

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

4 Telephone: (916) 227-0781

FILED

FEB 05 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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

10 * * *

11 In the Matter of the Accusation of)
12) No. H-6759 SAC
13 CARL SAN MIGUEL,)
14 Respondents.)
15)
16) STIPULATION AND
17) AGREEMENT

15 It is hereby stipulated by and between CARL SAN MIGUEL (Respondent),
16 and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of
17 Real Estate (Department), as follows for the purpose of settling and disposing the First
18 Amended Accusation (Accusation) filed on December 17, 2018, in this matter:

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

24 2. Respondent has received, read, and understands the Statement to
25 Respondent, and the Discovery Provisions of the APA filed by the Department in this
26 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 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. Respondent understands that by agreeing to this Stipulation and
22 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and
23 Professions Code (Code), the cost of the audit, which resulted in the determination that
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.
25 The amount of said costs is \$6,273.45.

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1 As to Paragraph 11(b), under Section 10177(d) of the Code in conjunction with
2 Section 10145 of the Code and Section 2831.2 of the Regulations.

3 * * *

4 ORDER

5 I

6 All licenses and licensing rights of Respondent under the Real Estate Law are
7 suspended for a period of thirty (30) days from the effective date of this Order; provided,
8 however, that:

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

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

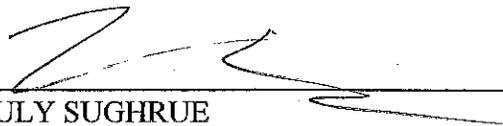
13 b) That no final subsequent determination be made, after hearing or upon stipulation,
14 that cause for disciplinary action occurred within two (2) years from the effective date of this
15 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
16 and set aside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

18 2) Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
19 \$6,273.45 for the Commissioner's cost of the audit which led to this disciplinary action.
20 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the
21 Commissioner. Payment of audit costs should not be made until Respondent receives the
22 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
23 Respondent's real estate license shall automatically be suspended until payment is made in full,
24 or until a decision providing otherwise is adopted following a hearing held pursuant to this
25 condition.

26 5) Pursuant to Section 10148 of the Code, Respondent shall pay the Commissioner's
27 reasonable cost, not to exceed \$7,841.81, for an audit to determine if Respondent has corrected

1 the violation(s) found in the Determination of Issues. In calculating the amount of the
2 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
3 for all persons performing audits of real estate brokers, and shall include an allocation for travel
4 time to and from the auditor's place of work. Respondent shall pay such cost within sixty (60)
5 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should
6 not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition
7 in a timely manner as provided for herein, Respondent's real estate license shall automatically be
8 suspended until payment is made in full, or until a decision providing otherwise is adopted
9 following a hearing held pursuant to this condition.

10
11 8-Jan-18
12 _____
13 DATED

11 
12 _____
13 TRULY SUGHRUE
14 Counsel for Complainant

14 * * *

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

21 Respondent further agrees to send the original signed Stipulation and Agreement
22 by mail to the following address no later than one (1) week from the date the Stipulation and
23 Agreement is signed by Respondent: *Department of Real Estate, Legal Section, P.O. Box*
24 *137007, Sacramento, California 95813-7007*. Respondent understands and agrees that if they fail
25 to return the original signed Stipulation and Agreement by the due date, Complainant retains the
26 right to set this matter for hearing.

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1-2-19
DATED _____

CARL SAN MIGUEL
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and
Order and shall become effective at 12 o'clock noon on ~~FEB 26 2019~~ _____.

IT IS SO ORDERED January 29, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri