

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

4 Telephone: (916) 227-0781

FILED

APR 20 2012

DEPARTMENT OF REAL ESTATE

By R. Jones

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

10 * * *

11 In the Matter of the Accusation of)

No. H-11051 SF

12 MARCO ANTONIO GUTIERREZ, and)
13 JENNIFER VERA GUTIERREZ,)

STIPULATION AND
AGREEMENT

14 Respondents.)

15 It is hereby stipulated by and between MARCO ANTONIO GUTIERREZ, and
16 JENNIFER VERA GUTIERREZ (Respondents), and their attorney William J. Rogers, and the
17 Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real
18 Estate, as follows for the purpose of settling and disposing the Accusation filed on January 10,
19 2011 in this matter:

20 1. All issues which were to be contested and all evidence which was to be
21 presented by Complainant and Respondents 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. Respondents have received, read, and understand the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Department of Real Estate in
27 this proceeding.

1 3. Respondents 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 Respondents hereby freely and voluntarily withdraws said Notice of Defense. Respondents
4 acknowledges that they understand that by withdrawing said Notice of Defense they will thereby
5 waive their right to require the Commissioner to prove the allegations in the Accusation at a
6 contested hearing held in accordance with the provisions of the APA, and that they will waive
7 other rights afforded to them in connection with the hearing such as the right to present evidence
8 in defense of the allegations in the Accusation and the right to cross-examine witnesses.

9 4. Respondents, pursuant to the limitations set forth below, hereby admit that
10 the factual allegations in the Accusation filed in this proceeding are true and correct and the Real
11 Estate Commissioner shall not be required to provide further evidence to prove such allegations.

12 5. It is understood by the parties that the Real Estate Commissioner may
13 adopt the Stipulation and Agreement as his decision in this matter thereby imposing the penalty
14 and sanctions on the real estate licenses and license rights of Respondent as set forth in the below
15 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and
16 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing
17 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
18 any admission or waiver made herein.

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

23 * * *

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations and waivers and solely for the purpose of
26 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
27 following determination of issues shall be made:

28 I

29 The acts and omissions of Respondents as described in the First Cause of Action
30 of the Accusation are grounds for the suspension or revocation of Respondents licenses and

1 license rights under Section 10130 of the Business and Professions Code (Code) in conjunction
2 with Section 10177(d) of the Code.

3 II

4 The acts and omissions of MARCO A. GUTIERREZ as described in the Second
5 Cause of Action of the Accusation are grounds for the suspension or revocation of Respondent's
6 licenses and license rights under Sections 10177(d) of the Code in conjunction with Section
7 10085, 10085.5, and 10085.6 of the Code and Section 2970 of the Commissioner's Regulations
(Title 10 of the California Code of Regulations) (Regulations).

8 III

9 The acts and omissions of Respondents as described in the Third Cause of Action
10 of the Accusation are grounds for the suspension or revocation of Respondents licenses and
11 license rights under Section 10176(i) of the Code.

12 * * *

13 ORDER

14 I

- 15 A. All real estate license(s) and license rights of Respondent MARCO A. GUTIERREZ are
16 revoked.
- 17 B. A restricted real estate salesperson license shall be issued to Respondent pursuant to
18 Section 10156.6 of the Code if within ninety (90) days of the effective date of the Order,
19 Respondent makes application therefore and pays to the Department the appropriate fee for
20 said license.
- 21 C. The restricted license issued to Respondent shall be subject to all of the provisions of
22 Section 10156.7 of the Code and to the following conditions and limitations imposed under
23 authority of Section 10156.6 of said Code:
- 24 1) Respondent shall, prior to and as a condition of the issuance of said restricted license,
25 submit proof satisfactory to the Real Estate Commissioner of having made restitution
26 to Oscar Garzon for all monies The Home Retention Team, MARCO A.
27 GUTIERREZ, and/or JENNIFER VERA GUTIERREZ collected from Oscar Garzon
for a loan modification, including: \$500 collected on or about November 25, 2009,

1 \$100 collected in December 2009, \$100 collected in January 2010, and \$100 collected
2 in February 2010.

- 3 2) The restricted license issued to Respondent may be suspended prior to hearing by
4 order of the Real Estate Commissioner in the event of Respondent's conviction or plea
5 of nolo contendere to a crime which bears a substantial relationship to Respondent's
6 fitness or capacity as a real estate licensee.
- 7 3) The restricted license may be suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that Respondent has
9 violated provisions of the California Real Estate Law, the Subdivided Lands Law,
10 Regulations of the Real Estate Commissioner or conditions attaching to the restricted
11 license.
- 12 4) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate
13 license, nor the removal of any of the conditions of the restricted license, until four (4)
14 years have elapsed from the effective date of this Order.
- 15 5) Respondent shall submit with any application for license under an employing broker,
16 or any application for transfer to a new employing broker, a statement signed by the
17 prospective employing real estate broker on a form approved by the Department of
18 Real Estate which shall certify:
- 19 (a) That the employing broker has read the Decision of the Commissioner which
20 granted the right to a restricted license; and
- 21 (b) That the employing broker will exercise close supervision over the performance
22 by the restricted licensee relating to activities for which a real estate license is
23 required.

24 E. Any restricted license issued to Respondent pursuant to this Decision shall be suspended
25 for a period of thirty (30) days from the issuance of the restricted license.

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

1 the Commissioner may order the suspension of the restricted license until Respondent
2 presents such evidence. The Commissioner shall afford Respondent the opportunity for
3 hearing pursuant to the APA to present such evidence.

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

9 II

- 10 A. All real estate license(s) and license rights of Respondent JENNIFER VERA GUTIERREZ
11 are revoked.
- 12 B. A restricted real estate salesperson license shall be issued to Respondent pursuant to
13 Section 10156.6 of the Code if within ninety (90) days of the effective date of the Order,
14 Respondent makes application therefore and pays to the Department the appropriate fee for
15 said license.
- 16 C. The restricted license issued to Respondent shall be subject to all of the provisions of
17 Section 10156.7 of the Code and to the following conditions and limitations imposed under
18 authority of Section 10156.6 of said Code:
- 19 1) Respondent shall, prior to and as a condition of the issuance of said restricted license,
20 submit proof satisfactory to the Real Estate Commissioner of having made restitution
21 to Oscar Garzon for all monies The Home Retention Team, MARCO A.
22 GUTIERREZ, and/or JENNIFER VERA GUTIERREZ collected from Oscar Garzon
23 for a loan modification, including: \$500 collected on or about November 25, 2009,
24 \$100 collected in December 2009, \$100 collected in January 2010, and \$100 collected
25 in February 2010.
- 26 2) The restricted license issued to Respondent may be suspended prior to hearing by
27 order of the Real Estate Commissioner in the event of Respondent's conviction or plea
of nolo contendere to a crime which bears a substantial relationship to Respondent's
fitness or capacity as a real estate licensee.

1 3) The restricted license may be suspended prior to hearing by Order of the Real Estate
2 Commissioner on evidence satisfactory to the Commissioner that Respondent has
3 violated provisions of the California Real Estate Law, the Subdivided Lands Law,
4 Regulations of the Real Estate Commissioner or conditions attaching to the restricted
5 license.

6 4) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate
7 license, nor the removal of any of the conditions of the restricted license, until four (4)
8 years have elapsed from the effective date of this Order.

9 5) Respondent shall submit with any application for license under an employing broker,
10 or any application for transfer to a new employing broker, a statement signed by the
11 prospective employing real estate broker on a form approved by the Department of
12 Real Estate which shall certify:

13 (a) That the employing broker has read the Decision of the Commissioner which
14 granted the right to a restricted license; and

15 (b) That the employing broker will exercise close supervision over the performance
16 by the restricted licensee relating to activities for which a real estate license is
17 required.

18 E. Any restricted license issued to Respondent pursuant to this Decision shall be suspended
19 for a period of thirty (30) days from the issuance of the restricted license.

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

28 F. Respondent shall, within six (6) months from the effective date of this Decision, take and
29 pass the Professional Responsibility Examination administered by the Department
30 including the payment of the appropriate examination fee. If Respondent fails to satisfy

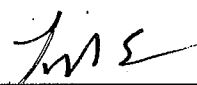
02/28/2012 TUE 14:38 FAX

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herein as part of this Stipulation and Agreement. Respondents' license certificates, pocket cards and any branch office license certificates shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

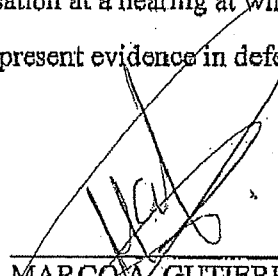
DEPARTMENT OF REAL ESTATE
Attn: Licensing Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

9-March-12
DATED

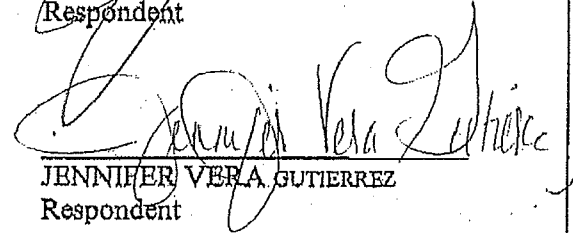

TRULY SUGHRUE
Counsel for Complainant

I have read the Stipulation and Agreement, have discussed it with my counsel, and 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, 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.

Mar. 8, 2012
DATED


MARCOVA GUTIERREZ
Respondent

Mar. 8, 2012
DATED


JENNIFER VERA GUTIERREZ
Respondent

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The foregoing Stipulation and Agreement is hereby adopted as my Decision and
shall become effective at 12 o'clock noon on MAY 1 0 2012

IT IS SO ORDERED

3/27/2012

Real Estate Commissioner

