

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

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FILED

OCT 30 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 MERCED OLD 99 REALTY, INC., RUSSELL)
13 CHARLES McGARRY JR., JOHN HENRY)
14 SCHWALBACH III, and ESTHER)
VALENCIA,)

15 Respondents)

No. H-3143 FR

STIPULATION AND
AGREEMENT

16 It is hereby stipulated by and between ESTHER VALENCIA (Respondent),
17 and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of
18 Real Estate (Department), as follows for the purpose of settling and disposing the Accusation
19 filed on March 22, 2018, in this matter:

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

25 2. Respondent has received, read, and understands the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Department in this
27 proceeding.

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 Respondent understands that by withdrawing said Notice of Defense
5 Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA, and that Respondent will waive other rights afforded
8 to Respondent in connection with the hearing such as the right to present evidence in defense of
9 the allegations in the Accusation and the right to cross-examine witnesses.

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

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

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

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

5 Respondent and Respondent's attorney further agree to send the original signed
6 Stipulation by mail to the following address no later than one (1) week from the date the
7 Stipulation is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
8 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and
9 Respondent's attorney understand and agree that if they fail to return the original signed
10 Stipulation by the due date, Complainant retains the right to set this matter for hearing.

11 October 21, 2019
12 DATED

Esther Valencia
ESTHER VALENCIA
Respondent

14 ***

15 *I have reviewed the Stipulation and Agreement as to form and content and have*
16 *advised my clients accordingly.*

17 October 27, 2019
18 DATED

[Signature]
MICHAEL ROTHSCHILD
Attorney for Respondent

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21 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
22 Order and shall become effective at 12 o'clock noon on NOV 20 2019

23 IT IS SO ORDERED October 29, 2019

24
25 DANIEL J. SANDRI
26 ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri