

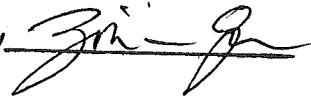
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**FILED**

OCT 18 2013

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU<sup>1</sup> OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	
WALLSTREET REALTY AND INVESTMENTS, INC.; MARIO N. LOPEZ, as former designated officer of Wallstreet Realty and Investments, Inc.; and <u>SERGIO TAFOLLA</u> , as former designated officer of Wallstreet Realty and Investments, Inc.	)	BRE No. H-38267 LA OAH No. 2012090663
	)	
Respondents.	)	

DECISION AFTER REJECTION

This matter came on for hearing before Chris Ruiz, Administrative Law Judge of the Office of Administrative Hearings (ALJ), in Los Angeles, California, on March 11-12, 2013.

Elliot MacLennan and Diane Lee, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner of the State of California (Complainant).

SERGIO TAFOLLA (TAFOLLA) was present at hearing and represented by attorney Tomasina Reed, Esq.

<sup>1</sup> Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate ("Bureau"). All references to the agency in this Decision After Rejection are to the successor "Bureau."

1 Respondent WALLSTREET REALTY AND INVESTMENTS, INC.  
2 (“WALLSTREET”) did not file a Notice of Defense, and did not appear at hearing. MARIO N.  
3 LOPEZ (“LOPEZ”) filed a Notice of Defense but did not appear at the hearing. The ALJ  
4 remanded the matter of the Accusations against WALLSTREET and LOPEZ to the Bureau for  
5 default proceedings.<sup>2</sup> Therefore, this decision only addresses SERGIO TAFOLLA.

6 Oral and documentary evidence was received and the matter was submitted for  
7 decision on March 12, 2013.

8 On May 3, 2013, the Administrative Law Judge rendered a Proposed Decision,  
9 which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the  
10 Government Code of the State of California, Respondent was served with notice of my  
11 determination not to adopt the Proposed Decision of the Administrative Law Judge along with a  
12 copy of said Proposed Decision. Respondent was notified that I would decide the case upon the  
13 record, the transcript of proceedings held on March 11-12, 2013, and upon any written argument  
14 offered by Respondent and Complainant. Complainant and Respondent TAFOLLA submitted  
15 further written argument. I have given careful consideration to the record in this case including  
16 the transcript of the proceedings of March 11-12, 2013. I have also considered the arguments  
17 submitted by Complainant and Respondent TAFOLLA. The following shall constitute the  
18 Decision of the Real Estate Commissioner (“Commissioner”) in this proceeding:

19 FACTUAL FINDINGS

20 The Factual Findings of the ALJ’s Proposed Decision in this matter, dated  
21 May 3, 2013, are hereby adopted.

22 LEGAL CONCLUSIONS AND DISCUSSION

23 The Legal Conclusions and Discussion of the ALJ’s Proposed Decision in this  
24 matter, dated May 3, 2013, are hereby adopted.

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27 <sup>2</sup> In its Argument after Rejection, Complainant notes that the Bureau subsequently entered into a Stipulation and Agreement with LOPEZ.



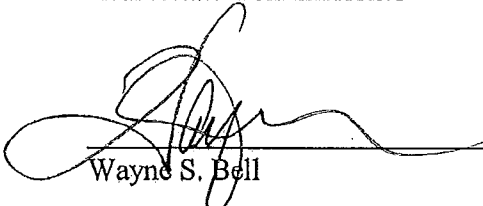
- 1           4. Respondent shall, within nine months from the effective date of this Decision,  
2           present evidence satisfactory to the Real Estate Commissioner that Respondent has,  
3           since the most recent issuance of an original or renewal real estate license, taken and  
4           successfully completed the continuing education requirements of Article 2.5 of  
5           Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent  
6           fails to satisfy this condition, the Commissioner may order the suspension of the  
7           restricted license until the Respondent presents such evidence. The Commissioner  
8           shall afford Respondent the opportunity for a hearing pursuant to the Administrative  
9           Procedure Act to present such evidence. Respondent shall take any other continuing  
10          education classes as directed by the Real Estate Commissioner.
- 11          5. Respondent shall take and pass the Professional Responsibility Exam within six  
12          months from the effective date of the Decision
- 13          6. Respondent shall serve as the designated broker-officer for only one business entity  
14          during the two year period in which his license is restricted.
- 15          7. Respondent shall pay \$2,013.73 as costs to the Bureau of Real Estate through 12  
16          monthly payments, with an initial payment of \$167.82 due 30 days after the effective  
17          date of this decision, followed by 11 consecutive monthly payments of \$167.81. The  
18          final payment shall be due no later than one year after the effective date of this  
19          decision.

20                 This Decision shall become effective at 12 o'clock noon on November 7,

21                 2013.

22                 IT IS SO ORDERED October 18, 2013.

23   Real Estate Commissioner

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25   Wayne S. Bell  
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*Serchio Files*

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**FILED**

JUN - 6 2013

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of  
  
WALLSTREET REALTY AND  
INVESTMENTS, INC.; MARIO N. LOPEZ,  
as former designated officer of Wallstreet  
Realty and Investments, Inc.; and  
SERGIO TAFOLLA, as former designated  
officer of Wallstreet Realty and  
Investments, Inc.  
  
Respondent(s).

No. H-38267 LA  
OAH No. 2012090663

NOTICE

TO: SERGIO TAFOLLA, Respondent, and TOMASINA REED, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated  
May 3, 2013, of the Administrative Law Judge is not adopted as the Decision of the Real Estate  
Commissioner. A copy of the Proposed Decision dated May 3, 2013, is attached for your  
information.

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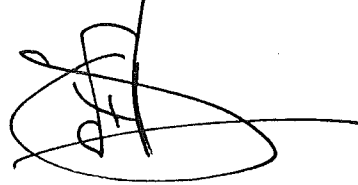
1 In accordance with Section 11517(c) of the Government Code of the State of  
2 California, the disposition of this case will be determined by me after consideration of the record  
3 herein including the transcript of the proceedings held on March 11-12, 2013, any written  
4 argument hereafter submitted on behalf of Respondent and Complainant.

5 Written argument of Respondent to be considered by me must be submitted within  
6 15 days after receipt of the transcript of the proceedings of March 11-12, 2013, at the  
7 Los Angeles office of the Department of Real Estate unless an extension of the time is granted  
8 for good cause shown.

9 Written argument of Complainant to be considered by me must be submitted  
10 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the  
11 Department of Real Estate unless an extension of the time is granted for good cause shown.

12 DATED: June 3, 2013

13 REAL ESTATE COMMISSIONER

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18 By: Jeffrey Mason  
19 Chief Deputy Commissioner  
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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WALLSTREET REALTY AND  
INVESTMENTS, INC.; MARIO N. LOPEZ,  
as former designated officer of Wallstreet  
Realty and Investments, Inc.; and SERGIO  
TAFOLLA, as former designated officer of  
Wallstreet Realty and Investments, Inc.,

Respondents.

Department No. H-38267

OAH No. 2012090663

**PROPOSED DECISION**

This matter was heard on March 11-12, 2013, in Los Angeles, California, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Sergio Tafolla (Respondent or Tafolla), was present and was represented by Tomasina Reed, Esq.

Complainant, Maria Suarez, Deputy Real Estate Commissioner, was represented by Elliot MacLennan and Diane Lee, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was presented and the matter was submitted for decision on March 12, 2013. There was no appearance by, or on behalf of Wallstreet Realty and Investments, Inc. (Wallstreet), or Mario Lopez (Lopez). As such, Wallstreet and Lopez were found in default and the case was remanded as to those Respondents to the Department for preparation of a default decision(s).

**FACTUAL FINDINGS**

1. Complainant brought the Accusation in her official capacity.
2. Tafolla is presently licensed as a real estate broker and was initially licensed as a broker in September 2007. From November 12, 2008, through September 14, 2009, Tafolla was the designated officer and broker responsible for Wallstreet. After

Tafolla left Wallstreet as the designated officer, Lopez became the designated officer for Wallstreet from October 2009 to December 2009. Mr. Rodriguez (Rodriguez) was the owner of Wallstreet.

3. When Tafolla met Rodriguez in 2008, they discussed a business of pre-qualifying buyers and handling traditional real estate sales. Real estate management was not discussed between Tafolla and Rodriguez. However, unbeknownst to Tafolla, at some point Rodriguez began operating a property management brokerage. Rodriguez does not hold a license issued by the Department.
4. In 2010, the Department performed a residential rental services audit of Wallstreet. The audit was performed in February 2010 and evaluated the period from April 2008 to December 2009. That time period encompassed the complete period of time, plus eight months prior to, and three months after, Tafolla's time as broker. During the audit, Rodriguez was unable to locate a number of critical documents as requested by the Department investigator. Tafolla was not contacted by the investigator. The Department investigator only contacted Lopez and Rodriguez regarding documents requested because Lopez was the designated broker (DB) when the audit was performed and Rodriguez was the business owner. The investigator's opinions are heavily based on information he obtained from Rodriguez.
5. The investigator determined that when Wallstreet accepted an application from a client, it also accepted a \$30.00 screening fee (SF). This fee did not need to go into Wallstreet's trust account. Pursuant to the investigator's understanding of the law, only any sum in excess of \$30.00 needs to be placed in a trust account. The applications reviewed did not show the actual amount paid by the client. In November 2008, a few days before Tafolla became the DB for Wallstreet, a general bank account was opened. No trust account was opened by Wallstreet.
6. The investigator concluded that he reviewed 40 transactions and that therefore multiplying that number by \$30.00 should have had a balance of \$1,200.00. Because the balance was actually \$1,695.00, the investigator concluded that more than \$30.00 per transaction had been collected, and that the excess needed to be placed in a trust account. Wallstreet maintained a general bank account, rather than a trust fund account, and only Rodriguez and Chris Palomares, the office manager, were authorized signatories on that account. However, the \$30.00 limit was set in 1998 and was supposed to be adjusted according to the consumer price index (CPI). The Department's auditor did not address this during his testimony. Tafolla first raised this issue during his testimony, and while his testimony was not somewhat unclear, it did raise enough doubt to conclude that Complainant did not establish the trust account violations alleged. The same conclusion was reached regarding Complainant's allegations surrounding the use of the fictitious name "Wallstreet Realty" instead of "Wallstreet Realty and Investments, Inc."



7. After becoming the broker in December 2008, Tafolla requested the agents' license information from Rodriguez in January 2009. Three days later, the two set a meeting for the end of January 2009. That meeting never took place. In sum, the history between Tafolla and Rodriguez can be summarized as follows: Tafolla would continually ask Rodriguez to meet, Rodriguez would agree, and then Rodriguez would either not show up, or would cancel at the last minute due to an "emergency." At times, Tafolla would come to the office unannounced in an attempt to get the necessary information and documents to fulfill his broker obligations. After 90 days of being unable to get Rodriguez to meet, Tafolla had become very concerned regarding his inability to meet with Rodriguez, but he gave Rodriguez the "benefit of the doubt." Also, Rodriguez told Tafolla that there had not been any sales, and thus it appeared to Tafolla that the business was still in the start-up phase. Tafolla would drop by the office approximately three times per week. He spoke to the office manager and did see some files that were at the pre-qualification stage, but in general he did not see the rental applications that Rodriguez was performing and hiding from Tafolla.
8. In March 2009, Tafolla told Rodriguez that they had to get the paperwork, bank accounts, and all other necessary paperwork in order for him to fulfill his broker responsibilities, or Tafolla was going to resign.
9. In April 2009, Tafolla gave Rodriguez notice that he was going to resign in 60 days if Rodriguez did not meet and assist Tafolla. Rodriguez promised to do so. Tafolla also followed up this written notice by dropping by the office in an attempt to see Rodriguez, and also to perform his own investigation as to the business activity. He spoke to Palomares and again wrote to Rodriguez on May 29, 2009. By July 2009, he discovered that Rodriguez was handling the rental of properties when he saw an advertisement online. Tafolla resigned on July 9, 2009, but gave Rodriguez until August 1, 2009, to find another broker.
10. Tafolla acknowledged he gave Rodriguez too much time to properly set up the business. He acknowledged that as the broker, he was responsible for the corporation and its employees. In mitigation, Tafolla earned no money during his dealings with Rodriguez. While Tafolla did not assert his supervisory responsibilities in a reasonable time period, he did plan to have weekly meetings with the staff, and he provided written policies to Rodriguez which were to be used at Wallstreet. At the time of his dealings with Rodriguez, Tafolla also had another company for which he was the designated broker, namely Eagle International, which performed mortgage loans.
11. Tafolla acknowledged that he made a mistake by trusting Rodriguez and that he put his license at risk by doing so. He acknowledged that Rodriguez was a "good talker" to whom he "gave the benefit of the doubt." However, Tafolla testified that

Rodriguez always appeared to be working hard, and that the economy was difficult at the time, so he stuck with it hoping Rodriguez was just overwhelmed, as compared to deceitful.

12. Tafolla is presently the designated officer of Capital Cover International, Inc., where he has been employed since December 2010.
13. Complainant alleged that Tafolla failed to fulfill his responsibilities as the designated broker by: failing to maintain a control record for trust funds received, failing to maintain a separate record for each transaction, failing to perform a monthly reconciliation of the separate transactions with the trust funds, failing to maintain a trust account, allowing unlicensed persons to be the sole signatories on the bank account and by not having Tafolla as a signatory on that account, failing to keep trust funds separate from general funds, collecting rental application screening fees in excess of \$30.00 per applicant, using the fictitious name "Wallstreet Realty" instead of "Wallstreet Realty and Investments, Inc., failing to retain salesperson license certificates for employees Martinez and Worthy, and failing to exercise adequate supervision and control over Wallstreet's business activities as the designated broker.
14. The evidence established that Tafolla failed to fulfill his responsibilities as the designated broker by failing to maintain a control record for trust funds received, failing to maintain a separate record for each transaction, failing to perform a monthly reconciliation of the separate transactions with the trust funds, maintain a trust account, allowing unlicensed persons to be the sole signatories on the bank account and by failing to have Tafolla as a signatory on that account, failing to retain salesperson license certificates for employees Martinez and Worthy, and by failing to exercise adequate supervision and control over Wallstreet's business activities as the designated broker. All of these failures were related to Tafolla's failure to fulfill his responsibilities as the designated broker in a more reasonable and timely manner.
15. The allegations regarding collecting rental application screening fees in excess of \$30.00 per applicant, using the fictitious name "Wallstreet Realty" instead of "Wallstreet Realty and Investments, Inc., and failing to keep trust funds separate from general funds, were not established.
16. The Complainant incurred reasonable costs of prosecution and investigation in the sum of \$6,041.20. However, the investigation focused on two brokers, and one corporate entity. Thus, the reasonable costs attributable to Tafolla are \$2,013.73.
17. All other allegations and contentions raised by both parties were not established by the evidence or legal authority.

## LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to suspend or revoke Respondent's real estate broker's license pursuant to Business and Professions Code sections 10145, 10160, 10148, 10159.2, 10176, subdivision (e), and 10177, subdivisions (d)(g)(h), and California Code of Regulations, title 10, sections 2831, 2831.1, 2831.2, 2832, subdivision (a), 2834, 2753, 2726, and 2715.
2. Tafolla acknowledges that he put his license at risk by trusting Rodriguez, and by allowing Rodriguez to utilize his broker's license while not responding to Tafolla's requests to meet and properly set Tafolla in place as the supervising broker. Tafolla and Rodriguez began their business relationship in December 2008. Tafolla did not resign as the broker until July 9, 2009, and the resignation was not effective until August 1, 2009. Therefore, Tafolla allowed more than six months to pass before he resigned. Tafolla only received his broker's license in 2007, and therefore did not have extensive experience as a broker. Nevertheless, Tafolla knew he was putting his license at risk by allowing Rodriguez to continue to use his license after Rodriguez began being unresponsive to Tafolla's requests to meet. Tafolla assumed this risk and now must suffer the consequences. At hearing, Complainant suggested restricting Tafolla's license for two years with terms and conditions which include only allowing Tafolla to serve as a broker for an entity where he is also the sole owner. Complainant's suggestion is persuasive because it will allow Tafolla to focus his attention on one business entity. However, the public will be sufficiently protected by allowing Tafolla to serve as a broker, even if he is not the sole owner, as long as he only serves as the broker for one entity. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.) Restricting Tafolla from only serving as a broker at a company he solely owned would only punish him. As long as he can focus his attention on one entity, he established that he has learned from the mistakes in dealing with Rodriguez. It was not established that Tafolla is the sole owner of Capital Cove International Inc. (CCI), where he has served as the broker since October 2010. Assuming he is not the sole owner, such a restriction would require that he leave CCI where he has worked for two and one-half years and form a new business which he solely owned in a very difficult economy. The following order will adequately protect the consuming public.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent SERGIO TAFOLLA under the Real Estate Law are revoked; provided, however, a restricted real estate broker's license shall be issued to SERGIO TAFOLLA pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

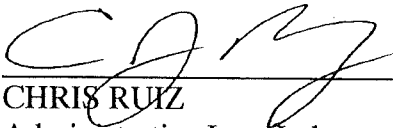
1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence. Respondent shall take any other continuing education classes as directed by the Real Estate Commissioner.
5. Respondent shall take and pass the Professional Responsibility exam within six months from the effective dates of the Decision.
6. Respondent shall take serve as the designated broker for only one business entity during the two year period during which his license is restricted.

*Not Adopted*

Not Accepted

7. Respondent shall pay \$2,013.73 as costs to the Department through 12 equal payments of \$167.8, beginning 30 days after the effective date of this decision, and continuing each following month for 11 additional payments.

DATED: May 3, 2013

  
\_\_\_\_\_  
CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings