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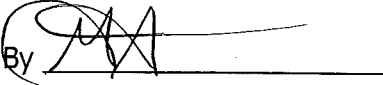
BEFORE THE

November 13, 2012

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

In the Matter of the Accusation of)
)
 LOAN EXPRESS MORTGAGE AB, INC.,)
 a California Corporation;)
 ALFONSO CARPIO BARRETTO;)
 LINDA SY HAMPTON,)
 f.k.a. LINDA JIMINEZ;)
 MANUELITO MATA PAYURAN,)
 a.k.a. LITO M. PAYURAN;)
 TIMOTHY DREW SCHRECK,)
 d.b.a. ISLAND REALTY;)
 NEMESIO THOMPSON GAVIOLA, JR.,)
 a.k.a. JUN GAVIOLA; and,)
 ROGER DAMIAN FERRER,)
 Respondents.)

CASE NO. H-5405 SAC

OAH NO. 2011120422

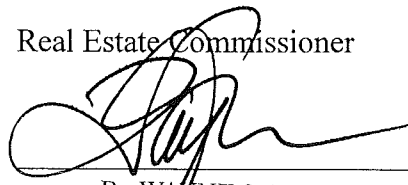
DECISION

The Proposed Decision dated September 20, 2012, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on DEC 03 2012

IT IS SO ORDERED 11/9/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

October 23, 2012

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation Against:

LOAN EXPRESS MORTGAGE AB, INC., a
California Corporation;

ALFONSO CARPIO BARRETTO;

LINDA SY HAMPTON,
f.k.a. LINDA JIMINEZ;

MANUELITO MATA PAYURAN,
a.k.a. LITO M. PAYURAN;


TIMOTHY DREW SCHRECK,
d.b.a. ISLAND REALTY;

NEMESIO THOMPSON GAVIOLA, JR.,
a.k.a. JUN GAVIOLA;

and,

ROGER DAMIAN FERRER,

Respondents.

Case No. ^{By}  H-5405 SAC

OAH No. 2011120422

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on August 20 and 21, 2012, in Sacramento, California.

Michael B. Rich, Counsel, represented complainant, Charles W. Koenig, a Deputy Real Estate Commissioner for the Department of Real Estate (department).

Manuelito Mata Payuran, a.k.a. Lito M. Payuran (respondent Payuran) appeared and represented himself.

Nemesio Thompson Gaviola, Jr., a.k.a. Jun Gaviola (respondent Gaviola) appeared and represented himself.

There was no appearance by or on behalf of corporate real estate broker Loan Express Mortgage AB, Inc. (Loan Express Mortgage), a California Corporation, or real estate broker Alfonso Carpio Barretto, designated broker/officer of respondent Loan Express Mortgage. In a Decision and Order effective August 8, 2012, the licenses and licensing rights of respondents Loan Express Mortgage and Alfonso Carpio Barretto were revoked pursuant to Business and Professions Code section 10177.5, fraud in a civil action.

There was no appearance by or on behalf of real estate salesperson Linda Sy Hampton, formerly known as Linda Jiminez. At all times relevant herein, real estate salesperson Linda Sy Hampton was in the employ of Alfonso Carpio Barretto, d.b.a. Loan Express Mortgage. At hearing, complainant's counsel advised OAH that on July 26, 2012, respondent Linda Sy Hampton, f.k.a. Linda Jiminez, petitioned the Real Estate Commissioner to voluntarily surrender her real estate salesperson license, and counsel was awaiting the department's approval of the voluntary surrender. In an Order effective September 24, 2012, the licenses and licensing rights of respondent Linda Sy Hampton, f.k.a. Linda Jiminez, to act in the capacity of a real estate salesperson will be voluntarily surrendered pursuant to Business and Professions Code section 10100.2.

There was no appearance by or on behalf of real estate broker Timothy Drew Schreck, d.b.a. Island Realty. In an Order effective February 1, 2012, respondent Timothy Drew Schreck, d.b.a. Island Realty, voluntarily surrendered his real estate broker license pursuant to Business and Professions Code section 10100.2.

There was no appearance by or on behalf of real estate salesperson Roger Damian Ferrer. At all times relevant herein, real estate salesperson Roger Damian Ferrer was in the employ of Timothy Drew Schreck, d.b.a. Island Realty. In a Decision and Order effective August 8, 2012, the licenses and licensing rights of respondent Roger Damian Ferrer were revoked pursuant to Business and Professions Code sections 10176, subdivision (a), making any substantial misrepresentation; 10176, subdivision (g), demonstrating negligence or incompetence; and 10176, subdivision (i), and 10177, subdivision (j), engaging in conduct constituting fraud or dishonest dealing.

Evidence was received, the record was closed, and the matter was submitted for decision on August 21, 2012.

FACTUAL FINDINGS

1. On March 3, 2004, the department issued Real Estate Salesperson License Number S01390299 to respondent Payuran. Between December 29, 2004 and May 8, 2008, respondent Payuran was in the employ of real estate broker Alfonso Carpio Barretto, d.b.a. First Bay Area Realty. On May 8, 2008, respondent Payuran's real estate salesperson license expired. On May 9, 2008, the department issued Real Estate Broker License Number B01390299 to respondent Payuran. Respondent Payuran's real estate broker license will expire on May 8, 2016, unless renewed.

2. On September 13, 1978, the department issued Real Estate Salesperson License Number S00677744 to respondent Gaviola. Between January 1, 2005 and June 21, 2007, respondent Gaviola was in the employ of real estate broker Timothy Drew Schreck, d.b.a. Island Realty. From June 21, 2007 through July 23, 2007, respondent Gaviola was in the employ of real estate broker Alfonso Carpio Barretto. From July 23, 2007 through January 9, 2008, respondent Gaviola returned to his employment with real estate broker Timothy Drew Schreck, d.b.a. Island Realty. Respondent Gaviola's real estate salesperson license expired on August 20, 2009. At hearing, respondent Gaviola confirmed that he has not renewed his license.¹

3. On June 7, 2010, complainant made and filed the Accusation in his official capacity. Complainant seeks to discipline respondent Payuran's real estate broker license for engaging in fraud, dishonest dealing and/or negligence and incompetence to induce a lender to loan money for the purchase of a real property in which the borrower did not intend to purchase or reside, and based on false income verification, more commonly referred to as a straw buyer. Complainant seeks to discipline respondent Gaviola's real estate salesperson license for engaging in substantial misrepresentations, fraud, deceit and dishonest dealing to induce lenders to loan money for the purchase of real properties for straw buyers.

4. Respondents timely filed a Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et. seq.

¹ Pursuant to Business and Professions Code Section 10103, the lapsing of a license does not deprive the department of jurisdiction to proceed with any investigation or action or disciplinary proceeding against the licensee, or render a decision suspending or revoking such license.

Castillian Court Property

5. On May 19, 2007, respondent Payuran completed a California Residential Purchase Agreement and Escrow Instructions (Purchase Agreement) on behalf of Marcelina Q. Garcia for the purchase of 532 Castillian Court in Roseville, California (Castillian Court). In the Purchase Agreement, respondent Payuran identified himself as the agent, and First Bay Area Realty as the broker for the buyer, Mrs. Garcia.

6. On May 24, 2007, Loan Express Mortgage, by and through Linda Jiminez, completed a Uniform Residential Loan Application (Loan Application) on behalf of Mrs. Garcia for the purchase of Castillian Court for \$660,000, and to draw \$82,500 through a home equity line of credit.² Included with the Loan Application submitted to Countrywide Bank FSB (Countrywide),³ was a signed Employment Verification indicating that Mrs. Garcia was self-employed as a management consultant earning \$13,500 per month; a signed Letter of Explanation How Business is Generated dated May 24, 2007, indicating that Mrs. Garcia has been a management consultant for individuals and social groups for seven years; a signed Letter of Explanation Regarding Impact of Business dated June 9, 2007, indicating that Mrs. Garcia charges \$150 per hour for her consulting work; and a signed letter from Certified Public Accountant (CPA) Alberto M. Aquino dated May 25, 2007, certifying that he provided accounting and tax services to Mrs. Garcia for two (2) years. The loan was funded by Countrywide, and escrow closed on June 22, 2007.

7. Mrs. Garcia is a retired Computer Specialist for the Department of Veterans Affairs. At hearing, she testified that after she was introduced to Linda Jiminez by respondent Gaviola, Linda Jiminez "kept calling" to use her because of her good credit. According to Mrs. Garcia, she was offered \$10,000 to use her name and credit history to purchase Castillian Court, and was advised by Linda Jiminez that her name would be removed from the title within three to six months. At the close of escrow, Mrs. Garcia received \$10,000 from Loan Express Mortgage. However, before her name could be removed from title, the property was foreclosed and Mrs. Garcia's credit rating went down. Mrs. Garcia admitted that she was supposed to make the mortgage payments on the loan, but believed that because respondent Payuran was receiving the rental income from the property, which was sufficient to cover the mortgage payments, that respondent Payuran was going to make the mortgage payments. She admitted, however, that she did not have a written agreement with respondent Payuran to use the rental income to pay the mortgage.

8. Mrs. Garcia's monthly income from her retirement and social security is approximately \$1,100. She has never owned her own business, has never been self-

² This is commonly referred to in the industry as a tandem transaction.

³ Bank of America is the successor in interest to Countrywide Bank FSB.

employed as a management consultant, and has never earned \$13,500 per month. She does not know CPA Alberto Aquino. She never intended to reside at Castillian Court, and never told Linda Jiminez that she intended to reside at Castillian Court.

However, she was instructed by Linda Jiminez that if anyone asked, she was to say that she was residing at Castillian Court. Other than her instructions from Linda Jiminez, Mrs. Garcia had no further discussions about the loan because "Lyn said she would work all of that for us." She admitted that respondent Gaviola was not involved in this purchase and loan transaction. Mrs. Garcia does not recall signing the loan documents in which it indicated she would occupy Castillian Court as her primary residence. She believes that the documents she signed at Linda Jiminez's house were blank. She could not recall if respondent Payuran was present during the signing of the blank loan documents. Mrs. Garcia asserted that she did not sign the employment or income verification letters submitted to Countrywide.⁴

9. Debbi Burnett is a Special Investigator for the department. Her responsibilities include investigating consumer complaints and analyzing complex transactions, including mortgage fraud and trust fund violations. Special Investigator Burnett was assigned to investigate a consumer complaint from a straw buyer alleging that respondent Gaviola offered him \$10,000 to use his name and credit history to purchase properties, but only gave him \$5,000 and an airline ticket to the Philippines for his participation. According to the consumer, Linda Jiminez explained to him that his participation was legal, she would take care of processing the loan documents, and he would not reside in the properties but was to say he was residing in the properties if asked.⁵ Special Investigator Burnett conducted her investigation, which included obtaining and reviewing documents and conducting interviews. At hearing, Special Investigator Burnett testified that during her investigation she determined that respondent Gaviola was not involved in the Castillian Court transaction.

10. In a Memorandum of her April 8, 2010 interview of Linda Jiminez, Special Investigator Burnett wrote that Linda Jiminez stated "she knew the buyer, Marcelina Garcia, was being paid to buy the property for someone else when she submitted the owner occupied loan to the lender." Linda Jiminez stated that she "did this because the Garcias forced her to do this," and asserted that she "completed the

⁴ It is noted that Mrs. Garcia's signature on the employment and income verification letters bears a remarkable resemblance to her notarized signatures on the Deed of Trust and Identity Affidavit; her signature on Countrywide's Signature and Name Certification form; as well as many of the blank forms she signed that were utilized to initiate the loan process.

⁵ Rex Garcia testified at hearing. He initially stated that he filed the complaint after realizing that he was involved in a real estate scam. However, he changed his testimony stating that he was told by respondent Gaviola and Linda Jiminez at the outset that this was a real estate scam. Mr. Garcia's testimony at hearing was not credible.

loan application in this manner because the lender's wholesale rep advised her that this was the way to put together a stated income loan ... although Hampton/Jiminez knew this was not the true story." According to Linda Jiminez, it was the lender's wholesale rep's advice to use CPA Alberto Aquino's letters verifying Mrs. Garcia's self-employment. Linda Jiminez told Special Investigator Burnett that "[s]ince the lender approved the loan, and escrow closed it, it's not her fault."

11. In a Memorandum of her April 28, 2010 interview of respondent Payuran, Special Investigator Burnett wrote that respondent Payuran asserted that Linda Jiminez "directed all the 1st Bay Area [Realty] transactions to her Loan Express office for the loans," and "directed all his activities" and those of the other sales agents. According to respondent Payuran, Linda Jiminez introduced him to Mrs. Garcia as an investor, and explained to Mrs. Garcia that she was buying the house and respondent Payuran's daughter would continue to live in the property. Linda Jiminez also directed him to write up the purchase offer for Mrs. Garcia to sign. After respondent Payuran gave the purchase agreement to Linda Jiminez, she handled "all the paperwork and conducted the negotiations for the transaction."

12. At hearing, respondent Payuran explained that Castillian Court was owned by his ex-wife; however, their daughter resided in the property. His ex-wife wanted to save the property for their daughter, so she attempted to refinance it but did not qualify after she became disabled. At that time, respondent Payuran was working for Linda Jiminez. Respondent Payuran asserted that Linda Jiminez suggested he sell the house because there was equity in the property, and informed him that she had an investor who would be willing to purchase the property. Respondent Payuran confirmed that Linda Jiminez told him to write up the Purchase Agreement and instructed him to represent Mrs. Garcia, and that after Mrs. Garcia signed the Purchase Agreement, he handed it to Linda Jiminez and she handled the rest of the transaction to completion. Respondent Payuran contends that his responsibility as the agent for Mrs. Garcia was to draw up the purchase contract once Linda Jiminez told him that Mrs. Garcia qualified for the loan. He was not involved in qualifying Mrs. Garcia for the loan, and had no reason to disbelieve Linda Jiminez when she told him that the investor was qualified for the loan. He denied knowing that Mrs. Garcia was acting as a straw buyer in this transaction, or knowing that Mrs. Garcia was receiving money for her participation until after the loan transaction was complete. Respondent Payuran contends that the property was never intended to be owner occupied, and that he advised Linda Jiminez that his daughter would continue to live in the property. He denied any responsibility for providing copies of the real estate documents to Mrs. Garcia at the close of escrow, and asserted that Linda Jiminez and the escrow company were responsible for doing so. He denied receiving a commission from this transaction, but admitted that his outstanding debts, including personal loans from Linda Jiminez and the notary public, Eric Taganap, were paid off at the close of escrow. In addition, he was instructed by Linda Jiminez to share the equity in the property with Mrs. Garcia once Mrs. Garcia sold the property back to his ex-wife.

13. While the Purchase Agreement identified in Factual Finding 5 identifies respondent Payuran as the buyer's agent, and a Deluxe Plus Homeowners Policy Declarations page submitted in evidence identifies respondent Payuran as an insured, none of the loan documents submitted to and by Countrywide or Stewart Title of California (Stewart Title), identify respondent Payuran as the loan broker for Mrs. Garcia or in any capacity. The loan documents do, however, identify Lynn Hampton Jimenez, Lynn Hampton Jimenez, Lynn Hampton, Linda Jimenez, Linda Jimenez, Lynn Jimenez, "Linda," "Lynn," "Lj," Alfonso Barretto, and Loan Express Mortgage as the loan brokers for Mrs. Garcia, including the Uniform Residential Loan Application; Countrywide letter dated June 5, 2007 to Mrs. Garcia thanking her for her loan application received from Countrywide's business partner Loan Express Mortgage; Borrower's Certification and Authorization; Notice to Applicant of Right to Receive Copy of Appraisal Report; Notice to the Home Loan Applicant Credit Score Information Disclosure; Cal Coast Credit Reports; Good Faith Estimate; Good Faith Estimate of Closing Costs; Truth-In-Lending Disclosure Statements; Fair Lending Notice; Lock-In Agreement; Stewart Title's Open Order Form and Order Sheets; Uniform Residential Appraisal Report; Uniform Underwriting and Transmittal Summary; Loan Application Summary; Countrywide Loan Approval Notice; emails from Countrywide's Associate Underwriter; undated notes stating "Waived Impound + Insurance," and "No Impounds. Send Lynn Est Before Closing"; Additional Required California Disclosures; Stewart Title's Loan Status Comments Report; Buyer's Estimated Closing Costs; Sale Escrow Instructions; Closing Instructions; Invoice from Accurate and Fast Appraisals; Placer Title Company (Placer Title) Customer Distribution Form;⁶ Disclosure Regarding California Finance Lender Licensing and Borrower Declaration; Home Equity Lending Division Authorization to Pay; Home Equity Confirmation Agreement; Receipts and Disbursements Listing; Countrywide Funding Alert; Addendum to Deductions from Check; and Stewart Title's letter dated June 22, 2007 enclosing the "HUD/Closing Statement(s) and Broker Check. In addition, the Final U.S. Department of Housing and Urban Development Settlement Statement (HUD-1) reveals that the yield spread premium (YSP), processing fee, broker fee, application fee, administration fee, appraisal fee and credit report fee was paid to Loan Express Mortgage.

14. It is undisputed that respondent Payuran completed the Purchase Agreement on behalf of Mrs. Garcia for the purchase of Castillian Court, and identified himself as the buyer's agent in the transaction (Factual Finding 5.) It is also undisputed that because respondent Payuran intended for his daughter to continue living at Castillian Court, he knew that Mrs. Garcia did not intend to occupy the property as her primary residence (Factual Finding 12.) However, there was no evidence to establish that respondent Payuran was involved at any time in preparing or completing the loan documents that were ultimately submitted to Countrywide by

⁶ Placer Title was the "Policy Issuing Agent for Stewart Title Guaranty Company."

Linda Jiminez and Loan Express Mortgage. (Factual Findings 6 through 8, and 10 through 13.) Therefore, the evidence did not establish that respondent Payuran made any representations whatsoever to Countrywide to induce Countrywide to loan money to Mrs. Garcia for the purchase of Castillian Court; knew or reasonably should have known that the loan application indicated Mrs. Garcia would occupy the property as her primary residence; or knew or reasonably should have known that Mrs. Garcia's employment and income verification letters were generated and forged. In addition, no evidence was presented to establish that respondent Payuran knew Mrs. Garcia would receive \$10,000 to use her name and credit history to purchase the property; no agreement was submitted to show that respondent Payuran would pay the mortgage payments under the terms of the loan; and no agreement was submitted to establish that respondent Payuran would lease Castillian Court and collect and use the rental income to pay the mortgage. Based on the evidence presented, it is plausible that Mrs. Garcia purchased the property with the intent of renting it back to respondent Payuran's daughter, and selling it back to respondent Payuran's ex-wife once she was able to afford the mortgage payments. Finally, no evidence was presented to establish that respondent Payuran received a commission for this transaction. The fact that he received a monetary benefit from this transaction when his debts were paid off at the close of escrow, (Factual Finding 12), does not establish that he was a participant in a scheme to induce the lender to fund a loan for Mrs. Garcia. It is plausible that Linda Jiminez capitalized on the purchase transaction, and ensured that her personal loan was paid off through the escrow. When all the facts and circumstances are considered, the Accusation against respondent Payuran should be dismissed.

15. Complainant also alleged that respondent Gaviola was involved in the Castillian Court loan transaction. However, other than the testimony of Mrs. Garcia that respondent Gaviola introduced her to Linda Jiminez (Factual Finding 7), no evidence was presented to establish that respondent Gaviola was involved in any phase of the Castillian Court loan transaction. In addition, Special Investigator Burnett and Mrs. Garcia testified that respondent Gaviola was not involved in the Castillian Court transaction (Factual Findings 8 and 9.) Therefore, the evidence did not establish that respondent Gaviola made any representations whatsoever to Countrywide to induce Countrywide to loan money to Mrs. Garcia for the purchase of Castillian Court; knew or reasonably should have known that the loan application indicated Mrs. Garcia would occupy the property as her primary residence; knew or reasonably should have known that Mrs. Garcia's employment and income verification letters were generated and forged; or knew that Mrs. Garcia would receive \$10,000 to use her name and credit history to purchase the property.

Georgia Street Property

16. On May 12, 2007, respondent Gaviola completed a Purchase Agreement on behalf of Alexander Hedelund for the purchase of 4222 Georgia Street in Vallejo, California (Georgia Street). In the Purchase Agreement, respondent

Gaviola identified himself as the agent, and Island Realty as the broker for the buyer, Mr. Hedelund.

17. On May 25, 2007, Loan Express Mortgage, by and through Linda Jiminez, completed a Loan Application on behalf of Mr. Hedelund for the purchase of Georgia Street in the amount of \$403,750. The loan was funded by Countrywide, and escrow closed on June 6, 2007.

18. In addition to the Purchase Agreement identified in Factual Finding 16 identifying respondent Gaviola as the agent for Mr. Hedelund, Stewart Title's Sale Escrow Order and Open Order Forms identify respondent Gaviola of Island Realty as the selling agent. A Placer Title Customer Distribution form identifies respondent Gaviola of Island Realty as a recipient of one copy of the "CCR's"; an undated note signed by respondent Gaviola requests "a direct deposit to [respondent Gaviola's Washington Mutual] account instead of Well's Fargo"; a form signed by Timothy Schreck entitled Commission Disbursement Instructions requests that funds be wired to respondent Gaviola's personal account; Stewart Title's Internal Control Request form and Account Information Report indicates that proceeds were wired to a "fees acct" in the name of respondent Gaviola of Island Realty; and Stewart Title's Combined Statement, the Seller's Estimated Closing Statement, and Stewart Title's Disbursement Worksheet identify Island Realty as the recipient of a broker commission.

19. The following loan documents submitted to and by Countrywide, Stewart Title, or Loan Express Mortgage do not identify respondent Gaviola as the loan broker for Mr. Hedelund or in any capacity, but identify Lynn Hampton Jiminez, Lynn Hampton Jimenez, Lynn Hampton, Linda Jiminez, Linda Jimenez, Lynn Jimenez, "Lynn H," "Lynn," "Lj," "L," Alfonso Barretto, and Loan Express Mortgage AB, Inc. as the loan or mortgage brokers for Mr. Hedelund: the Uniform Residential Loan Application; Countrywide letter dated May 21, 2007 to Mr. Hedelund thanking him for his loan application received from Countrywide's business partner Loan Express Mortgage; Borrower's Certification and Authorization; Notice to Applicant of Right to Receive Copy of Appraisal Report; Notice to the Home Loan Applicant Credit Score Information Disclosure; Cal Coast Credit Reports; Mortgage Shopping Worksheet; The Housing Financial Discrimination Act of 1977 Fair Lending Notice; Good Faith Estimate; Good Faith Estimate of Closing Costs; Truth-In-Lending Disclosure Statements; Lock-In Agreement; Borrower Signature Authorization; Sale Escrow Order Sheet; Bay Area Title Services Report; Uniform Residential Appraisal Report; Uniform Underwriting and Transmittal Summary; undated note from "L," stating "Client would not send original Power of Atty"; Broker-Approved Checklist Values; Countrywide computer screen displays; Countrywide Underwriting Decision/ Condition Letter; Loan Express Mortgage fax cover sheet to "Melissa" re "Hedelund" stating "Complete Condition"; Countrywide Loan Approval Notice; Countrywide's June 6, 2007 letter to Loan Express Mortgage stating "Thank you for a GREAT file, Broker and Escrow!" and requesting

completion of conditions; First Mortgage Fee Conformation and Doc Request; Additional Required California Disclosures; Stewart Title's Loan Status Comments Report; Stewart Title's Loan Comments Log; Buyer's Estimated Closing Statement; Sale Escrow Instructions; Closing Instructions; Invoice from Accurate and Fast Appraisals; Placer Title Customer Distribution Form; Stewart Title's Combined Statement; Stewart Title's Disbursement Worksheet; Addendum to Deductions from Check; Countrywide's June 13, 2007 letter to Stewart Title requesting an update to the final HUD-1; and Buyer's Final Closing Statement. In addition, the Final HUD-1 reveals that the loan origination fee, appraisal fee, credit report fee, processing fee, YSP, application fee, administration fee, and loan broker fee was paid to Loan Express Mortgage.

20. In a Memorandum of her April 8, 2010 interview with Linda Hampton Jiminez, Special Investigator Burnett wrote that Linda Jiminez stated respondent Gaviola introduced her to Mr. Hedelund, but was not the loan agent in this transaction. She was directed by respondent Gaviola to do owner occupied loans for all the real estate transactions, and "was following lender guidelines and submitting multiple owner occupied loans, even though she knew the buyers did not intend to live there," and "was given advice from the Lender's wholesale reps on how to process stated income loans." She admitted that "[s]he made up the income since these were stated income loans and the lenders allowed her to do this." She received a commission for her role in this transaction, and paid a commission to respondent Gaviola, "because he asked her to."

21. In a Memorandum of her May 4, 2010 interview with respondent Gaviola, Special Investigator Burnett wrote that respondent Gaviola asserted he was not a loan agent, and was not involved in the financing transactions and stated income details. According to respondent Gaviola, he relied on the expertise of the loan agent, Linda Hampton Jiminez, to arrange financing for his clients. Respondent Gaviola asked his broker, Timothy Schreck, about the transactions, and was advised "to stick to the sale side and let the loan agent handle the loan side." Respondent Gaviola admitted that he "had an arrangement with Jiminez to find qualified buyers to purchase homes for other people," and that Jiminez told him "this was allowed by the lender." He referred Mr. Hedelund to Linda Jiminez to handle the Georgia Street loan transaction, "and left all the details of the loan transaction to Jiminez."

22. At hearing, respondent Gaviola asserted that his role as a real estate salesperson was at risk once the real estate industry allowed real estate agents to also serve as loan brokers. According to respondent Gaviola, he "lost control" as a real estate salesperson once the loan brokers were able to control how he made his money. He contends that he complained to a lender about the structure, but the lender "wouldn't entertain it, and referred [him] to [his] mortgage broker." Respondent Gaviola contends that although the market changed the rules to permit a dual agency, he knew he could not "serve two masters." He also believed that the real estate industry permitted straw buyers and stated income, and removed the requirement of a

down payment, and claimed he was assured by Linda Jiminez that these were acceptable in the industry. Therefore, because he needed to earn money to feed his family, he “played along with the game.” Respondent Gaviola admitted that “I am not without fault,” and contends that “it was my fault to follow the rules.” However, his reputation is important to him; therefore, he would like to retain his real estate salesperson license so that he can support his family, and “start all over again and prove that [he] can be a good agent.” Respondent Gaviola asserted that he has not been disciplined by the department in his 34 years of practice. There was no evidence presented at hearing to establish that respondent Gaviola has engaged in rehabilitation efforts since the completion of these loan transactions.

23. It is undisputed that respondent Gaviola completed the Purchase Agreement on behalf of Mr. Hedelund and identified himself as the buyer’s agent (Factual Finding 16.) It is also undisputed that respondent Gaviola had an arrangement to find qualified buyers for Linda Jiminez to use to purchase real properties (Factual Findings 21 and 22.) Respondent Gaviola knew that the Georgia Street property was being purchased by a straw buyer, knew that Mr. Hedelund was not going to occupy the Georgia Street property as his primary residence, yet failed to disclose the true facts to the lender. While respondent Gaviola contends that he had to play along with the game, his arrangement with Linda Jiminez leaves no doubt that he participated in the scheme to induce Countrywide to fund the loan on the Georgia Street property. And whether respondent Gaviola knew the details of the loan transaction or not, he found the straw buyer, introduced him to Linda Jiminez and waited until the close of escrow to receive his commission. Honesty is the cornerstone of the real estate industry, and as a professional, respondent Gaviola had an obligation to disclose the true facts of the Georgia Street transaction to the lender, even if the lender ignored him and even if it meant he would not receive a commission.

Lilyview Way

24. On May 19, 2007, respondent Gaviola completed a Purchase Agreement on behalf of Roger Damian Ferrer for the purchase of 5618 Lilyview Way in Elk Grove, California (Lilyview Way). In the Purchase Agreement, respondent Gaviola identified himself as the agent, and Island Realty as the broker for the buyer, Mr. Ferrer. Lynn Hampton of First Bay Area Realty was identified as the sellers’ agent.

25. On June 9, 2007, Loan Express Mortgage, by and through Linda Jiminez, completed a Loan Application on behalf of Mr. Ferrer for the purchase of Lilyview Way in the amount of \$617,500. The loan was funded by American Brokers Conduit,⁷ and escrow closed on June 14, 2007.

⁷ JP Morgan Chase is the successor in interest to American Brokers Conduit.

26. The Purchase Agreement identified in Factual Finding 24 identifies respondent Gaviola as the buyer's agent. Stewart Title's Seller's Estimated Net Proceeds and Receipts and Disbursements Listing indicate that commission charges were paid to Island Realty. A form signed by Timothy Schreck entitled Commission Disbursement Instructions requests that funds be wired to respondent Gaviola's personal account, and an undated note signed by respondent Gaviola requests "a direct deposit to [respondent Gaviola's Washington Mutual] account instead of Well's Fargo." In addition, Stewart Title's Internal Control Request identifies a "payoff" to respondent Gaviola of Island Realty, and their Account Information Report indicates that proceeds were wired to a "fees acct" in the name of respondent Gaviola of Island Realty. Finally, Stewart Title sent a June 14, 2007 letter to respondent Gaviola enclosing his commission check and the HUD-1 Settlement Statement.

27. The following loan documents submitted to and by American Brokers Conduit or Stewart Title do not identify respondent Gaviola as the loan broker for Mr. Ferrer or in any capacity. They do, however, identify Lynn Hampton, Lyn Hampton, Linda Jimenez, Linda Hampton Jimenez; Linda Hampton Jimenez; Lynn Jimenez, "Lynn," and Loan Express Mortgage as the loan brokers for Mr. Ferrer: the Uniform Residential Loan Application; Mortgage Loan Origination Agreement; Borrower Signature Authorization; Notice to Applicant of Right to Receive Copy of Appraisal Report; NorCal Express Appraisals; Notice to the Home Loan Applicant Credit Score Information Disclosure; Cal Coast Credit Reports; The Housing Financial Discrimination Act of 1977 Fair Lending Notice; Good Faith Estimate; Good Faith Estimate of Closing Costs; Truth-In-Lending Disclosure Statements; Rate Lock Confirmation; Document Order Form; Stewart Title's Order Sheet; Bay Area Title Services Report; Uniform Residential Appraisal Report; One-Unit Residential Appraisal Field Review Report; Uniform Underwriting and Transmittal Summary; Mortgage Loan Commitment; Notice of Loan Approval; Funding Conditions; email from Stewart Title requesting social security numbers; email regarding "estimated HUDs for seller"; email from Stewart Title's Jr. Escrow Officer advising that the loan will fund upon completion of escrow conditions; Instruction to Pay Commission to seller's agent Lynn Hampton of First Bay Area Realty; Buyer's Estimated Closing Costs; Sale Escrow Instructions; Loan Closing Instructions; Estimated Settlement Statement; Servicing Disclosure Statement; Receipts and Disbursements Listing. In addition, the Final HUD-1 reveals that the loan origination fee, appraisal fee, credit report, brokerage fee, processing fee and YSP was paid to Loan Express Mortgage.

28. In a Memorandum of her March 26, 2010 interview with Linda Hampton Jimenez, Special Investigator Burnett wrote that Linda Jimenez asserted she was directed by respondent Gaviola to do owner occupied loans for all the real estate transactions, and "was following lender guidelines and submitting multiple owner occupied loans, even though she knew the buyers did not intend to live there," and "was given advice from the Lender's wholesale reps on how to process stated income loans." She admitted that "[s]he made up the income since these were stated income

loans and the lenders allowed her to do this.” She received a commission for her role in this transaction.

29. In her Memorandum of interview with respondent Gaviola, Special Investigator Burnett wrote that respondent Gaviola stated that he referred Roger Ferrer to Linda Jiminez to handle the Lilyview Way loan transaction, and received a commission check from Loan Express Mortgage for a loan referral fee. He denied “scheming” with Linda Jiminez, and asserted that he believed, and Linda Jiminez assured him, that his arrangement with her was acceptable to the lender.

30. In a Memorandum of her April 21, 2010 interview with Roger Damian Ferrer, Special Investigator Burnett wrote that Roger Damian Ferrer asserted that respondent Gaviola recommended Linda Jiminez to him, and he met her when she completed the loan application on his behalf. Mr. Ferrer received a \$600 referral fee from respondent Gaviola for his participation in the transaction.

31. It is undisputed that respondent Gaviola completed the Purchase Agreement on behalf of Mr. Ferrer and identified himself as the buyer’s agent (Factual Finding 24.) It is also undisputed that respondent Gaviola had an arrangement to find qualified buyers for Linda Jiminez to use to purchase real properties (Factual Findings 21 and 22.) Respondent Gaviola knew that the Lilyview Way property was being purchased by a straw buyer, knew that Mr. Ferrer was not going to occupy the Lilyview Way property as his primary residence, and failed to disclose the true facts to the lender.

Discussion

32. Linda Jiminez was the linchpin in the loan transactions for Castillian Court, Georgia Street and Lilyview Way. Using Loan Express Mortgage to originate the loans, and herself to broker the loans, she capitalized on the lenders’ relaxed rules and stopped at nothing, including forging employment and income verification documents, to secure the loans on these transactions. As a real estate salesperson, respondent Gaviola was in a precarious position. If he wanted to earn money, he had to abide by the rules of the game whether he agreed with them or not. Moreover, everyone involved in the Georgia Street and Lilyview Way transactions, including the straw buyers, were keenly aware of their roles in the scheme and did nothing to stop it. However, respondent Gaviola cannot absolve himself of his responsibility as a real estate licensee simply because he was unaware of the details of each of the loan transactions performed by Linda Jiminez, the documents on which his name appears were not relied on by the lenders to fund the loan, or everybody was doing it.

33. Respondent had an arrangement with Linda Jiminez to secure straw buyers, he was aware that the straw buyers did not intend to occupy the properties as their primary residence, and he received commissions for his role in these transactions. His conduct made him a participant in the scheme to induce the lenders

to fund the loans. As a professional and the holder of a real estate license, he had a responsibility to himself and to the public to disclose to the lender the true facts of the loan. He failed in that responsibility. Respondent Gaviola also had the option to walk away from the transactions and to conduct residential sales transactions using legitimate buyers. He chose not to do so, and therefore is faced with defending his conduct. In sum, his participation in these transactions demonstrate that he cannot be relied upon to follow the rules and regulations set forth by the department for conducting real estate transactions. Respondent Gaviola has no prior discipline by the department. However, as set forth in Factual Finding 22, no evidence of rehabilitation was presented at hearing by respondent Gaviola. Therefore, it would be against the public interest to allow respondent Gaviola to retain his real estate salesperson license at this time, with or without restrictions.

LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline a professional license, the agency has the burden of proof to establish the allegations in the Accusation by “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) As set forth below, complainant has met its burden that the real estate salesperson license issued to respondent Gaviola should be disciplined pursuant to Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (g) and (j).

2. “Honesty and truthfulness are two qualities deemed by the Legislature to bear on one’s fitness and qualification to be a real estate licensee.” (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) “The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear.” (*Ibid, Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

Substantial Misrepresentation, and Fraud or Dishonest Dealing

3. Section 10176, subdivisions (a) and (i), provide that the commissioner may “. . . temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following: (a) Making any substantial misrepresentation . . ., and (i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.”

As set forth in Factual Findings 5 through 15, the department did not establish, by clear and convincing evidence, that respondent Payuran made a substantial misrepresentation or engaged in fraud or dishonest dealing in the Castillian Court transaction. Therefore, cause does not exist to discipline respondent Payuran’s real

estate broker license, pursuant to Business and Professions Code section 10176, subdivisions (a) and (i).

As set forth in Factual Findings 8, 9 and 15, the department did not establish, by clear and convincing evidence, that respondent Gaviola made a substantial misrepresentation or engaged in fraud or dishonest dealing in the Castillian Court transaction. Therefore, cause does not exist to discipline respondent Gaviola's real estate salesperson license, pursuant to Business and Professions Code section 10176, subdivisions (a) and (i).

As set forth in Factual Findings 16 through 31, the department met its burden of establishing that respondent Gaviola made a substantial misrepresentation and engaged in fraud and dishonest dealing when he arranged to secure straw buyers for Linda Jiminez to use to originate the Georgia Street and Lilyview Way loan transactions, and failed to disclose to the lenders the true facts of transactions. Therefore, cause exists to discipline respondent Gaviola's real estate salesperson license, pursuant to Business and Professions Code section 10176, subdivisions (a) and (i).

Negligence or Incompetence and Fraud or Dishonest Dealing

4. Section 10177, subdivisions (g) and (j), authorize the commissioner to suspend or revoke the license of a real estate licensee who has done any of the following:

[¶]. . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[¶]. . . [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

As set forth in Factual Findings 5 through 15, the department did not establish, by clear and convincing evidence, that respondent Payuran demonstrated negligence or incompetence or engaged in fraud or dishonest dealing in performing his role as the buyer's agent in the Castillian Court transaction. Therefore, cause does not exist to discipline respondent Payuran's real estate broker license as it pertains to the Castillian Court property, pursuant to Business and Professions Code section 10177, subdivisions (g) and (j).

As set forth in Factual Finding 8, 9 and 15, the department did not establish, by clear and convincing evidence, that respondent Gaviola demonstrated negligence or incompetence or engaged in fraud or dishonest dealing in the Castillian Court transaction. Therefore, cause does not exist to discipline respondent Gaviola's real estate salesperson license as it pertains to the Castillian Court property, pursuant to Business and Professions Code section 10177, subdivisions (g) and (j).

As set forth in Factual Findings 16 through 31, the department met its burden of establishing that respondent Gaviola demonstrated negligence when he arranged to secure straw buyers for Linda Jiminez to use to originate the Georgia Street and Lilyview Way loan transactions, and failed to disclose to the lenders the true facts of transactions. Therefore, cause exists to discipline respondent Gaviola's real estate salesperson license, as it pertains to the Georgia Street and Lilyview Way properties, pursuant to Business and Professions Code section 10177, subdivision (g).

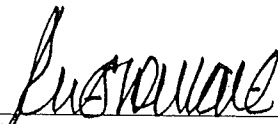
As set forth in Factual Findings 16 through 31, the department met its burden of establishing that respondent Gaviola engaged in fraud and dishonest dealing when he arranged to secure straw buyers for Linda Jiminez to use to originate the Georgia Street and Lilyview Way loan transactions, and failed to disclose to the lenders the true facts of transactions. Therefore, cause exists to discipline respondent Gaviola's real estate salesperson license, as it pertains to the Georgia Street and Lilyview Way properties, pursuant to Business and Professions Code section 10177, subdivision (j).

ORDER

1. The Accusation against respondent Manuelito Mata Payuran, a.k.a. Lito M. Payuran, is DISMISSED.

2. All licenses and licensing rights of respondent Nemesio Thompson Gaviola, Jr., a.k.a. Jun Gaviola, are REVOKED.

DATED: September 20, 2012


REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings