

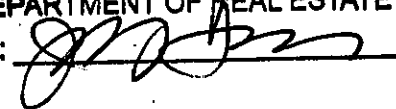
1 Department of Real Estate  
2 320 West Fourth Street, #350  
3 Los Angeles, California 90013

4 (213) 576-6982

**FILED**

DEC 23 2008

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

NO. H-34940 LA

12 DAVID MARK MARZULLO, )

L-2008050823

13 )  
14 Respondent. )

STIPULATION AND AGREEMENT

15  
16 It is hereby stipulated by and between Respondent  
17 DAVID MARK MARZULLO (hereinafter "Respondent"), and Respondent's  
18 attorney, Edgardo Gonzalez, and the Complainant, acting by and  
19 through Cheryl Keily, Counsel for the Department of Real Estate,  
20 as follows for the purpose of settling and disposing of the  
21 Accusation filed on May 16, 2008, 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

1 submitted solely on the basis of the provisions of this  
2 Stipulation and Agreement.

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

7 3. On May 21, 2008, Respondent filed a Notice of  
8 Defense, pursuant to Section 11506 of the Government Code for  
9 the purpose of requesting a hearing on the allegations in the  
10 Accusation. Respondent hereby freely and voluntarily withdraws  
11 said Notice of Defense. Respondent acknowledges that he  
12 understands that by withdrawing said Notice of Defense he will  
13 thereby waive his right to require the Commissioner to prove the  
14 allegations in the Accusation at a contested hearing held in  
15 accordance with the provisions of the APA and that he will waive  
16 other rights afforded to him in connection with the hearing,  
17 such as the right to present evidence in defense of the  
18 allegations in the Accusation and the right to cross-examine  
19 witnesses.  
20

21 4. This Stipulation and Agreement is based on the  
22 factual allegations contained in the Accusation filed in this  
23 proceeding. In the interest of expedience and economy,  
24 Respondent chooses not to litigate these allegations at a formal  
25 administrative hearing, but to remain silent and understands  
26 that, as a result thereof, these factual allegations, without  
27

1 being admitted or denied, will serve as a prima facie basis for  
2 the disciplinary action stipulated to herein. This Stipulation  
3 and Agreement and Respondent's decision not to contest the  
4 Accusation are hereby expressly limited to this proceeding and  
5 made for the sole purpose of reaching an agreed disposition of  
6 this proceeding. Respondent's decision not to contest the  
7 factual allegations at a formal administrative hearing is made  
8 solely for the purpose of effectuating this Stipulation and  
9 Agreement and is intended to be non-binding upon Respondent in  
10 any actions against him by third parties. The Real Estate  
11 Commissioner shall not be required to provide further evidence to  
12 prove said factual allegations.

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

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

1 further administrative or civil proceedings by the Department of  
2 Real Estate with respect to any matters which were not  
3 specifically alleged to be causes for accusation in this  
4 proceeding.

5 DETERMINATION OF ISSUES

6 By reason of the foregoing stipulations, admissions  
7 and waivers and solely for the purpose of settlement of the  
8 pending Accusation without a hearing, it is stipulated and  
9 agreed that the facts alleged in paragraph 4, above, are grounds  
10 for the suspension or revocation of the real estate license and  
11 license rights of Respondent under the provisions of Section  
12 10177(g) of the Business and Professions Code.

13 ORDER

14 WHEREFORE, THE FOLLOWING ORDER is hereby made:

15 1. The real estate broker license of Respondent  
16 DAVID MARK MARZULLO is hereby publicly reprovod.

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

24 ///

25 ///

1  
2 DATED:

12/1/08

*C Cheryl Kelly*  
CHERYL KELLY, Counsel for  
the Complainant, the Department  
of Real Estate

3  
4  
5 \* \* \*

6 I have read the Stipulation and Agreement and its terms  
7 are understood by me and are agreeable and acceptable to me. I  
8 understand that I am waiving rights given to me by the California  
9 Administrative Procedure Act (including but not limited to  
10 Sections 11506, 11508, 11509 and 11513 of the Government Code),  
11 and I willingly, intelligently and voluntarily waive those  
12 rights, including the right of requiring the Commissioner to  
13 prove the allegations in the Accusation at a hearing at which I  
14 would have the right to cross-examine witnesses against me and to  
15 present evidence in defense and mitigation of the charges.

16 Respondent can signify acceptance and approval of the  
17 terms and conditions of this Stipulation and Agreement by faxing  
18 a copy of the signature page, as actually signed by Respondent,  
19 to the Department at the following telephone/fax number: (213)  
20 576-6917. Respondent agrees, acknowledges and understands that  
21 by electronically sending to the Department a fax copy of his  
22 actual signature as it appears on the Stipulation and Agreement,  
23 that receipt of the faxed copy by the Department shall be as

24 ///

25 ///

26 ///

1 binding on Respondent as if the Department had received the  
2 original signed Stipulation and Agreement.

3  
4 DATED:

11/7/08

David Mark Mareulo  
DAVID MARK MAREULO  
Respondent

5  
6 I have reviewed the Stipulation and Agreement as to form and  
7 content and have advised my client accordingly.

8 DATED:

11/7/08

Edgardo Gonzalez  
EDGARDO GONZALEZ  
Attorney for Respondent

9  
10  
11 \* \* \*

12 The foregoing Stipulation and Agreement is hereby  
13 adopted as my Decision in this matter and shall become effective  
14 at 12 o'clock noon on \_\_\_\_\_

15 IT IS SO ORDERED \_\_\_\_\_

16  
17 JEFF DAVI  
Real Estate Commissioner  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
\_\_\_\_\_  
- 6 -

1 binding on Respondent as if the Department had received the  
2 original signed Stipulation and Agreement.

3  
4 DATED: \_\_\_\_\_

DAVID MARK MARZULLO  
Respondent

5  
6 I have reviewed the Stipulation and Agreement as to form and  
7 content and have advised my client accordingly.

8 DATED: \_\_\_\_\_

EDGARDO GONZALEZ  
Attorney for Respondent

9  
10  
11 \* \* \*

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

15 IT IS SO ORDERED

16 JEFF DAVI  
17 Real Estate Commissioner  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

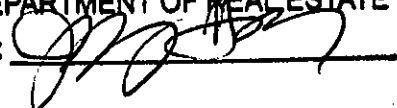
1 CHERYL D. KEILY SBN# 94008  
2 Department of Real Estate  
3 320 West 4th Street, Suite 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982  
6 (Direct) (213) 576-5770

**FILED**

MAY 16 2008

DEPARTMENT OF REAL ESTATE

BY: 

8  
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of ) No. H- 34940 LA  
13 DAVID MARK MARZULLO, ) A C C U S A T I O N  
14 Respondent. )

15  
16 The Complainant, Robin Trujillo, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Accusation  
18 against DAVID MARK MARZULLO, aka David Marzullo, (hereinafter  
19 "Respondent"), is informed and alleges as follows:

20 1.

21 The Complainant, Robin Trujillo, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Accusation  
23 in her official capacity.

24 2.

25 Respondent is presently licensed and/or has license  
26 rights under the Real Estate Law (Part 1 of Division 4 of the  
27

1 Business and Professions Code, hereinafter "Code"), as a real  
2 estate broker.

3 3.

4 Respondent was first licensed by the Department of  
5 Real Estate of the State of California ("Department") as a real  
6 estate broker on or about May 25, 2005.

7 4.

8 At all times after May 25, 2005, Respondent was  
9 engaged in the business of, acted in the capacity of, advertised  
10 or assumed to act as a real estate broker in the State of  
11 California, within the meaning of Code Section 10131.

12 5.

13 At all times relevant herein Estelle Luciano  
14 ("Luciano") was the owner of property located at 27310 Circle G  
15 Drive, Canyon Country, California 91387 (the "Property"). On or  
16 about July 18, 2005, the Property was valued between  
17 approximately Five Hundred Seventy-Eight Hundred Thousand  
18 Dollars (\$578,000) and Seven Hundred Thirty-Three Thousand  
19 Dollars (\$733,000).

20 6.

21 In or around May, 2005, Luciano, then an eighty-eight  
22 year old widow, was introduced to Respondent as someone able to  
23 assist her in obtaining fire insurance proceeds due to her as a  
24 result of a fire which occurred at the Property on or about  
25 November 2, 2004.

26 7.

27 As a means of gaining Luciano's confidence and

1 influencing her to place her trust and confidence in him  
2 Respondent represented himself to Luciano as a law enforcement  
3 officer, an experienced investor and a licensed real estate  
4 broker. In fact, Respondent was not licensed as a real estate  
5 broker during his initial contact with Luciano, or until May 25,  
6 2005.

7 8.

8 On or about May 18, 2005, pursuant to Respondent's  
9 direction and advice, Luciano executed a Limited Power of  
10 Attorney appointing Respondent as attorney-in-fact over her  
11 financial affairs, which document was recorded in the County  
12 Recorder's Office, Los Angeles County, California.

13 9.

14 By virtue of Respondent's becoming Luciano's attorney-  
15 in-fact Respondent entered into a fiduciary relationship with  
16 Luciano whereby Respondent became obligated to place Luciano's  
17 interests above his own.

18 10.

19 At a time prior to May 26, 2005, but after Respondent  
20 became Luciano's attorney-in-fact, Respondent determined to  
21 purchase the Property from Luciano for an amount that was far  
22 less than its fair market value. In an attempt to avoid his  
23 fiduciary obligations to Respondent by virtue of the Limited  
24 Power of Attorney, Respondent instructed Luciano to execute a  
25 document entitled Rescission of Limited Power of Attorney,  
26 rescinding the Limited Power of Attorney described in Paragraph  
27 9, above. The Rescission of Limited Power of Attorney was

1 recorded in the County Recorder's Office, Los Angeles County,  
2 California.

3 11.

4 On or about June 2, 2005, Respondent induced and  
5 persuaded Luciano to execute a written agreement for the sale of  
6 the Property (the "Purchase and Sale Agreement") whereby Luciano  
7 agreed to sell and Respondent agreed to buy the Property for the  
8 total purchase price of \$200,000, an amount well known by  
9 Respondent to be far below the fair market value of the  
10 Property.

11 12.

12 Respondent falsely represented to Luciano that the  
13 sales price of \$200,000 set forth in the Purchase and Sale  
14 Agreement represented the fair market value of the Property  
15 given the existence of damage to the structure caused by the  
16 November, 2004 fire. Respondent knew that Luciano did not know  
17 the true fair market value of the Property and, in fact, that  
18 Luciano believed that the fire damage existing at the Property  
19 rendered the Property without substantial value. Respondent's  
20 intentional misrepresentation as to the value of the Property  
21 was made with the intent to take advantage of Luciano's trust  
22 and confidence in Respondent and, further, to take advantage of  
23 Luciano's ignorance of the true value of the Property. By  
24 reason of the foregoing, Respondent obtained Luciano's agreement  
25 to sell the Property to him for an amount far less than its true  
26 market value.

27 ///

13.

1 In entering into the Purchase and Sale Agreement  
2 Luciano relied upon and believed Respondent's false  
3 representations to her that the sum of \$200,000 represented the  
4 true fair market value of the Property.  
5

6 14.

7 At no time relevant herein did Luciano intend to sell  
8 the Property to Respondent, or to any other purchaser, for less  
9 than its true fair market value.

10 15.

11 Though Respondent was licensed by the Department as a  
12 real estate broker prior to and at the time he entered into the  
13 Purchase and Sale Agreement with Luciano, Respondent failed to  
14 list the Property for sale with any Multiple Listing Service, or  
15 to otherwise advertise the availability of the Property for sale  
16 to other potential buyers.

17 16.

18 On or about June 3, 2005, Respondent caused an escrow  
19 to be opened for the purpose of carrying out his purchase of the  
20 Property pursuant to the terms of the Purchase and Sale  
21 Agreement. The subject escrow was cancelled without transfer of  
22 title of the Property to Respondent when Luciano learned that  
23 the purchase price did not represent the true fair market value  
24 of the Property.

25 17.

26 On or about October 25, 2005, Respondent filed an  
27 action against Luciano in the Los Angeles Superior Court which

1 alleged Respondent's right to obtain court ordered specific  
2 performance of the Purchase and Sale Agreement according to its  
3 terms and over Luciano's objections. In conjunction with the  
4 civil action against Luciano Respondent caused a lis pendens to  
5 be recorded against the Property thereby effectively preventing  
6 Luciano from selling or otherwise transferring title to the  
7 Property during the pendency of the civil action brought by  
8 Respondent against Luciano for specific performance of the  
9 Purchase and Sale Agreement.

10 18.

11 In or around March, 2006, in exchange for monetary  
12 compensation, Respondent dismissed the complaint for specific  
13 performance of the Purchase and Sale Agreement filed against  
14 Luciano. Respondent also released the lis pendens recorded  
15 against the Property, thereby permitting Luciano to sell the  
16 Property to another purchaser free of Respondent's claim to  
17 purchase the Property.

18 19.

19 The conduct, acts and/or omissions of Respondent as  
20 described herein above, constitute making a substantial  
21 misrepresentation, the making of false promise(s)  
22 of a character likely to influence, persuade or induce, and/or  
23 fraud or dishonest dealing, and is cause for the suspension or  
24 revocation of all real estate licenses and license rights of  
25 of Respondent under the provisions of Code Sections 10176(a),  
26 10176(i), and/or 10177(j).

27 ///

The conduct, acts and/or omissions of Respondent as described herein above occurring on or after May 25, 2005, constitute negligence or incompetence by Respondent in his performance of activities for which he is required to hold a real estate license issued to him by the Department, and is cause for the suspension or revocation of all real estate licenses and license rights of Respondent under the provisions of Code Section 10177(g).

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent DAVID MARK MARZULLO 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 15 day of May, 2008.



Robin Trujillo  
Deputy Real Estate Commissioner

cc: David Mark Marzullo  
Robin Trujillo  
Sacto.