein shall become permanent.

6 II.

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

14 III.

15 Respondent ORLANDO IBANEZ shall, within six (6) months
16 from the effective of the Decision herein, provide proof of
17 paying restitution of \$5,250 to Hugo Villatoro as follows:

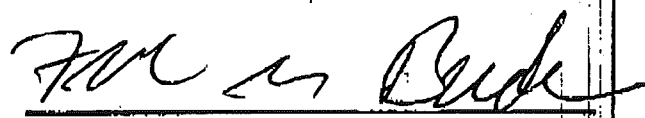
18 (a) Respondent shall deliver or mail the restitution
19 payment, by certified mail, return receipt requested, to Hugo
20 Villatoro's last address on file with or known to Respondent.

21 (b) If the payment is returned by the Post Office marked
22 "unable to deliver," Respondent shall employ a locator service
23 (that may include or be limited to the Internet or other database
24 retrieval search) to try and locate Hugo Villatoro. Repayment
25 shall then be made to the addresses recommended by the locator
26 service.

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

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

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21
22 DATED: 12/17/2012 
23 ORLANDO IBANEZ

24 DATED: 12-18-2012 
25 FRANK M. BUDA,
26 Attorney for Respondent
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