

1 Department of Real Estate  
2 320 West 4th Street, Ste. 350  
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982

**FILED**  
JAN - 8 2002  
DEPARTMENT OF REAL ESTATE

By K. Kriegerholt

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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-29232 LA

12 GINO L. GUTIERREZ, )

13 Respondent. )

STIPULATION  
AND  
AGREEMENT

14 )  
15 )  
16 It is hereby stipulated by and between Respondent  
17 GINO L. GUTIERREZ (sometimes referred to herein as "Respondent")  
18 and the Complainant, acting by and through Elliott Mac Lennan,  
19 Counsel for the Department of Real Estate, as follows for the  
20 purpose of settling and disposing of the Accusation filed on  
21 September 26, 2001, 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

1 Stipulation and Agreement ("Stipulation").

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

6 3. On October 12, 2001, Respondent filed a Notice of  
7 Defense pursuant to Section 11506 of the Government Code for the  
8 purpose of requesting a hearing on the allegations in the  
9 Accusation. Respondent hereby freely and voluntarily withdraws  
10 said Notice of Defense. Respondent acknowledges that he  
11 understands that by withdrawing said Notice of Defense, he will  
12 thereby waive his right to require the Commissioner to prove the  
13 allegations in the Accusation at a contested hearing held in  
14 accordance with the provisions of the APA and that he will waive  
15 other rights afforded to him in connection with the hearing, such  
16 as the right to present evidence in defense of the allegations in  
17 the Accusation and the right to cross-examine witnesses.

18 4. The Stipulation is based on the factual allegations  
19 contained in the Accusation filed in this proceeding. In the  
20 interest of expedience and economy, Respondent chooses not to  
21 contest these factual allegations, but to remain silent and  
22 understands that, as a result thereof, these factual statements,  
23 without being admitted or denied, will serve as a prima facie  
24 basis for the disciplinary action stipulated to herein. This  
25 Stipulation and Respondent's decision not to contest the  
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1 Accusation are hereby expressly limited to this proceeding and  
2 made for the sole purpose of reaching an agreed disposition of  
3 this proceeding. Respondent's decision not to contest the  
4 factual allegations is made solely for the purpose of  
5 effectuating this Stipulation and is intended by Respondent to be  
6 non-binding upon her in any actions against Respondent by third  
7 parties. The Real Estate Commissioner shall not be required to  
8 provide further evidence to prove such allegations.

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

22           6. It is understood by the parties that the Real  
23 Estate Commissioner may adopt the Stipulation as her decision  
24 in this matter, thereby imposing the penalty and sanctions on  
25 Respondent's real estate license and license rights as set forth  
26 in the below "Order". In the event that the Commissioner in her  
27

1 discretion does not adopt the Stipulation, the Stipulation shall  
2 be void and of no effect, and Respondent shall retain the right  
3 to a hearing on the Accusation under all the provisions of the  
4 APA and shall not be bound by any stipulation or waiver made  
5 herein.

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

12 DETERMINATION OF ISSUES

13 By reason of the foregoing stipulations and waivers and  
14 solely for the purpose of settlement of the pending Accusation  
15 without a hearing, it is stipulated and agreed that the following  
16 determination of issues shall be made:  
17

18 The conduct, acts and/or omissions of Respondent  
19 GINO L. GUTIERREZ, as set forth in the Accusation, constitutes  
20 cause to suspend or revoke the real estate license and license  
21 rights of Respondent under the provisions of Section 10137 of the  
22 California Business and Professions Code.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent  
GINO L. GUTIERREZ, under the Real Estate Law are revoked.

DATED: 12-4-01

*E. J. W.*  
ELLIOTT MAC LENNAN, Counsel for  
the Department of Real Estate

\* \* \*

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

FACSIMILE TRANSMISSION

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent, to the Department c/o Elliott Mac Lennan at the following

1 telephone/fax number: (213) 576-6917. Respondent agrees,  
2 acknowledges and understands that by electronically sending to  
3 the Department a fax copy of Respondent's actual signature as it  
4 appears on the Stipulation and Agreement, that receipt of the  
5 faxed copy by the Department shall be as binding on Respondent as  
6 if the Department had received the original signed Stipulation  
7 and Agreement.

8  
9 DATED: \_\_\_\_\_ GINO L. GUTIERREZ, Respondent

10  
11 \* \* \*

12 The foregoing Stipulation and Agreement is hereby  
13 adopted as my Decision as to Respondent GINO L. GUTIERREZ, and  
14 shall become effective at 12 o'clock noon  
15 on \_\_\_\_\_, 200\_.

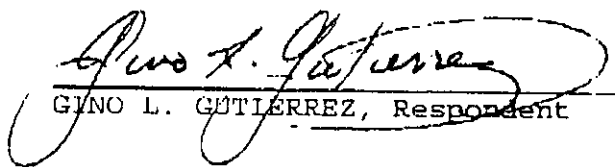
16  
17 IT IS SO ORDERED \_\_\_\_\_

18 PAULA REDDISH ZINNE MANN  
19 Real Estate Commissioner  
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faxed copy by the Department shall be as binding on Respondent as  
if the Department had received the original signed Stipulation  
and Agreement.

DATED: 12/15/01

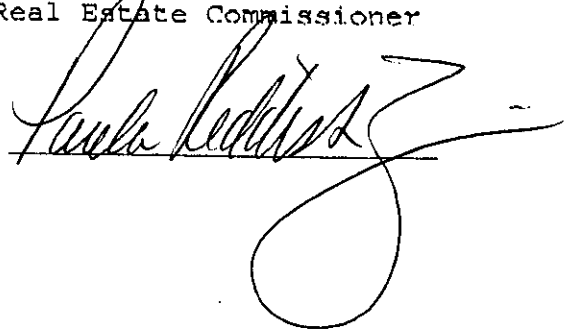
  
GINO L. GUTIERREZ, Respondent

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision as to Respondent GINO L. GUTIERREZ, and  
shall become effective at 12 o'clock noon  
on January 28, 2002

IT IS SO ORDERED January 3, 2002.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner



*Handwritten initials*

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
NOV 13 2001  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

By *R. Mederholt*

GINO L. GUTIERREZ,

Case No. H-29232 LA

OAH No. L-2001100545

\_\_\_\_\_  
*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 the Office of Administrative Hearings, 320 West Fourth Street, Ste. 630, Los Angeles, California on February 6 & 7, 2002, 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: November 13, 2001

By *E. J. L.*  
ELLIOTT MAC LENNAN, Counsel

cc: Gino L. Gutierrez  
Sacto  
OAH/JN



*check flag*

1 ELLIOTT MAC LENNAN, Counsel  
State Bar No. 66674  
2 Department of Real Estate  
320 West Fourth Street, Suite 350  
3 Los Angeles, California 90013-1105  
4 (213) 576-6911

**FILED**  
SEP 26 2001  
DEPARTMENT OF REAL ESTATE

*K. Huderholt*

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \*

11 In the Matter of the Accusation of ) NO. H-29232 LA  
12 GINO L. GUTIERREZ, )  
13 ) A C C U S A T I O N  
14 Respondent. )  
15 )

16 The Complainant, Maria Suarez, a Deputy Real Estate  
17 Commissioner of the State of California, acting in her official  
18 capacity as a Deputy Real Estate Commissioner of the State of  
19 California, for cause of accusation against GINO L. GUTIERREZ,  
20 is informed and alleges as follows:

21 1

22 GINO L. GUTIERREZ (GUTIERREZ) sometimes referred to as  
23 Respondent, is presently licensed and/or has license rights  
24 under the Real Estate Law (Part 1 of Division 4 of the  
25 California Business and Professions Code).

1 2

2 All references to the "Code" are to the California  
3 Business and Professions Code and all references to  
4 "Regulations" are to Title 10, Chapter 6, California Code of  
5 Regulations.

6 3

7 At all mentioned times, GUTIERREZ was licensed or had  
8 license rights issued by the Department of Real Estate  
9 (Department) as a real estate broker. GUTIERREZ was originally  
10 licensed by the Department on July 11, 1993, as a real estate  
11 broker.

12 4

13 At all times mentioned, in the City of Rancho Santa  
14 Margarita, County of Orange, GUTIERREZ acted as a real estate  
15 broker, within the meaning of Section 10131(a) of the Code in  
16 that he operated a residential resale brokerage dba California  
17 Business Brokers.

18 5

19 During 2000, GUTIERREZ filed a lawsuit against MBA  
20 Business Brokers ("MBA") to enforce and collect a commission on  
21 the sale of a business opportunity known as "Food Town" that MBA  
22 represented as the seller's agent. Naheed Afridi, who GUTIERREZ  
23 claimed was a real estate salesperson employed by him during the  
24 pendency of the Food Town sale, represented the buyer, Pirzada  
25 Enterprises Inc.

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1  
2 Naheed Afridi's real estate salesperson license had  
3 expired without renewal on September 9, 1997. At the time of  
4 the sale of Food Town, her license was expired. She was not  
5 employed by or affiliated with any real estate broker including  
6 GUTIERREZ. In fact, Naheed Afridi claimed that she was a  
7 licensed real estate broker dba VR Business Brokers. In truth  
8 and in fact, she had never been employed by GUTIERREZ in any  
9 capacity and therefore GUTIERREZ was not entitled to a  
10 commission.

11  
12 GUTIERREZ knew or should have known that Naheed Afridi  
13 was not licensed.

14  
15 The conduct of GUTIERREZ, as described in Paragraphs 4  
16 and 5 in commencing a legal action to fraudulently collect a  
17 commission on the sale of the business opportunity Food Town  
18 constitutes a misrepresentation, and/or fraud and dishonest  
19 dealing and/or negligence or incompetence pursuant to Business  
20 and Professions Code Sections 10176(a), 10176(i), and 10177(g),  
21 and is cause for discipline of his real estate license and  
22 license rights thereunder.  
23

24  
25 Alternatively, the conduct of GUTIERREZ, as described  
26 in Paragraph 5 by employing Naheed Afridi, an expired real  
27

1 estate licensee, to perform acts for which a real estate license  
2 is required, for or in expectation of compensation, is in  
3 violation of Section 10137 of the Code. This conduct and  
4 violation are cause to suspend or revoke licenses and license  
5 rights of Respondent GUTIERREZ under the provisions of that  
6 section.

7  
8 WHEREFORE, Complainant prays that a hearing be  
9 conducted on the allegations of this Accusation and that upon  
10 proof thereof, a decision be rendered imposing disciplinary  
11 action against the license and license rights of Respondent GINO  
12 L. GUTIERREZ under the Real Estate Law (Part 1 of Division 4 of  
13 the Business and Professions Code) and for such other and  
14 further relief as may be proper under other applicable  
15 provisions of law.

16 Dated at Los Angeles, California  
17 this 26th day of September, 2001

18  
19 MARIA SUAREZ

20 Deputy Real Estate Commissioner

21  
22  
23 cc: Gino L. Gutierrez  
24 JN  
25 Sacto  
26 MS  
27