

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013

4 Telephone: (213) 576-6982

FILED
MAY 28 2008
DEPARTMENT OF REAL ESTATE

[Handwritten Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-34057 LA
12 GERARDO, INC.,) L-2007100577
13 and GERARDO C. MONTELONGO,) STIPULATION AND AGREEMENT
14 individually and as)
15 designated officer of)
16 Gerardo, Inc.,)
17 and CARMEN L. ORTIZ,)
Respondents.)

18 It is hereby stipulated by and between GERARDO, INC.,
19 GERARDO C. MONTELONGO, and CARMEN L. ORTIZ (sometimes referred
20 to as Respondents) and their attorney, Michael A. Morrow, and
21 the Complainant, acting by and through James R. Peel, Counsel
22 for the Department of Real Estate, as follows for the purpose of
23 settling and disposing of the Accusation filed on June 19, 2007,
24 in this matter.
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and
3 Respondents at a formal hearing on the Accusation, which hearing
4 was to be held in accordance with the provisions of the
5 Administrative Procedure Act ("APA"), shall instead and in place
6 thereof be submitted solely on the basis of the provisions of
7 this Stipulation and Agreement ("Stipulation").

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the
10 Administrative Procedure Act ("APA") and the Accusation filed by
11 the Department of Real Estate in this proceeding.

12 3. On July 17, 2007, Respondents GERARDO, INC. and
13 GERARDO C. MONTELONGO filed a Notice of Defense pursuant to
14 Section 11506 of the Government Code for the purpose of
15 requesting a hearing on the allegations in the Accusation.
16 Respondents hereby freely and voluntarily withdraw said Notices
17 of Defense. Respondents acknowledge that they understand that
18 by withdrawing said Notices of Defense they will thereby waive
19 their right to require the Commissioner to prove the allegations
20 in the Accusation at a contested hearing held in accordance with
21 the provisions of the APA and that they will waive other rights
22 afforded to them in connection with the hearing, such as the
23 right to present evidence in defense of the allegations in the
24 Accusation and the right to cross-examine witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation filed in this
3 proceeding. In the interest of expedience and economy,
4 Respondents choose not to contest these factual allegations, but
5 to remain silent and understand that, as a result thereof, these
6 factual statements, will serve as a prima facie basis for the
7 disciplinary action stipulated to herein. The Real Estate
8 Commissioner shall not be required to provide further evidence
9 to prove such allegations.

10 5. This Stipulation and Respondents' decision not to
11 contest the Accusation is made for the purpose of reaching an
12 agreed disposition of this proceeding and is expressly limited
13 to this proceeding and any other proceeding or case in which the
14 Department of Real Estate ("Department"), the state or federal
15 government, or an agency of this state, another state or the
16 federal government is involved.

17 6. It is understood by the parties that the Real
18 Estate Commissioner may adopt the Stipulation as his decision
19 in this matter thereby imposing the penalty and sanctions on
20 Respondents' real estate licenses and license rights as set
21 forth in the below "Order". In the event that the Commissioner
22 in his discretion does not adopt the Stipulation, the
23 Stipulation shall be void and of no effect, and Respondents
24 shall retain the right to a hearing on the Accusation under all
25 the provisions of the APA and shall not be bound by any
26 stipulation or waiver made herein.
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any conduct which was not specifically
6 alleged to be causes for accusation in this proceeding.

7 DETERMINATION OF ISSUES

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

12 The conduct, acts and/or omissions of Respondents
13 GERARDO, INC., and GERARDO C. MONTELONGO, as set forth in the
14 Accusation, constitute cause for the suspension or revocation of
15 all of the real estate licenses and license rights of
16 Respondents under the provisions of Section 10177(d) of the
17 Business and Professions Code ("Code") for violation of Code
18 Section 10137.

19 The conduct, acts and/or omissions of Respondent
20 CARMEN L. ORTIZ constitute cause for the suspension or revocation
21 of all of the real estate licenses and license rights of
22 Respondent under the provisions of Section 10177(d) of the Code
23 for violation of Section 10130.

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1 a. Respondents GERARDO, INC. and GERARDO C.

2 MONTELONGO pay a monetary penalty pursuant to Section 10175.2 of
3 the Business and Professions Code at the rate of \$66.66 for each
4 day of the suspension for a total monetary penalty of \$2,000
5 (\$4,000 for both Respondents).

6 Respondent CARMEN L. ORTIZ pays a monetary
7 penalty pursuant to Section 10175.2 of the Code at the rate of
8 \$50 for each day of the suspension for a total monetary penalty
9 of \$1,500.

10 b. Said payment shall be in the form of a
11 cashier's check or certified check made payable to the Recovery
12 Account of the Real Estate Fund. Said check must be received by
13 the Department prior to the effective date of the Decision in
14 this matter.

15 c. No further cause for disciplinary action
16 against the real estate licenses of Respondent occurs within two
17 (2) years from the effective date of the Decision in this
18 matter.

19 d. If Respondent fails to pay the monetary
20 penalty in accordance with the terms and conditions of the
21 Decision, the Commissioner may, without a hearing, order the
22 immediate execution of all or any part of the stayed suspension
23 in which event the Respondent shall not be entitled to any
24 repayment nor credit, prorated or otherwise, for money paid to
25 the Department under the terms of this Decision.
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1 e. If Respondent pays the monetary penalty and if
2 no further cause for disciplinary action against the real estate
3 license of Respondent occurs within two (2) years from the
4 effective date of the Decision, the stay hereby granted shall
5 become permanent.

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8 DATED: Feb. 26, 2008

James R. Peel
9 JAMES R. PEEL, Counsel for the
10 Department of Real Estate

11 * * *

12 We have read the Stipulation and Agreement, have
13 discussed it with our attorney, and its terms are understood by
14 us and are agreeable and acceptable to us. We understand that
15 we are waiving rights given to us by the California
16 Administrative Procedure Act (including but not limited to
17 Sections 11506, 11508, 11509 and 11513 of the Government Code),
18 and we willingly, intelligently and voluntarily waive those
19 rights, including the right of requiring the Commissioner to
20 prove the allegations in the Accusation at a hearing at which we
21 would have the right to cross-examine witnesses against us and
22 to present evidence in defense and mitigation of the charges.

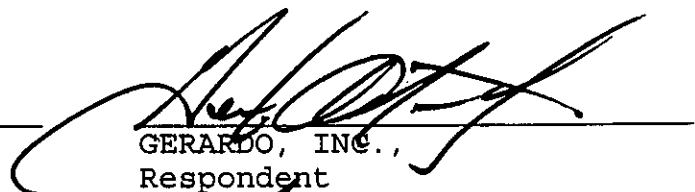
23 Respondents can signify acceptance and approval of the
24 terms and conditions of this Stipulation and Agreement by faxing
25 a copy of the signature page, as actually signed by Respondents,
26 to the Department at the following telephone/fax number:

27 (213) 576-6917. Respondents agree, acknowledge and understand

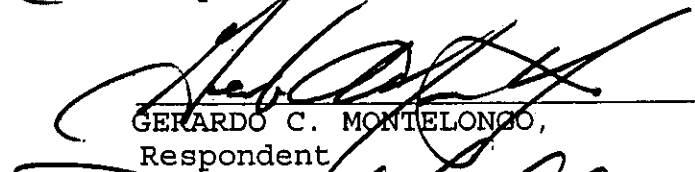
1 that by electronically sending to the Department a fax copy of
2 his or her actual signature as it appears on the Stipulation and
3 Agreement, that receipt of the faxed copy by the Department
4 shall be as binding on Respondent as if the Department had
5 received the original signed Stipulation and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

6 Further, if the Respondents are represented, the
7 Respondents' Counsel can signify his or her agreement to the
8 terms and conditions of the Stipulation and Agreement by
9 submitting that signature via fax.

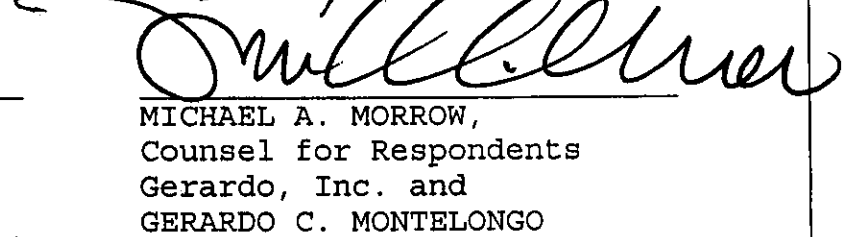
10
11 DATED: 2-25-08


GERARDO, INC.,
Respondent

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14 DATED: 2-25-08


GERARDO C. MONTELONGO,
Respondent

15
16 DATED: 2/25/08

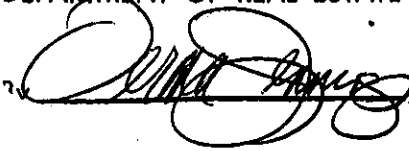

MICHAEL A. MORROW,
Counsel for Respondents
Gerardo, Inc. and
GERARDO C. MONTELONGO

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20
21 DATED: 2/25/08


CARMEN L. ORTIZ

SACTO
day

1 JAMES R. PEEL, Counsel (SBN 47055)
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3
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JUN 19 2007
DEPARTMENT OF REAL ESTATE


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STATE OF CALIFORNIA

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11	In the Matter of the Accusation of)	No. H-34057 LA
12	GERARDO, INC.,)	<u>A C C U S A T I O N</u>
13	GERARDO C. MONTELONGO,)	
14	individually and as)	
15	designated officer of)	
16	Gerardo, Inc.,)	
17	and CARMEN L. ORTIZ,)	
18)	
19	Respondents.)	

18 The Complainant, Janice A. Waddell, a Deputy Real
19 Estate Commissioner of the State of California, for cause of
20 accusation against GERARDO, INC., GERARDO C. MONTELONGO,
21 individually and as designated officer of Gerardo, Inc., and
22 CARMEN L. ORTIZ, alleges as follows:

23 I

24 The Complainant, Janice A. Waddell, acting in her
25 official capacity as a Deputy Real Estate Commissioner of the
26 State of California, makes this Accusation against GERARDO, INC.,
27

1 GERARDO C. MONTELONGO, individually and as designated officer of
2 GERARDO, Inc., and CARMEN L. ORTIZ.

3 II

4 GERARDO, INC., GERARDO C. MONTELONGO, individually and
5 as designated officer of said corporation, and CARMEN L. ORTIZ
6 (hereinafter referred to as "Respondents"), are presently
7 licensed and/or have license rights under the Real Estate Law
8 (Part 1 of Division 4 of the Business and Professions Code)
9 (hereinafter Code).

10 III

11 At all times mentioned herein, Respondent GERARDO, INC.
12 was licensed as a real estate broker through Respondent GERARDO
13 C. MONTELONGO as its designated broker-officer, and Respondent
14 CARMEN L. ORTIZ was licensed as a real estate salesperson. The
15 license of Respondent CARMEN L. ORTIZ was suspended from May 9,
16 2006 through September 13, 2006 for failure to satisfy certain
17 educational requirements pursuant to Section 10153.4 of the Code.

18 IV

19 At all times material herein, Respondents engaged in
20 the business of, acted in the capacity of, advertised or assumed
21 to act as a real estate broker in the State of California, within
22 the meaning of Section 10131(a) and (d) of the Code, including
23 soliciting buyers and sellers and negotiating the sale of real
24 property, as well as soliciting borrowers and lenders and
25 negotiating loans on real property.

