

Sachs

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982 (office)

FILED

APR - 6 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-35221 LA
	)	L-2008090350
GARCIA AND ASSOCIATES REALTY INC.;	)	
and GILBERTO GARCIA, individually	)	
and as designated officer of	)	<u>STIPULATION</u>
Garcia and Associates Realty Inc.,	)	<u>AND</u>
	)	<u>AGREEMENT</u>
Respondents,	)	

18 It is hereby stipulated by and between Respondents
19 GARCIA AND ASSOCIATES REALTY INC. and GILBERTO GARCIA,
20 individually and as designated officer of Garcia and Associates
21 Realty Inc., (sometimes collectively referred to as
22 "Respondents"), and the Complainant, acting by and through
23 Elliott Mac Lennan, Counsel for the Department of Real Estate, as
24 follows for the purpose of settling and disposing of the
25 Accusation ("Accusation") filed on April 18, 2008, in this
26 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 Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

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

12 3. Respondents timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense and the right to cross-
23 examine witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondents choose not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation is made for the purpose of
11 reaching an agreed disposition of this proceeding and is
12 expressly limited to this proceeding and any other proceeding or
13 case in which the Department of Real Estate ("Department"), the
14 state or federal government, or any agency of this state, another
15 state or federal government is involved.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 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 matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondents herein. ✓

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of the audit. The
12 amount of said cost for the original audit (LA 070121) is
13 \$8,982.52 and the subsequent audit (LA 090071) is \$4,266.50,
14 totaling \$13,249.02.

15 9. Respondents have received, read, and understand the
16 "Notice Concerning Costs of Subsequent Audit". Respondents
17 further understand that by agreeing to this Stipulation, the
18 findings set forth below in the Determination of Issues become
19 final, and the Commissioner may charge Respondents for the cost
20 of any subsequent audit conducted pursuant to Business and
21 Professions Code Section 10148 to determine if the violations
22 have been corrected. The maximum cost of the follow-up audit for
23 the original and the subsequent audit will not exceed \$13,249.02.

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DETERMINATION OF ISSUES

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

I.

The conduct, acts or omissions of GARCIA AND ASSOCIATES REALTY INC. and GILBERTO GARCIA, as described in Paragraph 4, above, are in violation of Sections 10145, 10159.5 and 10161.8 of the Business and Professions Code ("Code") and Sections 2725, 2726, 2731, 2752, 2831, 2831.1, 2832, 2832.1, 2834, 2950(d), 2950(g) and 2951 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for discipline of Respondents' license and license rights as violation of the Real Estate Law pursuant to Code Sections 10177(d) and 10177(g).

II.

The conduct, acts or omissions of GILBERTO GARCIA, as described in Paragraph 4, above, are in violation of Code Section 10159.2 and Regulation 2725 and is a basis for discipline of Respondent's license and license rights as violation of the Real Estate Law pursuant to Code Section 10177(h).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The license and licensing rights of Respondents GARCIA AND ASSOCIATES REALTY INC. and GILBERTO GARCIA under the Real Estate Law, are suspended for a period of sixty (60) days from the effective date of this Decision.

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

1. Each Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$50.00 per day for each day of the suspension for a monetary penalty of \$1,500, or \$3,000 total.

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

3. No further cause for disciplinary action against the real estate license of Respondents occur within two (2) years from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in accordance with the terms of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any

1 part of the stayed suspension, in which event the Respondent
2 shall not be entitled to any repayment nor credit, prorated or
3 otherwise, for money paid to the Department under the terms of
4 this Decision.

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

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

13 1. Respondents shall obey all laws, rules and
14 regulations governing the rights, duties and responsibilities of
15 a real estate licensee in the State of California; and

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

Pursuant to Section 10148 of the Business and

Professions Code, Respondents GILBERTO AND ASSOCIATES REALTY INC. and GILBERTO GARCIA shall pay the Commissioner's reasonable cost for (a) the audit which led to this disciplinary action (b) a subsequent audit to determine if Respondents are now in compliance with the Real Estate Law. The cost of the original and subsequent audits which led to this disciplinary action is \$13,249.02. 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 \$26,498.04.

Respondents 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 Respondents 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 Respondents enter 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 III.

4 All licenses and licensing rights of Respondent
5 GILBERTO GARCIA are indefinitely suspended unless or until
6 Respondent provides proof satisfactory to the Commissioner, of
7 having taken and successfully completed the continuing education
8 course on trust fund accounting and handling specified in
9 paragraph (3) of subdivision (a) of Section 10170.5 of the
10 Business and Professions Code. Proof of satisfaction of this
11 requirement includes evidence that Respondent has successfully
12 completed the trust fund account and handling continuing
13 education course within 120 days prior to the effective date of
14 the Decision.

15 IV.

16 Respondent shall within six (6) months from the
17 effective date of the Decision herein, take and pass the
18 Professional Responsibility Examination administered by the
19 Department including the payment of the appropriate examination
20 fee. If Respondent fails to satisfy this condition, the
21 Commissioner may order suspension of Respondent's license until
22 Respondent successfully passes the examination.

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V.

Respondent GILBERTO GARCIA shall, within nine (9)
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 Respondent's license until 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: 3-18-16

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

* * *

EXECUTION OF THE STIPULATION

We have read the Stipulation. Its terms are understood
by us and are agreeable and acceptable to us. We understand that
we are waiving rights given to us by the California
Administrative Procedure Act (including but not limited to
Sections 11506, 11508, 11509 and 11513 of the Government Code),
and we 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 we

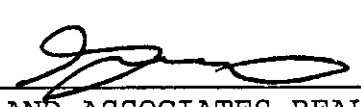
1 would have the right to cross-examine witnesses against us and to
2 present evidence in defense and mitigation of the charges.

3 MAILING AND FACSIMILE

4 Respondents (1) shall mail the original signed
5 signature page of the stipulation herein to Elliott Mac Lennan:
6 Attention: Legal Section, Department of Real Estate, 320 W.
7 Fourth St., Suite 350, Los Angeles, California 90013-1105.
8 Respondents shall also (2) facsimile a copy of signed signature
9 page, to the Department at the following telephone/fax number:
10 (213) 576-6917, Attention: Elliott Mac Lennan.

11 A facsimile constitutes acceptance and approval of the
12 terms and conditions of this stipulation. Respondents agree,
13 acknowledge and understand that by electronically sending to the
14 Department a facsimile copy of Respondents' actual signature as
15 it appears on the stipulation that receipt of the facsimile copy
16 by the Department shall be as binding on Respondents as if the
17 Department had received the original signed stipulation.
18

19
20 DATED: 1-15-2010


21 GARCIA AND ASSOCIATES REALTY INC.,
22 a corporate real estate broker,
23 BY: GILBERTO GARCIA D.O.,
24 Respondent

25 DATED: 1-15-2010

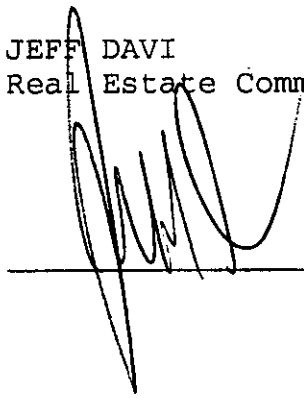

26 GILBERTO GARCIA, individually and
27 as designated officer of Garcia and
Associates Realty Inc., Respondent

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents GARCIA AND ASSOCIATES
REALTY INC. and GILBERTO GARCIA, individually and as designated
officer of Garcia and Associates Realty Inc. and shall become
effective at 12 o'clock noon on May 6, 2010.

IT IS SO ORDERED 5/29, 2010.

JEFF DAVI
Real Estate Commissioner



1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

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

FILED

AUG 18 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)

No. H-35221 LA

12)
13 GARCIA AND ASSOCIATES REALTY INC.,)
14 and GILBERTO GARCIA, individually)
15 and as designated officer of Garcia)
16 And Associates Realty Inc.,)

A C C U S A T I O N

Respondents.)

17 The Complainant, Robin Trujillo, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against GARCIA AND ASSOCIATES REALTY INC.; and GILBERTO GARCIA,
20 individually and as designated officer of Garcia And Associates
21 Realty Inc., alleges as follows:

22 1.

23 The Complainant, Robin Trujillo, acting in her official
24 capacity as a Deputy Real Estate Commissioner of the State of
25 California, makes this Accusation against GARCIA AND ASSOCIATES
26 REALTY INC. and GILBERTO GARCIA.
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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.

LICENSE HISTORY

3.

A. GARCIA AND ASSOCIATES REALTY INC. At all times mentioned, GARCIA AND ASSOCIATES REALTY INC. ("G&A") was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On August 7, 2007, G&A was originally licensed as a real estate broker via GILBERTO GARCIA as the designated officer.

B. GILBERTO GARCIA. At all times mentioned, GILBERTO GARCIA ("GARCIA") was licensed or had license rights issued by the Department as a real estate broker. On February 20, 1998, GARCIA was originally licensed as a real estate broker; and

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

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BROKERAGE

GARCIA AND ASSOCIATES REALTY INC.

4.

At all times mentioned, in the City of South Gate, County of Los Angeles, G&A and GARCIA acted as real estate brokers and conducted licensed activities within the meaning of:

A. Code Section 10131(d). G&A operated a mortgage and loan brokerage dba Credit Corp; and

B. In addition, G&A conducted broker-controlled escrows through its escrow division under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

AUDIT EXAMINATION

5.

On June 26, 2008, the Department completed an audit examination of the books and records of G&A pertaining to the broker-escrow activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on September 1, 2006 to May 30, 2008. 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 070121 and the exhibits and work papers attached to said audit report.

TRUST ACCOUNT

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, G&A accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including lenders, borrowers, homeowners and escrow holders for mortgage loan transactions handled by G&A and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by G&A in the bank account as follows:

"Garcia And Associates Realty Inc.
Account No. 2006000097086"
Wachovia Bank
Charlotte, North Carolina

(escrow trust account)

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 G&A and GARCIA, acted in violation of the Code and the Regulations in that they:

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in the escrow trust account, to an amount which, on May 30, 2008, was \$104,132.921 less than the existing aggregate trust fund liability of G&A to

1 every principal who was an owner of said funds, without first
2 obtaining the prior written consent of the owners of said funds,
3 as required by Code Section 10145 and Regulations 2832.1, 2950(d)
4 2950(g) and 2951.

5 (b) Failed to maintain an adequate control record in
6 the form of a columnar record in chronological order of all trust
7 funds received, deposited and disbursed by the escrow trust fund,
8 as required by Code Section 10145 and Regulations 2831, 2831(c),
9 2950(d) and 2951.

10 (c) Failed to maintain an adequate separate record for
11 each beneficiary or transaction, thereby failing to account for
12 all trust funds received, deposited and disbursed for the escrow
13 trust account, as required by Code Section 10145 and Regulation
14 2831.1, 2950(d) and 2951.

15 (d) The escrow trust account was not designated as a
16 trust account, in violation of Code Section 10145 of the Code and
17 Regulations 2832(a), 2950(d), 2950(f) and 2951. This violation
18 has been corrected.
19

20 (e) Permitted unlicensed and unbonded person Elvira
21 Herrera, as an authorized signatory on the escrow trust account,
22 in violation of Code Section 10145 and Regulations 2834, 2950(d)
23 and 2951.

24 (f) Failed to perform a monthly reconciliation of the
25 balance of all separate beneficiary or transaction records
26 maintained pursuant to Regulation 2831.1 with the record of all
27

1 trust funds received and disbursed by the escrow trust account,
2 as required by Code Section 10145 and Regulation 2831.2, 2950(d)
3 and 2951.

4 (g) Used the fictitious name of "Garcia and Associates"
5 to conduct licensed activities including broker-controlled
6 escrows without holding a license bearing said fictitious
7 business name, in violation of Code Section 10159.5 and
8 Regulation 2731.

9 (h) Failed to notify the Department of the employment
10 of four salespersons within five days of employment, Hernandez,
11 Munoz, Mota and Martinez, as required by Code Section 10161.8 and
12 Regulation 2752.

13 (i) Failed to maintain a signed broker salesperson
14 agreements with salespersons Hernandez, Munoz, Mota and Martinez,
15 in violation of Section 2726 of the Regulations; and
16

17 (j) GARCIA failed to exercise adequate supervision over
18 the real estate resale activities of G&A requiring a real estate
19 license in order to ensure compliance the Real Estate Laws and
20 Regulations and had no system in place for regularly monitoring
21 compliance with the Real Estate Law, especially in regard to the
22 handling of trust funds, in violation of Code Sections 10159.2,
23 10177(h) and Regulation 2725.

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DISCIPLINARY STATUES AND REGULATIONS

8.

The conduct of Respondents G&A and GARCIA described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

7(a)

Code Section 10145 and Regulations
2832.1, 2950(d), 2950(g) and 2951

7(b)

Code Section 10145 and Regulations
2831, 2831(c), 2950(d) and 2951

7(c)

Code Section 10145 and Regulations
2831.1, 2950(d) and 2951

7(d)

Code Section 10145 and Regulations
2832(a), 2950(d), 2950(f) and 2951

7(e)

Code Section 10145 and Regulations
2834, 2950(d) and 2951

7(f)

Code Section 10145 and Regulations
2831.2, 2950(d) and 2951

1 7(g) Code Section 10159.5 and Regulation
2 2731

3
4 7(h) Code Section 10161.8 and Regulation
5 2752

6
7 7(i) Regulation 2726

8
9
10 7(j) Code Sections 10159.2 and 10177(h)
11 and Regulation 2725

12 The foregoing violations constitute cause for the suspension or
13 revocation of the real estate license and license rights of G&A
14 and GARCIA, under the provisions of Code Sections 10177(d) and/or
15 10177(g) and 10177(h).

16
17 9.

18 The overall conduct of Respondents G&A and GARCIA
19 constitutes negligence. This conduct and violation are cause for
20 the suspension or revocation of the real estate license and
21 license rights of Respondents G&A and GARCIA pursuant to Code
22 Section 10177(g).

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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 GARCIA AND ASSOCIATES REALTY INC. and GILBERTO GARCIA, under the
6 Real Estate Law (Part 1 of Division 4 of the Business and
7 Professions Code) and for such other and further relief as may be
8 proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 29 day of July 2008. Robin Trujillo
11 Deputy Real Estate Commissioner
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24 cc: Garcia And Associates Realty Inc.
25 c/o Gilberto Garcia D.O.
26 Robin Trujillo
27 Sacto
Audits - Isabel Beltran