

FILED

JUL 18 2011

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

Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By L. Jones

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of

ROGELIO GONZALEZ JR.

Respondent.

No. H-11098 SF

STIPULATION AND  
AGREEMENT

It is hereby stipulated by and between ROGELIO GONZALEZ JR.  
(Respondent), and the Complainant, acting by and through Truly Sughrue, Counsel for the  
Department of Real Estate, as follows for the purpose of settling and disposing the Accusation  
filed on March 30, 2011 in this matter:

1. All issues which were to be contested and all evidence which was to be  
presented by Complainant and Respondents 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.

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

3. Respondent filed a Notice of Defense pursuant to Section 11505 of the  
Government Code for the purpose of requesting a hearing on the allegations in the Accusation.

1 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent  
2 acknowledges that he understands that by withdrawing said Notice of Defense he will thereby  
3 waive his right to require the Commissioner to prove the allegations in the Accusation at a  
4 contested hearing held in accordance with the provisions of the APA, and that he will waive  
5 other rights afforded to him in connection with the hearing such as the right to present evidence  
in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

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

19 \* \* \*

#### 20 DETERMINATION OF ISSUES

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

#### 23 I

24 The acts and omissions of Respondent as described in the First Cause of Action  
25 of the Accusation are grounds for the suspension or revocation of Respondents licenses and  
26 license rights under Section 10137 of the Business and Professions Code (Code) in conjunction  
27 with Section 10177(d) of the Code.

II

The acts and omissions of Respondent as described in the Second Cause of Action of the Accusation are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10176(g) of the Code.

\* \* \*

ORDER

I

- A. All real estate license(s) and license rights of Respondent are revoked.
- B. A restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.6 of the Code if within ninety (90) days of the effective date of the Order, Respondent makes application therefore and pays to the Department the appropriate fee for said license.
- C. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the following conditions and limitations imposed under authority of Section 10156.6 of said Code:
- 1) Respondent shall, prior to and as a condition of the issuance of said restricted license, submit proof satisfactory to the Real Estate Commissioner of having made restitution to Rodnina and Fawas Martin in the amount of \$3,350.
  - 2) The restricted license issued to Respondent may be suspended prior to hearing by 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.
  - 3) The restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
  - 4) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, nor the removal of any of the conditions of the restricted license, until two (2) years have elapsed from the effective date of this Order.

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

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

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

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

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

23 21-June-11  
24 DATED

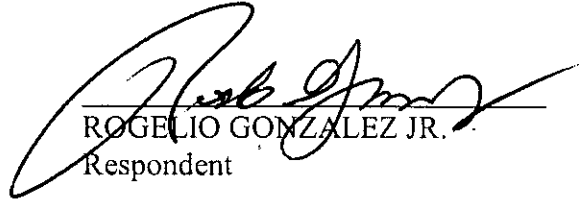
25 JWS  
26 TRULY SUGHRUE  
27 Counsel for Complainant

\*\*\*

28 I have read the Stipulation and Agreement, have discussed it with my counsel, and  
29 its terms are understood by me and are agreeable and acceptable to me. I understand that I am  
30 waiving rights given to me by the California Administrative Procedure Act, and I willingly,  
31

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 5-27-11  
6 DATED

  
7 \_\_\_\_\_  
8 ROGELIO GONZALEZ JR.  
9 Respondent

10 \*\*\*

11 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
12 shall become effective at 12 o'clock noon on AUG 08 2011, 2011.

13 IT IS SO ORDERED 7/8, 2011.

14 BARBARA J. BIGBY  
15 Acting Real estate Commissioner

16   
17 \_\_\_\_\_  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1 TRULY SUGHRUE, Counsel  
2 State Bar No. 223266  
3 Department of Real Estate  
4 P. O. Box 187007  
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0789  
7 (916) 227-0781 (Direct)

FILED

MAR 30 2011

DEPARTMENT OF REAL ESTATE

*[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of

12 ROGELIO GONZALEZ JR.,

13 Respondent.

No. H-11098 SF

ACCUSATION

14  
15 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the  
16 State of California, for cause of Accusation against ROGELIO GONZALEZ JR. (hereinafter  
17 "Respondent"), is informed and alleges as follows:

18 PRELIMINARY ALLEGATIONS

19 1

20 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the  
21 State of California, makes this Accusation in his official capacity.

22 2

23 Respondent is presently licensed and/or has license rights under the Real Estate  
24 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

25 3

26 At all times mentioned, Respondent was and is licensed by the Department  
27 individually as a real estate broker.

At no time mentioned after February 14, 2003 was Jim Daman, also known as Jamshid Daman (hereinafter "Daman"), licensed by the Department either as a real estate salesperson or as a real estate broker. Effective February 14, 2003, DAMAN's real estate salesperson license was revoked in case H-8156 SF before the Department of Real Estate, for violation of Sections 490 and 10177(b) of the Code.

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate licensee in the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property.

#### FIRST CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 5, inclusive, above, are incorporated by this reference as if fully set forth herein.

Beginning on or about June 2009, Respondent employed and compensated Daman to perform the acts and conduct the real estate activities described in Paragraph 5, above, including but not limited to the activities described in Paragraph 8, below.

///

///

///

///

///

Beginning on or about June 2009, in course of the employment and activities described in Paragraph 7, above, Daman negotiated and arranged the purchase and sale of real property, including but not necessarily limited to:

| Property Address                            | Buyer                                  |
|---------------------------------------------|----------------------------------------|
| 681 Flemish Court,<br>Brentwood, California | Rodnina Matin<br>(hereinafter "Matin") |

In acting as described in Paragraphs 7 through 8, above, Respondent violated the provisions of Section 10137 of the Code and willfully caused, suffered and/or permitted Daman to violate Section 10130 of the Code.

The facts described above as to the First Cause of Accusation constitutes cause to suspend or revoke all licenses and license rights of Respondent pursuant to the provisions of Section 10137 of the Code in conjunction with Section 10177(d) of the Code.

#### SECOND CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 10, inclusive, above are incorporated by this reference as if fully set forth herein.

On or about November 20, 2009, Matin closed escrow on the purchase of the real property located at 691 Flemish Court, Brentwood, California. Upon the close of escrow Respondent charged and collected an "Administration Fee" of \$3,350 from escrow. Respondent made either no disclosure or inadequate disclosure of the "Administration Fee" to Matin, and/or did not obtain Matin's informed consent to the "Administration Fee." Respondent's acts and omissions constitute fraud or dishonest dealing, and the taking of a secret profit, and are cause for discipline under Sections 10176(g) and 10176(i) of the Code.

The facts described above as to the Second Cause of Action constitute cause to suspend or revoke all licenses and license rights of Respondent pursuant to the provisions of Sections 10176(g) and/or 10176(i) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

  
E. J. HABERER II  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 11<sup>th</sup> day of March, 2011