

1 BUREAU OF REAL ESTATE
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982

FILED

NOV 13 2017

BUREAU OF REAL ESTATE

By *Byrgud Stenner*

5
6
7
8 BEFORE THE BUREAU OF REAL ESTATE
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 * * *

12
13 In the Matter of the Accusation against) CalBRE No. H-40570 LA
14) OAH No. 2017041021
15 OCTAVIO PONCE MERCADO and)
16 EMPIRE OF STARS COMMERCIAL AND) STIPULATION AND AGREEMENT
17 RESIDENTIAL REAL ESTATE SERVICES,) IN SETTLEMENT AND ORDER
INC.,)
Respondents.)

18 It is hereby stipulated by and between Respondents OCTAVIO PONCE MERCADO and
19 EMPIRE OF STARS COMMERCIAL AND RESIDENTIAL REAL ESTATE SERVICES,
20 INC. (collectively "Respondents") and their attorney, Robert Sievers, Esq., and Complainant,
21 acting by and through Lissete Garcia, Counsel for the Bureau of Real Estate ("Bureau"), as
22 follows for the purpose of settling and disposing the Accusation filed on March 8, 2017, with
23 Bureau Case No. H-40570 LA ("Accusation") in this matter:

24 ///

Stipulation and Agreement
H-40570 LA

1 1. All issues which were to be contested and all evidence which was to be presented by
2 Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be
3 held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall
4 instead and in place thereof be submitted on the basis of the provisions of this Stipulation and
5 Agreement in Settlement and Order ("Stipulation").

6 2. Respondents have received, read, and understand the Statement to Respondent, the
7 Discovery Provisions of the APA, and Accusation filed by the Bureau in this proceeding.

8 3. Notices of Defense were filed by Respondents pursuant to Section 11506 of the
9 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
10 Respondents hereby freely and voluntarily withdraw said Notices of Defense. Respondents
11 acknowledge and understand that by withdrawing said Notices of Defense they will thereby
12 waive their rights to require the Real Estate Commissioner ("Commissioner") to prove the
13 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
14 APA and that they will waive other rights afforded to them in connection with the hearing such
15 as the right to present evidence in defense of the allegations in the Accusation and the right to
16 cross-examine witnesses.

17 4. Respondents, pursuant to the limitations set forth below, hereby admit that the factual
18 allegations in Paragraphs 1 through 13 of the Accusation filed in this proceeding are true and
19 correct and the Real Estate Commissioner shall not be required to provide further evidence of
20 such allegations.

21 5. It is understood by the parties that the Real Estate Commissioner may adopt the
22 Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and
23 sanctions on Respondents' real estate licenses and license rights as set forth in the below
24

1 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and
2 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
3 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
4 any admission or waiver made herein.

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

9 7. Respondents understand that by agreeing to this Stipulation, Respondents agree to
10 pay, pursuant to Section 10148 of the California Business and Professions Code ("Code"), the
11 cost of the audit which resulted in the determination that Respondent committed the violations
12 found in the "Determination of Issues" below. The amount of said cost is \$3,991.08.

13 8. Respondents understand that by agreeing to this Stipulation, the findings set forth
14 below in the Determination of Issues become final, and the Commissioner may charge
15 Respondents for the cost of any subsequent audit conducted pursuant to Business and Professions
16 Code Section 10148 to determine if the violations have been corrected. The maximum cost of
17 the subsequent audit will not exceed \$4,988.85.

18 9. Respondents further understand that by agreeing to this Stipulation, Respondents
19 agree to pay, pursuant to Section 10106(a) of the Code, investigative and enforcement costs of
20 \$3,723.90 which led to this disciplinary action.

21 ///

22 ///

23 ///

24

1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulation and agreement and solely for the purpose of
3 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
4 following determination of issues shall be made:

5 I.

6 The conduct, acts and/or omissions of Respondent OCTAVIO PONCE MERCADO as
7 set forth in Paragraphs 5 and 6 of the Accusation, constitute cause for the suspension or
8 revocation of all real estate licenses and license rights of Respondent OCTAVIO PONCE
9 MERCADO under the provisions of Sections 10177(d) of the Business and Professions Code
10 ("Code") for violation of Code Sections 10085, 10085.5, 10145, 10146, and Regulations 2970
11 and 2972 of the Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California
12 Code of Regulations ("Regulations"), as set forth in Paragraph 7 of the Accusation.

13 II.

14 As a corporate officer, director, or person owning or controlling more than 10% of
15 EMPIRE OF STARS COMMERCIAL AND RESIDENTIAL REAL ESTATE SERVICES,
16 INC. ("EMPIRE") stock, the conduct, acts and/or omissions of Respondent OCTAVIO PONCE
17 MERCADO forth in Paragraphs 5 and 6 of the Accusation, constitute cause for the suspension or
18 revocation of all real estate licenses and license rights of Respondent EMPIRE under the
19 provisions of Code Section 10177(d) for OCTAVIO MERCADO PONCE's violations of Code
20 Sections 10085, 10085.5, 10145, 10146, and Regulations 2970 and 2972, as set forth in
21 Paragraph 8 of the Accusation.

22 ///

23 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

III.

The conduct, acts and/or omissions of Respondent OCTAVIO PONCE MERCADO as set forth in Paragraphs 12(a) through 12(f) of the Accusation, constitute cause for the suspension or revocation of all real estate licenses and license rights of Respondent OCTAVIO PONCE MERCADO under the provisions of Code Sections 10176(e) and 10177(d) for violations of Code Sections 10176(e), 10145, 10085, 10146, 10140.6, 10159.5, and Regulations 2832, 2831, 2970, 2972, 2773, and 2731, as set forth in Paragraph 13 of the Accusation.

ORDER

I.

1) All licenses and license rights of Respondent OCTAVIO PONCE MERCADO are suspended for a period of six (6) months from the effective date of this Decision and Order; provided, however, said six-month suspension shall be stayed for two (2) years upon the following terms and conditions:

a) Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,

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

2) All licenses and licensing rights of Respondent OCTAVIO PONCE MERCADO are indefinitely suspended unless or until Respondent OCTAVIO PONCE MERCADO pays,

1 jointly or severally with Respondent EMPIRE, the sum of \$3,723.90 for the Commissioner's
2 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
3 payment shall be in the form of a cashier's check made payable to the Bureau of Real Estate.
4 **The investigative and enforcement costs must be delivered to the Bureau of Real Estate,**
5 **Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of**
6 **this Decision and Order.** Payment of investigation and enforcement costs should not be made
7 until the Stipulation has been approved by the Commissioner.

8 3) Respondent OCTAVIO PONCE MERCADO shall, within six (6) months from
9 **the effective date of this Decision, take and pass the Professional Responsibility Examination**
10 **administered by the Bureau including the payment of the appropriate examination fee. If**
11 **Respondent OCTAVIO PONCE MERCADO fails to satisfy this condition, Respondent's real**
12 **estate license shall automatically be suspended until Respondent passes the examination.**

13 4) Respondent OCTAVIO PONCE MERCADO shall, within nine (9) months from
14 **the effective date of this Decision and Order, present evidence satisfactory to the**
15 **Commissioner that Respondent has, since the most recent issuance of an original or renewal real**
16 **estate license, taken and successfully completed the continuing education requirements of Article**
17 **2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. The continuing**
18 **education courses must include the course on trust fund accounting and handling specified in**
19 **paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof**
20 **of satisfaction of these requirements includes evidence that Respondent has successfully**
21 **completed the trust fund account and handling continuing education courses, no earlier than 120**
22 **days prior to the effective date of the Decision and Order in this matter. If Respondent**
23 **OCTAVIO PONCE MERCADO fails to satisfy this condition, Respondent's real estate license**
24

1 shall automatically be suspended until Respondent presents evidence satisfactory to the
2 Commissioner of having taken and successfully completed the continuing education
3 requirements. **Proof of completion of the continuing education courses must be delivered to**
4 **the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.**

5 5) Pursuant to Section 10148 of the Code, Respondent OCTAVIO PONCE

6 MERCADO shall pay, jointly or severally with Respondent EMPIRE, the sum of \$3,991.08 for
7 the Commissioner's cost of the audit which led to this disciplinary action. **Respondents shall**
8 **pay such cost within sixty (60) days of receiving an invoice therefore from the**
9 **Commissioner.** Payment of audit costs should not be made until Respondents receive the
10 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein,
11 Respondents' real estate licenses shall automatically be suspended until payment is made in full,
12 or until a decision providing otherwise is adopted following a hearing held pursuant to this
13 condition.

14 6) Pursuant to Section 10148 of the Code, Respondent OCTAVIO PONCE

15 MERCADO shall pay, jointly or severally with Respondent EMPIRE, the Commissioner's
16 reasonable cost, not to exceed \$4,988.85, for an audit to determine if Respondents have corrected
17 the violations found in the Determination of Issues. In calculating the amount of the
18 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
19 for all persons performing audits of real estate brokers, and shall include an allocation for travel
20 time to and from the auditor's place of work. **Respondents shall pay such cost within sixty**
21 **(60) days of receiving an invoice therefore from the Commissioner.** Payment of the audit
22 costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy
23 this condition in a timely manner as provided for herein, Respondents' real estate licenses shall
24

1 automatically be suspended until payment is made in full, or until a decision providing otherwise
2 is adopted following a hearing held pursuant to this condition.

3 II.

4 1) All licenses and license rights of Respondent EMPIRE OF STARS COMMERCIAL
5 AND RESIDENTIAL REAL ESTATE SERVICES, INC. ("EMPIRE") are suspended for a
6 period of six (6) months from the effective date of this Decision and Order; provided, however,
7 said six-month suspension shall be stayed for two (2) years upon the following terms and
8 conditions:

9 a) Respondent shall obey all laws, rules and regulations governing the rights,
10 duties and responsibilities of a real estate licensee in the State of California; and,
11 b) That no final subsequent determination be made, after hearing or upon stipulation,
12 that cause for disciplinary action occurred within two (2) years from the effective date of this
13 Decision and Order. Should such a determination be made, the Commissioner may, in his
14 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
15 suspension. Should no such determination be made, the stay imposed herein shall become
16 permanent.

17 2) All licenses and licensing rights of Respondent EMPIRE are indefinitely
18 suspended unless or until Respondent EMPIRE pays, jointly or severally with Respondent
19 OCTAVIO PONCE MERCADO, the sum of \$3,723.90 for the Commissioner's reasonable cost
20 of the investigation and enforcement which led to this disciplinary action. Said payment shall be
21 in the form of a cashier's check made payable to the Bureau of Real Estate. The investigative
22 and enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O.
23 Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and
24

1 **Order.** Payment of investigation and enforcement costs should not be made until the Stipulation
2 has been approved by the Commissioner.

3 3) Pursuant to Section 10148 of the Code, Respondent EMPIRE shall pay, jointly or
4 severally with Respondent OCTAVIO PONCE MERCADO, the sum of \$3,991.08 for the
5 Commissioner's cost of the audit which led to this disciplinary action. **Respondents shall pay**
6 **such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.**
7 Payment of audit costs should not be made until Respondents receive the invoice. If
8 Respondents fail to satisfy this condition in a timely manner as provided for herein,
9 Respondents' real estate licenses shall automatically be suspended until payment is made in full,
10 or until a decision providing otherwise is adopted following a hearing held pursuant to this
11 condition.

12 4) Pursuant to Section 10148 of the Code, Respondent EMPIRE shall pay, jointly or
13 severally with Respondent OCTAVIO PONCE MERCADO, the Commissioner's reasonable
14 cost, not to exceed \$4,988.85, for an audit to determine if Respondents have corrected the
15 violations found in the Determination of Issues. In calculating the amount of the Commissioner's
16 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
17 performing audits of real estate brokers, and shall include an allocation for travel time to and
18 from the auditor's place of work. **Respondents shall pay such cost within sixty (60) days of**
19 **receiving an invoice therefore from the Commissioner.** Payment of the audit costs should not
20 be made until Respondents receive the invoice. If Respondents fail to satisfy this condition in a
21 timely manner as provided for herein, Respondents' real estate licenses shall automatically be
22 suspended until payment is made in full, or until a decision providing otherwise is adopted

23 ///

24

1 following a hearing held pursuant to this condition.

2 DATED: 10/6/2017


Lissete Garcia, Counsel
Bureau of Real Estate

3
4 * * *

5 We have read this Stipulation and its terms are understood by us and are agreeable and
6 acceptable to us. We understand that we are waiving rights given to us by the California APA
7 (including, but not limited to, Sections 11506, 11508, 11509, and 11513 of the Government
8 Code), and we willingly, intelligently, and voluntarily waive those rights, including the right of
9 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we
10 would have the right to cross-examine witnesses against us and to present evidence in defense
11 and mitigation of the charges.

12 Respondents can signify acceptance and approval of the terms and conditions of this
13 Stipulation and Agreement by electronically e-mailing a copy of the signature pages, as actually
14 signed by Respondents, to the Bureau. Respondents agree, acknowledge, and understand that by
15 electronically sending to the Bureau an electronic copy of Respondents' actual signatures, as
16 they appear on the Stipulation, that receipt of the emailed copy by the Bureau shall be as binding
17 on Respondents as if the Bureau had received the original signed Stipulation. By signing this
18 Stipulation, Respondents understand and agree that Respondents may not withdraw their
19 agreement or seek to rescind the Stipulation prior to the time the Commissioner considers and
20 acts upon it or prior to the effective date of the Stipulation and Order.

21 DATED: _____

22 Respondent EMPIRE OF STARS
23 COMMERCIAL AND RESIDENTIAL
24 REAL ESTATE SERVICES, INC.
By: _____
(Printed Name)

1 following a hearing held pursuant to this condition.

2 DATED: _____

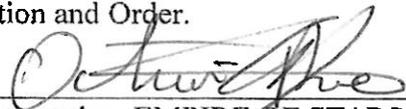
Lisete Garcia, Counsel
Bureau of Real Estate

3
4 * * *

5 We have read this Stipulation and its terms are understood by us and are agreeable and
6 acceptable to us. We understand that we are waiving rights given to us by the California APA
7 (including, but not limited to, Sections 11506, 11508, 11509, and 11513 of the Government
8 Code), and we willingly, intelligently, and voluntarily waive those rights, including the right of
9 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we
10 would have the right to cross-examine witnesses against us and to present evidence in defense
11 and mitigation of the charges.

12 Respondents can signify acceptance and approval of the terms and conditions of this
13 Stipulation and Agreement by electronically e-mailing a copy of the signature pages, as actually
14 signed by Respondents, to the Bureau. Respondents agree, acknowledge, and understand that by
15 electronically sending to the Bureau an electronic copy of Respondents' actual signatures, as
16 they appear on the Stipulation, that receipt of the emailed copy by the Bureau shall be as binding
17 on Respondents as if the Bureau had received the original signed Stipulation. By signing this
18 Stipulation, Respondents understand and agree that Respondents may not withdraw their
19 agreement or seek to rescind the Stipulation prior to the time the Commissioner considers and
20 acts upon it or prior to the effective date of the Stipulation and Order.

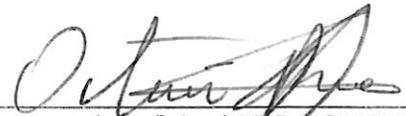
21 DATED: 10-5-17



Respondent EMPIRE OF STARS
COMMERCIAL AND RESIDENTIAL
REAL ESTATE SERVICES, INC.
By: OCTAVIO PONCE MERCADO
(Printed Name)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

DATED: 10-5-17


Respondent OCTAVIO PONCE
MERCADO

I have reviewed the Stipulation and Agreement in Settlement and Order as to form and content and have advised my clients accordingly.

DATED: _____

Robert Sievers, Attorney for Respondents

* * *

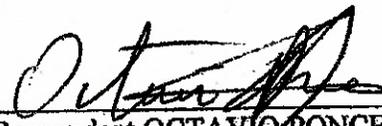
The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on _____, 2017.

IT IS SO ORDERED _____, 2017.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

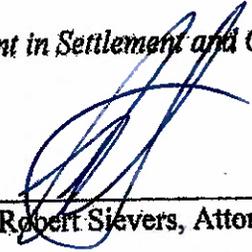
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

DATED: 10-5-17


Respondent OCTAVIO PONCE
MERCADO

I have reviewed the Stipulation and Agreement in Settlement and Order as to form and content and have advised my clients accordingly.

DATED: 10-5-17


Robert Sievers, Attorney for Respondents

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on _____, 2017.

IT IS SO ORDERED _____, 2017.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

DATED: _____

Respondent OCTAVIO PONCE
MERCADO

I have reviewed the Stipulation and Agreement in Settlement and Order as to form and content and have advised my clients accordingly.

DATED: _____

Robert Sievers, Attorney for Respondents

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
DEC 04 2017, 2017.

IT IS SO ORDERED November 7, 2017.

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner