Department of Real Estate 320 W. 4th Street, Suite 350 Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED

DEC = 6 2018

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation Against

RICHARD MICHAEL GONZALES, individually and doing business as Bakersfield Property Services,

Respondent.

No. H-03177 FR

STIPULATION
AND
AGREEMENT

It is hereby stipulated by and between Respondent RICHARD MICHAEL GONZALES, individually and doing business as Bakersfield Property Services ("Respondent"), acting on his own behalf, and the Complainant, acting by and through Amelia V. Vetrone, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation ("Accusation") filed on May 2, 2018, in this matter:

- 1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent 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 ("Stipulation").
- 2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate

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in this proceeding.

3. Respondent filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he thereby waives his right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in his defense, and the right to cross-examine witnesses.

- 4. This Stipulation is based on the factual allegations contained in the Accusation. In the interest of expedience and economy Respondent chooses not to contest these allegations but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide evidence to prove said factual allegations.
- 5. This Stipulation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and not any other proceeding or case in which the Department of Real Estate ("DRE"), or another licensing agency of this state, another state, or the federal government is involved, and otherwise shall not be admissible in any criminal or civil proceeding.
- 6. It is understood by the parties that the Real Estate Commissioner may adopt this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on Respondent's real estate license and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation, the Stipulation shall be void and of no effect and Respondent shall retain the right to a hearing and proceed on the Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver made herein.

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7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

- 8. Respondent understands that by agreeing to this Stipulation, Respondent agrees to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit which led to this disciplinary action. The amount of said cost is \$3,399.00.
- 9. Respondents understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant to Business and Professions Code Section 10106, the cost of the investigation of this matter. The amount of said cost is \$4,705.45.

DETERMINATION OF ISSUES

By reason of the foregoing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct, acts or omissions of RICHARD MICHAEL GONZALES, as described in Paragraph 4, above, are in violation of Sections 10145, 10177(d), and 10177(g) of the Business and Professions Code ("Code") and Section 2725 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and are a basis for discipline of Respondent's license and license rights as a violation of the Real Estate Law, Part 1 of Division 4 of the Code, pursuant to Code Sections 10177(d) and 10177(g).

<u>ORDER</u>

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensed rights of Respondent RICHARD MICHAEL

GONZALES under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision, and the entire thirty (30) days of that suspension shall be stayed for two years upon the following terms and conditions:

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A. That Respondent obeys all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

B. That no final subsequent determination be made after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made under this section, the stay imposed herein shall become permanent.

II.

Respondent shall, within six (6) months from the effective date of this Decision and Order herein, 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, his real estate license shall be automatically suspended until he passes the examination.

III.

Respondent shall, within nine (9) months from the effective date of this Decision and Order, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. If Respondent fails to satisfy this condition, Respondent's real estate license shall be automatically suspended until he presents evidence satisfactory to the Commissioner of having taken and successfully completed the trust fund accounting and handling course. Proof of completion of the continuing education course must be delivered to the Department of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013.

Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for the audit which led to this disciplinary action in the amount of \$3,399.00. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein, Respondent's real estate license shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

V.

Prior to the effective date of this Decision, and pursuant to Section 10106 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for the investigation which led to this disciplinary action in the amount of \$4,705.45. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.

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

DATED: /(-13-18

Amelia V. Vetrone, Counsel for Department of Real Estate

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EXECUTION OF THE STIPULATION

I have read the Stipulation. 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 (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 right of requiring the Commissioner to prove the allegations in the Accusation 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.

MAILING

Respondent shall <u>mail the original</u> signed signature page of the stipulation herein to Amelia V. Vetrone: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105.

Respondent's signature below constitutes acceptance and approval of the terms and conditions of this Stipulation. Respondent agrees, acknowledges and understands that by signing this Stipulation Respondent is bound by its terms as of the date of such signature and that this agreement is not subject to rescission or amendment at a later date except by a separate Decision and Order of the Real Estate Commissioner.

DATED: <u>///09//8</u>

RICHARD MICHAEL GONZALES

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Respondent RICHARD MICHAEL GONZALES and shall become effective at 12 o'clock noon DEC 26 2018

The foregoing Stipulation and Agreement is hereby adopted as my Decision as to

IT IS SO ORDERED November 28, 2018.

DANIEL J. SANDRI Acting Real Estate Commissioner

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