

1 Attorney General of the State of California has been given notice
2 of the filing of said petition.

3 I have considered the petition of Respondent and the
4 evidence and arguments in support thereof including Respondent's
5 record as a restricted licensee. Respondent has demonstrated to
6 my satisfaction that Respondent meets the requirements of law for
7 the issuance to Respondent of an unrestricted real estate broker
8 license and that it would not be against the public interest to
9 issue said license to Respondent.

10 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
11 for reinstatement is granted and that a real estate broker license
12 be issued to Respondent, if Respondent satisfies the following
13 conditions within nine months from the date of this Order:

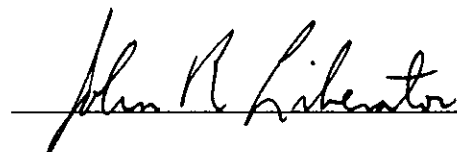
14 1. Submittal of a completed application and payment
15 of the fee for a real estate broker license.

16 2. Submittal of evidence of having, since the most
17 recent issuance of an original or renewal real estate license,
18 taken and successfully completed the continuing education
19 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
20 for renewal of a real estate license.

21 This Order shall be effective immediately.

22 DATED: August 6, 2004.

23 JOHN R. LIBERATOR
24 Acting Real Estate Commissioner

25 
26
27

1 Department of Real Estate
P. O. Box 187000
2 Sacramento, CA 95818-7000
3 Telephone: (916) 227-0789
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FILED
JUL 22 1999

DEPARTMENT OF REAL ESTATE

By Laurie A. Zain

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-2473 SD

12 ELI RODRIGUEZ,)

OAH NO. L-1999030564

13 Respondents.)
14)
15)

STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between ELI RODRIGUEZ,
17 and his attorney Michael Bergner, and the Complainant, acting by
18 and through David A. Peters, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of
20 the Accusation filed February 5, 1999 in this matter:

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
26 submitted solely on the basis of the provisions of this
27 Stipulation and Agreement.

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

5 3. On March 23, 1999, Respondent filed a Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense he will
11 thereby waive his right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA and he waives other
14 rights afforded to him in connection with the hearing such as the
15 right to present evidence in defense of the allegations in the
16 Accusation and the right to cross-examine witnesses.

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

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1 5. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement as his
3 Decision in this matter, thereby imposing the penalty and
4 sanctions of Respondent's real estate license and license rights
5 as set forth in the below "Order". In the event that the
6 Commissioner in his discretion does not adopt the Stipulation and
7 Agreement, it shall be void and of no effect, and Respondent shall
8 retain the right to a hearing and proceeding on the Accusation
9 under all the provisions of the APA and shall not be bound by any
10 admission or waiver made herein.

11 6. The Order or any subsequent Order of the Real
12 Estate Commissioner made pursuant to this Stipulation and
13 Agreement shall not constitute an estoppel, merger or bar to any
14 further administrative or civil proceedings by the Department of
15 Real Estate with respect to any matters which were not
16 specifically alleged to be causes for accusation in this
17 proceeding.

18 7. Respondent has received, read, and understands the
19 "Notice Concerning Costs of Subsequent Audits". Respondent
20 understands that by agreeing to this Stipulation and Agreement,
21 the findings set forth below in the DETERMINATION OF ISSUES become
22 final, and that the Commissioner may charge Respondent for the
23 costs of any audit conducted pursuant to Section 10148 of the
24 Business and Professions Code to determine if the violations have
25 been corrected. The maximum costs of said audit will not exceed
26 \$1,100.52.

27 ///

1 DETERMINATION OF ISSUES

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

6 I

7 The acts and omissions of Respondent as described in the
8 Accusation are grounds for the suspension or revocation of all of
9 the real estate licenses and license rights of Respondents under
10 the provisions of Section 10177(d) of the Business and Professions
11 Code (Code) in conjunction with Section 10145 of the Code and
12 Sections 2832.1 and 2831.2 of Title 10, California Code of
13 Regulations.

14 ORDER

15 I

16 A. The restricted real estate broker license and all
17 license rights of Respondent under the Real Estate Law are
18 revoked; however, a new restricted real estate broker license
19 shall be issued to Respondent pursuant to Business and Professions
20 Code Section 10156.5 if Respondent makes application therefor and
21 pays to the Department the appropriate fee for said license within
22 ninety (90) days from the effective date of the Decision herein.

23 B. The restricted license issued to Respondent shall
24 be subject to all the provisions of Section 10156.7 of the
25 Business and Professions Code and to the following limitations,
26 conditions and restrictions imposed under authority of Section
27 10156.6 of said Code:

1 (1) The license shall not confer any property right in
2 the privileges to be exercised, and the Real Estate
3 Commissioner may by appropriate order suspend the
4 right to exercise any privileges granted under the
5 restricted license in the event of:

6 (a) The conviction of Respondent (including a plea
7 of nolo contendere) to a crime which bears a
8 substantial relationship to Respondent's
9 fitness or capacity as a real estate licensee;
10 or

11 (b) The receipt of evidence that Respondent has
12 violated provisions of the California Real
13 Estate Law, Subdivided Lands Law, Regulations
14 of the Real Estate Commissioner or conditions
15 attaching to the restricted license.

16 C. Respondent shall not be eligible to apply for
17 issuance of an unrestricted real estate license nor removal of any
18 of the conditions, limitations or restrictions attaching to the
19 restricted license until three (3) years have elapsed from the
20 date of issuance of a restricted license to Respondent.

21 D. Pursuant to Section 10148 of the Business and
22 Professions Code, Respondent shall pay the Commissioner's
23 reasonable costs for an audit to determine if Respondent has
24 corrected the trust fund violations found in Paragraph I of the
25 Determination of Issues. In calculating the amount of the
26 Commissioner's reasonable cost, the Commissioner may use the
27 estimated average hourly salary for all persons performing audits

1 of real estate brokers, and shall include an allocation for travel
2 time to and from the auditor's place of work. Respondent shall
3 pay such cost within forty-five (45) days of receiving an invoice
4 from the Commissioner detailing the activities performed during
5 the audit and the amount of time spent performing those
6 activities. The Commissioner may suspend the restricted license
7 issued to Respondent pending a hearing held in accordance with
8 Section 11500, et seq., of the Government Code if payment is not
9 timely made as provided for herein, or as provided for in a
10 subsequent agreement between Respondent and the Commissioner. The
11 suspension shall remain in effect until payment is made in full or
12 until Respondent enters into an agreement satisfactory to the
13 Commissioner to provide for payment, or until a decision providing
14 otherwise is adopted following a hearing held pursuant to this
15 condition.

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

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

8 G. Any restricted real estate broker license issued to
9 Respondent pursuant to this Decision shall be suspended for thirty
10 (30) days from the effective date of issuance of said restricted
11 license; provided, however, that said thirty (30) days of
12 suspension or any portion thereof shall be stayed for one (1) year
13 from the date of issuance of said restricted license upon
14 condition that:

15 (1) Respondent petitions pursuant to Section 10175.2 of
16 the Business and Professions Code and pays a
17 monetary penalty pursuant to Section 10175.2 of the
18 Code at a rate of \$100.00 for each day of the
19 thirty (30) days of said suspension stayed for a
20 maximum total monetary penalty of \$3,000.00.

21 (2) Said payment shall be in the form of a cashier's
22 check or certified check made payable to the
23 Recovery Account of the Real Estate Fund. Said
24 check must be delivered to the Department prior to
25 the effective date of the Decision in this matter.
26 If Respondent fails to pay the monetary penalty in
27 accordance with the terms and conditions of the

1 Decision, the Commissioner may, without a hearing,
2 order the immediate execution of all or any part of
3 the stayed suspension in which event Respondent
4 shall be entitled to any repayment nor credit,
5 prorated or otherwise, for money paid to the
6 Department under the terms of this Decision.

7 (3) If Respondent pays the monetary penalty and if no
8 further cause for disciplinary action against the
9 real estate license of Respondent occurs within one
10 (1) year from the date of issuance of a restricted
11 license to Respondent the stay hereby granted shall
12 become permanent.

13 G. Any restricted real estate broker license issued to
14 Respondent may be suspended or revoked for a violation by
15 Respondent of any of the conditions attaching to the restricted
16 license.

17
18 6/1/99
19 DATED

20 David A. Peters
21 DAVID A. PETERS, Counsel
22 DEPARTMENT OF REAL ESTATE

23 * * *

24 I have read the Stipulation and Agreement, have
25 discussed it with my counsel, and its terms are understood by me
26 and are agreeable and acceptable to me. I understand that I am
27 waiving rights given to me by the California Administrative
Procedure Act (including but not limited to Sections 11506,
11508, 11509, and 11513 of the Government Code), and I willingly,
intelligently, and voluntarily waive those rights, including the

1 right of requiring the Commissioner to prove the allegations in
2 the Accusation at a hearing at which I would have the right to
3 cross-examine witnesses against me and to present evidence in
4 defense and mitigation of the charges.

5
6 June 4, 1999
7 DATED

El. Rodriguez
8 ELI RODRIGUEZ
9 Respondent

10 I have reviewed the Stipulation and Agreement as to form
11 and content and have advised my client accordingly.

12 June 11, 1999
13 DATED

Michael Bergner
14 MICHAEL BERGNER, ESQ.
15 Attorney for Respondent

16 * * *

17 The foregoing Stipulation and Agreement for Settlement
18 is hereby adopted by the Real Estate Commissioner as his Decision
19 and Order and shall become effective at 12 o'clock noon on
20 August 12, 1999.

21 IT IS SO ORDERED

June 25, 1999

22 JOHN R. LIBERATOR
23 Acting Real Estate Commissioner

John R. Liberator

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 13 1999

DEPARTMENT OF REAL ESTATE

By Laurie A. Zies

In the Matter of the Accusation of

ELI RODRIGUEZ,

Case No. H-2473 SD

OAH No. L-1999030564

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1350 Front Street, Suite 6022,
San Diego, CA 92101

on Tuesday, June 8, 1999, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of
hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten
(10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission or other evidence including
affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The
interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: April 12, 1999

By

David A. Peters

DAVID A. PETERS

Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

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

FILED
FEB - 5 1999

DEPARTMENT OF REAL ESTATE

By Lucie A. Zain

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

) No. H-2473 SD

12 ELI RODRIGUEZ,)

) ACCUSATION

13 Respondent.)
14

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against ELI RODRIGUEZ dba E R Realty (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 I

20 The Complainant, J. Chris Graves, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

23 II

24 Respondent is licensed and/or has license rights under
25 the Real Estate Law (Part 1 of Division 4 of the Business and
26 Professions Code) (hereinafter "the Code"), as a restricted real
27 estate broker.

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III

Beginning on or before March 13, 1998 through on or about July 7, 1998, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(b) of the Code wherein Respondent for or in expectation of a compensation solicited prospective tenants for, negotiated rental agreements for and collected rents from real properties owned by another or others and otherwise managed real properties located in or near San Diego, California.

IV

During the course of the property management activities described in Paragraph III above, Respondent received and disbursed funds held in trust on behalf of another or others.

V

Within the three-year period immediately preceding the filing of this Accusation and continuing through on or about July 7, 1998, Respondent maintained the following trust fund account:

<u>TITLE AND ACCOUNT NO.</u>	<u>BANK</u>
Eli Rodriguez dba ER Realty Client Trust Account (hereinafter "Trust Account")	Home Savings of America San Diego, California
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VI

In connection with the collection and disbursement of trust funds described in Paragraph IV above, Respondent failed to deposit and maintain said trust funds in the Trust Account in such manner that as of May 29, 1998, there was a shortage of \$4,332.50 of trust funds.

VII

Respondent failed to obtain prior written consent from each of his principals for the reduction of the aggregate balance of trust funds in the Trust Account to an amount less than the existing aggregate trust fund liability to the owners of said funds in violation of Section 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations").

VIII

In connection with the receipt and disbursement of trust funds described in Paragraph IV above, Respondent failed to adequately maintain and perform a reconciliation with records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations, at least once per month, in conformance with Section 2831.2 of the Regulations.

IX

The facts alleged above are grounds for the suspension or revocation of Respondent's license and license rights under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Sections 2831.1 and 2831.2 of the Regulations.

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