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FILED

FEB 27 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-28666 LA
)	
MARIA GUTIERREZ,)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On December 22, 2000, a Decision was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on January 24, 2001 and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On or about January 4, 2007, Respondent petitioned for reinstatement of said real estate salesperson license. The Attorney General of the State of California has been given notice of the filing of Respondent's petition.

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1 I have considered Respondent's petition and the evidence and arguments
2 submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent
3 meets the requirements of law for the issuance to Respondent of an unrestricted real estate
4 salesperson license and that it would not be against the public interest to issue said license to
5 Respondent.

6 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
7 reinstatement is granted and that a real estate salesperson license be issued to Respondent, if
8 Respondent satisfies the following conditions within twelve (12) months from the date of this
9 Order:

- 10
- 11 1. Submittal of a completed application and payment of the fee for a real estate
12 salesperson license.
 - 13 2. Submittal of evidence of having, since the most recent issuance of an original
14 or renewal real estate license, taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate
16 Law for renewal of a real estate license.

17 This Order shall be effective immediately.

18 Dated: 2-3-2010

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21 JEFF DAVI
22 Real Estate Commissioner

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SORTO
NOW

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DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-28666 LA
)	
MARIA GUTIERREZ,)	
)	
Respondent.)	

ORDER DENYING REINSTATEMENT OF LICENSE

On December 22, 2000, a Decision was rendered in Case No. H-28666 LA revoking Respondent's real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on January 24, 2001.

On or about July 8, 2003, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.

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1 I have considered Respondent's petition and
2 the evidence and arguments in support thereof. Respondent has
3 failed to demonstrate to my satisfaction that Respondent has
4 undergone sufficient rehabilitation to warrant the reinstatement
5 of Respondent's real estate salesperson license, in that:

6 I

7 In the Decision in Case no. H-28666 LA which revoked
8 Respondent's real estate salesperson license, there were
9 Determination of Issues made that there was cause to revoke
10 Respondent's real estate license pursuant to Business and
11 Professions Code ("Code") Section 10177(g).

12 In 1997, Respondent had represented buyers in their
13 purchase of residential real property. The buyers gave
14 Respondent \$3,000 for the down payment, which was deposited in
15 escrow. Escrow failed to close and the escrow company delivered
16 a refund check to Respondent. Respondent converted the money.
17 Subsequently, the buyers obtained a small claims court judgment
18 against Respondent.

19 II

20 The burden of proving rehabilitation rests with the
21 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
22 petitioner is required to show greater proof of honesty and
23 integrity than an applicant for first time licensure. The proof
24 must be sufficient to overcome the prior adverse judgment on the
25 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
26 395).
27

1 The Department has developed criteria in Section
2 2911, Title 10, Chapter 6, California Code of Regulations
3 ("Regulations") to assist in evaluating the rehabilitation
4 of an applicant for reinstatement of a license. Among the
5 criteria relevant in this proceeding are:

6 2911(1) - Significant or conscientious involvement
7 in community, church or social programs. Respondent has not
8 provided proof of such involvement.

9 2911 (n) (1) - Change in attitude from that which
10 existed at the time of the conduct in question as evidenced
11 by Respondent. Respondent has not displayed a change in
12 attitude. As part of the petition application process,
13 Respondent was interviewed by a Deputy Real Estate Commissioner.
14 Respondent denied any wrongdoing in the matter which led to the
15 revocation of her license. She maintained that the \$3,000
16 deposit was for repayment of a personal loan to buyers.
17 However, Respondent did not provide documentation to
18 substantiate this claim
19

20 Given the fact that Respondent has not established
21 that she has complied with Regulations 2911(1) and 2911(n)(1),
22 I am not satisfied that Respondent is sufficiently rehabilitated
23 to receive a real estate salesperson license.

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1 NOW, THEREFORE, IT IS ORDERED that Respondent's
2 petition for reinstatement of Respondent's real estate
3 salesperson license is denied.

4 This Order shall become effective at 12 o'clock noon
5 on May 18, 2004.

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7 DATED: April 23, 2004.

8 JOHN R. LIBERATOR
9 Acting Real Estate Commissioner

10 *John R. Liberator*

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25 cc: Maria Gutierrez
26 8708 Cherokee Drive
27 Downey, CA 90241

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6911

FILED
JAN -4 2001
DEPARTMENT OF REAL ESTATE

By K. Mederholt

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 MARIA GUTIERREZ,) NO. H-28666 LA
13 Respondent.) L-2000080564
14) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between Respondent
16 MARIA GUTIERREZ (sometimes referred to herein as "Respondent")
17 represented by Matthew L. Kinely, Esq., and the Complainant,
18 acting by and through Elliott Mac Lennan, Counsel for the
19 Department of Real Estate, as follows for the purpose of
20 settling and disposing of the Accusation filed on July 28, 2000,
21 in this matter.

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

1 2. Respondent has received, read and understands
2 the Statement to Respondent, the Discovery Provisions of the
3 APA and the Accusation, filed by the Department of Real Estate
4 ("Department") in this proceeding.

5 3. On August 14, 2000, Respondent filed a Notice of
6 Defense pursuant to Section 11506 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that she
10 understands that by withdrawing said Notice of Defense, she will
11 thereby waive her right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA and that she will
14 waive other rights afforded to her in connection with the
15 hearing, such as the right to present evidence in defense of the
16 allegations in the Accusation and the right to cross-examine
17 witnesses.

18 4. This Stipulation and Agreement ("Stipulation") is
19 based on the factual allegations contained in the Accusation
20 filed in this proceeding. In the interest of expedience and
21 economy, Respondent chooses not to contest these factual
22 allegations, but to remain silent and understands that, as a
23 result thereof, these factual statements, without being admitted
24 or denied, will serve as a prima facie basis for the
25 disciplinary action stipulated to herein. This Stipulation and
26 Respondent's decision not to contest the Accusation are hereby
27 expressly limited to this proceeding and made for the sole



1 purpose of reaching an agreed disposition of this proceeding.
2 Respondent's decision not to contest the factual allegations is
3 made solely for the purpose of effectuating this Stipulation and
4 is intended by Respondent to be non-binding upon Respondent in
5 any actions against Respondent by third parties. The Real
6 Estate Commissioner shall not be required to provide further
7 evidence to prove such allegations.

8 5. This Stipulation and any Order made pursuant to
9 this Stipulation shall have no collateral estoppel or res
10 judicata effect in any proceedings in which the Respondent and
11 the Department (or the Department's representative) are not
12 parties. This Stipulation is made by Respondent and received
13 by the Commissioner and the Department, with the express
14 understanding and agreement that it is for the purpose of
15 settling these proceedings only, and that this Stipulation is
16 not intended as, and shall not be deemed, used, or accepted as
17 an acknowledgment or admission of fact in any other judicial,
18 administrative, or other proceeding to which the Department is
19 not a party.

20 6. It is understood by the parties that the Real
21 Estate Commissioner may adopt the Stipulation as her decision
22 in this matter, thereby imposing the penalty and sanctions on
23 Respondent's real estate license and license rights as set forth
24 in the below "Order". In the event that the Commissioner in her
25 discretion does not adopt the Stipulation, the Stipulation shall
26 be void and of no effect, and Respondent shall retain the right
27 to a hearing on the Accusation under all the provisions of the

1 APA and shall not be bound by any stipulation or waiver made
2 herein.

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

9 DETERMINATION OF ISSUES

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

14 The conduct, acts and/or omissions of Respondent
15 MARIA GUTIERREZ, as set forth in the Paragraph 4, constitutes
16 cause to suspend or revoke the real estate license and license
17 rights of Respondent under the provisions of Code Section
18 10177(g) of the Business and Professions Code.

19 ORDER

20 WHEREFORE, THE FOLLOWING ORDER is hereby made:

21 The license and licensing rights of Respondent
22 MARIA GUTIERREZ, under the Real Estate Law are revoked;
23 provided, however, a restricted real estate salesperson license
24 shall be issued to Respondent MARIA GUTIERREZ, pursuant
25 to Section 10156.5 of the Business and Professions Code, if
26 Respondent makes application therefor and pays to the Department
27 of Real Estate the appropriate fee for the restricted license

1 within ninety (90) days from the effective date of this
2 Decision. The restricted license issued to Respondent shall be
3 subject to all of the provisions of Section 10156.7 of the Code
4 and the following limitations, conditions and restrictions
5 imposed under authority of Section 10156.6 of that Code:

6 1. The restricted license issued to Respondent may be
7 suspended prior to hearing by Order of the Real Estate
8 Commissioner in the event of Respondent's conviction or plea of
9 nolo contendere to a crime which is substantially related to
10 Respondent's fitness or capacity as a real estate licensee.

11 2. The restricted license issued to Respondent may
12 be suspended prior to hearing by Order of the Real Estate
13 Commissioner on evidence satisfactory to the Commissioner that
14 Respondent has violated provisions of the California Real Estate
15 Law, the Subdivided Lands Law, Regulations of the Real Estate
16 Commissioner or conditions attaching to the restricted license.

17 3. Respondent shall not be eligible to apply for the
18 issuance of an unrestricted real estate license nor for the
19 removal of any of the conditions, limitations or restrictions of
20 a restricted license until two (2) year has elapsed from the
21 effective date of this Decision.

22 4. Respondent shall, within six (6) months from the
23 effective date of this Decision, present evidence satisfactory
24 to the Real Estate Commissioner that Respondent has, since the
25 most recent issuance of an original or renewal real estate
26 license, taken and successfully completed the continuing
27 education requirements of Article 2.5 of Chapter 3 of the Real

1 Estate Law for renewal of a real estate license. If Respondent
2 fails to satisfy this condition, the Commissioner may order the
3 suspension of the restricted license until the Respondent
4 presents such evidence. The Commissioner shall afford
5 Respondent the opportunity for a hearing pursuant to the
6 Administrative Procedure Act to present such evidence.

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

14 6. As a condition precedent to the issuance of any
15 restricted real estate salesperson license, Respondent MARIA
16 GUTIERREZ shall provide evidence satisfactory to the Real
17 Estate Commissioner of restitution to Complainant's Luz and
18 Rueben Lucero in the amount of \$3,000.

19 7. Respondent shall submit with any application for
20 license under an employing broker, or any application for
21 transfer to a new employing broker, a statement signed by the
22 prospective employing real estate broker on a form approved by
23 the Department of Real Estate which shall certify:

24 (a) That the employing broker has read the
25 Decision of the Commissioner which granted
26 the right to a restricted license; and
27

1 the Department a fax copy of Respondent's actual signature as it
2 appears on the Stipulation and Agreement, that receipt of the
3 faxed copy by the Department shall be as binding on Respondent
4 as if the Department had received the original signed
5 Stipulation and Agreement.

6 DATED: 11-29-00


7 MARIA GUTIERREZ, Respondent

8 DATED: 12-5-00

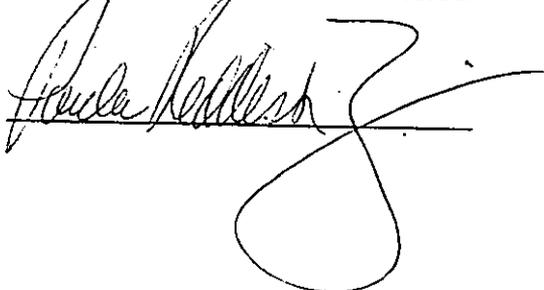

9 MATTHEW L. KINLEY, Attorney for
10 MARIA GUTIERREZ, Respondent

11 * * *

12 The foregoing Stipulation and Agreement is hereby
13 adopted as my Decision as to Respondent MARIA GUTIERREZ, and
14 shall become effective at 12 o'clock noon
15 on January 24, 2001

16 IT IS SO ORDERED December 22, 2000.

17
18 PAULA REDDISH ZINNEMANN
19 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 31 2000
DEPARTMENT OF REAL ESTATE

Sacto JLN

In the Matter of the Accusation of

MARIA GUTIERREZ,

}
}

R. Kueberholt
Case No. H-28666 LA
OAH No. L-2000080564

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 W. Fourth St., Ste. 630, Los Angeles on November 15 & 16, 2000, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: August 31, 2000

By *[Signature]*

Counsel

cc: Maria Gutierrez
Jacinto Orlando Mena
Matthew L. Kinley, Esq.
Sacto OAH JN

RE 501 (Rev. 8/97)

kw

At all mentioned times and since August 10, 1993, GUTIERREZ was licensed as a real estate salesperson by the Department of Real Estate (Department).

At all times herein mentioned, in the City of Downey, County of Los Angeles, respondent GUTIERREZ was and is employed as real estate salesperson licensed to Downey Finance. Downey Finance, in addition to operating a residential resale real estate brokerage within the meaning of Section 10131(a) of the Code, also operates a mortgage loan brokerage business pursuant to Section 10131(d) of the Code.

During April 1997, Rueben and Luz Lucero (Luceros') sought to purchase a residence located at 8898-8898 1/2 San Gabriel Avenue, South Gate, County of Los Angeles, California through GUTIERREZ as their agent. At her behest, the Luceros gave GUTIERREZ a total of Three Thousand Dollars (\$3,000.00) in cash, to make the down payment. The Luceros purchased a cashier's check and deposited it into escrow.

Escrow failed to close. Via a refund check, escrow delivered the Luceros \$3,000 to GUTIERREZ who converted it claiming it was repayment for a personal loan. To date respondent has not repaid the Luceros.

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The Luceros sued GUTIERREZ in Small Claims Court and obtained a judgment on March 12, 1998, in the amount of \$2,490 plus costs.

The conduct of respondent GUTIERREZ in converting the \$3,000 escrow refund payment of the Luceros, as described in Paragraphs 4 and 5 herein above, constitutes a violation of Section 10176(i) of the Code. This conduct and violation are cause to suspend or revoke the real estate license and license rights of respondent GUTIERREZ.

The overall conduct of respondent GUTIERREZ, as described in Paragraphs 4 and 5 herein above, constitutes negligence and is a violation of Section 10177(g) of the Code. This conduct and violation is cause to suspend or revoke the real estate license and license rights of respondent GUTIERREZ.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations made by the Accusation and, that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of respondent MARIA GUTIERREZ 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 applicable provisions of law. Dated at Los Angeles, California this 28th day of July, 2000.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: Maria Gutierrez
Sacto.
JN
Jacinto Orlando Mena