

*Sent*

1 Department of Real Estate  
2 320 West 4th Street, Ste. 350  
3 Los Angeles, California 90013-1105  
4 Telephone: (213) 576-6982 (office)

**FILED**

FEB 22 2010

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-36166 LA
	)	L-2009090136
SUNWEST PROPERTIES CORPORATION	)	
doing business as American Trust	)	
Mortgage, and Sunwest Modifications;	)	<u>STIPULATION</u>
and STEVEN PATRICK DE LOS REYES,	)	<u>AND</u>
individually and as designated	)	<u>AGREEMENT</u>
officer of Sunwest Properties	)	
Corporation,	)	
	)	
Respondents,	)	
	)	

It is hereby stipulated by and between Respondents  
SUNWEST PROPERTIES CORPORATION and STEVEN PATRICK DE LOS REYES,  
individually and as designated officer of Sunwest Properties  
Corporation, (sometimes collectively referred to as  
"Respondents") represented by Brian S. Kim, Esq., and the  
Complainant, acting by and through Elliott Mac Lennan, Counsel  
for the Department of Real Estate, as follows for the purpose of  
settling and disposing of the Accusation ("Accusation") filed on  
August 11, 2009, in this matter:

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 and the right to cross-  
23 examine witnesses.  
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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 is made for the purpose of  
11 reaching an agreed disposition of this proceeding and is  
12 expressly limited to this proceeding and any other proceeding or  
13 case in which the Department of Real Estate ("Department"), the  
14 state or federal government, or any agency of this state, another  
15 state or federal government is involved.

16           6. It is understood by the parties that the Real  
17 Estate Commissioner may adopt this Stipulation as his Decision in  
18 this matter thereby imposing the penalty and sanctions on  
19 Respondents' real estate licenses and license rights as set forth  
20 in the "Order" herein below. In the event that the Commissioner  
21 in his discretion does not adopt the Stipulation, it shall be  
22 void and of no effect and Respondents shall retain the right to a  
23 hearing and proceeding on the Accusation under the provisions of  
24 the APA and shall not be bound by any stipulation or waiver made  
25 herein.  
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1           7. The Order or any subsequent Order of the Real  
2 Estate Commissioner made pursuant to this Stipulation shall not  
3 constitute an estoppel, merger or bar to any further  
4 administrative or civil proceedings by the Department of Real  
5 Estate with respect to any matters which were not specifically  
6 alleged to be causes for Accusation in this proceeding but do  
7 constitute a bar, estoppel and merger as to any allegations  
8 actually contained in the Accusations against Respondent herein.

9           8. Respondents understand that by agreeing to this  
10 Stipulation, Respondents agree to pay, pursuant to Business and  
11 Professions Code Section 10148, the cost of the audit. The  
12 amount of said cost for the audit is \$4,428.40.

13           9. Respondents have received, read, and understand the  
14 "Notice Concerning Costs of Subsequent Audit". Respondents  
15 further understand that by agreeing to this Stipulation, the  
16 findings set forth below in the Determination of Issues become  
17 final, and the Commissioner may charge Respondents for the cost  
18 of any subsequent audit conducted pursuant to Business and  
19 Professions Code Section 10148 to determine if the violations  
20 have been corrected. The maximum cost of the subsequent audit  
21 will not exceed \$4,428.40.

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DETERMINATION OF ISSUES

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

4                   The conduct, acts or omissions of SUNWEST PROPERTIES  
5 CORPORATION and STEVEN PATRICK DE LOS REYES, as described in  
6 Paragraph 4, above, are in violation of Sections 10145, 10146,  
7 10161.8 and 10240 of the Business and Professions Code ("Code")  
8 and Sections 2752, 2831, 2831.1, 2832, 2840, 2970 and 2972 of  
9 Title 10, Chapter 6 of the California Code of Regulations  
10 ("Regulations") and is a basis for discipline of Respondents'  
11 license and license rights as violation of the Real Estate Law  
12 pursuant to Code Section 10177(d).  
13

II.

14                   The conduct, acts or omissions of STEVEN PATRICK DE LOS  
15 REYES, as described in Paragraph 4, above, are in violation of  
16 Code Section 10159.2 and is a basis for discipline of  
17 Respondent's license and license rights as violation of the Real  
18 Estate Law pursuant to Code Sections 10177(d), 10177(g) and  
19 10177(h).  
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The license and licensing rights of Respondents SUNWEST PROPERTIES CORPORATION and STEVEN PATRICK DE LOS REYES, under the Real Estate Law, are suspended for a period of sixty (60) days from the effective date of this Decision.

A. Provided, however, that if Respondents request, the initial thirty (30) days of said suspension (or a portion thereof) shall be stayed for two (2) years upon condition that:

1. Each Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$83.33 per day for each day of the suspension for a monetary penalty of \$2,500, or \$5,000 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 license of Respondents occur 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

1 part of the stayed suspension, in which event the Respondent  
2 shall not be entitled to any repayment nor credit, prorated or  
3 otherwise, for money paid to the Department under the terms of  
4 this Decision.

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

10 B. The remaining thirty (30) days of the sixty (60)  
11 day suspension shall be stayed for two (2) years upon the  
12 following terms and conditions:

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

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

Pursuant to Section 10148 of the Business and

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3 Professions Code, Respondents SUNWEST PROPERTIES CORPORATION and  
4 STEVEN PATRICK DE LOS REYES shall pay the Commissioner's  
5 reasonable cost for (a) the audit which led to this disciplinary  
6 action (b) a subsequent audit to determine if Respondents are now  
7 in compliance with the Real Estate Law. The cost of the audit  
8 which led to this disciplinary action is \$4,428.40. In  
9 calculating the amount of the Commissioner's reasonable cost, the  
10 Commissioner may use the estimated average hourly salary for all  
11 persons performing audits of real estate brokers, and shall  
12 include an allocation for travel time to and from the auditor's  
13 place of work. Said amount for the prior and subsequent audits  
14 shall not exceed \$8,856.80.

15  
16 Respondents shall pay such cost within 60 days of  
17 receiving an invoice from the Commissioner detailing the  
18 activities performed during the audit and the amount of time  
19 spent performing those activities.

20 The Commissioner may suspend the license of Respondents  
21 pending a hearing held in accordance with Section 11500, et seq.,  
22 of the Government Code, if payment is not timely made as provided  
23 for herein, or as provided for in a subsequent agreement between  
24 the Respondent and the Commissioner. The suspension shall remain  
25 in effect until payment is made in full or until Respondents  
26 enter into an agreement satisfactory to the Commissioner to  
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1 provide for payment, or until a decision providing otherwise is  
2 adopted following a hearing held pursuant to this condition.

3 III.

4 All licenses and licensing rights of Respondent STEVEN  
5 PATRICK DE LOS REYES are indefinitely suspended unless or until  
6 Respondent provides proof satisfactory to the Commissioner, of  
7 having taken and successfully completed the continuing education  
8 course on trust fund accounting and handling specified in  
9 paragraph (3) of subdivision (a) of Section 10170.5 of the  
10 Business and Professions Code. Proof of satisfaction of this  
11 requirement includes evidence that Respondent has successfully  
12 completed the trust fund account and handling continuing  
13 education course within 120 days prior to the effective date of  
14 the Decision.

15 IV.

16 Respondent shall within six (6) months from the  
17 effective date of the Decision herein, take and pass the  
18 Professional Responsibility Examination administered by the  
19 Department including the payment of the appropriate examination  
20 fee. If Respondent fails to satisfy this condition, the  
21 Commissioner may order suspension of Respondent's license until  
22 Respondent successfully passes the examination.

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EXECUTION OF THE STIPULATION

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

MAILING AND FACSIMILE

14  
15 Respondents (1) shall mail the original signed  
16 signature page of the stipulation herein to Elliott Mac Lennan:  
17 Attention: Legal Section, Department of Real Estate, 320 W.  
18 Fourth St., Suite 350, Los Angeles, California 90013-1105.  
19 Respondents shall also (2) facsimile a copy of signed signature  
20 page, to the Department at the following telephone/fax number:  
21 (213) 576-6917, Attention: Elliott Mac Lennan.  
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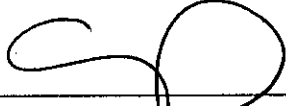
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1 A facsimile constitutes acceptance and approval of the  
2 terms and conditions of this stipulation. Respondents agree,  
3 acknowledge and understand that by electronically sending to the  
4 Department a facsimile copy of Respondents' actual signature as  
5 it appears on the stipulation that receipt of the facsimile copy  
6 by the Department shall be as binding on Respondents as if the  
7 Department had received the original signed stipulation.


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10 DATED: 1/21/10

  
11 \_\_\_\_\_  
12 SUNWEST PROPERTIES CORPORATION, a  
13 corporate real estate broker,  
14 BY: STEVEN PATRICK DE LOS REYES  
15 D.O., Respondent

16 DATED: 1/21/10

  
17 \_\_\_\_\_  
18 STEVEN PATRICK DE LOS REYES,  
19 individually and as designated  
20 officer of Sunwest Properties  
21 Corporation, Respondent

22 DATED: 1/20/10

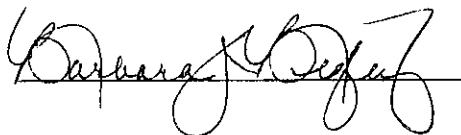
  
23 \_\_\_\_\_  
24 BRIAN S. KIM, ESQ.  
25 Attorney for Respondents  
26 Approved as to form  
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\* \* \*

1                    The foregoing Stipulation and Agreement is hereby  
2  
3 adopted as my Decision as to Respondents SUNWEST PROPERTIES  
4 CORPORATION and STEVEN PATRICK DE LOS REYES, individually and as  
5 designated officer of Sunwest Properties Corporation and shall  
6 become effective at 12 o'clock noon on March 24, 2010.

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8                    IT IS SO ORDERED 2/11, 2010.

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10                    JEFF DAVI  
11                    Real Estate Commissioner

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1 California, makes this Accusation against SUNWEST PROPERTIES  
2 CORPORATION (SPC) and STEVEN PATRICK DE LOS REYES (DE LOS REYES).

3 2.

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

7 License

8 3.

9 At all times mentioned, SPC was licensed or had license  
10 rights issued by the Department of Real Estate (Department) as a  
11 corporate real estate broker by and through real estate broker  
12 STEVEN PATRICK DE LOS REYES.

13 Brokerage

14 4.

15 At all times mentioned, in the City of Montclair,  
16 County of Los Angeles, SPC and DE LOS REYES engaged in the  
17 business of real estate brokers conducting licensed activities  
18 within the meaning of Code Sections 10131(d) and 10131.2. SPC  
19 and DE LOS REYES engaged in operating a mortgage loan, advanced  
20 fee and loan modification service brokerage dba American Trust  
21 Mortgage and Sunwest Modification. For compensation or in  
22 expectation of compensation and for fees often collected in  
23 advance, Respondents contacted lenders on behalf of distressed  
24 homeowners seeking modification or forbearance of the terms of  
25 their home loans.  
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Audit

5.

On April 9, 2009, the Department completed an audit examination of the books and records of SPC pertaining to the mortgage loan, advanced fee and loan modification service activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time beginning on April 1, 2008 to January 30, 2009. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 080179 and the exhibits and work papers attached to said audit report.

6.

No trust account was kept during the audit period.

Violations

7.

In the course of activities described in Paragraph 4, above, and during the examination period described in Paragraph 5, Respondents SPC and DE LOS REYES, acted in violation of the Code and the Regulations in that Respondents:

(a) Collected advance fees within the meaning of Code Section 10026 from homeowners seeking loan modification services wherein SPC failed to provide homeowner-borrowers James Vacca, Jaime Hernandez, Carolina Coterero and William Miller, a pre-approved advance fee agreement from the Department in the form of



1 a no objection letter, in violation of Code Section 10085 and  
2 Regulation 2970.

3 (b) Failed to establish and maintain a trust account at  
4 a bank or other recognized financial institution in the name of  
5 the broker for deposit of advance fees collected by SPC, thereby  
6 depositing trust funds in SPC's general account and thus  
7 commingling trust funds with SPC's funds, in violation of Code  
8 Sections 10145, 10146 10176(e) and Regulation 2832.

9 (c) With reference to the lack of an advance fee  
10 agreement, SPC failed to provide a complete description of  
11 services to be rendered provided to each prospective tenant in 10  
12 point type font and failed to provide an allocation and  
13 disbursement of the amount collected as the advance fee, in  
14 violation of Code Section 10146 and Regulation 2972.

15 (d) Failed to maintain a control record in the form of  
16 a columnar record in chronological order of all trust funds  
17 including advance fees received, deposited and disbursed, in  
18 violation of Code Section 10145 and Regulation 2831.

19 (e) Failed to maintain a separate record for each  
20 beneficiary or transaction, thereby failing to account for all  
21 advance fees collected, in violation of Code Section 10145 and  
22 Regulation 2831.1.

23 (f) Failed to provide and/or maintain an approved  
24 Mortgage Loan Disclosure Statement containing all the information  
25 required by Code Section 10241(c) before borrowers J. foreman, G.  
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1 Price, L. Centeno and E. Lopez, became obligated to perform under  
2 the terms of their respective loans, in violation of Code Section  
3 10240 and Regulation 2840.

4 (g) Failed to notify the Department of the termination  
5 of five salespersons, to wit, Alicia Carillo, Cynthia Gutierrez,  
6 Alexia Hauck, Janet Person and Dough G. Shirley, in violation of  
7 Code Section 10161.8 and Regulation 2752.

8 Disciplinary Statutes

9 8.

10 The conduct of Respondents SPC and DE LOS REYES  
11 described in Paragraph 7, above, violated the Code and the  
12 Regulations as set forth below:  
13

14 PARAGRAPH	PROVISIONS VIOLATED
15 7(a)	Code Sections 10085 and Regulation 2970
16 7(b)	Code Sections 10145, 10146 and 10176(e) and Regulation 2832
17 7(c)	Code Section 10146 and Regulation 2972
18 7(d)	Code Section 10145 and Regulation 2831
19 7(e)	Code Section 10145 and Regulation 2831.1
20 7(f)	Code Section 10240 and Regulation 2840
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7(g)

Code Section 10161.8 and Regulation 2752

The foregoing violations constitutes cause for the suspension or revocation of the real estate license and license rights of SPC and DE LOS REYES, as aforesaid, under the provisions of Code Sections 10176(e) for commingling, 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence.

9.

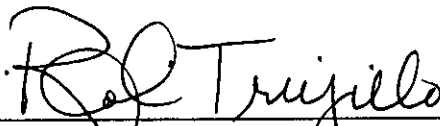
The overall conduct of Respondents SPC and DE LOS REYES constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

10.

The overall conduct of Respondent DE LOS REYES constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of SPC, as required by Code Sections 10159.2 and 10211, and to keep SPC in compliance with the Real Estate Law, with specific regard to loan modifications services and advance fee handling, requiring a real estate license and is cause for the suspension or revocation of the real estate license and license rights of SPC and DE LOS REYES pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against the license and license rights of Respondents  
5 SUNWEST PROPERTIES CORPORATION and STEVEN PATRICK DE LOS REYES,  
6 under the Real Estate Law (Part 1 of vision 4 of the Business and  
7 Professions Code) and for such other and further relief as may be  
8 proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 10 day of August 2009.   
11 Deputy Real Estate Commissioner

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24 cc: Sunwest Properties Corporation  
25 c/o Steven Patrick De Los Reyes D.O.  
26 Robin Trujillo  
27 Sacto  
Summer Bakotich  
Audits - Chona T. Soriano