

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

FILED
APR 27 2007
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12)

DRE No. H-33538 LA
OAH No. L-2007010362

13 JC LENDING INC., doing business)
14 as JC Realty and JULIO CESAR)
15 HERNANDEZ, individually and as)
16 designated officer of)
17 JC Lending Inc.,)

STIPULATION
AND
AGREEMENT

16 Respondents.)
17)

18 It is hereby stipulated by and between Respondents
19 JC LENDING INC., a corporate real estate broker, dba JC Realty,
20 and JULIO CESAR HERNANDEZ, individually and as designated officer
21 of JC Lending Inc. (sometimes collectively referred to as
22 "Respondents"), represented by Rose Pothier, Esq. and the
23 Complainant, acting by and through Lissete Garcia, Counsel for
24 the Department of Real Estate, as follows for the purpose of
25 settling and disposing of the Accusation ("Accusation") filed on
26 December 14, 2006, in this matter:
27

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

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department of Real Estate in this
11 proceeding.

12 3. Respondents timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense the right to cross-examine
23 witnesses.
24
25
26
27

1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondents choose not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation and Respondents decision not to
11 contest the Accusation is made for the purpose of reaching an
12 agreed disposition of this proceeding and is expressly limited to
13 this proceeding and any other proceeding or case in which the
14 Department of Real Estate ("Department"), the state or federal
15 government, or any agency of this state, another state or federal
16 government is involved, and otherwise shall not be admissible in
17 any other criminal or civil proceedings.
18

19 6. It is understood by the parties that the Real
20 Estate Commissioner may adopt this Stipulation as his Decision in
21 this matter thereby imposing the penalty and sanctions on
22 Respondents' real estate licenses and license rights as set forth
23 in the "Order" herein below. In the event that the Commissioner
24 in his discretion does not adopt the Stipulation, it shall be
25 void and of no effect and Respondents shall retain the right to a
26 hearing and proceeding on the Accusation under the provisions of
27

1 the APA and shall not be bound by any stipulation or waiver made
2 herein.

3 7. The Order or any subsequent Order of the Real
4 Estate Commissioner made pursuant to this Stipulation shall not
5 constitute an estoppel, merger or bar to any further
6 administrative or civil proceedings by the Department of Real
7 Estate with respect to any matters which were not specifically
8 alleged to be causes for Accusation in this proceeding but do
9 constitute a bar, estoppel and merger as to any allegations
10 actually contained in the Accusation against Respondents herein.

11 8. Respondents JC LENDING INC. and JULIO CESAR
12 HERNANDEZ understand that by agreeing to this Stipulation, they
13 agree to pay, pursuant to Business and Professions Code Section
14 10148, the cost of audit which led to this disciplinary action.
15 The amount of said cost for the audit is \$4,748.15.

16 9. Respondents JC LENDING INC. and JULIO CESAR
17 HERNANDEZ have received, read, and understand the "Notice
18 Concerning Costs of Subsequent Audit". Respondents JC LENDING
19 INC. and JULIO CESAR HERNANDEZ further understand that by
20 agreeing to this Stipulation, the findings set forth below in the
21 Determination of Issues become final, and the Commissioner may
22 charge Respondents for the cost of any subsequent audit conducted
23 pursuant to Business and Professions Code Section 10148 to
24 determine if the violations have been corrected. The maximum
25 cost of the subsequent audit will not exceed \$4,748.15.
26
27

DETERMINATION OF ISSUES

By reason of the foregoing, it is stipulated and agreed that the following determination of issues shall be made:

I

The conduct, acts or omissions of JC LENDING INC., and JULIO CESAR HERNANDEZ, as described in Paragraph 4, above, is in violation of Sections 10145, 10159.5 and 10176(g) of the Business and Professions Code ("Code") and Sections 2731, 2831, 2832, 2834, 2950(d), 2950(h) and 2951 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for the suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Code Section 10177(g).

II

The conduct, acts or omissions of JULIO CESAR HERNANDEZ, as described in Paragraph 4, constitutes a failure to keep JC Realty Inc. in compliance with the Real Estate Law during the time that he was the officer designated by a corporate broker licensee, in violation of Code Section 10159.2. This conduct is a basis for the suspension or revocation of Respondent's license pursuant to Code Sections 10177(d), 10177(g) and 10177(h).

///

///

///

///

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

All licenses and licensing rights of Respondents
JC LENDING INC. and JULIO CESAR HERNANDEZ under the Real Estate
Law are suspended for a period of ninety (90) days from the
effective date of this Decision; provided, however, that the
initial thirty (30) days of said suspension shall be stayed upon
the following terms and conditions:

1. Respondents each pay a monetary penalty pursuant to
Section 10175.2 of the Business and Professions Code of \$1,500
(at the rate of \$16.67 per day for each day of the suspension)
for a total monetary penalty of \$1,500 each, or \$3,000 in total.

2. Said payment shall be in the form of a cashier's
check or certified check made payable to the Recovery Account of
the Real Estate Fund. Said check must be received by the
Department prior to the effective date of the Decision in this
matter.

3. No further cause for disciplinary action against
the real estate licenses of Respondents occurs within two (2)
years from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in
accordance with the terms of the Decision, the Commissioner may,
without a hearing, order the immediate execution of all or any
part of the stayed suspension, in which event the Respondents

1 shall not be entitled to any repayment nor credit, prorated or
2 otherwise, for money paid to the Department under the terms of
3 this Decision.

4 5. If Respondents pay the monetary penalty and if no
5 further cause for disciplinary action against the real estate
6 licenses of Respondents occurs within two (2) years from the
7 effective date of the Decision, the stay hereby granted shall
8 become permanent

9 6. The remaining sixty (60) days of the ninety (90)
10 day suspension shall be stayed for two (2) years upon the
11 following terms and conditions:

12 (a) Respondents shall obey all laws, rules and
13 regulations governing the rights, duties and responsibilities of
14 a real estate licensee in the State of California; and

15 (b) That no final subsequent determination be made
16 after hearing or upon stipulation, that cause for disciplinary
17 action occurred within two (2) years from the effective date of
18 this Decision. Should such a determination be made, the
19 Commissioner may, in his discretion, vacate and set aside the
20 stay order and reimpose all or a portion of the stayed
21 suspension. Should no such determination be made, the stay
22 imposed herein shall become permanent.
23
24
25
26
27

II

Pursuant to Section 10148 of the Business and Professions Code, Respondents JC LENDING INC. and JULIO CESAR HERNANDEZ shall pay the Commissioner's reasonable cost for (a) the audit which led to this disciplinary action and (b) a subsequent audit to determine if Respondents are now in compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action is \$4,748.15. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Said amount for the prior and subsequent audits shall not exceed \$9,496.30.

Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

The Commissioner may suspend the license of Respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the

1 Commissioner to provide for payment, or until a decision
2 providing otherwise is adopted following a hearing held pursuant
3 to this condition.

4 III

5 Respondent JULIO CESAR HERNANDEZ shall within six (6)
6 months from the effective date of the Decision herein, take and
7 pass the Professional Responsibility Examination administered by
8 the Department including the payment of the appropriate
9 examination fee. If Respondent fails to satisfy this condition,
10 the Commissioner may order suspension of Respondent's license
11 until Respondent passes the examination.

12 IV

13 All licenses and licensing rights of Respondent JULIO
14 CESAR HERNANDEZ are indefinitely suspended unless or until
15 Respondent provides proof satisfactory to the Commissioner, of
16 having taken and successfully completed the continuing education
17 course on trust fund accounting and handling specified in
18 paragraph (3) of subdivision (a) of Section 10170.5 of the
19 Business and Professions Code. Proof of satisfaction of this
20 requirement includes evidence that Respondent has successfully
21 completed the trust fund account and handling continuing
22 education course within 120 days prior to the effective date of
23 the Decision in this matter.

25
26 DATED: March 30, 2007


27 LYSSETTE GARCIA, Counsel for
the Department of Real Estate

* * *

EXECUTION OF THE STIPULATION

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

Respondents (1) shall mail the original signed signature page of the stipulation herein to Lissete Garcia: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondent shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Lissete Garcia. A facsimile constitutes acceptance and approval of the terms and conditions of this Stipulation. Respondents agree, acknowledge and understand that by electronically sending to the Department a facsimile copy of Respondents' actual signature as it appears on the Stipulation, that receipt of the facsimile copy by the

1 Department shall be as binding on Respondents as if the
2 Department had received the original signed Stipulation.

3
4 DATED: 3/20/07

Julio C. Hernandez
JC LENDING INC., a corporate real
estate broker,
BY: JULIO CESAR HERNANDEZ, D.O.,
Respondent

7
8 DATED: 3/20/07

Julio C. Hernandez
JULIO CESAR HERNANDEZ, individually
and as designated officer of JC
Lending Inc., Respondent

10
11 DATED: 3/28/07

Rose Pothier
ROSE POTHIER, ESQ.
Attorney for Respondents
Approved as to form

14 * * *

15 The foregoing Stipulation and Agreement is hereby
16 adopted as my Decision as to Respondents JC LENDING INC. and
17 JULIO CESAR HERNANDEZ, individually and as designated officer of
18 JC Lending Inc., and shall become effective at 12 o'clock noon on
19

20 IT IS SO ORDERED _____, 2007.

22 JEFF DAVI
23 Real Estate Commissioner
24
25
26
27

1 Department shall be as binding on Respondents as if the
2 Department had received the original signed Stipulation.

3
4 DATED: _____

JC LENDING INC., a corporate real
estate broker,
BY: JULIO CESAR HERNANDEZ, D.O.,
Respondent

7
8 DATED: _____

JULIO CESAR HERNANDEZ, individually
and as designated officer of JC
Lending Inc., Respondent

10
11 DATED: _____

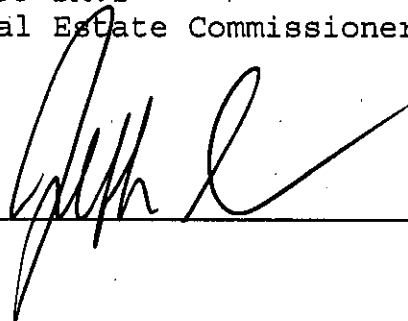
ROSE POTHIER, ESQ.
Attorney for Respondents
Approved as to form

14 * * *

15 The foregoing Stipulation and Agreement is hereby
16 adopted as my Decision as to Respondents JC LENDING INC. and
17 JULIO CESAR HERNANDEZ, individually and as designated officer of
18 JC Lending Inc., and shall become effective at 12 o'clock noon on
19 May 29, 2007.

20 IT IS SO ORDERED 4/24/, 2007.

21
22 JEFF DAVI
23 Real Estate Commissioner

24
25 
26
27

5AC
1 LISSETE GARCIA, SBN 211522
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6914 (direct)
6 -or- (213) 576-6982 (office)
7

FILED
DEC 14, 2006
DEPARTMENT OF REAL ESTATE

By Cu

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-33538 LA

12 JC LENDING INC., doing business)
13 as JC Realty and JULIO CESAR)
14 HERNANDEZ, individually and as)
15 designated officer of)
16 JC Lending Inc.,)
17 Respondents.)

A C C U S A T I O N

18 The Complainant, Joseph Aiu, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against JC LENDING INC., dba JC Realty and JULIO CESAR HERNANDEZ,
21 individually and as designated officer of JC Lending Inc.,
22 alleges as follows:
23
24
25
26
27

///

///

///

1.

The Complainant, Joseph Aiu, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against JC LENDING INC. and JULIO CESAR HERNANDEZ.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

3.

A. At all times mentioned, JC LENDING INC. ("JCLI") was licensed or had license rights issued by the Department of Real Estate ("Department") as a corporate real estate broker. On August 13, 2002, JCLI was originally licensed as a corporate real estate broker.

B. At all times mentioned, JULIO CESAR HERNANDEZ ("HERNANDEZ") was licensed or had license rights issued by the Department as a real estate salesperson. On May 3, 2000, HERNANDEZ was originally licensed as a real estate salesperson. On August 13, 2002, HERNANDEZ was licensed as the designated officer of JCLI.

C. At all times material herein, JCLI was licensed by the Department as a corporate real estate broker by and through HERNANDEZ, as the designated officer and broker responsible, pursuant to Code Section 10159.2 for supervising the activities

1 requiring a real estate license conducted on behalf of JCLI by
2 JCLI's officers, agents and employees, including HERNANDEZ.

3 BROKERAGE

4 4.

5 At all times mentioned, in the City and County of
6 Riverside, JCLI acted as a corporate real estate broker and
7 conducted licensed activities within the meaning of:

8 A. Code Section 10131(a). JCLI operated a residential
9 resale brokerage dba JC Realty.

10 B. Code Section 10131(d). JCLI operated a mortgage and
11 loan brokerage dba JC Lending; and

12 C. In addition, JCLI conducted broker-controlled
13 escrows through its escrow division, under the exemption set
14 forth in California Financial Code Section 17006(a)(4) for real
15 estate brokers performing escrows incidental to a real estate
16 transaction where the broker was a party and where the broker was
17 performing acts for which a real estate license is required.
18

19 AUDIT OF JC LENDING INC.

20 5.

21 On September 1, 2006, the Department completed an audit
22 examination of the books and records of JCLI pertaining to the
23 (1) residential resale (2) mortgage loan and (3) broker-escrow
24 activities described in Paragraph 4, that require a real estate
25 license. The audit examination covered a period of time
26 beginning on February 1, 2005 to May 31, 2006. The audit
27

1 examination revealed violations of the Code and the Regulations
2 as set forth in the following paragraphs, and more fully set
3 forth in Audit Report SD 050034 (residential resale), SD 050036
4 (mortgage and loan) and SD 050037 (broker-escrow), and the
5 exhibits and workpapers attached thereto.

6 TRUST ACCOUNT

7 6.

8 At all times mentioned, in connection with the activities
9 described in Paragraph 4, above, JCLI accepted or received funds
10 including funds in trust (hereinafter "trust funds") from or on
11 behalf of actual or prospective parties to transactions including
12 buyers, sellers, lenders and borrowers handled by JCLI and
13 thereafter made deposits and or disbursements of such funds.
14 From time to time herein mentioned during the audit period, said
15 trust funds were deposited and/or maintained by JCLI in the bank
16 account as follows:

17 "JC Lending Inc. dba JC Realty Trust Account ("escrow trust
18 account")
19 0398194951"
20 PFF Bank & Trust
Corona, California

21 VIOLATIONS OF THE REAL ESTATE LAW

22 7.

23
24 In the course of activities described in Paragraphs 4
25 and 6, above, and during the examination period described in
26 Paragraph 5, Respondents JCLI and HERNANDEZ, acted in violation
27 of the Code and the Regulations in that they:

1 (a) Permitted, allowed or caused the disbursement of
2 trust funds from the escrow trust account, where the disbursement
3 of funds reduced the total of aggregate funds in the escrow trust
4 account, to an amount which, on May 31, 2006, was \$533.26, less
5 than the existing aggregate trust fund liability of JCLI to every
6 principal who was an owner of said funds, without first obtaining
7 the prior written consent of the owners of said funds, as
8 required by Code Section 10145 and Regulations 2832.1, 2950(d),
9 2950(g) and 2951. The shortage was caused by a bank error.

10 (b) Failed to maintain an accurate and complete control
11 record in the form of a columnar record in chronological order of
12 all trust funds received, deposited and disbursed by the escrow
13 trust account, in violation of Code Section 10145 and Regulations
14 2831, 2950(d) and 2951.

15 (c) (1) Failed to place trust funds, accepted on behalf
16 of another into the hands of the owner of the funds, a neutral
17 escrow depository or into a trust fund account in the name of the
18 broker at a bank or other financial institution not later than
19 three business days following receipt of the funds by the broker
20 or by the broker's salesperson, in violation of Code Section
21 10145 and Regulation 2832(a). JCLI collected trust funds in the
22 form of appraisals and credit report fees from lenders on behalf
23 of borrowers Salcedo, Ramos and Desmond yet failed to deposit
24 these trust funds into the escrow trust account and furthermore
25 failed to forward the balance of said trust funds due to these
26
27

1 same borrowers; and

2 (c) (2). Failed to place trust funds, including earnest
3 money deposits, accepted on behalf of another into the hands of
4 the owner of the funds, a neutral escrow depository or into a
5 trust fund account in the name of the trustee at a bank or other
6 financial institution not later than three business days
7 following receipt of the funds by the broker or by the broker's
8 salesperson, as required by Code Section 10145 and Regulation
9 2832(d). Earnest money deposits for buyers Gomez, Yarbrough and
10 Lindsey were held beyond three days following the acceptance of
11 an offer to purchase in connection with JCLI's residential resale
12 activity, JC Realty.

13 (d) Permitted unlicensed and unbonded persons Stephanie
14 Hernandez and Erin Langford to be authorized signatories on the
15 escrow trust account, in violation of Code Section 10145 and
16 Regulation 2834.

17 (e) Failed to disclose in writing to all parties of
18 JCLI's financial interest and ownership of its escrow division,
19 as required by Code Section 10145 and Regulation 2950(h).

20 (f) Used the fictitious name of "JC Lending", to
21 conduct licensed activities including mortgage loans and broker-
22 controlled escrows without holding a license bearing said
23 fictitious business name, in violation of Code Section 10159.5
24 and Regulation 2731; and
25
26
27

(g) Failed to disclose that JCLI charged credit report fees in excess of the amount billed to the borrower by the credit reporting company including, but not limited to, borrowers Salcedo, Ramos and Desmond. This failure to disclose constitutes the taking of a secret profit by means of compensation undisclosed to the aforesaid borrowers, in violation of Code Section 10176(g).

8.

The conduct of Respondents JCLI and HERNANDEZ, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

7(a)

Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951

7(b)

Code Section 10145 and Regulations 2831, 2950(d) and 2951

7(c)(1) and (2)

Code Section 10145 and Regulations 2832, 2950(d), and 2951

7(d)

Code Section 10145 and Regulation 2834

1 7(e)

Code Section 10145 and Regulation
2950(h)

3
4 7(f)

Code Section 10159.5 and Regulation
2731

5
6
7 7(g)

Code Section 10176(g)

8
9 The foregoing violations constitute cause for the
10 suspension or revocation of the real estate licenses and license
11 rights of JCLI and HERNANDEZ under the provisions of Code
12 Sections 10176(g), 10177(d) and/or 10177(g).

13
14 9.

15 The overall conduct of Respondents JCLI and HERNANDEZ
16 constitutes negligence or incompetence. This conduct and
17 violations are cause for the suspension or revocation of the real
18 estate licenses and license rights of JCLI and HERNANDEZ pursuant
19 to Code Section 10177(g).

20 10.

21 The overall conduct of Respondent HERNANDEZ constitutes
22 a failure on his part, as officer designated by a corporate
23 broker licensee, to exercise the reasonable supervision and
24 control over the licensed activities of JCLI as required by Code
25 Section 10159.2, and to keep JCLI in compliance with the Real
26 Estate Law, and is cause for the suspension or revocation of the
27

1 real estate license and license rights of HERNANDEZ pursuant to
2 the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a decision be rendered imposing disciplinary
6 action against the licenses and license rights of Respondents JC
7 LENDING INC. and JULIO CESAR HERNANDEZ, under the Real Estate Law
8 (Part 1 of Division 4 of the Business and Professions Code) and
9 for such other and further relief as may be proper under other
10 applicable provisions of law.

11 Dated at San Diego, California

12 this 5 day of December, 2006.

13
14
15 
16 JOSEPH AIU
17 Deputy Real Estate Commissioner
18
19
20
21
22
23

24 cc: JC Lending Inc.
25 Julio Cesar Hernandez
26 Joseph Aiu
27 Sacto
Audits/Zaky Wanis