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

SEP 30 2011

DEPARTMENT OF REAL ESTATE
BY: Russell Valencia

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	DRE No. H-36923 LA
	)	OAH No. L-201012094
	)	
RAMIRO ERNESTO TAMAYO, doing	)	
business as EKV Financial,	)	
and dba EKV Properties,	)	<u>STIPULATION AND AGREEMENT</u>
	)	
<u>Respondent.</u>	)	

It is hereby stipulated by and between RAMIRO ERNESTO TAMAYO (sometimes referred to herein as "Respondent"), representing himself in this matter, the Complainant, acting by and through Martha J. Rosett, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on November 18, 2010 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 held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

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

4 3. On November 30, 2010, Respondent filed a Notice of Defense pursuant to
5 Section 11506 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. In order to effectuate this settlement, Respondent hereby freely
7 and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he
8 understands that by withdrawing said Notice of Defense, he will thereby waive his right to
9 require the Commissioner to prove the allegations in the Accusation at a contested hearing held
10 in accordance with the provisions of the APA and that he will waive other rights afforded to
11 him in connection with the hearing such as the right to present evidence in defense of the
12 allegations in the Accusation and the right to cross-examine witnesses.

13 4. Respondent, pursuant to the limitations set forth below, although not
14 admitting or denying the truth of the allegations, will not contest the factual allegations
15 contained in the Accusation filed in this proceeding and the Real Estate Commissioner shall
16 not be required to provide further evidence of such allegations.

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

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to
26 any further administrative proceedings by the Department of Real Estate with respect to any
27 matters which were not specifically alleged to be causes for accusation in this proceeding.

1 7. This Stipulation and Respondent's decision not to contest the Accusation are
2 made for the purpose of reaching an agreed disposition of this proceeding, and are expressly
3 limited to this proceeding and any other proceeding or case in which the Department of Real
4 Estate ("Department"), or another licensing agency of this state, another state, or of the federal
5 government is involved, and otherwise shall not be admissible in any other criminal or civil
6 proceedings.

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations and waivers and solely for the purpose
9 of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
10 following Determination of Issues shall be made:

11 The conduct, acts or omissions of Respondent RAMIRO ERNESTO
12 TAMAYO, as set forth in the Accusation, constitute cause to suspend or revoke the real estate
13 license and licensing rights of Respondent RAMIRO ERNESTO TAMAYO under the
14 provisions of Business and Professions Code ("Code") Section 10177(g).

15 ORDER

16 WHEREFORE, THE FOLLOWING ORDER is hereby made:

17 All licenses and licensing rights of Respondent RAMIRO ERNESTO
18 TAMAYO under the Real Estate Law are suspended for a period of sixty (60) days from the
19 effective date of this Decision; provided, however, that sixty (60) days of said suspension shall
20 be stayed for two (2) years upon the following terms and conditions:

- 21 1. Respondent shall obey all laws, rules and regulations governing the rights,
22 duties and responsibilities of a real estate licensee in the State of California; and
23 2. That no final subsequent determination be made, after hearing or upon
24 stipulation, that cause for disciplinary action occurred within two (2) years of the effective date
25 of this Decision. Should such a determination be made, the Commissioner may, in his
26 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
27

1 suspension. Should no such determination be made, the stay imposed herein shall become
2 permanent.

3 3. Respondent shall, within six months from the effective date of this Decision,
4 take and pass the Professional Responsibility Examination administered by the Department
5 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
6 condition, the Commissioner may order suspension of Respondent's license until Respondent
7 passes the examination.

8
9 DATED: 7/11/11


10 MARTHA J. ROSETT
11 Counsel for Complainant

12 * * *

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

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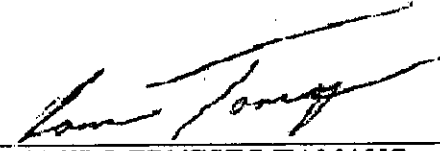
07/08/2011 FRI 16:38 FAX 213 5766838

0007/007

1 Respondent may signify acceptance and approval of the terms and conditions of
2 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by

3 Respondent, to the Department at the following fax number (213) 576-6917. Respondent agrees,
4 acknowledges and understands that by electronically sending to the Department a fax copy of his
5 actual signature as it appears on the Stipulation that receipt of the faxed copy by the Department
6 shall be as binding on Respondent as if the Department had received the original signed
7 Stipulation and Agreement.

8
9 DATED: 07/08/2011


RAMIRO ERNESTO TAMAYO
Respondent

11
12 * * *

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

16
17 IT IS SO ORDERED _____.

18 BARBARA BIGBY
19 Acting Real Estate Commissioner
20
21 _____
22
23
24
25
26
27

1 Respondent may signify acceptance and approval of the terms and conditions of
2 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
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8
9 DATED: _____

RAMIRO ERNESTO TAMAYO
Respondent

11
12 * * *

13
14 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
15 this matter and shall become effective at 12 o'clock noon on OCT 20 2011

16
17 IT IS SO ORDERED

9/28/11

18 BARBARA BIGBY
19 Acting Real Estate Commissioner

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FILED

NOV 18 2010

MARTHA J. ROSETT, Counsel (SBN 142072)
Department of Real Estate
320 West Fourth St. #350
Los Angeles, CA 90013

DEPARTMENT OF REAL ESTATE
BY: Jan B. Chen

(213) 576-6982
(213) 620-6430

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	No H-36923-LA
	)	
RAMIRO ERNEST TAMAYO, doing	)	ACCUSATION
Business as EKV Financial and	)	
EKV Properties,	)	
	)	
<u>Respondent.</u>	)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner, for cause of Accusation against RAMIRO ERNEST TAMAYO is informed and alleges as follows:

1.

Robin Trujillo is a Deputy Real Estate Commissioner of the Department of Real Estate of the State of California ("Department"), and she brings this Accusation in her official capacity.

2.

Respondent RAMIRO ERNEST TAMAYO, dba EKV Financial and dba EKV Properties (Respondent), is licensed and/or has license rights under the Real Estate Law (Part 1

1 of Division 4 of the Business and Professions Code, hereinafter "Code") as a real estate broker.

2 Respondent was originally licensed by the Department as a broker in 2004.

3 3.

4 All further references to "Respondent" include the party identified in Paragraph 2
5 above, and also include the employees, agents and real estate licensees employed by or associated
6 with said party, who at all times were engaged in the furtherance of the business or operations of
7 said parties and who were acting within the course and scope of their authority and employment.
8

9 4.

10 At all times material herein, Respondent engaged in the business of, acted in the
11 capacity of, advertised or assumed to act as a real estate broker within the meaning of Code
12 Sections 10131(a) and 10131(d), representing another or others in the purchase, sale or exchange
13 of real property and business opportunities and representing borrowers and lenders in obtaining
14 and/or making loans secured by real property.
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16 5.

17 In February of 2008, Cindy Zepeda owned residential property located at 36078
18 Tahoe Street, Winchester, CA 92596 ("subject property"). At that time, she was two months
19 behind on her mortgage payments. On or about February 5, 2008, Cindy Zepeda ("Seller")
20 entered into a listing agreement with her cousin, Respondent TAMAYO, whereby Respondent
21 agreed to act as her agent and list the subject property for sale.
22

23 6.

24 On or about April 12, 2008, Respondent received an offer from Dolores and
25 Vongsayanh Sananikone ("Buyers") to purchase the subject property for \$279,000.00. On
26 April 23, 2008, Seller signed a counter-offer, which made the sale contingent upon lenders'
27

1 acceptance of a short sale, and upon Buyers' obtaining a conventional loan. The Buyers signed
2 the counter-offer on April 24, 2008, indicating acceptance of the additional terms. Respondent
3 did not present the signed counter offer to the Seller at that time. Instead, Respondent told Seller
4 that Buyers were having problems with the contract.

5 7.

6 On or about May 18, 2008, Respondent offered to purchase the subject property
7 from Seller for \$229,000.00. At that time, he did not tell Seller that there was a valid offer
8 pending from Buyer for \$279,000.00. In addition to a new Purchase Agreement, Respondent
9 also obtained Seller's signature on a Notice of Option Contract for Sale and Purchase, and on the
10 Option Contract itself, executed by Respondent and Seller on May 18, 2008.
11

12 8.

13 On or about May 22, 2008, Respondent negotiated with the original Buyers and
14 obtained a new "counter-offer" from them in which they agreed to an increased sales price of
15 \$285,000.00. In the counter-offer, Buyers acknowledged that they were aware Respondent was a
16 party to the transaction, and an authorized signer. This new counter-offer was not signed by
17 Seller, and there is no evidence that she was aware of its terms or existence at the time.
18

19 9.

20 On or about May 30, 2008, two separate escrows were opened at Counties Title
21 Nation, an escrow company licensed by the California Department of Insurance. One escrow,
22 number IR 0366, pertained to the sale of subject property from Seller to Respondent TAMAYO
23 for \$229,000.00. The other escrow, number 0367, pertained to the sale of subject property from
24 Respondent TAMAYO to Buyers for \$285,000.00.
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10.

1
2 On or about July 24, 2008, Buyers learned from a lender that title was in Seller's
3 name, and not in Respondent's name, as they had been misled to believe. Buyers learned that
4 Seller's agreement to sell the subject property to Respondent for \$229,000.00 was signed after
5 Buyers had agreed to purchase the property for \$279,000.00. Therefore, Buyers cancelled
6 escrow. Subsequently, the subject property went into foreclosure.
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11.

8
9 Respondent failed to communicate and disclose to his client, Seller, that the
10 Buyers accepted and signed her counter offer of April 23rd on April 24, 2008. Respondent
11 engaged in self-dealing by withholding that information from his client and leading her to believe
12 that sale of the property to him was necessary and in her best interests.
13

12.

14
15 Respondent made a series of material misrepresentations to the Buyer and the
16 Buyers' agent, failing to disclose that he had attempted to purchase the property from Seller for
17 \$229,000.00 after she had already accepted an offer from them to purchase the property for
18 \$279,000.00. Respondent engaged in an intentionally deceptive and dishonest course of conduct,
19 and planned to make a \$50,000.00 personal profit in ersatz "purchase and resale" of the subject
20 property, as described above.
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13.

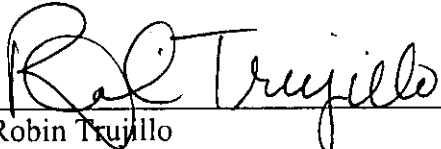
22
23 The conduct, acts and/or omissions of Respondent TAMAYO, in making
24 substantial misrepresentations, engaging in self-dealing, and engaging in fraud and dishonest
25 dealing as set forth above, constitutes grounds to suspend or revoke TAMAYO's licenses and
26 license rights pursuant to Code Sections 10176(a), 10176(b), 10176(c), 10176(i), 10177(j) and/or
27

1 10177(g).

2 WHEREFORE, the Complainant prays that a hearing be conducted on the
3 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
4 disciplinary action against all licenses and/or license rights of Respondent RAMIRO ERNEST
5 TAMAYO under the Real Estate Law and for such other and further relief as may be proper
6 under applicable provisions of law.

7 Dated at Los Angeles, California

8 this 26 day of October, 2010.

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11 
12 Robin Trujillo
13 Deputy Real Estate Commissioner
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22

23 cc: Ramiro Ernest Tamayo
24 Robin Trujillo
25 Sacto.
26
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