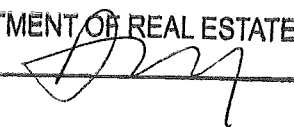


FILED

NOV 21 2013

DEPARTMENT OF REAL ESTATE

BY: 

Bureau of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013
(213) 576-6982
(213) 620-6430
(213) 576-6917 (f)

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	DRE Case No. H-38510 LA
	)	OAH Case No. 2013020335
GILBERTO VARGAS GARCIA,	)	
	)	<u>STIPULATION AND</u>
	)	<u>AGREEMENT</u>
Respondent.	)	

It is hereby stipulated by and between GILBERTO VARGAS GARCIA (sometimes referred to herein as "Respondent"), represented in this matter by Frank M. Buda, Esq., and the Complainant, acting by and through Martha J. Rosett, Counsel for the Bureau of Real Estate¹, as follows for the purpose of settling and disposing of the Accusation filed on November 1, 2012 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

¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate. All further references to the agency will be as the "Bureau".

1 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement.

3 2. Respondent has received, read and understands the Statement to Respondent,
4 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in
5 this proceeding, and has reviewed it with his attorney.

6 3. On November 16, 2012, Respondent filed a Notice of Defense pursuant to
7 Section 11506 of the Government Code for the purpose of requesting a hearing on the
8 allegations in the Accusation. In order to effectuate this settlement, Respondent hereby freely
9 and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense, he will thereby waive his right to
11 require the Commissioner to prove the allegations in the Accusation at a contested hearing held
12 in accordance with the provisions of the APA and that he will waive other rights afforded to
13 him in connection with the hearing such as the right to present evidence in defense of the
14 allegations in the Accusation and the right to cross-examine witnesses.

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

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

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

1 any further administrative proceedings by the Bureau with respect to any matters which were
2 not specifically alleged to be causes for accusation in this proceeding.

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

9 DETERMINATION OF ISSUES

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

13 The conduct, acts or omissions of Respondent GILBERTO VARGAS
14 GARCIA, as set forth in the Accusation constitute cause to suspend or revoke the real estate
15 license and licensing rights of Respondent GILBERTO VARGAS GARCIA pursuant to
16 Business and Professions Code Sections 10137, 10146, 10177(g), and 10177(d).

17 ORDER

18 WHEREFORE, THE FOLLOWING ORDER is hereby made:

19 I. The real estate broker license of Respondent GILBERTO VARGAS GARCIA
20 under the Real Estate Law is revoked; provided, however, a restricted real estate broker license
21 shall be issued to Respondent, pursuant to Section 10156.5 of the Business and Professions
22 Code, if Respondent makes application there for and pays to the Department of Real Estate the
23 appropriate fee for the restricted license within ninety (90) days from the effective date of this
24 Decision. The restricted license issued to Respondent shall be subject to all of the provisions of
25 Section 10156.7 of the Code and the following limitations, conditions and restrictions imposed
26 under authority of Section 10156.6 of that Code.
27

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

5 2. The restricted license issued to Respondent may be suspended prior to hearing
6 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
7 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
8 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
9 license.

10 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
11 real estate license nor for the removal of any of the conditions, limitations or restrictions of a
12 restricted license until two (2) years has elapsed from the effective date of the issuance of the
13 restricted license.

14 4. Respondent shall, within nine months from the effective date of this Decision,
15 present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the
16 most recent issuance of an original or renewal real estate license, taken and successfully
17 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
18 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the
19 Commissioner may order the suspension of the restricted license until the Respondent presents
20 such evidence. The Commissioner shall afford Respondent the opportunity for a hearing
21 pursuant to the Administrative Procedure Act to present such evidence.

22 5. Respondent shall within six (6) months from the effective date of the Decision
23 herein, take and pass the Professional Responsibility Examination administered by the
24 Department including the payment of the appropriate examination fee. If Respondent fails to
25 satisfy this condition, the Commissioner may order suspension of Respondent's license until
26 Respondent passes the examination.
27

1 6. Pursuant to Section 10106 of the Business and Professions Code, Respondent
2 shall pay the Commissioner's reasonable cost for the investigative audit which led to this
3 disciplinary action in the amount of \$3,377.00, and a subsequent audit to determine if
4 Respondent has corrected the violations found in the Determination of Issues. In calculating the
5 amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average
6 hourly salary for all persons performing audits of real estate brokers, and shall include an
7 allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost
8 within sixty (60) days of receiving an invoice from the Commissioner detailing the activities
9 performed during the audit and the amount of time spent performing those activities. The
10 Commissioner may suspend the license of Respondent pending a hearing held in accordance
11 with Section 11500, et seq., of the Government Code, if payment is not timely made as provided
12 for herein, or as provided for in a subsequent agreement between the Respondent and the
13 Commissioner. The suspension shall remain in effect until payment is made in full or until
14 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or
15 until a decision providing otherwise is adopted following a hearing held pursuant to this
16 condition.

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

24 8. Respondent shall within six (6) months from the effective date of this Decision
25 present evidence satisfactory to the Real Estate Commissioner that Respondent has made
26 restitution in the amounts listed in the chart below, or that despite reasonable efforts, payment of
27 restitution could not be made.

1 (A) To the extent that restitution payment is applicable:

2 (i) Respondent shall deliver or mail the restitution payments, by certified mail,
3 return receipt requested, to the consumers at the last address on file with or known
4 to Respondent.

5 (ii) If any of the payments are returned by the Post Office marked “unable to
6 deliver,” Respondent shall employ a locator service (that may include or be
7 limited to the Internet or other database retrieval search) to try and locate the
8 aforesaid borrowers. Repayments shall then be made to the addresses
9 recommended by the locator service.

10 (B) If unable to effect repayment after using a locator service, Respondent shall
11 provide reasonable proof satisfactory to the Commissioner of his efforts to comply with the
12 provisions of this Paragraph.

13 (C) If the Commissioner determines that proof to be unsatisfactory, the
14 Commissioner shall so advise Respondent, and indicate what additional reasonable efforts should
15 be made to locate and repay such borrowers.

16 (D) If the Commissioner determines that reasonable efforts have been made to
17 locate any borrower without success, then that borrower’s refund shall escheat to the State of
18 California as unclaimed property.

19 (E) If Respondent is able to provide proof satisfactory to the Department within
20 the time period set forth above that Respondent, through USA Home Relief, Inc., successfully
21 obtained a loan modification on behalf of one or more of the named consumers, such proof will
22 be deemed sufficient to comply with this term of his restricted license, and no further proof of
23 restitution will be required as to that or those specific consumer(s).

24 (F) All proof of compliance with this condition shall be submitted to Department
25 Counsel Martha J. Rosett, Attention: Legal Section, Department of Real Estate, 320 W. Fourth
26 St., Suite 350, Los Angeles, California 90013-1105, within six (6) months of the effective date of
27 this Decision.

(G) If Respondent fails to satisfy this condition, Respondent's license and license rights shall be suspended indefinitely prior to hearing until Respondent provides proof of restitution. Failure to satisfy this condition may also constitute grounds for further discipline of Respondent's license and/or license rights. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedures Act to present evidence of compliance.

Chart of Restitution to Consumers for Advance Fees paid for Loan Modification Services:

CONSUMER NAME(S)	AMOUNT OF RESTITUTION
Mavis L.	\$ 2,695
Evelyn B.	\$ 4,500
Isais C.	\$ 3,000
Jose P.	\$ 3,000
Lucio and Delia V.	\$ 3500
Angela T.	\$ 2000
Jose F.	\$ 2500
TOTALS: 7 CONSUMERS	\$21,195

DATED: 7/30/13


Martha J. Rosett, Counsel for
Department of Real Estate

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1 I have read the Stipulation and Agreement. Its terms are understood by me and
2 are agreeable and acceptable to me. I understand that I am waiving rights given to me by the
3 California Administrative Procedure Act (including but not limited to Sections 11506, 11508,
4 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive
5 those rights, including the right of requiring the Commissioner to prove the allegations in the
6 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
7 and to present evidence in defense and mitigation of the charges.

8 Respondent may signify acceptance and approval of the terms and conditions of
9 this Stipulation by faxing a copy of its signature page, as actually signed by Respondent, to the
10 Department at the following facsimile number: **Martha J. Rosett at (213) 576-6917.**
11 Respondent agrees, acknowledges and understands that by electronically sending to the
12 Department a fax copy of Respondent's actual signature as it appears on the Stipulation, receipt
13 of the faxed copy by the Department shall be as binding on Respondent as if the Department had
14 received the original signed Stipulation.

15
16 DATED: _____

GILBERTO VARGAS GARCIA
Respondent

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18
19 DATED: _____

Frank M. Buda, Attorney at Law
Counsel for Respondent

21 * * *

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I have read the Stipulation and Agreement. Its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I 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 I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

Respondent may signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following facsimile number: Martha J. Rosett at (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation, receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation.

DATED: 7-26-13

GILBERTO VARGAS GARCIA

Respondent

DATED: 7-26-13

Frank M. Buda, Attorney at Law

Counsel for Respondent

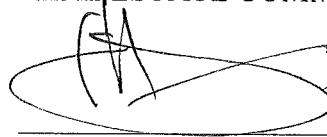
GILBERTO VARGAS GARCIA

Respondent

1 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
2 this matter and shall become effective at 12 o'clock noon on December 20, 2013
3 _____

4 **OCT 25 2013**
5 IT IS SO ORDERED _____

6
7 REAL ESTATE COMMISSIONER

8 
9 _____

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11 **By: JEFFREY MASON**
12 **Chief Deputy Commissioner**
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