

FILED

APR 20 2012

Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By *R. Jones*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MARCO ANTONIO GUTIERREZ, and
JENNIFER VERA GUTIERREZ,

Respondents.

No. H-11051 SF

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between MARCO ANTONIO GUTIERREZ, and JENNIFER VERA GUTIERREZ (Respondents), and their attorney William J. Rogers, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on January 10, 2011 in this matter:

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

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

1 license rights under Section 10130 of the Business and Professions Code (Code) in conjunction
2 with Section 10177(d) of the Code.

3 II

4 The acts and omissions of MARCO A. GUTIERREZ as described in the Second
5 Cause of Action of the Accusation are grounds for the suspension or revocation of Respondent's
6 licenses and license rights under Sections 10177(d) of the Code in conjunction with Section
7 10085, 10085.5, and 10085.6 of the Code and Section 2970 of the Commissioner's Regulations
(Title 10 of the California Code of Regulations) (Regulations).

8 III

9 The acts and omissions of Respondents as described in the Third Cause of Action
10 of the Accusation are grounds for the suspension or revocation of Respondents licenses and
11 license rights under Section 10176(i) of the Code.

12 * * *

13 ORDER

14 I

- 15 A. All real estate license(s) and license rights of Respondent MARCO A. GUTIERREZ are
revoked.
- 16 B. A restricted real estate salesperson license shall be issued to Respondent pursuant to
Section 10156.6 of the Code if within ninety (90) days of the effective date of the Order,
Respondent makes application therefore and pays to the Department the appropriate fee for
said license.
- 19 C. The restricted license issued to Respondent shall be subject to all of the provisions of
Section 10156.7 of the Code and to the following conditions and limitations imposed under
21 authority of Section 10156.6 of said Code:
- 22 1) Respondent shall, prior to and as a condition of the issuance of said restricted license,
23 submit proof satisfactory to the Real Estate Commissioner of having made restitution
24 to Oscar Garzon for all monies The Home Retention Team, MARCO A.
25 GUTIERREZ, and/or JENNIFER VERA GUTIERREZ collected from Oscar Garzon
26 for a loan modification, including: \$500 collected on or about November 25, 2009,

1 \$100 collected in December 2009, \$100 collected in January 2010, and \$100 collected
2 in February 2010.

3 2) The restricted license issued to Respondent may be suspended prior to hearing by
4 order of the Real Estate Commissioner in the event of Respondent's conviction or plea
5 of nolo contendere to a crime which bears a substantial relationship to Respondent's
6 fitness or capacity as a real estate licensee.

7 3) The restricted license may be suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that Respondent has
9 violated provisions of the California Real Estate Law, the Subdivided Lands Law,
10 Regulations of the Real Estate Commissioner or conditions attaching to the restricted
11 license.

12 4) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate
13 license, nor the removal of any of the conditions of the restricted license, until four (4)
14 years have elapsed from the effective date of this Order.

15 5) Respondent shall submit with any application for license under an employing broker,
16 or any application for transfer to a new employing broker, a statement signed by the
17 prospective employing real estate broker on a form approved by the Department of
18 Real Estate which shall certify:

19 (a) That the employing broker has read the Decision of the Commissioner which
20 granted the right to a restricted license; and

21 (b) That the employing broker will exercise close supervision over the performance
22 by the restricted licensee relating to activities for which a real estate license is
23 required.

24 E. Any restricted license issued to Respondent pursuant to this Decision shall be suspended
25 for a period of thirty (30) days from the issuance of the restricted license.

26 E. Respondent shall, within nine (9) months from the effective date of this Order, present
27 evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most
recent issuance of an original or renewal real estate license, taken and successfully
completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real
Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,

1 the Commissioner may order the suspension of the restricted license until Respondent
2 presents such evidence. The Commissioner shall afford Respondent the opportunity for
3 hearing pursuant to the APA to present such evidence.

4 F. Respondent shall, within six (6) months from the effective date of this Decision, take and
5 pass the Professional Responsibility Examination administered by the Department
6 including the payment of the appropriate examination fee. If Respondent fails to satisfy
7 this condition, the Commissioner may order suspension of the restricted license until
8 Respondent passes the examination.

9 II

10 A. All real estate license(s) and license rights of Respondent JENNIFER VERA GUTIERREZ
11 are revoked.

12 B. A restricted real estate salesperson license shall be issued to Respondent pursuant to
13 Section 10156.6 of the Code if within ninety (90) days of the effective date of the Order,
14 Respondent makes application therefore and pays to the Department the appropriate fee for
15 said license.

16 C. The restricted license issued to Respondent shall be subject to all of the provisions of
17 Section 10156.7 of the Code and to the following conditions and limitations imposed under
18 authority of Section 10156.6 of said Code:

19 1) Respondent shall, prior to and as a condition of the issuance of said restricted license,
20 submit proof satisfactory to the Real Estate Commissioner of having made restitution
21 to Oscar Garzon for all monies The Home Retention Team, MARCO A.

22 GUTIERREZ, and/or JENNIFER VERA GUTIERREZ collected from Oscar Garzon
23 for a loan modification, including: \$500 collected on or about November 25, 2009,
24 \$100 collected in December 2009, \$100 collected in January 2010, and \$100 collected
25 in February 2010.

26 2) The restricted license issued to Respondent may be suspended prior to hearing by
27 order of the Real Estate Commissioner in the event of Respondent's conviction or plea
of nolo contendere to a crime which bears a substantial relationship to Respondent's
fitness or capacity as a real estate licensee.

1 3) The restricted license may be suspended prior to hearing by Order of the Real Estate
2 Commissioner on evidence satisfactory to the Commissioner that Respondent has
3 violated provisions of the California Real Estate Law, the Subdivided Lands Law,
4 Regulations of the Real Estate Commissioner or conditions attaching to the restricted
5 license.

6 4) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate
7 license, nor the removal of any of the conditions of the restricted license, until four (4)
8 years have elapsed from the effective date of this Order.

9 5) Respondent shall submit with any application for license under an employing broker,
10 or any application for transfer to a new employing broker, a statement signed by the
11 prospective employing real estate broker on a form approved by the Department of
12 Real Estate which shall certify:

13 (a) That the employing broker has read the Decision of the Commissioner which
14 granted the right to a restricted license; and

15 (b) That the employing broker will exercise close supervision over the performance
16 by the restricted licensee relating to activities for which a real estate license is
17 required.

18 E. Any restricted license issued to Respondent pursuant to this Decision shall be suspended
19 for a period of thirty (30) days from the issuance of the restricted license.

20 E. Respondent shall, within nine (9) months from the effective date of this Order, present
21 evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most
22 recent issuance of an original or renewal real estate license, taken and successfully
23 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real
24 Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
25 the Commissioner may order the suspension of the restricted license until Respondent
26 presents such evidence. The Commissioner shall afford Respondent the opportunity for
27 hearing pursuant to the APA to present such evidence.

28 F. Respondent shall, within six (6) months from the effective date of this Decision, take and
29 pass the Professional Responsibility Examination administered by the Department
30 including the payment of the appropriate examination fee. If Respondent fails to satisfy

02/28/2012 TUE 14:38 FAX

009/010

1 herein as part of this Stipulation and Agreement. Respondents' license certificates, pocket cards
2 and any branch office license certificates shall be sent to the below listed address so that they
3 reach the Department on or before the effective date of this Order:

4 DEPARTMENT OF REAL ESTATE
5 Attn: Licensing.Flag Section
6 P. O. Box 187000
7 Sacramento, CA 95818-7000

9 9-March-12

Truly Sughrue

10 DATED

10 TRULY SUGHRUE
11 Counsel for Complainant

11 * * *

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

20 Mar. 8, 2012

Marcova Gutierrez
21 MARCOVA GUTIERREZ
22 Respondent

23 Mar. 8, 2012

Jennifer Vera Gutierrez
24 JENNIFER VERA GUTIERREZ
25 Respondent

26 DATED

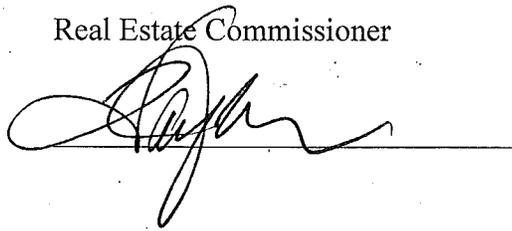
27 * * *

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

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on MAY 1 0 2012

IT IS SO ORDERED 3/27/2012

Real Estate Commissioner



1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007

FILED

JAN 10 2011

DEPARTMENT OF REAL ESTATE

6 Telephone: (916) 227-0789
7 (916) 227-0781 (Direct)

By 

8
9
10 BEFORE THE DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of)

No. H-11051 SF

14 MARCO A. GUTIERREZ, and)
15 JENNIFER V. GUTIERREZ,)

ACCUSATION

16 Respondents.)
17

18 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
19 State of California, for cause of Accusation against MARCO A. GUTIERREZ, and
20 JENNIFER V. GUTIERREZ (hereinafter "Respondents"), is informed and alleges as follows:

21 PRELIMINARY ALLEGATIONS

22 1

23 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
24 State of California, makes this Accusation in his official capacity.

25 ///

26 ///

27 ///

2

1 Respondents are presently licensed and/or have license rights under the Real
2 Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").
3

3

4 At no times mentioned has The Home Retention Team been licensed by the
5 Department in any capacity.
6

4

7 At all times mentioned, Respondent MARCO A. GUTIERREZ (hereinafter
8 "MARCO") was and is licensed by the Department individually as a real estate broker. From on
9 or about February 6, 2009 to May 5, 2010, MARCO's real estate broker license was suspended
10 pursuant to Family Code Section 17520.
11

5

12 At all times mentioned until October 17, 2009, Respondent JENNIFER V.
13 GUTIERREZ (hereinafter "JENNIFER") was and is licensed by the Department individually as a
14 real estate salesperson. At no time after October 17, 2009, has JENNIFER been licensed by the
15 Department in any capacity.
16

6

17 At all times mentioned, Respondents engaged in the business of, acted in the
18 capacity of, advertised, or assumed to act as real estate brokers in the State of California, within
19 the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage
20 loan brokerage and/or loan modification business with the public wherein each of them solicited
21 lenders and borrowers for or negotiated loans or collected payments and/or performed services
22 for borrowers or lenders or note owners in connection with loans secured directly or collaterally
23 by liens on real property for or in expectation of compensation.
24

25 ///

26 ///

27 ///

1 FIRST CAUSE OF ACTION

2 7

3 Each and every allegation in Paragraphs 1 through 6, is incorporated by this
4 reference as if fully set forth herein.

5 8

6 Beginning on or about November 23, 2009, Respondents, and/or unknown
7 representatives of The Home Retention Team, in the course of the real estate resale brokerage
8 activities described in Paragraph 6, solicited and/or performed services for borrowers, in
9 connection with loans secured directly or collaterally by liens on real property or on a business
10 opportunity, for or in expectation of compensation. Such activities include, but are no limited to:

11 PROPERTY OWNER

PROPERTY ADDRESS

12 Oscar G.

2596 Marie Antonette Lane, Tracy

13 9

14 By the commission of the acts alleged above, Respondents engaged in the
15 business and acted in the capacity of a real estate broker within the State of California as defined
16 by Section 10131(a) of the Code.

17 10

18 The facts alleged in the First Cause of Action are grounds for the suspension or
19 revocation of the licenses of Respondents under Section 10130 of the Code in conjunction with
20 10177(d) of the Code.

21 SECOND CAUSE OF ACTION

22 11

23 Each and every allegation in Paragraphs 1 through 10, is incorporated by this
24 reference as if fully set forth herein.

25 12

26 In connection with the operation and conduct of the real estate activities described
27 in Paragraph 6, MARCO engaged in the business of claiming, demanding, charging, receiving,

1 collecting, or contracting for the collection of advance fees within the meaning of Sections 10026
2 and 10131.2 (hereinafter "advance fees") of the Code including but not limited to the following:

<u>Property Owner</u>	<u>Property Address</u>	<u>Date</u>	<u>Advance Fee</u>
Oscar G..	2596 Marie Antonette Lane, Tracy	11/25/09	\$500

3
4
5
6 13

7 In connection with the collection and handling of said advance fee, MARCO
8 failed to cause the advance fee contract and all materials used in obtaining the advance fee
9 agreement to be submitted to the Department of Real Estate prior to use as required by Section
10 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations
11 (hereinafter "the Regulations").

12 14

13 The acts and/or omissions of MARCO described in the Second Cause of Action,
14 constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085,
15 10085.5, and 10085.6 of the Code and Section 2970 of the Regulations, and are cause for the
16 suspension or revocation of the license and license rights of MARCO.

17 THIRD CAUSE OF ACTION

18 15

19 Each and every allegation in Paragraphs 1 through 14, is incorporated by this
20 reference as if fully set forth herein.

21 16

22 On or about May 13, 2010, Respondents, without the knowledge and consent of
23 Oscar G., made an unauthorized charge to Oscar G.'s Wells Fargo checking account in the
24 amount of \$800.36 to pay Sprint.

25 ///

26 ///

27 ///

On or about May 14, 2010, Respondents, without the knowledge and consent of Oscar G., made an unauthorized charge to Oscar G.'s Wells Fargo checking account in the amount of \$821.57 to pay Comcast.

The acts and omissions of Respondents described in the Third Cause of Action constitutes fraud and/or dishonest dealing, and constitutes cause to suspend or revoke all licenses and license rights of Respondents pursuant to the provisions of Sections 10176(i), and/or 10177(j) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) of Respondents, and for such other and further relief as may be proper under applicable provisions of law.



E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 5th day of January, 2011.