

FILED

OCT - 7 2008

Department of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013

(213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: Jane B. Dion

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) STIPULATION AND AGREEMENT
) AND DECISION AFTER REMAND

RICHARD ALLEN GELLERSEN,)

Respondent.)

NO. H-34319 LA
L-2007110102

In the Matter of the Accusation of)

ORETRA USA INC. doing business)
as Enterprise Management, and)
and RICHARD ALLEN GELLERSEN,)
individually and as designated)
officer of Oretra USA Inc.,)

Respondents.)

NO. H-34792 LA
L-2008040750

It is hereby stipulated by and between RICHARD ALLEN GELLERSEN (hereinafter "Respondent") and Respondent's attorney, Frank M. Buda and the Complainant, acting by and through James Demus, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusations filed on September 25, 2007 and May 6, 2008 in these matters:

CASE NO. H-34319 LA

On May 20, 2008 and May 28, 2008 a hearing for Case

1 No. H-34319 LA was held before N. Gregory Taylor, Administrative
2 Law Judge ("ALJ"), Office of Administrative Hearings at Los
3 Angeles, California. Department Counsel, James A. Demus
4 represented the Complainant. Respondent personally appeared at
5 the hearing and was represented by Frank M. Buda, Attorney at
6 Law. Oral and documentary evidence was received, and the matter
7 was submitted.

8 On June 6, 2008 the ALJ issued a Proposed Decision,
9 finding that although cause exists for suspension or revocation
10 of Respondent's real estate broker license, the evidence of
11 rehabilitation was sufficient so that the public interest would
12 adequately be protected with the issuance of a restricted broker
13 license.

14 On July 15, 2008, the Commissioner of the Department
15 of Real Estate issued a Notice indicating that the Proposed
16 Decision of June 6, 2008 was not adopted. A Decision After
17 Rejection, revoking Respondent's broker license, was filed by
18 the Commissioner on November 13, 2008.

19 On December 31, 2008, Respondent filed a Petition for
20 Writ of Mandamus with the Superior Court of California, County
21 of Los Angeles, Case No. BS118454. On September 8, 2009, A Writ
22 of Mandamus was issued by Superior Court Judge James C.
23 Chalfant, commanding the Commissioner to set aside the Decision
24 After Rejection, dated November 13, 2008 and to file a return
25 setting forth compliance with the Writ.

26 CASE NO. H-34792 LA

27 In Case No. H-34792 LA, A Stipulation and Agreement

1 was filed on June 17, 2009. This Stipulation and Agreement
2 settled Case No. H-34792 for Respondent Oretra USA Inc., but did
3 not settle the Case for Respondent RICHARD ALLEN GELLERSEN.

4 In accordance with the September 8, 2009 Writ of
5 Mandamus, regarding Case No. H-34319 LA and for purposes of
6 settling Case No. H-34792 LA, the parties agree to the following
7 Stipulation and Agreement:

8 1. All issues which were to be contested and all
9 evidence which was to be presented by Complainant and Respondent
10 at a formal hearing on the Accusation for Case No. H-34792 LA,
11 which hearing was to be held in accordance with the provisions
12 of the Administrative Procedure Act (APA), shall instead and in
13 place thereof be submitted solely on the basis of the provisions
14 of this Stipulation and Agreement.

15 2. The Findings of Fact contained in the Decision
16 After Rejection filed on November 13, 2008, in Case No.
17 H-34319 LA are hereby adopted as the findings of the Real Estate
18 Commissioner. All issues and the discipline to be imposed in
19 Case No. H-34319 LA shall be resolved by this Stipulation and
20 Agreement.

21 3. Respondent has received, read and understands the
22 Statement to Respondent, the Discovery Provisions of the APA and
23 the Accusations filed by the Department of Real Estate in these
24 proceedings.

25 4. On April 17, 2008, Respondent filed a Notice of
26 Defense for Case No. H-34792 LA, pursuant to Section 11506 of
27 the Government Code for the purpose of requesting a hearing on

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

11 5. This Stipulation is based on the allegations
12 contained in the Accusations above. In the interest of
13 expedience and economy, Respondent chooses not to contest the
14 allegations in Case No. H-34792 LA, but to remain silent and
15 understands that, as a result thereof, these allegations, without
16 being admitted or denied, will serve as a prima facie basis for
17 the disciplinary action stipulated to herein. The Real Estate
18 Commissioner shall not be required to provide further evidence to
19 prove said allegations.

20 6. This Stipulation and Respondent's decision not to
21 contest the Accusation in Case No. H-34792 LA is made for the
22 purpose of reaching an agreed disposition of these proceedings
23 and is expressly limited to these proceedings and any other
24 proceeding or case in which the Department of Real Estate
25 ("Department"), the state or federal government, or any agency of
26 this state, another state or federal government is involved, and
27

1 otherwise shall not be admissible in any other criminal or civil
2 proceedings.

3 7. It is understood by the parties that the Real
4 Estate Commissioner may adopt this Stipulation as his Decision
5 in these matters thereby imposing the penalty and sanctions on
6 Respondents real estate licenses and license rights as set forth
7 in the "Order" herein below. In the event that the Commissioner,
8 in his discretion, does not adopt the Stipulation, it shall be
9 void and of no effect and Respondents shall retain the right to
10 a hearing and proceeding on the Accusation for Case No. H-34792
11 LA under the provisions of the APA and shall not be bound by any
12 stipulation or waiver made herein.

13 8. The Order or any subsequent Order of the Real
14 Estate Commissioner made pursuant to this Stipulation shall not
15 constitute an estoppel, merger or bar to any further
16 administrative or civil proceedings by the Department of Real
17 Estate with respect to any matters which were not specifically
18 alleged to be causes for Accusation in these proceedings but do
19 constitute a bar, estoppel and merger as to any allegations
20 actually contained in the Accusations against Respondent herein.

21 DETERMINATION OF ISSUES

22 By reason of the foregoing stipulations, admissions
23 and waivers and solely for the purpose of settlement of the
24 pending Accusations, it is stipulated and agreed that the
25 following determination of issues shall be made:

26 The conduct of Respondent RICHARD ALLEN GELLERSEN, as
27 set forth in the Accusations, constitutes grounds for suspension

1 or revocation of Respondent's real estate broker license under
2 the provisions of Sections 490, 10177(b) and 10177(h) of the
3 Business and Professions Code.

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 All licenses and licensing rights of Respondent
7 RICHARD ALLEN GELLERSEN, under the Real Estate Law are revoked;
8 provided, however, a restricted real estate broker license shall
9 be issued to Respondent pursuant to Section 10156.5 of the
10 Business and Professions Code, if Respondent makes application
11 therefor and pays to the Department the appropriate fee within
12 90 days from the effective date of this Decision. The
13 restricted license issued to Respondent shall be subject to all
14 of the provisions of Section 10156.7 of the Business and
15 Professions Code and to the following limitations, conditions
16 and restrictions imposed under authority of Section 10156.6 of
17 that code:

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

23 2. The restricted license issued to Respondent may be
24 suspended prior to hearing by Order of the Real Estate
25 Commissioner on evidence satisfactory to the Commissioner that
26 Respondent has violated provisions of the California Real Estate
27 Law, the Subdivided Lands Law, Regulations of the Real Estate

Commissioner, or conditions attaching to this restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the date of issuance of the restricted license to Respondent.

4. Respondent shall, within nine months from the effective date of this Decision, present 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, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 10/6/09

James B. Demus
JAMES DEMUS Counsel for Complainant

* * *

I have read the Stipulation and Agreement and 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

1 Commissioner, or conditions attaching to this restricted
2 license.

3 3. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions
6 of a restricted license until two (2) years have elapsed from
7 the date of issuance of the restricted license to Respondent.

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

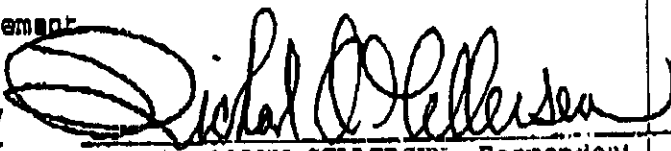
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21 DATED: _____ JAMES DEMUS Counsel for Complainant

22 * * *

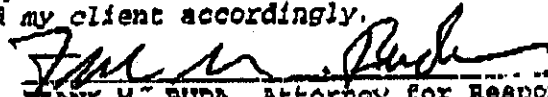
23 I have read the Stipulation and Agreement and
24 discussed it with my counsel. Its terms are understood by me
25 and are agreeable and acceptable to me. I understand that I am
26 waiving rights given to me by the California Administrative
27

1 Procedure Act (including but not limited to Sections 11506,
2 11508, 11509 and 11513 of the Government Code), and I willingly
3 intelligently and voluntarily waive those rights, including the
4 right of requiring the Commissioner to prove the allegations in
5 the Accusation at a hearing at which I would have the right to
6 cross-examine witnesses against me and to present evidence in
7 defense and mitigation of the charges.

8 Respondent can signify acceptance and approval of the
9 terms and conditions of this Stipulation and Agreement by faxing
10 a copy of the signature page, as actually signed by Respondent,
11 to the Department at fax number (213) 576-6917. Respondent
12 agrees, acknowledges and understands that by electronically
13 sending to the Department a fax copy of his actual signature as
14 it appears on the Stipulation and Agreement, that receipt of the
15 faxed copy by the Department shall be as binding on Respondent
16 as if the Department had received the original signed
17 Stipulation and Agreement.

18
19 DATED: 10/5/2009
RICHARD ALLEN GELLERSEN, Respondent

20
21
22 I have read the Stipulation and Agreement as to form and
23 content and have advised my client accordingly.

24 DATED: 10/5/2009
FRANK M. BUDA, Attorney for Respondent

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.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondent, to the Department at fax number (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED: _____

RICHARD ALLEN GELLERSEN, Respondent

I have read the Stipulation and Agreement as to form and content and have advised my client accordingly.

DATED: _____

FRANK M. BUDA, Attorney for Respondent

I have read the Accusations filed herein and the foregoing Stipulation and Agreement signed by Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate broker license to Respondent.

Therefore, IT IS HEREBY ORDERED that a restricted real estate broker license be issued to Respondent, if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned, and restricted as specified in the foregoing Stipulation and Agreement.

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on October 27, 2009.

IT IS SO ORDERED

JEFF DAVI
REAL ESTATE COMMISSIONER

by James H. Baver

facto

Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105
Telephone: (213) 576-6982 (office)

FILED

JUN 17 2009

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-34792 LA

ORETRA USA INC., doing business
as Enterprise Management,
and RICHARD ALLEN GELLERSEN,
individually and as designated
officer of Oretra USA Inc.,

STIPULATION
AND
AGREEMENT

Respondents.

It is hereby stipulated by and between Respondent
ORETRA USA INC., (sometimes referred to as "Respondent"),
represented by Frank M. Buda, Esq. and the Complainant, acting by
and through Elliott Mac Lennan, Counsel for the Department of
Real Estate, as follows for the purpose of settling and disposing
of the First Amended Accusation ("Accusation") filed on May 6,
2008, in this matter:

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

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act ("APA"), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement ("Stipulation").

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

10 3. Respondent timely filed a Notice of Defense
11 pursuant to Section 11506 of the Government Code for the purpose
12 of requesting a hearing on the allegations in the Accusation.
13 Respondent hereby freely and voluntarily withdraws said Notice of
14 Defense. Respondent acknowledges that Respondent understands
15 that by withdrawing said Notice of Defense Respondent thereby
16 waives Respondent's right to require the Commissioner to prove
17 the allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that Respondent
19 will waive other rights afforded to Respondent in connection with
20 the hearing such as the right to present evidence in Respondent's
21 defense the right to cross-examine witnesses.

22 4. This Stipulation is based on the factual
23 allegations contained in the Accusation. In the interest of
24 expedience and economy, Respondent chooses not to contest these
25 allegations, but to remain silent and understands that, as a
26
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1 result thereof, these factual allegations, without being admitted
2 or denied, will serve as a prima facie basis for the disciplinary
3 action stipulated to herein. The Real Estate Commissioner shall
4 not be required to provide further evidence to prove said factual
5 allegations.

6 5. This Stipulation is made for the purpose of
7 reaching an agreed disposition of this proceeding and is
8 expressly limited to this proceeding and any other proceeding or
9 case in which the Department of Real Estate ("Department"), the
10 state or federal government, or any agency of this state, another
11 state or federal government is involved, and otherwise shall not
12 be admissible in any other criminal or civil proceedings.

13 6. It is understood by the parties that the Real
14 Estate Commissioner may adopt this Stipulation as his Decision in
15 this matter thereby imposing the penalty and sanctions on
16 Respondent's real estate licenses and license rights as set forth
17 in the "Order" herein below. In the event that the Commissioner
18 in his discretion does not adopt the Stipulation, it shall be
19 void and of no effect and Respondent shall retain the right to a
20 hearing and proceeding on the Accusation under the provisions of
21 the APA and shall not be bound by any stipulation or waiver made
22 herein.
23

24 7. The Order or any subsequent Order of the Real
25 Estate Commissioner made pursuant to this Stipulation shall not
26 constitute an estoppel, merger or bar to any further
27

1 administrative or civil proceedings by the Department of Real
2 Estate with respect to any matters which were not specifically
3 alleged to be causes for Accusation in this proceeding but do
4 constitute a bar, estoppel and merger as to any allegations
5 actually contained in the Accusations against Respondent herein.

6 8. Respondent understands that by agreeing to this
7 Stipulation, Respondent agrees to pay, pursuant to Business and
8 Professions Code Section 10148, the cost of audit. The total
9 amount of said cost is \$3,943.72.

10 9. Respondent has received, read, and understands the
11 "Notice Concerning Costs of Subsequent Audit". Respondent
12 further understands that by agreeing to this Stipulation, the
13 findings set forth below in the Determination of Issues become
14 final, and the Commissioner may charge Respondent for the cost of
15 any subsequent audit conducted pursuant to Business and
16 Professions Code Section 10148 to determine if the violations
17 have been corrected. The maximum cost of the subsequent audit
18 will not exceed \$3,943.72.
19

20 DETERMINATION OF ISSUES

21 By reason of the foregoing, it is stipulated and agreed
22 that the following determination of issues shall be made:

23 The conduct of ORETRA USA INC., as described in
24 Paragraph 4, above, is in violation of Business and Professions
25 Code Sections 10145 and Sections 2832 and 2834 of Title 10,
26 Chapter 6 of the California Code of Regulations and is a basis
27

1 for discipline of Respondent's license and license rights as
2 violations of the Real Estate Law pursuant to Code Section
3 10177(d).

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 I. All licenses and licensing rights of Respondent
7 ORETRA USA INC. under the Real Estate Law are suspended for a
8 period of sixty (60) days from the effective date of this
9 Decision.

10 A. Provided, however, that if Respondent requests, the
11 initial thirty (30) days of said suspension (or a portion
12 thereof) shall be stayed for two (2) years upon condition that:

13 1. Respondent pays a monetary penalty pursuant to
14 Section 10175.2 of the Business and Professions Code at the rate
15 of \$50.00 per day for each day of the suspension for a total
16 monetary penalty of \$1,500.

17 2. Said payment shall be in the form of a cashier's
18 check or certified check made payable to the Recovery Account of
19 the Real Estate Fund. Said check must be received by the
20 Department prior to the effective date of the Decision in this
21 matter.

22 3. No further cause for disciplinary action against
23 the real estate license of Respondent occurs within two (2) years
24 from the effective date of the Decision in this matter.

25 ///

1 4. If Respondent fails to pay the monetary penalty in
2 accordance with the terms of the Decision, the Commissioner may,
3 without a hearing, order the immediate execution of all or any
4 part of the stayed suspension, in which event the Respondent
5 shall not be entitled to any repayment nor credit, prorated or
6 otherwise, for money paid to the Department under the terms of
7 this Decision.

8 5. If Respondent pays the monetary penalty and if no
9 further cause for disciplinary action against the real estate
10 license of Respondent occurs within two (2) years from the
11 effective date of the Decision, the stay hereby granted shall
12 become permanent.

13 B. The remaining thirty (30) days of the sixty (60)
14 day suspension shall be stayed for two (2) years upon the
15 following terms and conditions:

16 1. Respondent shall obey all laws, rules and
17 regulations governing the rights, duties and responsibilities of
18 a real estate licensee in the State of California; and

19 2. That no final subsequent determination be made
20 after hearing or upon stipulation, that cause for disciplinary
21 action occurred within two (2) years from the effective date of
22 this Decision. Should such a determination be made, the
23 Commissioner may, in his discretion, vacate and set aside the
24 stay order and reimpose all or a portion of the stayed
25 suspension. Should no such determination be made, the stay
26
27

imposed herein shall become permanent.

II. Pursuant to Section 10148 of the Business and Professions Code, Respondent ORETRA USA INC. shall pay the Commissioner's reasonable cost for (a) the underlying audit (b) a subsequent audit to determine if Respondent is now in compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action is \$3,943.72. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Said amount for the prior and subsequent audits shall not exceed \$7,887.44.

Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

The Commissioner may suspend the license of Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to

1 provide for payment, or until a decision providing otherwise is
2 adopted following a hearing held pursuant to this condition.

3
4 DATED: 5-8-69

EL
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

6
7 * * *

8 EXECUTION OF THE STIPULATION

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

21 MAILING AND FACSIMILE

22 Respondent (1) shall mail the original signed signature
23 page of the stipulation herein to Elliott Mac Lennan: Attention:
24 Legal Section, Department of Real Estate, 320 W. Fourth St.,
25 Suite 350, Los Angeles, California 90013-1105. Additionally,
26 Respondent shall also (2) facsimile a copy of signed signature
27

1 page, to the Department at the following telephone/fax number:
2 (213) 576-6917, Attention: Elliott Mac Lennan. A facsimile
3 constitutes acceptance and approval of the terms and conditions
4 of this stipulation.

5 Respondent agrees, acknowledges and understands that by
6 electronically sending to the Department a facsimile copy of
7 Respondent's actual signature as it appears on the stipulation
8 that receipt of the facsimile copy by the Department shall be as
9 binding on Respondent as if the Department had received the
10 original signed stipulation.

11
12 DATED: 05/11/09


ORETRA USA INC., Respondent
BY: JAYANI MANIKKAGE, President

13
14
15
16 DATED: 5-11-09


FRANK M. BUDA, ESQ.
Attorney for ORETRA USA INC.,
Respondent
Approved as to form

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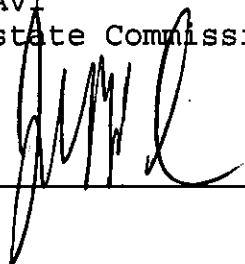
27

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent ORETRA USA INC. and shall
become effective at 12 o'clock noon on July 7,
2009.

IT IS SO ORDERED 5/25, 2009.

JEFF DAVI
Real Estate Commissioner



fasto

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

MAY -6 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

ORETRA USA INC., doing business
as Enterprise Management,
and RICHARD ALLEN GELLERSEN,
individually and as designated
officer of Oretra USA Inc.,

Respondents.

No. H-34792 LA

FIRST AMENDED

ACCUSATON

The Accusation filed in this matter on April 2, 2008,
is amended in its entirety as follows:

The Complainant, Robin Trujillo, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against ORETRA USA INC. dba Enterprise Management and RICHARD
ALLEN GELLERSEN, individually and as designated officer of Oretra
USA Inc., alleges as follows:

1.

The Complainant, Robin Trujillo, acting in her official
capacity as a Deputy Real Estate Commissioner of the State of

1 California, makes this Accusation against ORETRA USA INC. and
2 RICHARD ALLEN GELLERSEN.

3 2.

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

7 ORETRA USA INC.

8 LICENSE HISTORY

9 3.

10 A. At all times mentioned, ORETRA USA INC. ("ORETRA")
11 was licensed or had license rights issued by the Department of
12 Real Estate ("Department") as a real estate broker. On July 15,
13 2006, ORETRA was originally licensed as a real estate broker. On
14 August 23, 2006, RICHARD ALLEN GELLERSEN became the designated
15 officer.
16

17 B. At all times mentioned, RICHARD ALLEN GELLERSEN
18 ("GELLERSEN") was licensed or had license rights issued by the
19 Department as a real estate broker. On November 2, 1995,
20 GELLERSEN was licensed as a real estate broker.

21 C. At all times material herein, ORETRA was licensed
22 by the Department as a corporate real estate broker by and
23 through GELLERSEN, as the designated officer and broker
24 responsible, pursuant to Code Section 10159.2 for supervising the
25 activities requiring a real estate license conducted on behalf
26
27

1 ORETRA of by ORETRA's officers, agents and employees, including
2 GELLERSEN.

3 ORETRA USA INC.

4 LICENSED ACTIVITIES AND BROKERAGE

5 4.

6 At all times mentioned, in the City of Torrance, County
7 of Los Angeles, ORETRA acted as a real estate broker and
8 conducted licensed activities within the meaning of Code Section
9 10131(b). ORETRA operated a property management brokerage dba
10 Enterprise Management.

11 ORETRA USA INC.

12 AUDIT

13 5.

14 On December 28, 2007, the Department completed an audit
15 examination of the books and records of ORETRA pertaining to the
16 property management activities described in Paragraph 4, that
17 require a real estate license. The audit examination covered a
18 period of time beginning on October 1, 2004 to September 30,
19 2007. The audit examination revealed violations of the Code and
20 the Regulations as set forth in the following paragraphs, and
21 more fully discussed in Audit Report LA 070082 and the exhibits
22 and work papers attached to the audit report.

24 ///

25 ///

26 ///

TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, ORETRA accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by ORETRA including property owners and tenants at the Bank of America, Gardena Main Office. ORETRA maintained twenty-seven trust accounts of which the below four were audited:

"Enterprise Management 09489-10676"	(B/A #1)
"Enterprise Management 09483-07129"	(B/A #2)
"Enterprise Management 09488-04246"	(B/A #3)
"Enterprise Management 09488-16565"	(B/A #4)

ORETRA USA INC. AND RICHARD ALLEN GELLERSEN

VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents ORETRA dba enterprise Management and GELLERSEN, acted in violation of the Code and the Regulations in that they:

1 (a) (1) B/A #1 and B/A #2 were not in the name of the
2 broker as trustee at a bank or other financial institution, nor
3 designated as trust accounts, in violation of Code Section 10145
4 of the Code and Regulation 2832(a).

5 (a) (2) Failed to place trust funds, including rents,
6 accepted on behalf of another into the hands of the owner of the
7 funds, a neutral escrow depository or into a trust fund account
8 in the name of the trustee at a bank or other financial
9 institution not later than three business days following receipt
10 of the funds by the broker or by the broker's salesperson, as
11 required by Code Section 10145 and Regulation 2832(d). Tenant
12 Judy A. Lynch's rent check not deposited within three days of
13 receipt.
14

15 (b) Permitted Harshini Dassanayake, an unlicensed and
16 unbonded person, and a non-employee, to be an authorized
17 signatory on bank accounts B/A #1 and B/A #2 into which trust
18 funds were deposited, in violation of Code Section 10145 and
19 Regulation 2834. GELLERSEN was not a signatory on these trust
20 accounts.

21 (c) Performed acts for which a real estate license is
22 required, including conducting property management services
23 negotiating leases on real property and executing property
24 management agreements and including negotiating with property
25 owners for managing their real properties before ORETRA's broker
26 license had issued, in violation of Code Section 10130. ORETRA
27

1 was licensed on July 15, 2006, yet conducted licensed activities
2 from October 1, 2004 to July 14, 2006.

3 (d) Failed to notify the Department of the employment
4 of its salesperson, Baxter Gerard, as required by Code Section
5 10161.8 and Regulation 2752; and

6 (e) GELLERSEN failed to exercise adequate supervision
7 over ORETRA's property management activities to ensure compliance
8 with the Real Estate Laws and Regulations and had no system in
9 place for regularly monitoring his compliance with the Real
10 Estate Law especially in regard to establishing policies to
11 review trust fund handling and unlicensed activity, in violation
12 of Code Section 10159.2 and Regulation 2725.

13 ORETRA USA INC. AND RICHARD ALLEN GELLERSEN

14 DISCIPLINARY STATUTES AND REGULATIONS

15 8.

16 The conduct of Respondents ORETRA and GELLERSEN, as
17 alleged and described in Paragraph 7, above, violated the Code
18 and the Regulations as set forth below:
19

20 PARAGRAPH

PROVISIONS VIOLATED

21
22 7(a)

Code Section 10145 and Regulation
23 2832

24
25 7(b)

Code Section 10145 and Regulation
26 2834

1 7(c)

Code Section 10130

2
3 7(d)

Code Section 10161.8 and Regulation

4 2752

5 7(e)

Code Section 10159.2 and Regulation

6 2752

7
8 The foregoing violations constitute cause for the suspension or
9 revocation of the real estate license and license rights of
10 ORETRA and GELLERSEN under the provisions of Code Sections 10130,
11 10177(d) and/or 10177(g).

12 NEGLIGENCE

13 9.

14 The overall conduct of Respondents ORETRA and GELLERSEN
15 constitutes negligence. This conduct and violation are cause for
16 the suspension or revocation of the real estate license and
17 license rights of said Respondents pursuant to Code Section
18 10177(g).

19 SUPERVISION AND COMPLIANCE

20 10.

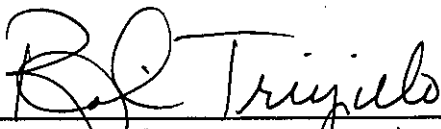
21
22 The overall conduct of Respondent GELLERSEN constitutes
23 a failure on his part, as officer designated by a corporate
24 broker licensee, to exercise the reasonable supervision and
25 control over the licensed activities of ORETRA as required by
26 Code Section 10159.2, and to keep ORETRA in compliance with the
27 Real Estate Law, and is cause for the suspension or revocation of

1 the real estate license and license rights of GELLERSEN pursuant
2 to the provisions of Code Section 10177(h).

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a decision be rendered imposing disciplinary
6 action against the license and license rights of Respondents
7 ORETRA USA INC. and RICHARD ALLEN GELLERSEN, under the Real
8 Estate Law (Part 1 of Division 4 of the Business and Professions
9 Code) and for such other and further relief as may be proper
10 under other applicable provisions of law.

11 Dated at Los Angeles, California

12 this 6 day of May 2008.


13 Deputy Real Estate Commissioner

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24 cc: Oretra USA Inc.
25 c/o Richard Allen Gellersen D.O.
26 Robin Trujillo
27 Sacto
Audits - Robert S. Brody

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

APR - 2 2008

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

ORETRA USA INC., doing business
as Enterprise Management,
and RICHARD ALLEN GELLERSEN,
individually and as designated
officer of Oretra USA Inc.,

Respondents.

No. H-34792 LA

A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against ORETRA USA INC. dba Enterprise Management and RICHARD
ALLEN GELLERSEN, individually and as designated officer of Oretra
USA Inc., alleges as follows:

1.

The Complainant, Robin Trujillo, acting in her official
capacity as a Deputy Real Estate Commissioner of the State of
California, makes this Accusation against ORETRA USA INC. and
RICHARD ALLEN GELLERSEN.

2.

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

ORETRA USA INC.

LICENSE HISTORY

3.

A. At all times mentioned, ORETRA USA INC. ("ORETRA") was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On July 15, 2006, ORETRA was originally licensed as a real estate broker. On August 23, 2006, RICHARD ALLEN GELLERSEN became the designated officer.

B. At all times mentioned, RICHARD ALLEN GELLERSEN ("GELLERSEN") was licensed or had license rights issued by the Department as a real estate broker. On November 2, 1995, GELLERSEN was licensed as a real estate broker.

C. At all times material herein, ORETRA was licensed by the Department as a corporate real estate broker by and through GELLERSEN, as the designated officer and broker responsible, pursuant to Code Section 10159.2 for supervising the activities requiring a real estate license conducted on behalf ORETRA of by ORETRA's officers, agents and employees, including GELLERSEN.

///

ORETRA USA INC.

LICENSED ACTIVITIES AND BROKERAGE

4.

At all times mentioned, in the City of Torrance, County of Los Angeles, ORETRA acted as a real estate broker and conducted licensed activities within the meaning of Code Section 10131(b). ORETRA operated a property management brokerage dba Enterprise Management.

FIRST CAUSE OF ACTION

AUDIT OF ORETRA USA INC.

5.

On December 28, 2007, the Department completed an audit examination of the books and records of ORETRA pertaining to the property management activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on October 1, 2004 to September 30, 2007. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 070082 and the exhibits and work papers attached to the audit report.

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TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, ORETRA accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by ORETRA including property owners and tenants at the Bank of America, Gardena Main Office. ORETRA maintained twenty-seven trust accounts of which the below four were audited:

"Enterprise Management
09489-10676" (B/A #1)

"Enterprise Management
09483-07129" (B/A #2)

"Enterprise Management
09488-04246" (B/A #3)

"Enterprise Management
09488-16565" (B/A #4)

ORETRA USA INC. AND RICHARD ALLEN GELLERSEN

VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents ORETRA dba Enterprise Management and

1 GELLERSEN, acted in violation of the Code and the Regulations in
2 that they:

3 (a) (1) B/A #1 and B/A #2 were not in the name of the
4 broker as trustee at a bank or other financial institution, nor
5 designated as trust accounts, in violation of Code Section 10145
6 of the Code and Regulation 2832(a).

7 (a) (2) Failed to place trust funds, including rents,
8 accepted on behalf of another into the hands of the owner of the
9 funds, a neutral escrow depository or into a trust fund account
10 in the name of the trustee at a bank or other financial
11 institution not later than three business days following receipt
12 of the funds by the broker or by the broker's salesperson, as
13 required by Code Section 10145 and Regulation 2832(d). Tenant
14 Judy A. Lynch's rent check not deposited within three days of
15 receipt.

16 (b) Permitted Harshini Dassanayake, an unlicensed and
17 unbonded person, and a non-employee, to be an authorized
18 signatory on bank accounts B/A #1 and B/A #2 into which trust
19 funds were deposited, in violation of Code Section 10145 and
20 Regulation 2834. GELLERSEN was not a signatory on these trust
21 accounts.
22

23 (c) Performed acts for which a real estate license is
24 required, including conducting property management services
25 negotiating leases on real property and executing property
26 management agreements and including negotiating with property
27

owners for managing their real properties before ORETRA's broker
license had issued, in violation of Code Section 10130. ORETRA
was licensed on July 15, 2006, yet conducted licensed activities
from October 1, 2004 to July 14, 2006.

(d) Failed to notify the Department of the employment
of its salesperson, Baxter Gerard, as required by Code Section
10161.8 and Regulation 2752; and

(e) GELLERSEN failed to exercise adequate supervision
over ORETRA's property management activities to ensure compliance
with the Real Estate Laws and Regulations and had no system in
place for regularly monitoring his compliance with the Real
Estate Law especially in regard to establishing policies to
review trust fund handling and unlicensed activity, in violation
of Code Section 10159.2 and Regulation 2725.

ORETRA USA INC. AND RICHARD ALLEN GELLERSEN

DISCIPLINARY STATUTES AND REGULATIONS

8.

The conduct of Respondents ORETRA and GELLERSEN, as
alleged and described in Paragraph 7, above, violated the Code
and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

7(a)

Code Section 10145 and Regulation
2832

1 7(b) Code Section 10145 and Regulation
2 2834

3 7(c) Code Section 10130

4
5 7(d) Code Section 10161.8 and Regulation
6 2752

7
8 7(e) Code Section 10159.2 and Regulation
9 2752

10
11 The foregoing violations constitute cause for the suspension or
12 revocation of the real estate license and license rights of
13 ORETRA and GELLERSEN under the provisions of Code Sections 10130,
14 10177(d) and/or 10177(g).

15 NEGLIGENCE

16 9.

17 The overall conduct of Respondents ORETRA and GELLERSEN
18 constitutes negligence. This conduct and violation are cause for
19 the suspension or revocation of the real estate license and
20 license rights of said Respondents pursuant to Code Section
21 10177(g).

22 SUPERVISION AND COMPLIANCE

23 10.

24 The overall conduct of Respondent GELLERSEN constitutes
25 a failure on his part, as officer designated by a corporate
26 broker licensee, to exercise the reasonable supervision and
27

1 control over the licensed activities of ORETRA as required by
2 Code Section 10159.2, and to keep ORETRA in compliance with the
3 Real Estate Law, and is cause for the suspension or revocation of
4 the real estate license and license rights of GELLERSEN pursuant
5 to the provisions of Code Section 10177(h).

6 SECOND CAUSE OF ACTION

7 BUSINESS AND PROFESSIONS CODE SECTION 10177(n)

8 VIOLATION OF THE CORPORATE SECURITIES LAW OF 1968

9 RICHARD ALLEN GELLERSEN

10 11.

11 On November 13, 2006, in the Superior Court of
12 California, county of Los Angeles, in case no. BA267037,
13 GELLERSEN was convicted of violating 17 counts of California
14 Corporation Code Section 25110 - 25540(a) (sale of unqualified
15 securities) and convicted of violating 17 counts of California
16 Corporation Code Section 25401 - 25530(b) (false statement on
17 securities), in violation of Code Section 10177(n).
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondents
5 ORETRA USA INC. and RICHARD ALLEN GELLERSEN, under the Real
6 Estate Law (Part 1 of Division 4 of the Business and Professions
7 Code) and for such other and further relief as may be proper
8 under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 1 day of April 2008 - Robin Trujillo
11 Deputy Real Estate Commissioner
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24 cc: Oretra USA Inc.
25 c/o Richard Allen Gellersen D.O.
26 Robin Trujillo
27 Sacto
Audits - Robert S. Brody