

FILED

APR 13 2015

BUREAU OF REAL ESTATE

By S. Black

1 BUREAU OF REAL ESTATE

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7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12)
13 AMERICAN SECURITY FINANCIAL)
14 CORPORATION, a Corporation, and)
15 JOHN SAENZ GUTIERREZ,)

NO. H-2786 FR

16) STIPULATION AND AGREEMENT
17) IN SETTLEMENT AND ORDER

18 Respondents.)

19 It is hereby stipulated by and between Respondents AMERICAN SECURITY
20 FINANCIAL CORPORATION (herein "ASFC") and JOHN SAENZ GUTIERREZ (herein
21 "GUTIERREZ") (herein collectively, "Respondents") and the Complainant, acting by and
22 through Mary F. Clarke, Counsel for the Bureau of Real Estate (herein "the Bureau"), as follows
23 for the purpose of settling and disposing the Accusation filed on October 18, 2012, in this matter
24 (herein "Accusation"):

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

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- 1 -

AMERICAN SECURITY FINANCIAL
CORPORATION and
JOHN SAENZ GUTIERREZ

1 Stipulation and Agreement in Settlement and Order (herein "Stipulation").

2 2. Respondents have received, read and understand the Statement to Respondent,
3 the Discovery Provisions of the APA, and the Accusation filed by the Bureau in this proceeding.

4 3. A Notice of Defense was filed on August 15, 2013 by Respondents pursuant
5 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices
7 of Defense. Respondents acknowledge they understand that by withdrawing said Notices of
8 Defense they will thereby waive their rights to require the Real Estate Commissioner (herein "the
9 Commissioner") to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that they will waive other rights afforded to them
11 in connection with the hearing such as the right to present evidence in defense of the allegations
12 in the Accusation and the right to cross-examine witnesses.

13 4. Respondents, pursuant to the "Determination of Issues" set forth below,
14 hereby admit that the factual allegations, in the Accusation (except Sections 10177(o), 10232.4
15 and 10238(1) of the California Business and Professions Code) filed in this proceeding are true
16 and correct and the Commissioner shall not be required to provide further evidence of such
17 allegations.

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

25 6. The "Order" or any subsequent Order of the Commissioner made pursuant to
26 this Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or

1 civil proceedings by the Bureau with respect to any matters which were not specifically alleged to
2 be causes for accusation in this proceeding.

3 7. Respondents understand that by agreeing to this Stipulation, Respondents
4 agree to pay, jointly and severally, pursuant to Section 10148 of the California Business and
5 Professions Code (herein "Code"), the cost of the audit which resulted in the determination that
6 Respondents committed the violations found in the "Determination of Issues" below. The
7 amount of said cost is \$9,537.46.

8 8. Respondents understand that by agreeing to this Stipulation, the findings set
9 forth below in the "Determination of Issues" become final, and that the Commissioner may
10 charge Respondents for the cost of any audit conducted pursuant to Section 10148 of the Code to
11 determine if the trust fund violations found in the "Determination of Issues," below, have been
12 corrected. The maximum cost of said audit shall not exceed \$9,537.46.

13 9. Respondents further understand that by agreeing to this Stipulation,
14 Respondents agree to pay, jointly and severally, pursuant to Section 10106(a) of the Code,
15 investigative and enforcement costs of \$8,239.85 which led to this disciplinary action.

16 DETERMINATION OF ISSUES

17 The acts and/or omissions of Respondents as described in the Accusation (except
18 Sections 10177(o), 10232.4 and 10238(1) of the Code) are grounds for the suspension or
19 revocation of the licenses and license rights of Respondents under the following provisions of the
20 Code and/or Chapter 6, Title 10, California Code of Regulations (herein "the Regulations"):

- 21 (a) as to Paragraph 8(a) and Respondent ASFC, under Section 10145 of
22 the Code and Section 2832.1 of the Regulations in conjunction with
23 Section 10177(d) of the Code;
24 (b) as to Paragraph 8(b) and Respondent ASFC, under Section 10145 of
25 the Code and Section 2832 of the Regulations in conjunction with
26 Section 10177(d) of the Code;

- 1 (c) as to Paragraph 8(c) and Respondent ASFC, under Section 2831(a)(6)
2 of the Regulations in conjunction with Section 10177(d) of the Code;
3 (d) as to Paragraph 8(d) and Respondent ASFC, under Section 2831.2 of the
4 Regulations in conjunction with Section 10177(d) of the Code;
5 (e) as to Paragraph 8(e) and Respondent ASFC, under Section 10159.5 of
6 the Code and Section 2731 of the Regulations in conjunction with
7 Section 10177(d) of the Code;
8 (f) as to Paragraph 13(a) and Respondent ASFC, under Section 10238(a)
9 of the Code in conjunction with Section 10177(d) of the Code;
10 (g) as to Paragraph 13(d) and Respondent ASFC, under Section
11 10238(h)(4)(E) of the Code in conjunction with Section 10177(d) of
12 the Code;
13 (h) as to Paragraph 13(e) and Respondent ASFC, under Section 10233 of
14 the Code in conjunction with Section 10177(d) of the Code;
15 (i) as to Paragraph 13(f) and Respondent ASFC, under Sections
16 10238(k)(2) and 10233.1 of the Code in conjunction with Section
17 10177(d) of the Code;
18 (j) as to Paragraph 13(g) and Respondent ASFC, under Section 10177(g)
19 of the Code;
20 (k) as to Paragraph 13(h) and Respondent GUTIERREZ, under Section
21 2742(c) of the Regulations in conjunction with Section 10177(d) of the
22 Code; and
23 (l) as to Paragraph 15 and Respondent GUTIERREZ, under Sections
24 10177(h), and (g) and 10159.2 of the Code in conjunction with
25 Section 10177(d) of the Code.

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All licenses and licensing rights of Respondent ASFC under the Real Estate Law
are suspended for a period of sixty (60) days from the effective date of this Order; provided,
however, that:

(a) 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. The remaining thirty (30) days of said sixty (60) day suspension shall be stayed upon the condition that Respondent petitions, pursuant to Section 10175.2 of the Code, and pays a monetary penalty, pursuant to Section 10175.2, of the Code at a rate of \$100.00 for each day of said remaining thirty (30) days for a total monetary penalty of \$3,000.00:

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

4 **(c) If Respondent fails to pay the monetary penalty in accordance with**
5 the terms and conditions of this Order, the suspension shall go into
6 effect automatically and remain in effect until Respondent pays the
7 monetary penalty in full.

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

14 **3. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and**
15 severally with Respondent GUTIERREZ, the sum of \$9,537.46 for the Commissioner's cost of
16 the audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60)
17 days of receiving an invoice therefore from the Commissioner. Payment of audit costs should
18 not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition
19 in a timely manner as provided for herein, Respondent's real estate license shall automatically be
20 suspended until payment is made in full, or until a decision providing otherwise is adopted
21 following a hearing held pursuant to this condition.

22 **4. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and**
23 severally with Respondent GUTIERREZ, the Commissioner's reasonable cost, not to exceed
24 \$9,537.46, for an audit to determine if Respondent has corrected the violation(s) found in the
25 Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the
26 Commissioner may use the estimated average hourly salary for all persons performing audits of

1 real estate brokers, and shall include an allocation for travel time to and from the auditor's place
2 of work. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore
3 from the Commissioner. Payment of the audit costs should not be made until Respondent
4 receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided
5 for herein, Respondent's real estate license shall automatically be suspended until payment is
6 made in full, or until a decision providing otherwise is adopted following a hearing held pursuant
7 to this condition.

8 5. All licenses and licensing rights of Respondent are indefinitely suspended
9 unless or until Respondent, jointly and severally with Respondent GUTIERREZ, pays the sum of
10 \$8,239.85 for the Commissioner's reasonable cost of the investigation and enforcement which
11 led to this disciplinary action. Said payment shall be in the form of a cashier's check made
12 payable to the Bureau of Real Estate. The investigative and enforcement costs must be delivered
13 to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,
14 prior to the effective date of this Order.

15 II

16 1. All licenses and licensing rights of Respondent GUTIERREZ are indefinitely
17 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having
18 taken and successfully completed the continuing education course on trust fund accounting and
19 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and
20 Professions Code. Proof of satisfaction of these requirements includes evidence that Respondent
21 has successfully completed the trust fund account and handling continuing education courses, no
22 earlier than 120 days prior to the effective date of the Order in this matter. Proof of completion
23 of the trust fund accounting and handling course must be delivered to the Bureau of Real Estate,
24 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior
25 to the effective date of this Order.

1 2. All licenses and licensing rights of Respondent under the Real Estate Law are
2 revoked; provided, however, a restricted real estate broker license shall be issued to Respondent
3 pursuant to Section 10156.5 of the Code if, within 90 days from the effective date of the Decision
4 entered pursuant to this Order, Respondent, prior to and as a condition of the issuance of said
5 restricted license makes application for the restricted license and pays to the Bureau the
6 appropriate fee therefor. The restricted license issued to Respondent shall be subject to all of the
7 provisions of Section 10156.7 of the Code and to the following limitations, conditions, and
8 restrictions imposed under authority of Section 10156.6 of that Code:

9 (a) The restricted license issued to Respondent may be suspended prior to
10 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo
11 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real
12 estate licensee.

13 (b) The restricted license issued to Respondent may be suspended prior to
14 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
15 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
16 Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted
17 license.

18 (c) Respondent shall not be eligible to apply for the issuance of an
19 unrestricted real estate license or for the removal of any of the conditions, limitations or
20 restrictions of a restricted license until two (2) years have elapsed from the effective date of this
21 Order.

22 3. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
23 severally with Respondent ASFC, the sum of \$9,537.46 for the Commissioner's cost of the audit
24 which led to this disciplinary action. Respondent shall pay such cost within sixty (60) days of
25 receiving an invoice therefore from the Commissioner. Payment of audit costs should not be
26 made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a

1 timely manner as provided for herein, Respondent's real estate license shall automatically be
2 suspended until payment is made in full, or until a decision providing otherwise is adopted
3 following a hearing held pursuant to this condition.

4 4. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and
5 severally with Respondent ASFC, the Commissioner's reasonable cost, not to exceed \$9,537.46,
6 for an audit to determine if Respondent has corrected the violation(s) found in the Determination
7 of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner
8 may use the estimated average hourly salary for all persons performing audits of real estate
9 brokers, and shall include an allocation for travel time to and from the auditor's place of work.
10 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
11 Commissioner. Payment of the audit costs should not be made until Respondent receives the
12 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
13 Respondent's real estate license shall automatically be suspended until payment is made in full,
14 or until a decision providing otherwise is adopted following a hearing held pursuant to this
15 condition.

16 5. All licenses and licensing rights of Respondent are indefinitely suspended
17 unless or until Respondent, jointly and severally with Respondent ASFC, pays the sum of
18 \$8,239.85 for the Commissioner's reasonable cost of the investigation and enforcement which
19 led to this disciplinary action. Said payment shall be in the form of a cashier's check made
20 payable to the Bureau of Real Estate. The investigative and enforcement costs must be delivered
21 to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,
22 prior to the effective date of this Order.

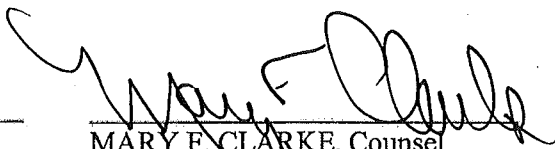
23 6. Respondent shall, within nine (9) months from the effective date of this
24 Order, present evidence satisfactory to the Commissioner that Respondent has, since the most
25 recent issuance of an original or renewal real estate license, taken and successfully completed the
26 continuing education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

1 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate
2 license shall automatically be suspended until Respondent presents evidence satisfactory to the
3 Commissioner of having taken and successfully completed the continuing education
4 requirements. Proof of completion of the continuing education courses must be delivered to the
5 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

6 7. Respondent shall, within six (6) months from the effective date of this Order,
7 take and pass the Professional Responsibility Examination administered by the Bureau including
8 the payment of the appropriate examination fee. If Respondent fails to satisfy this condition,
9 Respondent's real estate license shall automatically be suspended until Respondent passes the
10 examination.

11 3-17-15

12 DATED

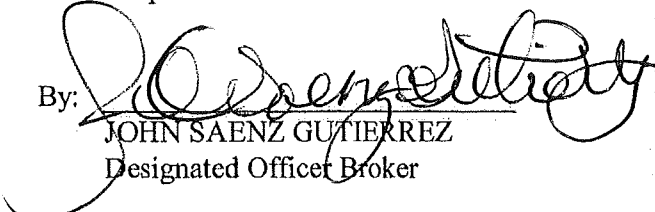
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14 MARY F. CLARKE, Counsel
Bureau of Real Estate

15 * * *

16 I have read this Stipulation and its terms are understood by me and are agreeable
17 and acceptable to me. I understand that I am waiving rights given to me by the California APA
18 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government
19 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of
20 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I
21 would have the right to cross-examine witnesses against me and to present evidence in defense
22 and mitigation of the charges.

23 AMERICAN SECURITY FINANCIAL
24 CORPORATION,
25 Respondent

26 March 16, 2015
27 DATED

By: 

JOHN SAENZ GUTIERREZ
Designated Officer Broker

1 March 11, 2015

2 DATED

3 JOHN SAENZ GUTIERREZ
Respondent

4 * * *

5 The foregoing Stipulation and Agreement in Settlement and Order is hereby
6 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
7 MAY 04 2015, 2015.

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9 IT IS SO ORDERED APRIL 6, 2015.

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11 REAL ESTATE COMMISSIONER

12 JEFFREY MASON
13 By: JEFFREY MASON
14 Chief Deputy Commissioner
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