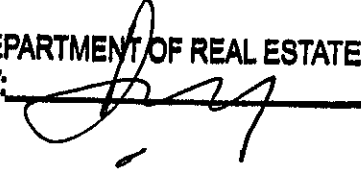


1 Department of Real Estate
320 West 4th Street, Ste. 350
2 Los Angeles, California 90013-1105

3 Telephone: (213) 576-6982

FILED

APR 14 2011

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-35776 LA

12 RICHARD A. MONTES, doing)
13 business as Camino Real Investments,)

STIPULATION

14 Respondent.)

AND

AGREEMENT

16
17 It is hereby stipulated by and between Respondent
18 RICHARD A. MONTES (sometimes referred to as "Respondent"),
19 represented by Jeffrey T. Osborn, Esq., and the Complainant,
20 acting by and through Elliott Mac Lennan, Counsel for the
21 Department of Real Estate, as follows for the purpose of settling
22 and disposing of the Accusation ("Accusation") filed on March 12,
23 2009, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27

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
27

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 the audit. The
8 amount of said cost for the audit is \$2,093.50.

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 \$2,093.50.

18 DETERMINATION OF ISSUES

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

22 The conduct, acts and omissions of RICHARD A. MONTES,
23 as described in Paragraph 4, hereinabove, is in violation of
24 Business and Professions Code Sections 10145, 10161.8 and 10162
25 and Sections 2715, 2752, 2831 and 2832 of Title 10, Chapter 6 of
26 the California Code of Regulations ("Regulations") and is a basis
27

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

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 The restricted real estate broker license of Respondent
7 RICHARD A. MONTES, under the Real Estate Law is revoked;
8 provided, however, a new restricted real estate broker license
9 shall be issued to said Respondent, pursuant to Section 10156.5
10 of the Business and Professions Code if Respondent:

11 (A) Make application thereof and pays to the Department
12 of Real Estate the appropriate fee for the restricted license
13 within ninety (90) days from the date of issuance of the
14 restricted license.

15 (B) Respondent shall, prior to and as a condition of
16 the issuance of the restricted license, submit proof satisfactory
17 to the Commissioner of having taken and successfully completed
18 the continuing education course on trust fund accounting and
19 handling specified in paragraph (3) of subdivision (a) of Section
20 10170.5 of the Business and Professions Code. Proof of
21 satisfaction of this requirement includes evidence that
22 Respondent has successfully completed the trust fund account and
23 handling continuing education course within 120 days prior to the
24 date of issuance of the restricted license.

25
26 ///

1 The restricted license issued to Respondent shall be
2 subject to all of the provisions of Section 10156.7 of the
3 Business and Professions Code and to the followings limitations,
4 conditions and restrictions imposed under authority of Section
5 10156.6 of that Code.

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

11 2. The restricted license issued to Respondent may
12 be suspended prior to hearing by Order of the Real Estate
13 Commissioner on evidence satisfactory to the Commissioner that
14 Respondent has violated provisions of the California Real Estate
15 Law, the Subdivided Lands Law, Regulations of the Real Estate
16 Commissioner or conditions attaching to the restricted license.

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

22 4. Respondent shall within six (6) months from the
23 date of issuance of the restricted license, take and pass the
24 Professional Responsibility Examination administered by the
25 Department including the payment of the appropriate examination
26
27

1 fee. If Respondent fails to satisfy this condition, the
2 Commissioner may order suspension of the restricted license until
3 respondent passes the examination.

4 III.

5 Pursuant to Section 10148 of the Business and
6 Professions Code, Respondent shall pay the Commissioner's
7 reasonable cost for (a) the audits which led to this disciplinary
8 action and (b) a subsequent audits to determine if Respondent is
9 now in compliance with the Real Estate Law. The cost of the
10 audit which led to this disciplinary action is \$2,093.50. In
11 calculating the amount of the Commissioner's reasonable cost, the
12 Commissioner may use the estimated average hourly salary for all
13 persons performing audits of real estate brokers, and shall
14 include an allocation for travel time to and from the auditor's
15 place of work. Said amount for the prior and subsequent audits
16 shall not exceed \$4,187.00.

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

21 The Commissioner may suspend the license of Respondent
22 pending a hearing held in accordance with Section 11500, et seq.,
23 of the Government Code, if payment is not timely made as provided
24 for herein, or as provided for in a subsequent agreement between
25 the Respondents and the Commissioner. The suspension shall
26
27

1 remain in effect until payment is made in full or until a
2 Respondent enters into an agreement satisfactory to the
3 Commissioner to provide for payment, or until a decision
4 providing otherwise is adopted following a hearing held pursuant
5 to this condition.

6
7 DATED: 3-16-11

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

9
10 * * *

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

21 ///

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25 ///

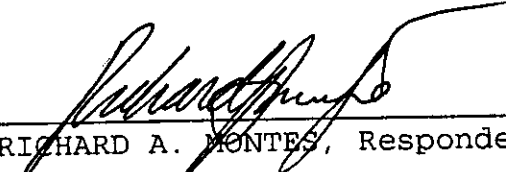
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27 ///

Respondent (1) shall mail the original signed signature
page of the stipulation herein to Elliott Mac Lennan: Attention:
Legal Section, Department of Real Estate, 320 W. Fourth St.,
Suite 350, Los Angeles, California 90013-1105. Additionally,
Respondent shall also (2) facsimile a copy of signed signature
page, to the Department at the following telephone/fax number:
(213) 576-6917, Attention: Elliott Mac Lennan. A facsimile
constitutes acceptance and approval of the terms and conditions
of this stipulation.

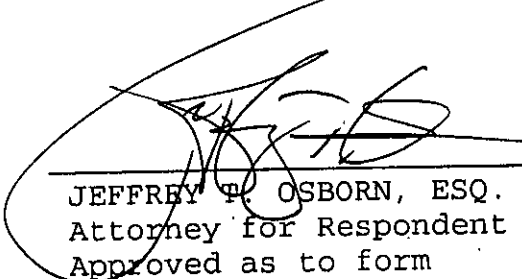
DATED:

3/10/11


RICHARD A. MONTES, Respondent

DATED:

3/10/11


JEFFREY T. OSBORN, ESQ.
Attorney for Respondent
Approved as to form

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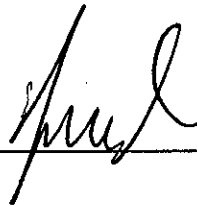
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* * *

1 The foregoing Stipulation and Agreement is hereby
2
3 adopted as my Decision as to Respondent RICHARD A. MONTES and
4 shall become effective at 12 o'clock noon on
5 May 13, 2011.

6 IT IS SO ORDERED 3/24, 2011.

7
8 JEFF DAVI
9 Real Estate Commissioner

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27

facto
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

MAR 12 2009

DEPARTMENT OF REAL ESTATE

BY: DeLy

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 35776 LA

12 RICHARD A. MONTES, doing)
13 business as Camino Real Investments,)

A C C U S A T I O N

14 Respondent.)
15)

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, acting in her official
18 capacity, for cause of Accusation against RICHARD A. MONTES dba
19 Camino Real Investments, is informed and alleges as follows:
20

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.

26 ///

27 ///

1 2.

2 At all times mentioned, RICHARD A. MONTES
3 ("MONTES"), was licensed or had license rights issued by the
4 Department of Real Estate ("Department") as a restricted real
5 estate broker. On March 8, 2004, MONTES was originally licensed
6 as a real estate broker. Effective January 23, 2004, in Case No.
7 H-30389 LA, pursuant to a Stipulation and Agreement, MONTES was
8 granted the right to a restricted broker license as set forth in
9 more detail in Paragraph 11, below.

10 3.

11 At all times mentioned, in the City of Santa Ana,
12 County of Orange, MONTES engaged in the business of, acted in the
13 capacity of, advertised or assumed to act as a real estate broker
14 within the meaning of Code Section 10131(a), including the
15 solicitation for listings of and the negotiation of the sale of
16 real property as the agent of others. MONTES operated a
17 residential resale brokerage dba Camino Real Investments.

18 4.

19 On October 15, 2008, the Department completed an audit
20 examination of the books and records of MONTES, pertaining to the
21 residential resale activities described in Paragraph 3, that
22 require a real estate license. The audit examination covered a
23 period of time beginning on July 1, 2006 to August 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 080020 and the exhibits and work papers attached.
27

5.

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

6.

With respect to the licensed activities referred to in Paragraph 3, and the audit examination including the exhibits and work papers referenced in Paragraph 4, it is alleged that MONTES:

(a) (1) Misrepresented to seller Howard D. Hudson that MONTES held an earnest money deposit for buyer David Sandoval, in violation of Section 10176(a) and/or 10177(g).

(a) (2) Held earnest money deposit checks for Juan Fernandez Jr., and for Jaimie Roman/Jose De Jesus Lopez, without obtaining written authorization from said buyers after the offer was not accepted, in violation of Code Section 10177(g).

(b) Failed to maintain an accurate control record in the form of a columnar record in chronological order of all "Trust Funds Received, Not Placed Broker's Trust Account", in violation of Code Section 10145 and Regulation 2831.

(c) Failed to place trust funds, including earnest money deposits, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson, in violation of Code Section 10145 and Regulation 2832(d).

1 (d) Changed its address in without timely notification
2 to the Department, in violation of Code Section 10162 and
3 Regulation 2715; and

4 (f) Failed to notify the Department of the termination
5 of two salespersons, Cindy Marlene Nustad and Rommy Renteros, in
6 violation of Code Section 10161.8 and Regulation 2752.

7 7.

8
9 The conduct of Respondent MONTES described in Paragraph
10 6, above, violated the Code and the Regulations as set forth:

11 PARAGRAPH

PROVISIONS VIOLATED

12 6(a)

Code Sections 10176(a) and/or 10177(g)

15 6(b)

Code Section 10145 and Regulation 2831

18 6(c)

Code Section 10145 and Regulation 2832

21 6(d)

Code Section 10162 and Regulation 2715

24 6(e)

Code Section 10161.8 and Regulation 2752

1 Each of the foregoing violations constitute cause for the
2 suspension or revocation of the real estate license and license
3 rights of Respondent MONTES under the provisions of Code Sections
4 10176(a), 10177(d) and/or 10177(g).

5 9.

6 The overall conduct of Respondent MONTES constitutes
7 negligence or incompetence. This conduct and violation are cause
8 for the suspension or revocation of the real estate license and
9 license rights of Respondent pursuant to Code Section 10177(g).

10 10.

11 The overall conduct of MONTES constitutes a failure to
12 exercise supervision and control over the licensed activities of
13 Respondent's brokerage. Nor did MONTES maintain a system in
14 place for regularly monitoring his compliance with the Real
15 Estate Law especially in regard to establishing policies to
16 reviewing trust fund handling and record keeping for his client's
17 trust funds, in violation of Code Sections 10177(d) and 10177(h).

18 11.

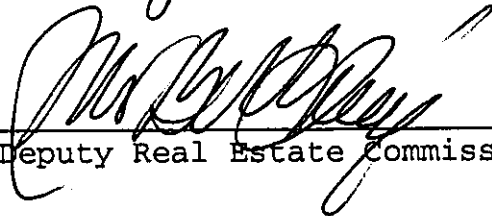
19
20 PRIOR DEPARTMENT ACTION

21 On January 23, 2004, in Case No. H-30389 LA, a
22 Stipulation and Agreement became effective against RICHARD A.
23 MONTES MENDOZA, for violations of Code Sections 475(a)(1),
24 480(a)(1) and 10177(b). Respondent's application for a real
25 estate broker licenses were denied with right to a restricted
26 real estate broker license on terms and conditions.

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 Respondent
5 RICHARD A. MONTES, under the Real Estate Law (Part 1 of Division
6 4 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable provisions
8 of law.

9
10 Dated at Los Angeles, California

11 this *26th day of February 2009.*

12
13 
14 Deputy Real Estate Commissioner
15
16
17
18
19
20
21
22
23
24

25 cc: Richard A. Montes
26 Maria Suarez
27 Sacto
Audits - Gina Chou