

**FILED**

JUNE 6, 2012

DEPARTMENT OF REAL ESTATE  
BY: Ca  
BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	DRE No. H-37287 LA
	)	
MARCORR CORPORATION;	)	OAH No. 2011080777
JOSE DE JESUS CONTRERAS,	)	
individually and as designated	)	
officer of Marcorr Corporation;	)	
MARIA EUGENIA ROSAS,	)	
individually and as former	)	
designated officer of Marcorr	)	
Corporation; and	)	
MARICELA CONTRERAS,	)	
	)	
Respondents.	)	
	)	

DECISION

The Proposed Decision dated May 4, 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  
June 26, 2012.

IT IS SO ORDERED May 30, 2012.

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MARCORR CORPORATION; JOSE DE JESUS CONTRERAS, individually and as designated officer of Marcorr Corporation; MARIA EUGENIA ROSAS, individually and as former designated officer of Marcorr Corporation; and MARICELA CONTRERAS;

Respondents.

Case No. H-37287 LA.

OAH No. 2011080777

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on March 27 and 28, 2012, in Los Angeles, California.

Lisette Garcia, Counsel for the Department of Real Estate (Department), appeared on behalf of complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California.

Respondent Jose de Jesus Contreras (Jose Contreras or Jose) appeared on his own behalf and on behalf of respondent Marcorr Corporation. Respondent Maria Eugenia Rosas (Maria Rosas or Rosas) appeared on her own behalf. Arturo Santana, Jr., Attorney at Law, represented respondent Maricela Contreras (Maricela Contreras or Maricela), who was present.<sup>1</sup>

Oral and documentary evidence was received, the record was closed, and the matter was submitted on March 28, 2012.

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<sup>1</sup> Because two of the individual respondents, Jose de Jesus Contreras and Maricela Contreras, have the same last name, they are sometimes referred to herein by their first names to avoid confusion.

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. Complainant filed the Accusation in her official capacity. Respondents timely filed a notice of defense.
2. Respondent Marcorr Corporation was originally licensed as a real estate corporation on September 27, 2004. The license is scheduled to expire on September 26, 2012. Marcorr Corporation is licensed to do business as Vancouver Realty and as MBJ Mortgage.
3. The Department originally issued real estate broker license no. B/01272826 to respondent Jose Contreras on April 9, 2008. The license expired on April 8, 2012.<sup>2</sup> Jose Contreras has been licensed as the designated officer of Marcorr Corporation since May 1, 2008. The designation is scheduled to expire on September 26, 2012.
4. The Department originally issued real estate broker license no. B/00927625 to respondent Maria Rosas on December 18, 1992. The license is scheduled to expire on December 17, 2012. Maria Rosas was licensed as the designated officer of Marcorr Corporation from September 27, 2004, to April 30, 2008. She is currently the designated officer of Becker Properties, Inc., and Elite Home Loans, Inc.; those designations are scheduled to expire on January 3, 2013.
5. The Department originally issued real estate salesperson license no. S/01204600 to respondent Maricela Contreras on January 4, 1996. The license expired on February 20, 2012. From August 23, 2007, to July 30, 2008, Maricela Contreras was acting in the employ of real estate broker Elite Home Loans, Inc. From July 30, 2008, to July 21, 2009, Maricela Contreras was acting in the employ of respondent Marcorr Corporation.
6. Respondent Marcorr Corporation is a California corporation. Respondent Jose Contreras is the chief executive officer and a director of respondent Marcorr Corporation. Respondent Maricela Contreras is the chief financial officer and designated agent for service of process of respondent Marcorr Corporation.

### *The Adolfo Lane Property*

7. In early 2008, Maricela Contreras advised her friend, Laura Rizzo, to "short sell" her house on Adolfo Lane in Victorville to Rizzo's daughter, Brenda Soto. Rizzo lived in the house with Soto; they each paid half of the first and second mortgages and household expenses. The house had lost value, and Rizzo believed that the short sale would lower the monthly mortgage payments.

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<sup>2</sup> The expiration of a license issued by the Board does not deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee or take disciplinary action against the licensee. (Bus. & Prof. Code, § 118, subd. (b).)

8. Maricela assured Rizzo that she could short sell the property to Soto for \$160,000. Rizzo signed an exclusive listing agreement with Maricela and Vancouver Realty for the short sale. Maricela did not advertise the property for sale and did not present any offers to Rizzo other than Soto's. Rizzo and Soto each earned approximately minimum wage working as waitresses and Soto had outstanding debts; nevertheless, Jose Contreras, who was acting as the loan officer, prepared a loan pre-approval letter for Soto.

9. Ultimately, Soto was not approved for a loan and the short sale did not take place. The property was foreclosed on and sold to a third party in a trustee sale on February 6, 2009. Rizzo and Soto moved out in March or April 2009.

10. Maricela testified at hearing that, although she knew that a short sale must be an "arm's-length" transaction, she nevertheless suggested and proceeded to work on the short sale from Rizzo to Rizzo's daughter, Soto. Maricela testified, "I know I was not supposed to do it, but this is friendship."

11. Complainant alleged but did not establish that Maricela collected an advance fee of \$3,000, or that Rizzo and Soto paid Maricela \$2,500 for property taxes on the Adolfo Lane property. The alleged payments were the subject of less-than-credible, self-serving testimony from Rizzo, Soto, and Maricela; not only did Rizzo and Soto contradict Maricela, they also contradicted each other on relevant points.

a. Rizzo testified that Maricela charged her \$3,000 for the short sale, as reflected in an invoice dated February 2008; Soto testified that she saw her mother pay Maricela the \$3,000 in cash. Rizzo testified that she entered into the short sale agreement despite Maricela owing her \$14,000 from a 2006 transaction because, she testified, Maricela promised to repay her the \$14,000. Maricela testified that Rizzo never paid her a \$3,000 deposit. She testified that, in fact, the February 2008 invoice reflects her crediting \$3,000 to Rizzo, to be paid out of Maricela's commission on the short sale, thereby writing off a loan she had made to Rizzo in connection with the 2006 transaction. She testified that she herself made the December 2007 mortgage payments on the Adolfo Lane house and paid Rizzo's \$400 Macy's bill and other debts, for a total of \$6,903.21, leaving approximately \$7,000 owing on the 2006 transaction. Documentation presented in support of the various parties' positions was neither persuasive nor decisive.

b. Rizzo testified that she also paid Maricela \$2,500 in cash, to enable Maricela to pay the Adolfo Lane property taxes and pay down some of Soto's credit card debt. Soto contradicted this statement, testifying that Rizzo and she each only paid Maricela half of \$2,156, the actual property tax owed, not \$2,500. Maricela denied receiving either \$2,156 or \$2,500 from Rizzo and Soto.

c. Rizzo denied that she sought the short sale because she was having difficulty making mortgage payments and wanted to prevent foreclosure. This testimony explicitly contradicts allegations made in her civil complaint against Maricela and Marcorr (Complainant's Exhibit 8), and statements made in a letter signed by both Rizzo and Maricela,

dated August 14, 2008, notifying whomever it might concern that Rizzo was unable to continue making mortgage payments and that Rizzo was requesting a short sale.

12. Although complainant alleges that Rizzo paid Maricela \$450 for an appraisal in connection with the short sale, it was Soto who actually paid for an appraisal, and she paid the appraiser, not Maricela.

13. During the attempted short-sale transaction, Maria Rosas was Marcorr Corporation's designated officer. Rosas denied at hearing that she knew of the transaction.

14. Respondent Marcorr Corporation failed to submit a written agreement or solicitation for short sale services to the Department ten days before using it.

#### *The Reyes Loan Modification*

15. Elder Reyes, responding to a radio advertisement, contacted respondent Marcorr Corporation, doing business as Vancouver Realty, and asked Maricela Contreras to obtain a home loan modification for him. Maricela agreed to do so and, on October 29, 2008, collected an advance fee of \$3,000 from Reyes for loan modification services, in the form of a check made payable to Vancouver Realty. Marcorr did not furnish the Department with a written agreement for the loan modification services, nor did it furnish the Department with an accounting identifying a trust fund account into which the advance fee was deposited, a description of the services rendered, and the amounts allocated or disbursed from the advance fee. The advance fee was not, in fact, deposited in a trust account; it was deposited into Vancouver Realty's regular bank account, from which general business costs were paid.

16. Maricela eventually obtained a trial home loan modification from a bank, lowering Reyes's monthly payments from over \$2,000 to \$1,840 for several months. At some point, without Maricela having secured a permanent loan modification, Reyes sought a loan modification elsewhere and asked Maricela for a refund of the advance fee. She eventually refunded \$2,500 to Reyes, by check dated February 2, 2010; she kept \$500 as compensation for the services she had performed.

17. Respondent Jose Contreras testified at hearing that it was his mistake that Vancouver Realty asked for an advance fee. He acknowledged that there was no contract with Reyes for the loan modification, and that no accounting was provided to Reyes.

#### LEGAL CONCLUSIONS

1. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004)

115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Any violation of licensing statutes and regulations may be cause for discipline against a licensee. (Bus. & Prof. Code, § 10085.) The Department may suspend or revoke a license where the licensee, in performing licensed acts, makes a substantial misrepresentation, makes false promises likely to influence, persuade, or induce, or engages in fraud or dishonest dealing. (Bus. & Prof. Code, § 10176, subds. (a), (b), (i).) The Department may suspend or revoke a license where the licensee has willfully disregarded or violated the Real Estate Law, demonstrated negligence or incompetence in performing licensed acts, or, “[a]s a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.” (Bus. & Prof. Code, § 10177, subds. (d), (g), (h).) The officer designated by a corporate broker licensee . . . shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of [the Real Estate Law], including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required. (Bus. & Prof. Code, § 10159.2.)

3. An “advance fee” is a fee charged by a licensee for services requiring a license before the services are fully performed. (Bus. & Prof. Code, § 10026.) A person proposing to collect an advance fee must submit all materials to be used to solicit the advance-fee agreement to the Department 10 days before using those materials. (Bus. & Prof. Code, § 10085; Cal. Code Regs., title 10 (CCR), § 2970.) The materials shall not guaranty that a loan secured by real property will be obtained. (CCR, § 2970.) Any advance fees collected must be deposited in a trust account, and the licensee must provide a quarterly verified accounting of those funds to the principal. (Bus. & Prof. Code, § 10146; CCR, § 2972.)

4. Cause exists to suspend or revoke respondent Marcorr Corporation’s real estate licenses and license rights under Business and Professions Code sections 10176, subdivisions (a), (b), and (i), 10177, subdivisions (d) and (g), and 10085, and CCR section 2970, for the reasons set forth in Factual Findings 2 through 10 and 13 through 17, and Legal Conclusions 1 through 3.

5. Cause exists to suspend or revoke respondent Maricela Contreras’s real estate licenses and license rights under Business and Professions Code sections 10176, subdivisions (a), (b), and (i), 10177, subdivisions (d) and (g), and 10185, for the reasons set forth in Factual Findings 2 through 10 and 13 through 17, and Legal Conclusions 1 through 3.

6. Cause exists to suspend or revoke respondent Maria Rosas’s real estate licenses and license rights under Business and Professions Code section 10177, subdivisions (d), (g), and (h), for the reasons set forth in Factual Findings 2 through 10, 13, and 14, and Legal Conclusions 1 through 3.

7. Cause exists to suspend or revoke respondent Jose Contreras's real estate licenses and license rights under Business and Professions Code section 10177, subdivisions (d), (g), and (h), for the reasons set forth in Factual Findings 2 through 6, 8, and 15 through 17, and Legal Conclusions 1 through 3.

8. Under the circumstances of this case, respondents' violations warrant revocation of all licensing rights. The purpose of licensing proceedings is to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) Respondent Maricela Contreras demonstrated a willingness to engage in multiple violations of the Real Estate Law, including making false promises, not placing trust funds in trust accounts, and engaging in fraudulent or dishonest conduct. The corporate licensee's designated officers, first Maria Rosas and then Jose Contreras, demonstrated a willingness to overlook, endorse, or participate in such conduct. And Jose Contreras and Maricela Contreras are both corporate officers of Marcorr Corporation. Rizzo, Soto, and Reyes all suffered harm as a result of respondents' acts, and the public would be placed at risk by respondents' continued licensure.

9. Although cause exists to order that respondents make restitution to Reyes in the amount of \$500, for the reasons set forth in Factual Findings 15 through 17, the Order revokes respondents' licenses rather than restricts them, and restitution may only be ordered as a condition of issuing a restricted license. Cause does not exist to order restitution to Rizzo and Soto, for the reasons set forth in Factual Findings 11 and 12.

#### ORDER


All licenses and licensing rights of respondent Marcorr Corporation under the Real Estate Law are revoked.

Real estate broker license no. B/01272826, and all real estate licenses and licensing rights of respondent Jose de Jesus Contreras, are revoked.

Real estate broker license no. B/00927625, and all real estate licenses and licensing rights of respondent Maria Eugenia Rosas, are revoked.

Real estate salesperson license no. S/01204600, and all real estate licenses and licensing rights of respondent Maricela Contreras, are revoked.

DATED: May 4, 2012



HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings