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FEB 09 2012

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35610 LA
))
DAVID WILLIAM GOMEZ,)
))
))
))
Respondent.)
))

ORDER SUSPENDING REAL ESTATE LICENSE

To: DAVID WILLIAM GOMEZ
621 W Beverly Blvd.
Montebello, CA 90640

On September 30, 2009, Respondent entered into a Stipulation and Agreement ("Stipulation") with the Department. Pursuant to the terms of the Stipulation terms and conditions were imposed including the requirement that Respondent pay for the audit as set forth in the Real Estate Commissioner's Decision in Case No. H-35610 LA, effective November 25, 2009. The

1 Commissioner has determined that Respondent has failed to satisfy
2 this condition by not paying for the audit costs in the amount of
3 \$8,536.80.

4 NOW, THEREFORE, IT IS ORDERED under that the real
5 estate broker licenses heretofore issued to Respondent and the
6 exercise of any privileges thereunder are hereby suspended until
7 such time as Respondent provides proof satisfactory to the
8 Department of having paid for the audit referred to above or
9 pending final determination made after hearing (see "Hearing
10 Rights" set forth below).

11 IT IS FURTHER ORDERED that all license certificates and
12 identification cards issued by the Department of Real Estate
13 which are in the possession of Respondents be immediately
14 surrendered by personal delivery or by mailing in the enclosed
15 self-addressed envelope to:

16 DEPARTMENT OF REAL ESTATE
17 Attention: Flag Section
18 Post Office Box 187000
19 Sacramento, CA 95818-7000

20 HEARING RIGHTS: you have the right to a hearing to
21 contest the Commissioner's determination that you are in
22 violation of the condition that you pay for the audit. If you
23 desire a hearing, you must submit a written request. The request
24 may be in any form as long as it is in writing and indicates that
25 you want a hearing. Unless a written request for a hearing,
26 signed by or on behalf of you, is delivered or mailed to the
27 Department at 320 West Fourth Street, Suite 350, Los Angeles,
California 90013, within 20 days after the date that this Order

1 was mailed to or served on you, the Department will not be
2 obligated or required to provide you with a hearing.

3 This Order shall be effective immediately.

4 DATED: 1/18/12

5 BARBARA J. BIGBY
6 Acting Real Estate Commissioner

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

Telephone: (213) 576-6982

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OCT 26 2009

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
)
 DAVID WILLIAM GOMEZ, doing)
 Business as California Bankers)
 Group,)
)
)
)
 Respondent.)
)
)

No. H-35610 LA

STIPULATION
AND
AGREEMENT

It is hereby stipulated by and between Respondent
DAVID WILLIAM GOMEZ (sometimes referred to as (Respondent),
represented by Dionne Mateos, 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 Accusation (Accusation) filed on January 14, 2009, in this
matter:

1. All issues which were to be contested and all
evidence which was to be presented by Complainant and Respondent
at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative
2 Procedure Act ("APA"), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement ("Stipulation").

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

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

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 result thereof, these factual allegations, without being admitted
27

1 or denied, will serve as a prima facie basis for the disciplinary
2 action stipulated to herein. The Real Estate Commissioner shall
3 not be required to provide further evidence to prove said factual
4 allegations.

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

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

23 7. The Order or any subsequent Order of the Real
24 Estate Commissioner made pursuant to this Stipulation shall not
25 constitute an estoppel, merger or bar to any further
26 administrative or civil proceedings by the Department of Real
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1 Estate with respect to any matters which were not specifically
2 alleged to be causes for Accusation in this proceeding but do
3 constitute a bar, estoppel and merger as to any allegations
4 actually contained in the Accusations against Respondent herein.

5 8. Respondent understands that by agreeing to this
6 Stipulation, Respondent agrees to pay, pursuant to Business and
7 Professions Code Section 10148, the cost of audit. The total
8 amount of said cost is \$8,536.80.

9 9. Respondent has received, read, and understands the
10 "Notice Concerning Costs of Subsequent Audit". Respondent
11 further understands that by agreeing to this Stipulation, the
12 findings set forth below in the Determination of Issues become
13 final, and the Commissioner may charge Respondent for the cost of
14 any subsequent audit conducted pursuant to Business and
15 Professions Code Section 10148 to determine if the violations
16 have been corrected. The maximum cost of the subsequent audit
17 will not exceed \$8,536.80.

18
19 DETERMINATION OF ISSUES

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

22 The conduct of DAVID WILLIAM GOMEZ, as described in
23 Paragraph 4, above, is in violation of Business and Professions
24 Code Sections 10145, 10176(g), 10236.4 and 10240 and Sections
25 2831, 2831.1 and 2840 of Title 10, Chapter 6 of the California
26 Code of Regulations and is a basis for discipline of Respondent's
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1 license and license rights as violations of the Real Estate Law
2 pursuant to Code Sections 10177(d) and 10177(g).

3 ORDER

4 WHEREFORE, THE FOLLOWING ORDER is hereby made:

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

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

12 1. Respondent pays a monetary penalty pursuant to
13 Section 10175.2 of the Business and Professions Code at the rate
14 of \$100.00 per day for each day of the suspension for a total
15 monetary penalty of \$3,000.

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

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

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

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

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

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

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

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II. Pursuant to Section 10148 of the Business and

1 Professions Code, Respondent DAVID WILLIAM GOMEZ shall pay the
2 Commissioner's reasonable cost for (a) the underlying audit (b) a
3 subsequent audit to determine if Respondent is now in compliance
4 with the Real Estate Law. The cost of the audit which led to
5 this disciplinary action is \$8,536.80. In calculating the amount
6 of the Commissioner's reasonable cost, the Commissioner may use
7 the estimated average hourly salary for all persons performing
8 audits of real estate brokers, and shall include an allocation
9 for travel time to and from the auditor's place of work. Said
10 amount for the prior and subsequent audits shall not exceed
11 \$17,073.60.
12

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

17 The Commissioner may suspend the license of Respondent
18 pending a hearing held in accordance with Section 11500, et seq.,
19 of the Government Code, if payment is not timely made as provided
20 for herein, or as provided for in a subsequent agreement between
21 the Respondent and the Commissioner. The suspension shall remain
22 in effect until payment is made in full or until Respondent
23 enters into an agreement satisfactory to the Commissioner to
24 provide for payment, or until a decision providing otherwise is
25 adopted following a hearing held pursuant to this condition.
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III. All licenses and licensing rights of Respondent

1 DAVID WILLIAM GOMEZ are indefinitely suspended unless or until
2 Respondent provides proof satisfactory to the Commissioner, of
3 having taken and successfully completed the continuing education
4 course on trust fund accounting and handling specified in
5 paragraph (3) of subdivision (a) of Section 10170.5 of the
6 Business and Professions Code. Proof of satisfaction of this
7 requirement includes evidence that respondent has successfully
8 completed the trust fund account and handling continuing
9 education course within 120 days prior to the effective date of
10 the Decision in this matter.

11
12
13 DATED: 8-28-09

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

16 * * *

17 EXECUTION OF THE STIPULATION

18 I have read the Stipulation and discussed it with my
19 counsel. Its terms are understood by me and are agreeable and
20 acceptable to me. I understand that I am waiving rights given to
21 me by the California Administrative Procedure Act (including but
22 not limited to Sections 11506, 11508, 11509 and 11513 of the
23 Government Code), and I willingly, intelligently and voluntarily
24 waive those rights, including the right of requiring the
25 Commissioner to prove the allegations in the Accusation at a
26 hearing at which I would have the right to cross-examine

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1 witnesses against me and to present evidence in defense and
2 mitigation of the charges.

3 MAILING AND FACSIMILE

4 Respondent (1) shall mail the original signed signature
5 page of the stipulation herein to Elliott Mac Lennan: Attention:
6 Legal Section, Department of Real Estate, 320 W. Fourth St.,
7 Suite 350, Los Angeles, California 90013-1105. Additionally,
8 Respondent 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. A facsimile
11 constitutes acceptance and approval of the terms and conditions
12 of this stipulation.

13 Respondent agrees, acknowledges and understands that by
14 electronically sending to the Department a facsimile copy of
15 Respondent's actual signature as it appears on the stipulation
16 that receipt of the facsimile copy by the Department shall be as
17 binding on Respondent as if the Department had received the
18 original signed stipulation.
19

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21 DATED: 9/2/09


22 DAVID WILLIAM GOMEZ, Respondent

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25 DATED: 9/3/09

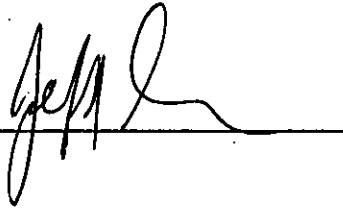

26 DIONNE MATEOS, ESQ. Attorney for
27 DAVID WILLIAM GOMEZ, Respondent

* * *

1 The foregoing Stipulation and Agreement is hereby
2
3 adopted as my Decision as to Respondent DAVID WILLIAM GOMEZ and
4 shall become effective at 12 o'clock noon on
5 November 25, 2009.

6 IT IS SO ORDERED 9-30, 2009.

7
8 JEFF DAVI
9 Real Estate Commissioner

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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

JAN 14 2009

DEPARTMENT OF REAL ESTATE
BY: *Reby*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Accusation of)	No. H- 35610 LA
12	DAVID WILLIAM GOMEZ, doing)	<u>A C C U S A T I O N</u>
13	business as California Bankers)	
14	Group,)	
15)	
16	Respondent.)	

17 The Complainant, Robin Trujillo, a Deputy Real Estate
18 Commissioner of the State of California, acting in her official
19 capacity, for cause of Accusation against DAVID WILLIAM GOMEZ dba
20 California Bankers Group, is informed and alleges as follows:

21 1.

22 All references to the "Code" are to the California
23 Business and Professions Code and all references to "Regulations"
24 are to Title 10, Chapter 6, California Code of Regulations or to
25 the California Financial Code.
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1 LICENSE HISTORY

2 2.

3 At all times mentioned, DAVID WILLIAM GOMEZ
4 ("GOMEZ"), was licensed or had license rights issued by the
5 Department of Real Estate ("Department") as a real estate broker.
6 On January 13, 1984, GOMEZ was originally licensed as a real
7 estate broker.

8 LICENSED ACTIVITIES AND BROKERAGE

9 3.

10 At all times mentioned, in City of Montebello, County
11 of Los Angeles, GOMEZ acted as real estate broker and conducted
12 licensed activities within the meaning of:

13 A. Code Section 10131(a). GOMEZ operated a
14 residential resale brokerage.

15 B. Code Section 10131(d). GOMEZ principally operated
16 as a mortgage and loan broker dba California Bankers Group.

17 AUDIT EXAMINATION

18 4.

19 On September 26, 2008, the Department completed an
20 audit examination of the books and records of GOMEZ, pertaining
21 to the mortgage loan activities described in Paragraph 3, that
22 require a real estate license. The audit examination covered a
23 period of time beginning on January 1, 2006 to May 31, 2008. The
24 audit examination revealed violations of the Code and the
25 Regulations as set forth below, and more fully discussed in Audit
26 Report LA 070373 and LA 080008 and the exhibits and workpapers
27

1 attached thereto.

2 TRUST ACCOUNT

3 5.

4 At all times mentioned, in connection with the
5 activities described in Paragraph 4, GOMEZ did not maintain a
6 trust account.

7 VIOLATIONS OF THE REAL ESTATE LAW

8 6.

9 With respect to the licensed activities referred to in
10 Paragraph 3, and the audit examination including the exhibits and
11 workpapers referred to in Paragraph 4, it is alleged that GOMEZ:

12 (a) (1) Mixed and commingled trust funds and personal
13 funds by depositing appraisal and credit report fees received
14 from escrow into GOMEZ' general operating account and issuing
15 checks from said account to the appraisers or credit companies
16 after the escrow checks were deposited, in violation of Code
17 Sections 10145(a) and 10176(e); and

18 (a) (2) Failed to place appraisal fees and credit report
19 fees collected from borrowers into a trust account in the name of
20 the broker as trustee at a bank or other financial institution,
21 in violation of Code Section 10145 and Regulation 2832(a).

22 (b) Failed to disclose that GOMEZ charged credit report
23 fees in excess of the amount billed to the borrower by the credit
24 reporting company including, but not limited to, the following
25 borrowers: Alonso, Rodriguez and Frausto. This failure to
26 disclose constitutes the taking of a secret profit by means of
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1 compensation undisclosed to the aforesaid borrowers, in violation
2 of Code Section 10176(g).

3 (c) Failed to maintain a control record in the form of
4 a columnar record in chronological order of all "Trust Funds
5 Received, Not Placed Broker's Trust Account", in violation of
6 Code Section 10145 and Regulation 2831. GOMEZ did not maintain a
7 columnar record for loan transactions where he collected credit
8 report fees and appraisal fees along with his real estate
9 commission fees earned at the close of escrow.

10 (d) Failed to maintain a separate record for each
11 beneficiary or transaction, thereby failing to account for all
12 trust funds received, including credit report fees and appraisal
13 fees, as required by Code Section 10145 and Regulation 2831.1

14 (e) (1) Failed to provide and/or maintain a statement in
15 writing containing all the information required by Code Section
16 10241 to various borrowers including but not limited to Alonso,
17 Rodriguez and Ramos, before these borrowers became obligated to
18 perform under the terms of their respective loans, as required by
19 Code Section 10240; and

20 (e) (2) Rebates from lenders for Yield Spread Premiums
21 were not timely disclosed in the Mortgage Loan Disclosure
22 Statements/Good Faith Estimates provided to the aforesaid
23 borrowers.

24 (f) Failed to display GOMEZ' broker license number on
25 the Mortgage Loan Disclosure Statements for the mortgage loans of
26 Alonso, Rodriguez and Ramos, as required by Code Section 10236.4.
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DISCIPLINARY STATUTES AND REGULATIONS

7.

The conduct of Respondent GOMEZ described in Paragraph 6, above, violated the Code and the Regulations as set forth:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
6(a)	Code Sections 10145 and 10176(e) and Regulation 2832(a)
6(b)	Code Section 10176(g)
6(c)	Code Section 10145 and Regulation 2831
6(d)	Code Section 10145 and Regulation 2831.1
6(e)	Code Section 10240 and Regulation 2840
6(f)	Code Section 10236.4

Each of the foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondent GOMEZ under the provisions of Code Sections 10177(d) for violation of the Real Estate Law; and/or 10177(g) for negligence.

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NEGLIGENCE

8.

The overall conduct of Respondent GOMEZ constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondent pursuant to 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 the license and license rights of Respondent DAVID WILLIAM GOMEZ, 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 13 day of January 2009.


Deputy Real Estate Commissioner

cc: David William Gomez
Robin Trujillo
Sacto
Audits - Robert S. Brody