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FILED

SEP - 7 2017

BUREAU OF REAL ESTATE

By CalBlous

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-40341 LA
	)	
PROSPERITY 4 U INC.	)	OAH No. 2016090527
	)	
RAMON ACOSTA	)	
	)	
(Respondents)	)	

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FIRST AMENDED DECISION

The Proposed Decision dated July 19, 2017, 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.

Pursuant to Section 11517(c) (2) of the Government Code, the following corrections are made to the Proposed Decision.

Summary, Page 2, Paragraph 2, Line 1: "R. Costa" shall read "R. Acosta".

Factual Findings:

Page 5, Paragraph 5(c), Line 1, "8with" shall read: "8 with".

Page 6, Paragraph 8, Line 3, "\$400, 000" shall read: "\$400,000".

Page 7, Paragraph 12(b), Line 2, "property Wing C" shall read: "property to Wing C".

Page 8, Paragraph 17, Line 1, "Main Avenue" shall read: "Maine Avenue".

Page 10, Paragraph 19, Line 1, "Main Avenue" shall read: "Maine Avenue".

Page 23, Paragraph 37, Line 2, "(disputed) and shall read: "(disputed) and".

Page 23, Paragraph 38, Line 6, "required.by" shall read: "required by".

Legal Conclusion And Discussion:

Page 25, Paragraph 2(b), Line 5, delete “and the Erin Property,” to read as “Code Section 10176, subdivision (b)”.

Page 26, Paragraph 3(a), Line 3, “Main Avenue” shall read: “Maine Avenue”.

The Decision suspends or revokes one or more real estate licenses.

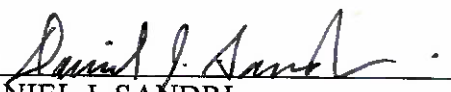
Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau’s power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on September 27, 2017.

IT IS SO ORDERED September 06, 2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

By   
DANIEL J. SANDRI  
Chief Deputy Commissioner

FILED

AUG 30 2017

BUREAU OF REAL ESTATE

By: *Al Blouin*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-40341 LA
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PROSPERITY 4 U INC.	)	OAH No. 2016090527
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RAMON ACOSTA	)	
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(Respondents)	)	

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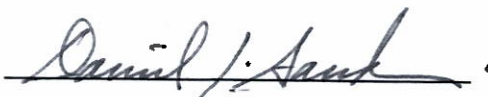
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This Decision shall become effective at 12 o'clock noon on .

IT IS SO ORDERED

8/24/17

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI  
Chief Deputy Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Second Amended  
Accusation Against:

PROSPERITY 4 U, INC., DIANA ERIKA  
ACOSTA, individually and as designated  
officer of Prosperity 4 U, Inc.; ELSIE  
ROMERO CAMBRONE, individually and as  
former designated officer of Prosperity 4 U,  
Inc.; and RAMON ACOSTA

Respondents.

Case No. H-40341 LA

OAH No. 2016090527

**PROPOSED DECISION**

This matter was heard on February 27-28, March 1, and May 18-19, 2017, in Los Angeles, California, by Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Diane Lee, Counsel for the Bureau of Real Estate (BRE), represented Complainant Maria Suarez, Supervising Special Investigator.

Edward O. Lear, Attorney at Law, represented respondents Prosperity 4 U, Inc. (P4UI) and Ramon Acosta at the hearing. Ramon Acosta (R. Acosta) appeared and was present throughout the hearing.

Prior to the hearing, Diana Erika Acosta (D. Acosta), also represented by Edward O. Lear, entered into a stipulation and agreement with the complainant to resolve the pending accusation. Also prior to the hearing, respondent Elsie Romero Cambrone (Cambrone), represented by her counsel, Michael Lanphere, Attorney at Law, entered into a stipulation and agreement with complainant to resolve the pending accusation.

Oral and documentary evidence was received. By agreement between the parties, Complainant presented oral closing argument on May 19, 2017, and the record remained open for respondents to file written closing argument, and to replace an unsigned letter marked as Exhibit B with a signed letter. Respondents timely filed their written closing brief, which was marked for identification only as Exhibit K. Respondent did not file a

signed Exhibit B and Exhibit B was not admitted into evidence. The record was closed and the matter was submitted for decision on June 16, 2017.

## SUMMARY

Complainant contends that R. Acosta's conduct acting individually and on behalf of his company, PUI4, requires revocation of respondents' licenses because respondent R. Acosta's conduct violated the statutes and regulations governing the licenses, and demonstrated a disregard for his clients and the public, particularly with regard to residential real estate properties short-sales transactions. Complainant charges respondents with improper conduct with regard to six properties and a related audit and with other licensing violations, including failure to disclose real estate license number, use of an unlicensed fictitious business name and an unauthorized address.

R. ~~Costa~~<sup>Acosta</sup> concedes to what he categorized as minor errors only, and offers to abide by the terms of a restricted license, but insists that during his 19 year history as a real estate salesperson, he unflinchingly worked in the best interests of his clients and the public, and that the errors made did not negatively impact his clients. Respondent conceded certain errors as part of the stipulation entered between the parties regarding the allegations in the Second Amended Accusation. In addition, at the hearing, R. Acosta conceded to errors in judgment with regard to certain transactions. He conceded he failed to use best practices with regard to the Lucille Property by transferring the title within thirty days of signing the grant deed, the Military Property by failing to properly communicate with his clients, the Erin Way Property by or failing to put the listing price on the listing agreement, and on the Shamouti Drive Property by failing to timely remove the property from the multiple listing service at the owner's request. R. Acosta maintains these errors were unfortunate, but did not result in harm to the clients, and do not justify a revocation of his license.

Complainant proved by clear and convincing evidence that R. Acosta in concert with P4UI materially violated the Real Estate Law in his handling of real estate transactions. Based upon the evidence, respondents' licenses are revoked.

## FACTUAL FINDINGS

### *Background: Jurisdiction, Stipulated Settlements and Stipulated Findings*

1. Complainant brought the Second Amended Accusation (SAA) in her official capacity. All jurisdictional requirements have been met for the matter to proceed to hearing.
2. The factual findings, legal conclusions, and order herein apply only to P4UI and R. Acosta. Prior to hearing, complainant entered into stipulated settlements and agreements with respondents D. Acosta and Cambrone, which were adopted by the Bureau. (Exs. 42 and 43.)

3. On February 24, 2017, complainant and respondents P4UI and R. Acosta, stipulated to the majority of the allegations in the SAA, which also constitute factual findings. The stipulation is marked and admitted as Exhibit 44 and attached and incorporated herein as appendix A.<sup>1</sup>

4. Licenses at issue:

4(a). P4UI is licensed by the Bureau as a real estate broker, license no. 01898038, and was licensed as a real estate corporation beginning on or about April 18, 2011, and continues to be licensed as such. R. Acosta is the sole owner and president of P4UI. From June 3, 2014 through the present, P4UI has registered fictitious business names Optimum Real Estate Solutions and Optimum Short Sale Solutions with the Bureau. P4UI has no other fictitious business names registered with the Bureau. From April 18, 2011, through June 3, 2014, P4UI's designated broker was Cambrone, after that time, the designated broker has been D. Acosta.<sup>2</sup>

4(b). R. Acosta is presently licensed and has licensing rights as a real estate salesperson, license number 01267314. His real estate salesperson license expires on July 30, 2020. (Exhibit 5.)

4(c). The Bureau initially awarded R. Acosta a conditional salesperson license on September 24, 1999. Said license was conditionally suspended from March 25, 2001 to April 24, 2001. For the period of April 25, 2001 through September 23, 2007, April 8, 2008 through April 7, 2012, and July 31, 2012 through the present R. Acosta has been licensed as a real estate salesperson.

4(d). R. Acosta has had a variety of sponsoring brokers. P4UI has been his sponsoring broker from October 31, 2012 to March 20, 2013, April 15, 2013 to February 19, 2014, July 24, 2014, to January 6, 2016, and April 28, 2016, through the present. There is no evidence that R. Acosta was suspended or changed brokers due to any conduct related to his clients. There was no evidence provided of licensing records from the date of his initial license to May 18, 2011, and no history of discipline. (Exhibit 5.)

4(e). Since December 2, 2016, R. Acosta has been working with employing broker, Avance Real Estate, Inc., in Rancho Cucamonga, California.

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<sup>1</sup>Minor errata was noted on the record and included in Exhibit 44 with regard to the Maine Avenue Property, and the name of the escrow company was changed from Westlake Escrow, Inc. to Pacific Escrow, at paragraph 16, line 15, and from Pacific Escrow to Westlake Escrow, at paragraph 18, line two. The decision does not address the final Sixth Cause (Ex. 44 paragraphs 66-68) which is focused on Cambrone and D. Acosta and subject to their stipulated settlements with the Bureau.

<sup>2</sup>D. Acosta's stipulated agreement with the Bureau may have altered her relationship with P4UI.

*First Cause*

*Sanchez Street Property*

5(a). This residential real estate property in Montebello, California was being sold as a short-sale, which requires the approval of the seller's lender to sell the property for less than the outstanding mortgage. (Ex. 44, para. 7.)

5(b). The parties stipulated to Ex. 44, paragraphs, 7, 8(partial), 9, 10-14.

7. In or about April 2013, the real property located at 924 North Sanchez St., Montebello, CA 90640 ("Sanchez St. Property") was listed for sale as a short sale by Cambrone. A short sale generally requires the approval of the seller's lender to the terms of the sale as the lender is permitting a sale for less than the amount of its loan on the property.

8. (Disputed facts set forth below.) R. Acosta of P4UI represented the prospective buyer Wing C. (Disputed facts set forth below.)

9. On or about May 29, 2013, R. Acosta on behalf of P4UI executed a Notice of Default Purchase Agreement for P4UI to purchase the Sanchez St. Property for \$293,333, which was increased to \$301,700 on or about June 28, 2013 via a Purchase Agreement Addendum. The selling agent was Jose Benjamin Galdamez (license no. 0140-5915) for Century 21 Dynasty, which is a dba of Essex Financial, Inc. (license no. 01525783). The owners of the Sanchez St. Property accepted the offer.

10. On or about July 18, 2013, Bank of America approved the short sale of the Sanchez St. Property to P4UI for \$301,700. This approval was subject to certain terms and conditions, including, but not limited to, (a) any changes to the terms and representations made in the short sale must be approved by Bank of America in writing, (b) a preliminary HUD-1 Settlement Statement must be provided to Bank of America no later than three (3) business days before the closing date of August 15, 2013, (c) another buyer cannot be substituted without prior written approval of Bank of America, (d) the buyer may not alter the capacity in which title is to be taken, (e) there are no transfers of property within thirty (30) days of the closing of this transaction, (f) the maximum commission to be paid is \$18,102.00, and (g) no fraud, misrepresentation, and or material omission in the sale.



11. On or about August 15, 2013, the Sanchez St. Property was sold to P4UI.

12. On or about August 2, 2013, prior to the close of escrow on the lender-approved short sale, Wing C. submitted another offer to purchase the Sanchez St. Property from P4UI for \$350,000 with a \$60,000 commission payable by Wing C. The offer was submitted by R. Acosta on behalf of Wing C. Cambrone continued to act as the listing agent for P4UI.

13. On or about October 15, 2013, escrow for the purchase of the Sanchez St. Property closed to a third party not named herein.

14. The foregoing transaction violated the conditions of the lender's approval for the short sale to P4UI in that prior to the consummation of the short sale transaction the terms and conditions of the sale were changed so that Wing C. became the actual purchaser of the Sanchez Street Property, without the lender's prior approval.

5(c). The parties disputed Ex. 44, paragraph <sup>8 with</sup> 8 with the exception of one sentence set forth above:

8. On or about April 15, 2013, Wing C. aka "Joe" through his agent R. Acosta submitted a purchase offer in the amount of \$400,000 for the Sanchez St. Property and a Cash for Keys Agreement. The Cash for Keys Agreement provided the occupants of the Sanchez Street Property would vacate the property five (5) days prior to the close of escrow. [Sentence omitted.] No response was received in regards to his offer.

6. Wing C.<sup>3</sup> a young man, who testified sincerely and credibly at the hearing about his experience, was a prospective buyer. Wing C. filed a complaint with the Bureau regarding his experience which was consistent with his hearing testimony. He had no prior history in real estate and had no reason to offer disingenuous testimony. Wing C. clearly was speaking from his own experience as a relatively naïve first-time buyer. At first, Wing C. received help from his cousin, another real estate salesperson or broker, but decided to engage R. Acosta of P4UI, after R. Acosta told him he could get him a better price.

7. This was Wing C.'s first home purchase. He received advance approval from his lender, (Ex. 9), for a maximum loan amount of \$400,000 and a purchase price of

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<sup>3</sup>The individual was referred to as Wing C. in the SAA to protect the individual's privacy.

\$500,000. Wing C. had support from his aunt to supplement the funding necessary for the purchase and 20 percent down payment.

8. Wing C. engaged respondents to submit an offer on April 9, 2013 for the property. On April 15, 2013 he met with R. Acosta for approximately two hours, signed a purchase agreement for ~~\$400,000~~ and also a Cash for Keys agreement for \$10,000, to be submitted to the occupants so that they would vacate the property. A Cash for Keys Agreement is paid by the lender, here Bank of America, to ensure that the occupants of the home leave before the close of escrow. Wing C. requested that R. Acosta provide Wing C. with a copy of the signed documents, but R. Acosta did not provide him the signed documents. R. Acosta only provided Wing C. with a copy of the unsigned documents. (Ex. 8.) When he made his offer Wing C. understood the house was in move-in condition. R. Acosta and Cambrone of P4UI both told him it was. The mortgage owed was approximately \$560,248.

9. After the April 15 meeting, Wing C. attempted to communicate with R. Acosta from April 22, 2013, through May 29, 2013, directly or through his lender or cousin, the real estate salesperson, primarily by e-mail, but also by cell phone, and WhatsApp. R. Acosta did not respond to Wing C. or attempt any communication with him.

10. Without ever notifying Wing C., R. Acosta through P4UI, had purchased the Sanchez property, for a total of \$301,700, with an initial agreement executed on May 29, 2013, and addendum one month later, through the seller's agent, and with the seller's approval. (Ex. 44, para 9.) The holder of the mortgage, Bank of America, approved the short sale on July 18, 2013, and escrow closed on August 15, 2013. In the short sale to P4UI, R. Acosta received approximately \$2,000 as a commission and Cambrone received a \$14,000.

11(a). Wing C. told his cousin about R. Acosta's conduct and his cousin had a heated exchange with R. Acosta about his failure to consummate a sale on behalf of Wing C. R. Acosta's responses to Wing C.'s cousin were consistent with his hearing testimony, but not persuasive or credible. R. Acosta made two main claims at hearing which were not sufficiently supported by any documentation. He claimed the property was uninhabitable, which it was not, (Exhibit 10, page 5), and he also claimed Wing C. did not have adequate funding to purchase the property, which he did.

11(b). The Sanchez Street Property was an older residence, but it was in move-in condition. Wing C. had documented approval for funding up to \$400,000, and was never informed this funding was insufficient for his original offer. There was no evidence of basic structural or plumbing problems. There is a pool on the property, and no evidence of any problems with the pool which would prevent funding. If anything, the house was not updated and the bathroom cabinets were shabby. (Exhibit 10.)

12(a). July 29, 2013, before P4UI's escrow closed, and without Wing C.'s knowledge, R. Acosta contacted Wing C.'s lender and requested authorization for a new sale

price of \$499,999. R. Acosta contacted Wing C.'s lender without first obtaining Wing C.'s consent. Wing C. first heard of the new terms from his lender, not R. Acosta. R. Acosta provided Wing C.'s lender a list of improvements to the property which Wing C. was not provided.

12(b). Most likely as a result of his heated exchange with Wing C.'s cousin, R. Acosta provided a right of first refusal to purchase the rehabilitated property to Wing C. Wing C. did not recall this point. On August 2, 2013, prior to the close of escrow, P4UI sent a new purchase agreement for the Sanchez Street Property to Wing C. for \$350,000.00.

12(c). In addition to R. Acosta's conflicts in his representation of Wing C, R. Acosta, pursued financing from Wing C.'s aunt, Wing C.'s funding source, to purchase the Sanchez Property in cash, and to pay R. Acosta's and P4UI's escrow fee. Wing C.'s aunt refused and the property was not sold to Wing C.

13(a). R. Acosta spoke with passion and presented what appeared to be logical reasons for the failure of Wing C. to secure the property. Nevertheless, although he testified easily and was convinced of the correctness of his position, his testimony was not supported by the documentation and was less credible than the testimony of his clients.

13(b). At no time before R. Acosta and P4UI purchased the property did R. Acosta inform Wing C. of his intent to purchase, rehabilitate and resell the property. There was a clear gap in his communication with Wing C., during which time R. Acosta was negotiating on his own and P4UI's behalf, and no follow-up on what Wing C. thought was his firm offer. He never disclosed to Wing C. what happened to his offer, or whether it was submitted. Wing C. understood it was submitted and at a minimum, his many phone calls should have put R. Acosta on notice that Wing C. needed information about the property.

13(c). Instead of submitting Wing C.'s offer, R. Acosta purchased the property. Further, R. Acosta purchased the property on behalf of P4UI for a substantially lower price than Wing C. offered the owner, and did not provide Wing C. with an opportunity to buy the property at that price.

13(d). Even if R. Acosta provide him with a right of first refusal to purchase the residence, presumably from P4UI, this did not discharge his obligation as his real estate salesperson to, among other things, present Wing C.'s initial offer to the lender. R. Acosta's offer of first right of refusal for Wing C. to purchase the renovated property from P4UI might have mitigated Wing C.'s damages, if any, but did not cure R. Acosta's failure to faithfully represent Wing. C.

14. Wing C. was an honest witness; he denied he was financially damaged by R. Acosta's conduct. He did not complete the purchase of the property. He was never told he did not qualify to purchase the property at the higher price, and he did not recall being told he had the right of first refusal to the property. He filed a complaint with the Bureau against R. Acosta because he believed R. Acosta's conduct was a "scam." (Ex. 7.)

15(a). Complainant presented the expert testimony of William Pak (Pak), Bureau Special Investigator. Pak demonstrated he had the requisite background in real estate investigations and transactions through his work with the Bureau and with a private real estate management company, including best practices of real estate salespersons, and knowledge of the financial mechanisms of short-sales, to provide insightful analysis of the transactions made by R. Acosta on behalf of his clients. Pak testified about the real estate transactions and the audit in Ex. 44.

15(b). Complainant also presented the audit and supporting testimony of Godswill Keraoru (Keraoru), who prepared the audit of P4UI on January 29, 2016. (Ex. 29). Keraoru demonstrated he had the requisite background and experience to conduct an audit; he has a bachelor of science in accounting, has been working as a Bureau auditor for 12 years, and conducts 36 audits a year. Keraoru's audit of the transactions in Ex. 44 is thorough and supported by the evidence and testimony.

15(c). Here are some of the problems Pak found with respondents' conduct: R. Acosta and P4UI solicited an agreement from Wing C. on August 9, prior to the closing of their sale on August 15. Respondents did not own the property as the short sale was pending when they solicited Wing C. P4UI offered the property to Wing C. for \$350,000 after purchasing it from the bank for \$301,000 and then planned for Wing C.'s aunt to provide a loan secured by the buyer for \$410,000, upwards of \$100,000 over bank's authorized sale price. (Ex. 13.) R. Acosta and P4UI would receive a profit of \$60,000. The transaction was not arms-length because the listing agent, R. Acosta, had a relationship with P4UI and there was no written disclosure showing this relationship

15(d). Pak reviewed all the relevant documents and confirmed that there was no evidence that the residence was uninhabitable. Generally a property is uninhabitable when there is improper plumbing, heating, or structural problems making the building unsafe. Updating cabinets, paint or a pool filter, for example, are not habitability factors.

16. Complainant established by clear and convincing evidence that R. Acosta violated the terms of the lender's short sale agreement, and breached his duty to his client as a real estate salesperson and to the public in this transaction. Complainant proved by clear and convincing evidence the disputed paragraph 8 and paragraph 48(c) (R. Acosta's failure to disclose secret profit) of Ex. 44. Complainant proved by clear and convincing evidence that the audit report of P4UI with regard to this transaction was accurate.

#### *Maine Avenue Property*

17. The Maine Avenue Property is located in Baldwin Park and was owned by Orlando L. The evidence established that R. Acosta was involved in the transaction as Orlando L.'s real estate salesperson to secure a third party LLC (LAYI) to buy the property for \$450,000. (Ex. H.) The circumstances of this transaction took place between July 16, 2013 and January 7, 2014 when escrow closed and respondents received a \$40,000 commission from an agreement with the purchasers.

18(a). The parties stipulated to the majority of the factual findings for the Maine Ave Property in Ex. 44, paragraphs 15-18 and 20- 22.

15. In or around 2072, Orlando L. was the owner of real property located at 3420 and 3422 Maine Ave., Baldwin Park, CA91706 ("Maine Ave. Property"). (Disputed sentence set forth below.)

16. On or about July 15, 2013, Orlando L. and Lea and Yan Investments LLC ("LAYI"), the buyer, entered into a Residential Income Property Purchase Agreement ("RIPPA") wherein LAYI agreed to pay \$450,000 for the Maine Ave. Property. Orlando L. signed this RIPPA, but he was not provided a copy of the completed RIPPA after signing it. Escrow for the sale was opened at Pacific Escrow, Inc.

17. On or about July 15, 2013, Orlando L. was provided a Residential Income Property Purchase Agreement ("RIPPA") indicating Lee and Yan Investments LLC ("LAYI") offered \$450,000 to purchase the Maine Ave. Property. This RIPPA also indicated Cambrone of P4UI was the listing agent. Orlando L. signed this RIPPA, but he was not provided a copy of the completed RIPPA after signing it, in violation of Code section 10142.

18. On or about July 16, 2013, R. ACOSTA and LAYI entered into a side Commission Agreement whereby LAYI, the buyer, agreed to pay P4UI and R. ACOSTA a sales commission of \$40,000. Neither Orlando P. nor his lender was aware of the existence of this side Commission Agreement. In furtherance of this side Commission Agreement, R. Acosta directed LAYI to deposit the \$40,000 [disputed term] commission with a second escrow company, Westlake Escrow, Inc.

¶¶ ¶

20. On or about July 17, 2013, LAYI issued a \$40,000 check pay to the order of P4UI for the commission for the Maine Ave. Property as agreed upon in the July 16, 2013 Commission Agreement, described above. This check was endorsed by R. Acosta, and then deposited into Pacific Escrow, Inc.'s account for Escrow No. 26415-SD on or about July 23, 2013.

21. On or about October 28, 2013, R. Acosta signed a Short Sale Third Party Authorization form with Bank of America stat-

ing he "shall not knowingly misrepresent or omit to state, any material fact in order to induce the Borrower(s), BANA, the lender, the investor or the insurer that would not have agreed to had all material facts been known."

22. On or about January 7, 2014, escrow for the Maine Ave. Property closed with Westlake Escrow, Inc. R. Acosta and P4UI received a commission for listing the property and \$40,000 as the commission from the [disputed term] Commission Agreement.

18(b). The parties disputed that the \$40,000 payment to R. Acosta and P4UI was a "secret" commission or profit and one sentence in Ex. 44, paragraph 15, and the entirety of Ex. 44, paragraph 19, which provides as follows:

15. (Stipulated sentence set forth above.) Orlando L. signed a listing agreement with R. Acosta and P4UI, but was never provided a copy of the listing agreement.

19. Also on or about July 16, 2013, Orlando L. and LAYI entered into a Cash for Keys agreement whereby Orlando L. would be paid an additional sum over and above the purchase price for the Maine Ave. Property to guarantee possession of the property at the close of escrow. R. Acosta represented to Orlando L. that this Cash for Keys payment would be \$15,000. However, R. Acosta represented to LAYI that the amount would be \$25,000, which would be payable from the \$40,000 commission payable to R. Costa and P4UI through the side Commission Agreement described above.

19. The Maine Avenue Property was Orlando L.'s investment property. He did not live there. R. Acosta presented himself to Orlando L. as a short sales expert and Orlando L. thought he was retaining a real estate salesperson with a special expertise. Orlando L. had also retained Cambrone of P4UI in the past, and used R. Acosta for a short sale on his personal residence in 2011, and considered both R. Acosta and Cambrone his agents. (Ex. I.)

20(a). Orlando L., who testified at hearing, filed a complaint with the Bureau,<sup>4</sup> which was consistent with his testimony and the documentation related to the transaction. R. Acosta arranged a short sale of Orlando L.'s property, and presented him with a Cash for Keys agreement where LAYI would pay him \$15,000 and be responsible for \$4,200 which was the amount owed to the tenants for their deposits. However, R. Acosta texted him that

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<sup>4</sup>Orlando L.'s complaint contained the results of his own interview and discussions with the buyers, LAYI, who did not testify, and, as such, the buyer's comments was treated as administrative hearsay and not given much weight.

he would be getting more money from the LAYI, maybe \$20,000, "I am not sure, but wait for the surprise from me pretty soon." (Exhibit 17.)

20(b). Orlando L. did not know that in addition to the Cash for Keys agreement R. Acosta and P4UI had entered into a commission agreement with LAYI for \$25,000 with the understanding that \$15,000 would be R. Acosta's commission, and the remaining \$25,000 would go to the seller as Cash for Keys at the close of escrow with a deduction of \$4,200 for the security deposit. LAYI paid a total of \$490,000 for a property sold for \$450,000.

20(c). Orlando L. received additional compensation from R. Acosta to resolve their dispute as a result of a Small Claims Settlement Agreement, (Ex. G), and his total compensation was approximately \$19,000, an amount which is close to what he would have gotten if he received \$25,000 and was required to pay for the tenants' deposits of \$4,200. At hearing, it was clear that Orlando L. remained very angry at R. Acosta and believed he was owed more money. Regardless of Orlando L.'s animus toward R. Acosta, and whether or not he was adequately compensated based upon the agreements R. Acosta made with him and separately with LAYI, or whether he would have filed for bankruptcy if not advised to do so by R. Acosta, (see Ex. I), the Bureau's investigation of the records supports a finding that R. Acosta violated his obligations as a real estate salesperson by failing to be truthful to Orlando L. and self-dealing.

20(d). The Bureau's investigation of the transaction documents, and Pak's testimony, supports Orlando L.'s claim that the disbursement of \$40,000 was not part of the final settlement statement, which is designed to provide full disclosure of the entire real estate transaction, or the short sale letter from the lender to Orlando L. (Ex. 20, pp. 7-8 and 21-22.) In the short sale letter the maximum commission allowed was \$27,000. (Ex. 20, p. 22.) In addition, R. Acosta's use of the Cash for Keys is suspect because this is a vehicle generally used for residential homeowners, not investment property and no mention was made of the Cash for Keys in the settlement statement documents Pak reviewed. (Ex. 20, pp. 21-22.)

20(e). The Bureau's investigation of the transaction documents confirms that Pacific Escrow was the first escrow opened and the buyer provided P4UI a deposit check for the purchase of the property in the amount of \$25,000, another check where the payee is LAYI in the amount of \$15,000. There was a cash receipts and disbursements listing but no final settlement statements produced by Pacific Escrow, and the escrow was closed in late December 2013 after a total of \$65,000 was disbursed, with a total disbursement of \$40,000 to P4UI. (Ex. 19, p. 2 of 24.) Westlake Escrow, the second escrow was opened after Pacific Escrow was closed, and no mention was made of the \$40,000. The Bureau did not receive any documents from the lender to directly confirm whether it knew of the new escrow. Nevertheless, the final settlement statement provided by Westlake Escrow does not provide for a \$40,000 payment; as such there is clear and convincing evidence that the payment of \$40,000 was unauthorized and was a secret and deceptive to Orlando L. and the lender. As to whether the second escrow was opened for the sole purpose of deceiving Orlando L. or the lender was not established by clear and convincing evidence. (Ex. 20, pp. 7-8 and 21-22.)

21(a). Complainant proved by clear and convincing evidence, that R. Acosta violated his obligations as a real estate salesperson in the Maine Avenue transaction.

21(b). R. Acosta was confident that he was forthcoming with Orlando L., provided him with funds consistent with his promises, and succeeded in selling his property, and maintained he was entitled to receive a negotiated commission of \$40,000 from the sellers.

21(c). Respondent's rationale for his conduct was not credible. At hearing, R. Acosta gave a confusing rationale for his conduct, described this transaction as a "peculiar" situation where his only role was to negotiate with the bank and secure the short sale.

21(d). In aggravation, Orlando L. maintains he was not properly counseled about the consequences of filing bankruptcy and its impact on his credit, and was misled by R. Acosta into filing for bankruptcy and selling the home on a short sale. R. Acosta did recommend that Orlando L. file for bankruptcy, which was not within the scope of his licensure. Orlando L. owed approximately \$487,000 to the lender, and related costs, but filing for bankruptcy under this close situation required careful and more expert counsel than R. Acosta provided. The purpose of this proceeding is not to assess damages to Orlando L., which based upon the evidence of the monies he received in closing, is unknown. While R. Acosta may have provided funds to Orlando L., styled as Cash for Keys, which he did not qualify for as an investor, R. Acosta also profited from the sale without disclosing his profits to Orlando L. or the lender.

21(e). As a licensee, R. Acosta is not entitled to use deception to secure a sale. The purchaser paid a total of \$490,000 which was not accounted for by the lender or Orlando L. The lender lost funds in the short sale when it agreed to the sale price of \$450,000, and could have recouped more funds at the real sale price of \$490,000, with the limitations it placed on commissions.

#### *Lucille Avenue Property*

22(a). This residential property, located in West Covina, California and owned by David B. and Susan B., involved a short-sale transaction during the period of June 24, 2013 through September 16, 2013. The parties stipulated to Ex. 44, paragraphs 23-28, with the exception on paragraph 28 to transferring title "in violation of the HAFA affidavit, described above," and to the sentence, "[t]his Grant Deed was not recorded in the office of the County Recorder until on or about November 6, 2013."

22(b). The parties stipulated to the following statements in Ex. 44, paragraphs 23-28.

23. On or about June 12, 2013, David B. and Susana B. entered into an agreement with Cambrone, as broker, to list their property located at 941 West Lucille Avenue, West Covina, CA 91790 ("Lucille Ave. Property") for \$275,000 as a short sale. A short sale requires lender approval as the lender is permitting the sale



of the property for less than the amount of the lenders' loan on the property.

24. On or about June 24, 2013, P4UI offered to purchase the Lucille Ave. Property for \$322,000. The selling agent was Jose Benjamin Galdamez (license no. 01405915) for Century 21 Dynasty, which is a dba of Essex Financial, Inc. (license no. 01525783). David B. and Susana B. accepted the offer.

25. On or about September 9, 2013, the lender gave approval for the sale of the property.

26. Also on or about September 9, 2013, David B., Susana B., and R. Acosta on behalf of P4UI signed a Wells Fargo Bank's Making Home Affordable HAFA Affidavit stating under penalty of perjury that the sale of the Lucille Ave. Property was an "arms length" transaction between the buyer and seller and were unrelated by family, marriage, or commercial enterprise; buyer agreed to not to sell the property within 30 days or 90 days if price is greater than 120 percent of the short sale price. Buyer and seller also agreed there were no agreements, understandings, contracts, or offers relating to the current sale or subsequent sale of the property that have not been disclosed to the servicer (i.e., neither the seller nor the buyer would receive any funds or commissions from the sale of the property except a relocation assistance payment to the owners/sellers).

27. On or about September 11, 2013, escrow for the sale of the Lucille Ave. Property closed for \$322,000. The listing agent's commission of \$18,032 was paid to P4UI and R. Acosta despite the fact that P4UI was the purchaser of the Lucille Ave. Property.

28. On or about September 16, 2013, R. Acosta on behalf of P4UI signed a Grant Deed transferring title of the Lucille Ave. Property from P4UI to LAYI (remaining paragraph disputed).

22(c). The parties disputed this portion of Ex. 44, paragraph 28:

28. (Stipulation portion set forth above), in violation of the HAFA Affidavit, described above. This Grant Deed was not recorded in the office of the County Recorder until on or about November 6, 2013.

23. Based upon clear and convincing evidence presented at hearing, and R. Acosta's admission, the disputed portion of paragraph 28 of the SAA was established to be true. R. Acosta and P4UI violated the HAFA affidavit by transferring the Grant Deed within 30 days. R. Acosta wrongly understood that the date of recordation of the transfer governed the HAFA restrictions, not the date of transfer. He recorded the Grant Deed on November 6, 2013. R. Acosta was wrong and conceded to his error in closing argument.

24(a). Complainant proved by clear and convincing evidence that R. Acosta and P4UI readily engaged in dishonest practices to obtain commissions and profit from the sale of the Lucille Avenue property. LAYI provided P4UI with the funds for P4UI to purchase the property, lending it \$352,000 (Ex. 22, p. 23); \$355,000 was deposited in escrow and P4UI purchased the property for \$322,000, and even though P4UI (and Cambrone) were the original listing agents, R. Acosta and P4UI received commissions from escrow as listing agents, in the total amount of \$19,321 (Ex. 22, p. 9), and received \$30,000 from LAYI, from the escrow. (Ex. 22, p. 23, and Ex. 45.)

24(b). R. Acosta's firm insistence that any errors were technical and his conduct was appropriate was not credible and was clearly and convincingly contradicted by the documents related to the Lucille Avenue Property transaction. R. Acosta failed to notify the sellers and the bank of his extra commissions. R. Acosta maintained that sellers in a short sale do not have an interest in commissions, and are not harmed, because they are not receiving any funds from the sale, over any fixed amount the lender might pay as an incentive to leave the home.

24(c). R. Acosta fails to appreciate that he is obligated to follow required procedures, and his obligations as a real estate salesperson is not measured solely on a self-designed litmus test of whether his clients suffered monetary injury.

24(d). Upon a review of the evidence, listing Cambrone as the original listing agent was a disingenuous and failed attempt to create an arms-length transaction, especially when both Cambrone and R. Acosta were part of P4UI, the purchaser, and the ultimate recipient of the commissions was R. Acosta and P4UI.

24(e). R. Acosta breached his oath under the HAFA declaration because the transaction was not arms-length; LAYI was not only the lender for P4UI's purchase, but the intended owner of the Lucille Avenue Property, as clearly demonstrated by the turnaround between the purchase by P4UI and the transfer to LAYI. As such, P4UI was a fake or straw buyer. R. Acosta breached his oath under the HAFA declaration because he was so focused on transferring the property to LAYI, that he transferred the property prior to the required waiting period.

24(f). In aggravation, R. Acosta's failure to accept the scope of his obligations as a licensee, his carelessness and willingness to bend the rules, is consistent with his conduct with regard to other properties in dispute.

*Military Avenue Property*

25. This transaction involves a property located in Los Angeles, and the time period of July 26, 2015, through August 7, 2015. The parties stipulated to the allegations concerning this property. (Ex. 44, paragraphs 29-33.)

29. On or about July 26, 2015, Heather P., a real estate licensee, on behalf of Donna R., e-mailed an all-cash offer of \$700,000 for the property located at 2568 Military Ave., Los Angeles, CA 90064 ("Military Ave. Property") to R. ACOSTA at the e-mail address provided on the Multiple Listing Service ("MLS") listing. That same day, Heather P. texted R. Acosta that she e-mailed a purchase offer to him.

30. On or about July 27, 2015, the Military Ave. Property was placed on a "hold do not show" status on the MLS.

31. On or about August 5, 2015, Heather P. e-mailed the purchase offer to R. Acosta at racosta@coldwellbanker.com as he had directed her to do.

32. On or about August 7, 2015, Heather P. requested an update from R. Acosta.

33. To date, Heather P. has not received a response from R. Acosta regarding the Military Ave. Property.

26. The allegations concern the failure of R. Acosta to respond to an all cash offer for the property presented to him on July 26, 2015, by another real estate licensee, Heather P. The day after this offer the property was placed on a "hold do not show" status on the multiple listing service. There is a dispute about the accuracy of the exhibits showing how long the hold was placed or that it was on hold and not de-listed. R. Acosta testified that he placed a hold for a shorter period of time than the exhibits show, because the sellers were out of the country, and that the property was de-listed. Nevertheless, despite Heather P.'s repeated requests to R. Acosta, he never responded to her offer.

27. Complainant failed to prove by clear and convincing evidence that respondent's conduct regarding this property, although troubling because respondent provided no credible excuse for failing to respond to Heather P.'s offer, by itself, is cause for discipline. Complainant conceded she included this property to demonstrate a pattern and practice of R. Acosta's failure to follow his obligations as a real estate salesperson by responding to bona fide offers, or alternatively, his self-interest and disinterest in his clients by his decision to freeze a client's listing when they fail to cooperate with him about a listing. However, complainant failed to provide sufficient evidence of the materiality of R. Acosta's failure to respond to Heather P.'s offer to his other misconduct.

*Erin Way Property*

28(a). This transaction involves a residential real estate property in San Bernardino California owned by Judith T. and Herve T. during the period of March 2016.

28(b). The parties stipulated to the allegations in Ex. 44, paragraphs 34-36.

34. In or about March 2016, Judith T. and Herve T. responded to an advertisement from P4UI dba National Mortgage Forgiveness Plan alleging they could "eligible for a cash incentive from HOMECOMINGS FINANCIAL of up to \$20,000 to assist in avoiding foreclosure if you respond quickly" with respect to their property located at 2694 South Erin Way, San Bernardino, CA92408 ("Erin Way Property"). (Emphasis in original.) P4UI operated under this name that it did not have registered with the Bureau of Real Estate.

35. On or about March 8, 2016, Judith T. and Herve T. entered into a Residential Listing Agreement with R. ACOSTA dba Realty Master & Associates dba National Mortgage Forgiveness Plan to list their property located at 2694 South Erin Way, San Bernardino, CA 92408 ("Erin Way Property") as a short sale. R. ACOSTA operated under these names that he did not have registered with the Bureau of Real Estate. R. ACOSTA failed to enter a listing price, and failed to provide a signed copy to Judith T. and Herve T.

36. On or about March 9, 2016, R. ACOSTA presented a Notice of Default Purchase Agreement to Judith T. and Herve T. wherein P4UI offered \$210,000 for the Erin Way Property. To date, R. ACOSTA has presented no other written offers to Judith T. and Herve T.

28(c). The parties disputed Ex. 44, paragraph 37:

37. R. Acosta failed to inform Judith T. and Herve T. that he was and is the owner of and a salesperson for P4UI.

29(a). Complainant proved by clear and convincing evidence that R. Acosta's stipulated conduct was a material breach of his obligations as a real estate salesperson.

29(b). Judith T. provided credible testimony about the circumstances of their retention of R. Acosta to effectuate a short sale. They were desperate; they had owned the house for 10 years and at the time they contacted R. Acosta, they had four children under the

age of seven, with the youngest seven months old. In addition they were taking care of her elderly mother. When they purchased the home Judith T. was working. At the time she contacted R. Acosta, she could not work given her family obligations, and the family relied solely on the support of Herve T.'s business as a Hammond Organ sales representative and repair technician. By late 2015, there was little income from Herve T.'s business. By early 2016 they were drawing down their savings to keep up with the mortgage. When Herve T.'s mother died in spring 2015, they had to draw down their savings further to pay for her burial. Judith T. worked tirelessly to get the attention of the lender regarding their financial condition without success. At the end of 2015 they received a Notice of Foreclosure from the lender.

29(c). Judith T. received many solicitations daily for mortgage foreclosure assistance and estimated she had received at hundreds at the time she selected R. Acosta. She was attracted to R. Acosta's flyer, particularly the government symbol of a house used by the Department of Housing and Urban Development (HUD). R. Acosta reported to Pak that his relationship with the National Mortgage Forgiveness Plan is that he had signed a membership agreement with it to obtain 100 leads per month for people in foreclosure proceedings, but since the leads were not good, he eventually used another service to obtain lists of distressed homeowners to solicit loan modifications and short sales.

29(d). R. Acosta met with Judith T. for four hours at her home and met with her a few additional times. Judith T. did not know R. Acosta was connected to P4UI, but understood he was acting as her agent.

29(e). R. Acosta presented her with a plan for two options: Plan A was to try to stay in her home, and Plan B. was a short sale. She had already determined she wanted to pursue a short sale when she retained R. Acosta and decided on Plan B. She signed a lot of documents but never received any signed documents.

29(f). Judith T. was unaware that one of the documents she signed was an offer by P4UI to purchase the home for \$210,000 well under the value of the home, which was approximately \$400,000, even for a short sale.

29(g). R. Acosta advised her to file for bankruptcy to stop the foreclosure sale which was scheduled within a few weeks. He did not provide any assistance with the forms; Judith T. filled out the forms and submitted them. They were incomplete and the bankruptcy was rejected, but her filing for bankruptcy adversely affected her credit.

29(h). R. Acosta never showed Judith T. any written offers to purchase the property and Judith T. did not recall learning from R. Acosta of any offers.

29(i). Judith T. only discovered there were offers, including one from P4UI, which R. Acosta submitted to the lender, when a real estate salesperson knocked on her door to inquire about the property, and sat down with her and went through each document in Judith T.'s file. At that time Judith T. first discovered that R. Acosta failed to return this

salesperson's calls, and that R. Acosta made an offer on behalf of P4UI to purchase the house. Judith T. was never presented with any written offers presented to R. Acosta.

29(j). After her meeting with the real estate salesperson Judith T. was unsuccessful in her attempts to contact R. Acosta. At hearing she acknowledged R. Acosta was distracted by a death in the family, but nevertheless she lost trust in him after she learned of the offer he made on behalf of P4UI. Herve T. e-mailed R. Acosta and terminated their relationship.

30(a). Complainant provided clear and convincing evidence that R. Acosta failed in his obligations to his clients as a real estate licensee based upon the stipulated allegations and also failed to inform Judith T. and Herve T. of his status as an owner of and salesperson for P4UI.

30(b). At hearing, R. Acosta conceded that his communication with his clients could have been better. In hindsight, he admits he should have recapped his initial meeting with Judith T. and confirmed that any offers would go through P4UI to clear up any misconceptions the Thomas's had about the scope of his representation and relationship to the entity. He insisted he was not hiding P4UI and that he gave them his business card, a fact Judith T. did not recall given the admitted turmoil in her life, but which only serves to underscore R. Acosta's failure to provide clear disclosures in his marketing materials and documentation. R. Acosta insisted he did not hide his company and that his e-mails prominently displayed his contact information. R. Acosta has reformed his practices by assigning an assistant to check e-mails so that communications are not missed.

30(c). R. Acosta also testified he informed Judith T. of offers, although he never showed her any documentation. It is likely given the circumstances that Judith T. would have remembered offers presented by R. Acosta and she did not, and R. Acosta's contrary assertion is not credible.

30(d). R. Acosta confidently asserted at hearing, that his recommendation that Judith T. file for bankruptcy and his presentation of an offer from P4UI to the lender to purchase the property stopped the foreclosure and gave them time to pursue a short sale. R. Acosta knew the lender would not accept P4UI's offer because it was low. R. Acosta's explanation for his actions may seem rationale, but he moved ahead without the informed consent of his client, and was in the position to potentially profit from the situation if the lender accepted the offer.

#### *Shamouti Drive Property*

31. This transaction involves a property located in Riverside County and owned by Craig V. and Carol V and concerns the conduct P4UI and R. Acosta doing business as American Mortgage Forgiveness Initiative during the period of August 2016 through the date of the hearing. (Ex. 44, paragraphs 38-44.)

///

32(a). The parties stipulated to the following allegations in Ex. 44.

38. At all pertinent times mentioned herein, Craig V. and Carol V. owned the property at 9333 Shamouti Dr., Riverside, CA 92508 ("Shamouti Dr. Property"), and had Wells Fargo Bank as their lender.

39. In or about August 2016, P4UI and R. Acosta dba American Mortgage Forgiveness Initiative mailed a letter to Craig V. offering loan modification services for the Shamouti Drive Property. [see remaining disputed paragraph below]

¶¶ ¶

43. In or about October 5, 2016, Craig V. requested R. Acosta cancel the Residential Listing Agreement signed on or about September 29, 2016. R. Acosta refused to cancel the listing. (see remaining disputed paragraph below).

44. From October 6, 2016 to October 31, 2016 and November 3, 2016 onward, the Samouti Dr. Property has been on "hold do not show" status.

32(b). The parties disputed the following allegations in Ex. 44:

39. (Stipulated language set forth above.) This letter was deceptive and used scare tactics to induce Craig V. to call them for loan modification services. The deception included, but was not limited to, failing to state a real estate license number, alleging American Mortgage Forgiveness Initiative was a "nationwide initiative," P4UI was a "Certified Mortgage Forgiveness Specialist," and they were "currently helping hundreds of homeowners," and telling the reader to "[c]all (800) 281-8806 right away so [they] can postpone [their] foreclosure immediately."

40. On or about September 19, 2016, R. Acosta misrepresented to Craig V. that he submitted a loan modification application to the lender, Wells Fargo Bank, on Craig V. and Carol V.'s behalf. Wells Fargo did not receive any documents from R. Acosta with respect to the Shamouti Dr. Property.

41. On or about September 29, 2016, R. Acosta misrepresented to Craig V. that Wells Fargo Bank rejected the loan modification application that R. Acosta alleged [he] submitted

to Wells Fargo Bank, and induced Craig V. to sign a Residential Listing Agreement with P4UI dba Optimum Real Estate Solutions by R. Acosta s the listing broker from September 29, 2016 to September 28, 2017 with a listing price of \$325,000. R. Acosta recognized this was a low listing price, and assured Craig V. that it was just a starting price and designed to be rejected and renegotiated in a short sale. P4UI and R. Acosta failed to provide a copy of the Residential Listing Agreement signed by all parties to Craig V. and Carol V.

42. On or about October 4, 2016, Craig V. discovered P4UI, R. Acosta, and others had an Accusation in the case herein (H-40341) pending against them.

43. (Continued from the stipulated paragraph above), and stated he thought he could “fudge” the income by adding [a] “rental” of one or two of [the] bedrooms, but the reality [was] that [Craig V.’s] household income [was] just way too low so “fudging” would not bring the income to the level necessary to be able to perform...a loan modification.”

33(a). Complainant proved by clear and convincing evidence, the disputed allegations above with minor and immaterial exceptions.

33(b). Craig V. testified sincerely and credibly about his troubling experience with R. Acosta. At the time he saw the flyer R. Acosta distributed, both he and his wife were unemployed; he had stopped work in 2014 due to a disability, and his wife had been disabled since December 2011. For a long while they kept up their house payments with loans from their life insurance, and his wife’s disability, but by the end of 2015, they could no longer afford the payments, and they stopped paying their mortgage after January 2016. He tried to go through HUD and a Help Save Your Home program in California, but Wells Fargo would not approve anything. HUD made an effort to work with Wells Fargo but the lender insisted it had the right to refuse the modification.

33(c). The flyers distributed did not necessarily employ scare tactics, because the foreclosures were real, but they were deceptive as to the nature of the dba, and the scope and success of its operation through P4UI, as set forth in Ex. 44, paragraph 39. R. Acosta stated in his interview with Pak on April 28, 2016, that he had used unlicensed dba American Mortgage Forgiveness Plan until April 2015, because he had a signed membership agreement with the business of the same name and the business promised leads, which it did not produce. In May 2016 P4UI registered as a fictitious business name American Mortgage Forgiveness Initiative. The letter signed by P4U Inc. CMS, (certified mortgage forgiveness specialist) included many promises to help avoid foreclosure, determine eligibility for mortgage debt forgiveness and save their credit. What is not disclosed is that P4UI is a



licensed broker with the Bureau, or that R. Acosta is a real estate salesperson, or that the dba is not a nationwide initiative.

33(d). Craig V. received many unsolicited offers to help him to work with the bank, but after considering three options, decided to go with R. Acosta's offer which emphasized that it would help save their homeownership, not just sell the home.

33(e). As with Judith T., Craig V. relied upon R. Acosta's direct promises to him, more than the flyer, to help him save his homeownership through a loan modification with Wells Fargo. Craig V. was suspicious of R. Acosta's insistence on meeting in person, and pressed R. Acosta to present his loan modification package to Wells Fargo, and followed up with R. Acosta to be sure he did so. R. Acosta boasted to him that he was highly successful in securing loan modifications and was very confident he could secure one for Craig V. R. Acosta stated he would pursue Plan B, the short-sale, if Plan A, the loan modification did not work. Craig V. made it clear to R. Acosta that he was only interested in a loan modification.

33(f). R. Acosta insisted he presented a loan package to Wells Fargo, but the documentation from the lender establishes clear and convincingly that he did not. At hearing, R. Acosta struggled to explain what he meant by a loan package, but in fact, he only spoke to Wells Fargo on the phone as part of a conversation about another property.

33(g). Craig C. discovered the instant action pending against P4UI and R. Acosta and decided to terminate his relationship with them. R. Acosta conceded he was angry with Craig V. when he called to cancel his listing and refused to relieve him of the listing contract. He admitted he was not proud of his action, and that it was improper, but he was offended by Craig V.'s statements to him. R. Acosta claims he has since removed Craig V.'s property from his "hold do not show" listing.

#### *Second Cause: Audit*

34(a). Complainant and respondent stipulated to the following allegations as to R. Acosta and P4UI in Ex. 44, paragraph 47.

47. On or about January 29, 2016, the Bureau of Real Estate completed a sales activity audit examination of the books and records of P4UI limited to determine whether P4UI handled and accounted for trust funds and conducted its real estate activities in accordance with the Real Estate Law and Regulations. The audit examination covered a period of time beginning on January 7, 2013 and ended on September 30, 2015. The audit examination revealed violations of the Code and the Regulations set forth in the following paragraphs, and more fully discussed in Audit Report LA150040 and the exhibits and work papers attached to said audit report.

34(b). The parties stipulated that D. Acosta's failure to notify the Bureau of a change of address, (Ex.44, paragraph 48(d)), was a violation of P4UI's obligations under Code section 10162.

34(c). The parties stipulated that Cambrone's failure to supervise P4UI's employees, (Ex. 44, paragraph 48(e)), was a violation of P4UI's obligations under Code sections 10159.2 and 10177, subdivision (h) and California Code of Regulations section 2725.

35(a). The parties disputed the results of the audit as it pertained to R. Acosta and P4UI. (Ex. 44, paragraphs 48, subdivisions (a), (b) (c).) The Second Cause of Accusation (audit) incorporated the claims regarding the properties.

35(b). Complainant proved by clear and convincing evidence that respondents P4UI and R. Acosta violated their obligations as licensees during the audit period as to the Main Avenue Property, including the failure to disclose to the lender the Commission Agreement dated July 16, 2013 to receive \$40,000 in secret profits in violation of the terms of the short sale and Code section 10176, subdivisions (a), (b), (g) and (i). (Ex. 44, paragraph 48(a).)

35(c). Complainant proved by clear and convincing evidence that respondent P4UI and R. Acosta violated their obligations as licensees during the audit period as to the Lucille Avenue Property by not engaging in an arms-length transaction in breach of the HAFA affidavit, in violation of Code section 10176, subdivisions (a), (b), (g) and (i). (Ex. 44, paragraph 48(b).)

35(d). Complainant proved by clear and convincing evidence that respondents violated their obligations as a licensee during the audit period as to the Sanchez Property, including receiving a secret profit of a \$60,000 commission in the short sales transaction, a secret side sales agreement, in violation of the Code section 10176, subdivisions (a),(b), (g) and (i) and Code section 10148. Complainant proved by clear and convincing evidence that not all records of the properties were provided by respondent P4UI and R. Acosta during the audit. (Ex. 29.) Records of transactions are supposed to be maintained for three years. (Ex. 44, paragraph 48(c).)

#### *Third Cause: Addresses*

36(a). Complainant and respondents stipulated to the Third Cause of Accusation. (Ex. 44, paragraphs 51-54.) As such, complainant established by clear and convincing evidence that D. Acosta, on behalf of P4UI, filed a change of address for P4UI, but P4UI did not conduct business at that location in violation of Code section 10162 and Regulations 2715 and 2710, subdivision (c), and subjects the licensing rights of P4UI to discipline pursuant to Code sections 10177, subdivision (d) and 10165. (Ex. 44, paragraph 54.)

36(b). In aggravation, the address was the leased office space of a mortgage loan company. One of the four partners, Edward Levy, credibly testified that he would be in a position to know if an office space arrangement was made and no one at his office was aware

of P4UI, its principals, or R Acosta until R. Acosta's clients came to their offices looking for him. (Ex. 34). R. Acosta said he made a deal with an occupant of that office to sublet, but never moved into it because the space was not cleared as promised, and although he decided not to use the space, his assistant failed to remove the address from his forms. R. Acosta's statement to Pak was not supported by documentation, and was not credible. The client complained in January 2016. P4UI's address was not changed until July 16, 2016, several months after Pak interviewed him.

*Fourth, Fifth and Sixth Cause:*

37. Complainant proved by clear and convincing evidence the Fourth Cause (Failure to Disclose Real Estate License Number), Ex. 44, paragraph 55 (disputed) and 56 (not disputed). As set forth above, the letter to Craig V. from American Mortgage Forgiveness Initiative failed to disclose a real estate license number. Complainant failed to prove by a preponderance of the evidence paragraph 57 of the SAA as to R. Acosta and P4UI.

38. Complainant proved by clear and convincing evidence the Fifth Cause of Action (Failure to Produce Documents), Ex. 44, paragraphs 58-60 related to the Shamouti property that respondents P4UI and R. Acosta, omitted all documentation including some text messages and communications. There is sufficient evidence that R. Acosta did try in good faith to find and produce all the documents related to the transaction, but failed to properly retain documents for three years as <sup>required by</sup> Code section 10148.

39. Complainant proved by clear and convincing evidence the Sixth Cause of Action (Use of Unlicensed Fictitious Business Names), Ex. 44, paragraphs 62-65, that R. Acosta used fictitious business names for P4UI with regard to the American Mortgage Forgiveness Plan and American Mortgage Forgiveness Initiative which were not registered with the Bureau as dbas of P4UI as required by Code section 10131, subdivision (d). Clear and convincing evidence established that R. Acosta through P4UI was conducting licensed activities with regard to the services he offered under these names, and was required to register the dbas with the Bureau as required by Code sections 10159.5 and Regulation 2731.

*Evidence in Mitigation, Aggravation and Character references*

40(a). R. Acosta failed to provide sufficient evidence of mitigation and rehabilitation to support a restricted license.

40(b). Respondent insists he has improved his methods of communication with his clients by having an assistant review e-mails, communicating clearly in writing, and responding expeditiously to his clients' requests. He maintains a restricted license is all that is warranted for his conduct. However, based upon the more credible testimony of his clients, the problems were not merely the result of occasional lapses in communication.

40(c). R. Acosta testified with great energy and enthusiasm so the trust his clients' placed in him was understandable. Respondent's clients' first impression of him was uniformly positive; based upon their initial meetings with him they trusted him to do the job he promised them he would do. With the exception of possibly Orlando L. his clients were not familiar with the nuts and bolts of real estate transactions; Wing C. was a first-time buyer, and others were vulnerable financially and deeply distressed about losing their homes. Given the vulnerability of his clients, R. Acosta's conduct was especially blameworthy. While it is true that some of the charges, without more, would have supported a restricted license, e.g., address notification, documentation retention and license numbers, taken together with his conduct in specific transactions, revocation is the appropriate discipline.

40(d). Respondent received letters in support from several professionals, who were aware of the allegations, and maintained R. Acosta was an asset to the profession. These written references, did not provide sufficient assurances that the R. Acosta could consistently act in public's or his clients' interest in complex situations where the clients are most vulnerable. Robert Carrillo, a broker associate, and the only reference who used his business letter head, spoke of his 15-year association and friendship with R. Acosta, and his reputation as a "person of outstanding character" who is an asset to the public, clients and colleagues. (Ex. F). One real estate broker and loan officer, Fernando Fiuereido, who has known R. Acosta for 30 years and has worked with him stated he never heard a complaint about R. Acosta and will continue to recommend clients to him. (Ex. A.) In another letter from an individual (signature not legible) who has worked with him for several years, R. Acosta is described as honest, and dedicated; so much so he referred a lifelong friend to R. Acosta. (Ex. C.) Another reference, Anna Salomon, a mortgage consultant with AKI Funding Inc., has known R. Acosta since 2008 and was impressed with how he handled buyers and sellers and real estate professionals, his ethics and "vast" knowledge and his help with Latino families with their first homes. She maintained R. Acosta always sought legal advice "when in doubt." (Ex. D) Another mortgage consultant with AKI Funding Inc., Eva Sanchez, has known R. Acosta for over 16 years as a trustworthy person of "outstanding character," and diligence, putting his clients before his own interests. (Ex. E.)

#### *Costs of Investigation*

41(a). Complainant submitted evidence of the costs of investigation and enforcement of this matter, through February 15, 2017, inclusive of allegations against all respondents. Complainant submitted costs for the investigation of \$14,385.809, which was primarily the investigation performed by Pak, (216 hours at \$62.00 an hour) and excluded the audit report prepared by Godswill Keraoro. Complainant submitted total legal costs in the amount of \$11,414.25. The costs of investigation and enforcement for the entire matter as to all respondents are reasonable.

41(b). Complainant did not provide any recommendations of an appropriate apportionment of the costs of investigation and enforcement between respondents. D. Acosta is required to pay costs of investigation and enforcement of approximately \$4,000 as part of her stipulation and agreement with the Bureau, (Ex. 1), but no evidence was submitted of

what, if anything, Cambrone was required to as part of the terms of her stipulated settlement and agreement. (Ex. 42.)

41(c). After the appropriate factors were considered under the authority of *In Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, and considering the discipline of revocation imposed for R. Acosta and P4UI, an award of costs of investigation and enforcement would be punitive and hinder respondent R. Acosta's ability to pursue rehabilitation and possibly reapply for licensure at some future time. As such, R. Acosta and P4UI shall not be required to pay the costs of investigation or enforcement.

### LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (*Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531.)

2(a). Cause exists to discipline respondent R. Acosta and P4UI for conduct set forth in the First Cause by reason of the Factual Findings 1-33 and Legal Conclusion one. Complainant alleges that the conduct described constitutes a substantial misrepresentation, the making of false promise(s) or a character likely to influence, persuade, or induce, the taking of a secret profit, and fraud or dishonest dealing, and are causes for suspension and revocation of respondents' real estate licenses. These allegations were proven by clear and convincing evidence.

2(b). Cause exists to discipline the licenses of R. Acosta and P4UI licenses for dishonest dealings pursuant to: Code section 10176, subdivision (a), for substantial misrepresentation to Wing C. related to the Sanchez Street Property, to the banks and clients in the Maine Avenue Property, Erin Property and Lucille Avenue Property, and the clients in the Shamouti Drive Property; Code section 10176, ~~and the Erin Property~~ subdivision (b) as to the Sanchez Street Property, the Erin Property, and the Shamouti Drive Property; Code section 10176, subdivision (d) as to the Sanchez Street Property, the Maine Avenue Property, and the Lucille Avenue Property; Code section 10176, subdivision (g) as to the Sanchez Street Property, the Maine Avenue Property, and the Lucille Avenue Property; and, Code section 10176, subdivision (i), as to all of the properties.

2(c). Cause exists to discipline the licenses of R. Acosta's and P4UI's based upon the circumstances and conduct regarding the Sanchez Street Property, the Erin Property, or the Shamouti Drive Property, but the combined circumstances of these transactions also establishes a continued and flagrant pattern of misrepresentation and false promises in violation of Code section 10176, subdivision (c).

2(d). Cause does not exist to discipline the licenses of R. Acosta and P4UI for the Military Avenue Property by reason of factual findings 25-27, and Legal Conclusion one.

3(a). Cause exists to discipline the licenses of R. Acosta and P4UI for conduct set forth in the Second Cause by reason of the Factual Findings 34 -35 and Legal Conclusion one as to the Main Avenue Property and Lucille Avenue Property for violating Code section 10176, subdivisions (a), (b), (g) and (i).

3(b). Cause exists to discipline the license of respondent P4UI for conduct set forth in the Second Cause for P4UI's failure to supervise in violation of Code section 10162, 10159.2 and 10177, subdivision (h) and Regulations section 2725.

4. Cause exists to discipline the licenses of respondents R. Acosta and P4UI for conduct set forth in the Third Cause (Failing to Maintain a Current Address) by reason of Factual Finding 36 and Legal Conclusion one, for violating Code section 10162 section 10177, subdivision (d) and 10165, and Regulations 2715 and 2710, subdivision (c).

5. Cause exists to discipline the licenses of respondents R. Acosta and P4UI for conduct set forth in the Fourth Cause (Failure to Disclose Real Estate Number) by reason of Factual Finding 37 and Legal Conclusion one, for violating Code section 10140.6 and Regulation 2773.

6. Cause exists to discipline the licenses of R. Acosta and P4UI for conduct set forth in the Fifth Cause (Failure to Produce Documents) by reason of Factual Finding 38 and Legal Conclusion one, for violating Code section 10148.

7. Cause exists to discipline the licenses of respondents R. Acosta and P4UI for conduct set forth in the Sixth Cause (Use of Unlicensed Fictitious Business Names) which were not registered with the Bureau by reason of Factual Finding 38 and Legal Conclusion one, for violating Code sections 10131, subdivision (d) and 10159.5, and Regulation 2731.

8(a). Based on the foregoing, cause exists to revoke the licenses held by R. Acosta and P4UI. Under other subdivisions of Code section 10177, a licensee can be disciplined for various other reasons. Complainant alleges that the respondents also violated subdivision (c), knowingly publishing a material false statement about R. Acosta's certification as a mortgage and program specialist, using the HUD logo, and promoting a nationwide network, (d), willful disregard or violation of the Real Estate Law and Regulations, and subdivision (g), demonstrating negligence or incompetence in performing licensed activities and (j), engaging in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing. Complainant proved by clear and convincing evidence that respondents' conduct violated section 10177, subdivisions (c), (d), (g) and (j).

8(b). The terms "willful" or "willful disregard" are not defined in the Code. However, they were interpreted in *Milner v. Fox* (1980) 102 Cal.App.3d 567, as not

requiring any intent to violate the law but, rather, only the intent to engage in an act. If that act is determined to violate the law, the actor did so willfully. There was clear and convincing evidence that R. Acosta's conduct individually and on behalf of P4UI was willful especially with regard to the self-dealing aspects of the property transactions, his publication of misleading information on his flyers, and his use of an unauthorized address, but his conduct also displayed a willful disregard or careless negligence in his failure to comply with the paperwork requirements of his job, and his failure to register the fictitious business names and addresses.

8(c). Complainant also alleges that respondents violated Code section 10142 when R. Acosta failed to deliver a copy of the agreements signed by his clients at the time the signature was obtained. Although it was clear that R. Acosta did not provide signed documentation, it was less clear that he failed to provide copies as his clients all appeared to have in their possession unsigned copies of documents R. Acosta had them sign.

9(a). Under Code section 10148, a real estate broker is required to maintain certain records, including trust records, for at least three years. Under Code section 10148, subdivision (b), the Real Estate Commissioner may charge a broker for the cost of any audit if the Commissioner finds that the broker has violated the requirements of Code section 10145, or the regulations relating to the records that are required to be kept. Under Code section 10106, the Commissioner may recover from a licensee the reasonable costs of investigating and prosecuting a disciplinary matter.

9(b). The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*, See also, *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) In considering whether to charge R. Acosta it is important to focus on the purpose of the disciplinary process and weigh that against the Commissioner's right to recover the costs of investigation.

9(c). In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Code section 10106. In so doing, however, the Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Bureau must consider a licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable challenge. The Bureau must consider a licensee's ability to pay, and the Bureau may not assess disproportionately large investigation and prosecution costs when it has

conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at p. 45.)

9(d). In this case, set forth in Factual Finding 41, the costs of investigation and enforcement are reasonable. Respondents R. Acosta and P4UI were actively involved in the due process proceeding and certain allegations were not proven. Given the seriousness of the causes proven by clear and convincing evidence it would generally be appropriate to assign a proportionate share of the costs to each of the respondents. However, it is not possible to determine the proportionate share because there is insufficient evidence of the agreements between the Bureau and respondents D. Acosta and Cambrone. Further, given the revocation of the licenses, it would be punitive and an undue hardship, especially for R. Acosta, to be responsible for payment after his license is revoked and he can no longer work in his profession of 19 years.

10. Based upon the evidence, public protection requires the revocation of respondents' real estate licenses. Respondents provided insufficient evidence of mitigation and rehabilitation to justify a restricted license.

#### ORDER

1. All licenses and licensing rights of Respondents P4UI and R. Acosta under the Real Estate Law are revoked.

DATED: July 19, 2017

DocuSigned by:  
*Eileen Cohn*  
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EILEEN COHN  
Administrative Law Judge  
Office of Administrative Hearings