

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

4 Telephone: (916) 227-0781

**FILED**

AUG 26 2013

BUREAU OF REAL ESTATE

By *L. Jones*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

12 RAUL ALCARAZ, )

13 Respondent. )

No. H-11505 SF

STIPULATION AND  
AGREEMENT

14 It is hereby stipulated by and between RAUL ALCARAZ (Respondent), and  
15 the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real  
16 Estate (Department), as follows for the purpose of settling and disposing the Accusation  
17 (Accusation) filed on January 24, 2013 in this matter:

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

23 2. Respondent has received, read, and understands the Statement to  
24 Respondent, and the Discovery Provisions of the APA filed by the Department in this  
25 proceeding.  
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1                   3.       Respondent 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 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent  
4 acknowledges that he understands that by withdrawing said Notice of Defense he will thereby  
5 waive his rights to require the Real Estate Commissioner (Commissioner) to prove the  
6 allegations in the Accusation at a contested hearing held in accordance with the provisions of the  
7 APA, and that he will waive other rights afforded to him in connection with the hearing such as  
8 the right to present evidence in defense of the allegations in the Accusation and the right to cross-  
9 examine witnesses.

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

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

20                   6.       Respondent understands that by agreeing to this Stipulation and  
21 Agreement, Respondent agrees to pay, the cost of the audit, which resulted in the determination  
22 that Respondent committed the violation(s) found in the Determination of Issues. The amount  
23 of said costs is \$2,052.00.

24                   7.       Respondent understands that by agreeing to this Stipulation and  
25 Agreement, Respondents agree to pay, pursuant to Section 10106 of the Code, the cost of the  
26 investigation and enforcement which resulted in the determination that Respondents committed  
27 the violation(s) found in the Determination of Issues. The amount of said costs is \$1,255.50.



1 and license rights under the following sections of the Code and Title 10 of the California Code  
2 of Regulations (Regulations):

3 (a) As to Paragraph 12, under Section 10177(d) (willful disregard or  
4 violation of Real Estate Law) in conjunction with Section 10085.6 (unlawful collection of  
5 advance fees related to loan modifications) of the Code; and

6 (b) As to Paragraph 13, under Sections 10177(d) (willful disregard or  
7 violation of Real Estate Law) in conjunction with Section 10085 (failure to submit materials  
8 used in collection of advance fees to Department) of the Code and Section 2970 (materials used  
9 in collection of advance fees must be approved by Department prior to use) of the Regulations.

10 III

11 The acts and omissions of Respondent as described in the Third Cause of Action  
12 of the Accusation are grounds for the suspension or revocation of Respondent's licenses and  
13 license rights under the following sections of the Regulations:

14 (1) As to Paragraph 16(a) under Section 10177(d) of the Code in conjunction  
15 with Section 10160 of the Code and Section 2753 of the Regulations;

16 (2) As to Paragraph 16(b), under Section 10177(d) of the Code in  
17 conjunction with Section 16161.8 of the Code and Section 2752 of the Regulations; and

18 (3) As to Paragraph 16(c), under Section 10177(d) of the Code in conjunction  
19 with Section 2715 of the Regulations.

20 \* \* \*

21 ORDER

22 I

23 All licenses and licensing rights of Respondent under the Real Estate Law are  
24 suspended for a period of ninety (90) days from the effective date of this Order; provided,

25 however, that:

26 1) Sixty (60) days of said suspension shall be stayed, upon the condition that Respondent

27 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to

1 Section 10175.2 of the Code at a rate of \$25 for each day of the suspension for a total  
2 monetary penalty of \$1,500.

3 a) Said payment shall be in the form of a cashier's check or certified check made payable to  
4 the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered  
5 to the Department prior to the effective date of the Order in this matter.

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

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

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

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

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

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

27 3) Respondent shall not solicit for or originate mortgage loans until Respondent obtains a

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mortgage loan originator endorsement.

- 4) All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent pays the sum of \$1,255.50 for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check or certified check made payable to the Real Estate Fund.
- 5) Respondent shall pay the sum of \$2,052.00 for the Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner. The Commissioner may suspend Respondent's license pending a hearing held in accordance with Section 11500, et seq., of the Government Code, 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 suspension 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, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.
- 6) Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of the license until Respondent passes the examination.

19-June-13  
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DATED

  
\_\_\_\_\_  
TRULY SUGHRUE  
Counsel for Complainant

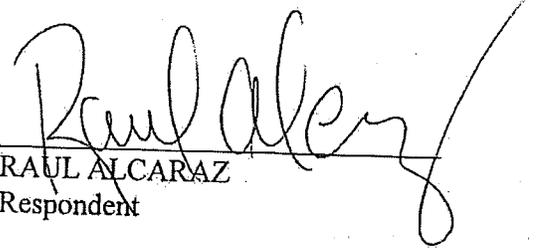
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I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and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

6/20/13

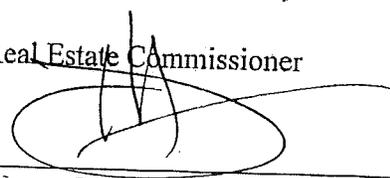
DATED

  
RAUL ALCARAZ  
Respondent

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The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on SEP 16 2013

IT IS SO ORDERED July 29, 2013

Real Estate Commissioner  


By: **JEFFREY MASON**  
Chief Deputy Commissioner

**FILED**

**January 24, 2013**

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

DEPARTMENT OF REAL ESTATE

By R. Jovan

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

8 Fax: (916) 227-9458

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of	)	No. H-11505 SF
	)	
13 RAUL ALCARAZ,	)	<u>ACCUSATION</u>
	)	
14 Respondent.	)	

15  
16 The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the State  
17 of California, for cause of Accusation against RAUL ALCARAZ (Respondent), is informed and  
18 alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the  
22 State of California, makes this Accusation in her official capacity.

23 2

24 Respondent is presently licensed and/or has license rights under the Real Estate  
25 Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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2 At all times mentioned, Respondent was and is licensed by the Department as a  
3 real estate broker. At no time mentioned was Respondent issued a mortgage loan originator  
4 license endorsement by the Department.

5  
6 At all times mentioned, Respondent engaged in the business of, acted in the  
7 capacity of, advertised, or assumed to act as a real estate broker, in the State of California, within  
8 the meaning of:

9 Section 10131(d) of the Code, including the operation and conduct of a mortgage  
10 loan brokerage and/or loan modification business with the public wherein Respondent solicited  
11 lenders and borrowers for or negotiated loans or collected payments and/or performed services  
12 for borrowers or lenders or note owners in connection with loans secured directly or collaterally  
13 by liens on real property for or in expectation of compensation; and,

14 Section 10131.2 of the Code, including the claiming, demanding, charging,  
15 receiving, collecting or contracting for the collection of an advance fee in connection with any  
16 employment undertaken to promote the sale or lease of real property or of a business opportunity  
17 by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or  
18 a business opportunity, or to obtain a loan or loans thereon.

19 Section 10131(a) of the Code, including the operation and conduct of a real estate  
20 resale brokerage with the public wherein, on behalf of others, for compensation or in expectation  
21 of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited  
22 prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the  
23 purchase and resale of real property

24 FIRST CAUSE OF ACTION

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

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On or about February 3, 2012, Respondent, in the course of the real estate activities described in Paragraph 4, via e-mail, solicited and/or offered an undercover Special Investigator to negotiate a residential loan modification concerning a piece of real property located within the State of California, in which Respondent would negotiate a loan modification for an advance fee of \$250 plus a monthly fee of \$150.

7

On or about May 23, 2012, Respondent, in the course of the real estate activities described in Paragraph 4, solicited and/or offered an undercover Special Investigator to negotiate a residential mortgage loan refinance concerning a piece of real property located within the State of California, in which Respondent would negotiate a refinance for a fee of "one point" of the value of the loan.

8

In connection with the operation and conduct of the activities and transactions described in Paragraphs 6 and 7, Respondent engaged in business as a mortgage loan originator as that term is defined by Section 10166.01(b)(1) of the Code, which includes but is not limited to the conduct of mortgage loan origination activities, and failed to obtain and maintain a real estate license endorsement identifying that Respondent is a licensed mortgage loan originator. in violation of Section 10166.02(b) (failure to obtain license endorsement) of the Code.

9

The facts alleged in the First Cause of Action are grounds for the suspension or revocation of the licenses of Respondent under Sections 10166.051 (grounds for discipline-violation of license endorsement and notice requirements) and 10177(d) (willful disregard or violation of Real Estate Law) of the Code, in conjunction with Section 10166.02(a) (failure to notify Department of loan activity) of the Code.

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1 advance fees related to loan modifications) of the Code, and/or 10177(g) (negligence or  
2 incompetence in performing licensed act) of the Code, and/or Section 10177(q) (violation of  
3 Civil Code) of the Code, in conjunction with Section 2945.4 (unlawful collection of advance  
4 fees related to loan modifications) of the Civil Code; and

5 (b) As to Paragraph 12, under Sections 10177(d) (willful disregard or  
6 violation of Real Estate Law) in conjunction with Section 10085 (failure to submit materials  
7 used in collection of advance fees to Department) of the Code and Section 2970 (materials used  
8 in collection of advance fees must be approved by Department prior to use) of the Regulations,  
9 and/or 10177(g) (negligence or incompetence in performing licensed act) of the Code.

10 THIRD CAUSE OF ACTION

11 14

12 Each and every allegation in Paragraphs 1 through 13, inclusive, is incorporated  
13 by this reference as if fully set forth herein.

14 15

15 In connection with the operation and conduct of the activities and transactions  
16 described in Paragraph 4, Respondent:

17 (a) Failed to retain the real estate salesperson license certificates at its main  
18 office as required by Section 10160 of the Code and Section 2753 of the Regulations. Said  
19 salespersons include, but are not limited to, Robert Rodriguez;

20 (b) Failed to immediately notify the Real Estate Commissioner  
21 (Commissioner) in writing that real estate salesperson, Jaime Quiroga, was employed by  
22 Respondent as required by Section 10161.8 (salesperson employment) of the Code and Section  
23 2752 (notice of change of broker) of the Regulations; and

24 (c) Failed to notify the Commissioner by the next business day that  
25 Respondent had closed its branch offices located at 160 Franklin Street, Suite 105 and 434,1  
26 Piedmont Avenue, Oakland, California, as required by Section 2715 of the Regulations.

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The facts alleged in the Third Cause of Action are grounds for the suspension or revocation of Respondent's licenses and license rights under the following sections of the Code and Regulations:

(1) As to Paragraph 15(a) under Section 10177(d) of the Code in conjunction with Section 10160 of the Code and Section 2753 of the Regulations;

(2) As to Paragraph 15(b), under Section 10177(d) of the Code in conjunction with Section 16161.8 of the Code and Section 2752 of the Regulations; and

(3) As to Paragraph 15(c), under Section 10177(d) of the Code in conjunction with Section 2715 of the Regulations.

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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 of Respondent under the Code, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.



ROBIN S. TANNER  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 10<sup>th</sup> day of December, 2012

DISCOVERY DEMAND

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Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.