

1 Department of Real Estate
2 320 West Fourth Street, #350
3 Los Angeles, California 90013

4 (213) 576-6982

FILED

JUL 24 2013

DEPARTMENT OF REAL ESTATE
BY: CA

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-38541 LA
12) OAH No. L-2013020293
13 RICHARD GARCIA,,)
14 Respondent.)
15) STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between RICHARD GARCIA
17 ("Respondent") and his attorney of record, Roy A. Hoffman, and
18 the Complainant, acting by and through Lissete Garcia, Counsel
19 for the Department of Real Estate, as follows for the purpose of
20 settling and disposing of the Accusation filed on November 9,
21 2012, in this matter:

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondent
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27

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

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

8 3. On November 19, 2012, Respondent filed a Notice of
9 Defense pursuant to Section 11506 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense he will
14 thereby waive his right to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that he will waive
17 other rights afforded to him in connection with the hearing such
18 as the right to present evidence in defense of the allegations
19 in the Accusation and the right to cross-examine witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation filed in this
22 proceeding. In the interest of expedience and economy,
23 Respondent chooses not to contest these factual allegations, but
24 to remain silent and understands that, as a result thereof,
25 these factual statements, will serve as a prima facie basis for
26 the disciplinary action stipulated to herein. The Real Estate
27 Commissioner shall not be required to provide further evidence

1 to prove such allegations.

2 5. This Stipulation is made for the purpose of
3 reaching an agreed disposition of this proceeding and is
4 expressly limited to this proceeding and any other proceeding or
5 case in which the Department of Real Estate ("Department"), the
6 state or federal government, or any agency of this state,
7 another state or federal government is a party.

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

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

26 8. Respondent understands that by agreeing to this
27 Stipulation, Respondent agrees to pay, pursuant to Business and

1 Professions Code Section 10148, the cost of the audit which led
2 to this disciplinary action. The amount of said cost is
3 \$4,668.28.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations and waivers
6 and solely for the purpose of settlement of the pending
7 Accusation without a hearing, it is stipulated and agreed that
8 the following determination of issues shall be made:

9 The conduct, acts and/or omissions of Respondent
10 RICHARD GARCIA, as set forth above in Paragraph 4, constitute
11 cause for the suspension or revocation of all the real estate
12 licenses and license rights of Respondent RICHARD GARCIA under
13 the provisions of Sections 10177(d) and 10167.12(a)(1) of the
14 Business and Professions Code ("Code") for violation of Code
15 Sections 10145, 10148, 10162, 10167.9, 10167.10, 10167.11, and
16 Regulations 2831 and 2715 of the Regulations of the Real Estate
17 Commissioner, Title 10, Chapter 6, California Code of
18 Regulations.

18 ORDER

19 WHEREFORE, THE FOLLOWING ORDER is hereby made:

20 I.

21 All licenses and licensing rights of Respondent
22 RICHARD GARCIA under the Real Estate Law are suspended for a
23 period of forty-five (45) days from the effective date of this
24 Decision; provided, however, that thirty (30) days of said
25 suspension, shall be stayed for one (1) year upon the following
26 terms and conditions:
27

1 one (1) from the effective date of the Decision in
2 this matter.

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

11 5. If Respondent pays the monetary penalty and if no
12 further cause for disciplinary action against the
13 real estate license of Respondent occurs within one
14 (1) year from the effective date of the Decision,
15 the stay hereby granted shall become permanent.

16 III.

17 Respondent shall, prior to the effective date of this
18 Decision, submit proof satisfactory to the Commissioner of
19 payment of restitution in the amount of \$195 to Melanie Gammage
20 and \$195 to Stephanie Aberl as follows:

21 (a) Respondent shall deliver or mail the restitution
22 payment, by certified mail, return receipt
23 requested, to Melanie Gammage's and Stephanie
24 Aberl's last addresses on file with or known to
25 Respondent.

26 (b) If the payment is returned by the Post Office
27 marked "unable to deliver," Respondent shall employ

1 a locator service (that may include or be limited to
2 the Internet or other database retrieval search) to
3 try and locate Melanie Gammage and Stephanie Aberl.
4 Repayment shall then be made to the addresses
5 recommended by the locator service.

6 (c) If unable to effect repayment after using a
7 locator service, Respondent shall provide reasonable
8 proof satisfactory to the Commissioner of his
9 efforts to comply with the provisions of this
10 Paragraph.

11 (d) If the Commissioner determines that proof to be
12 unsatisfactory, he shall so advise Respondent, and
13 indicate what additional reasonable efforts should
14 be made to make repayment to Melanie Gammage and
15 Stephanie Aberl.

16 (e) If Respondent fails to satisfy this condition, the
17 Commissioner may order suspension of Respondent's
18 license until Respondent effects compliance herein;
19 and

20 (f) Restitution payments not made to Melanie Gammage
21 and Stephanie Aberl shall escheat to the State of
22 California.

23 IV.

24 Respondent shall within six months from the effective
25 date of this Decision, take and pass the Professional
26 Responsibility Examination administered by the Department
27 including the payment of the appropriate examination fee. If

1 Respondent fails to satisfy this condition, the Commissioner may
2 order suspension of Respondent's license until Respondent passes
3 the examination.

4 V.

5 Respondent shall within six months from the effective
6 date of this Decision, provide proof satisfactory to the
7 Commissioner, of having taken and successfully completed the
8 continuing education course on trust fund accounting and
9 handling specified in paragraph (3) of subdivision (a) of
10 Section 10170.5 of the Business and Professions Code. Proof of
11 satisfaction of this requirement includes evidence that
12 Respondent has successfully completed the trust fund account and
13 handling continuing education course within 120 days prior to
14 the effective date of the Decision in this matter.

15 VI.

16 Pursuant to California Business and Professions Code
17 Section 10106, Respondent RICHARD GARCIA shall pay the
18 Commissioner's reasonable cost for enforcement of the matter.
19 The enforcement cost which led to this disciplinary action is
20 \$1,646.50. Said payment shall be made within ninety (90) days
21 after the effective date of this Decision.

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

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

5 VII.

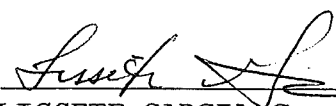
6 A copy of all proof of payment shall be submitted to
7 Department Counsel Lissete, Attention: Legal Section, Department
8 of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles,
9 California 90013-1105, on or before the dates set forth above.

10 VIII.

11 Pursuant to Section 10148 of the Business and
12 Professions Code, Respondent shall pay the Commissioner's
13 reasonable cost for the audit which led to this disciplinary
14 action. The amount of said cost is \$4,668.25. In calculating
15 the amount of the Commissioner's reasonable cost, the
16 Commissioner may use the estimated average hourly salary for all
17 persons performing audits of real estate brokers, and shall
18 include an allocation for travel costs, including mileage, time
19 to and from the auditor's place of work and per diem.
20 Respondent shall pay such costs within 60 days of receiving an
21 invoice from the Commissioner detailing the activities performed
22 during the audit and the amount of time spent performing those
23 activities. The Commissioner may, in his discretion, vacate and
24 set aside the stay order, if payment is not timely made as
25 provided for herein, or as provided for in a subsequent
26 agreement between the Respondent and the Commissioner. The
27 vacation and the set aside of the stay shall remain in effect

1 until payment is made in full, or until Respondent enters into
2 an agreement satisfactory to the Commissioner to provide for
3 payment.

4 DATED: June 27, 2013

5 
6 LISSETE GARCIA Counsel for Complainant

7 * * *

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

19
20 Respondent can signify acceptance and approval of the
21 terms and conditions of this Stipulation and Agreement by faxing
22 a copy of the signature page, as actually signed by Respondent,
23 to the Department at fax number (213) 576-6917. Respondent
24 agrees, acknowledges and understands that by electronically
25 sending to the Department a fax copy of his actual signature as
26

1 it appears on the Stipulation and Agreement, that receipt of the
 2 faxed copy by the Department shall be as binding on Respondent
 3 as if the Department had received the original signed
 4 Stipulation and Agreement.

5 DATED: 6-26-13

Richard Garcia
 RICHARD GARCIA, Respondent

7 I have reviewed the Stipulation and Agreement as to
 8 form and content and have advised my client accordingly.

10 DATED: June 26, 2013

Roy A. Hoff
 ROY A. HOFFMAN, Attorney for Respondent

12 * * *

13 The foregoing Stipulation and Agreement is hereby
 14 adopted as my Decision in this matter and shall become effective
 15 at 12 o'clock noon on August 23, 2013.

16 IT IS SO ORDERED July 19, 2013

18 REAL ESTATE COMMISSIONER

Jeffrey Mason

21 By: JEFFREY MASON
 22 Chief Deputy Commissioner

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