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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

SEP 11 2017

BUREAU OF REAL ESTATE

By *[Signature]*

In the Matter of the Accusation of)
NEW WAVE REALTY & FINANCE, INC.;)
LILIT LILY GLADZHYAN, individually and)
as designated officer of New Wave Realty &)
Finance, Inc.; RICK LOUIS GARCIA;)
HAIK BOKHCHALIAN; and)
ARTHUR BOYADZHYAN,)
Respondents.)

CalBRE No. H-40444 LA
OAH No. 2016120229

DECISION

The Proposed Decision dated August 2, 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 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.

This Decision shall become effective at 12 o'clock noon on 9/11/17 **9/11 12 2017**

IT IS SO ORDERED 9/11/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

[Signature]

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NEW WAVE REALTY & FINANCE, INC.,
LILIT LILY GALADZHYAN, individually and
as designated officer of New Wave Realty &
Finance, Inc.;
RICK LOUIS GARCIA,
HAIK BOKHCHALIAN; and
ARTHUR BOYADZHYAN,

Respondents.

CalBRE No. H-40444 LA

OAH No. 2016120229

PROPOSED DECISION

Administrative Law Judge Cindy F. Forman of the Office of Administrative Hearings heard this matter on April 25, 26, and 27, 2017, and May 24, 2017, in Los Angeles, California.

Lisette Garcia, Staff Attorney for the Bureau of Real Estate (Bureau), represented Maria Suarez (complainant). Complainant is a Supervising Special Investigator for the Bureau.

Armen G. Mitilian, Attorney at Law, represented respondents New Wave Realty & Finance, Inc. (New Wave), Lilit Lily Galadzhyan (Galadzhyan), individually and as designated officer of New Wave, Rick Louis Garcia (Garcia), Haik Bokhchalian (Bokhchalian), and Arthur Boyadzhyan (Boyadzhyan) (collectively, respondents), who were each present during portions of the hearing.

At the hearing, the Accusation was amended without objection as follows: on page 4, line 8, the word "April" was deleted.

Oral and documentary evidence was received, and argument was heard. The record was held open until July 10, 2017, to allow for the submission of closing briefs. Complainant's Closing Brief and Reply to Respondents' Closing Brief were marked as Exhibits 23 and 24, respectively; respondent's Closing Brief and Reply were marked as Exhibits R31 and R32, respectively. Respondent's Hearing Brief submitted at the start of the

hearing was marked as Exhibit R30. The record was closed, and the matter was submitted for decision on July 10, 2017.

FACTUAL FINDINGS

Jurisdiction

1. On May 2, 2007, the Bureau issued respondent New Wave real estate corporation license number 01806303. At all times relevant herein, respondent New Wave was licensed to use the fictitious business name and was doing business as "New Wave Realty Group." Respondent Galadzhyan is the chief executive officer, secretary, chief financial officer and director of respondent New Wave. Respondent Galadzhyan is also the designated officer under respondent New Wave's corporate license. Respondent New Wave's license is scheduled to expire on May 1, 2019.
2. On November 15, 2005, the Bureau issued respondent Galadzhyan real estate broker license number 01244046. Respondent Galadzhyan's license is scheduled to expire on November 14, 2017. There is no history of prior discipline on respondent Galadzhyan's license.
3. On November 24, 2008, the Bureau issued respondent Garcia real estate salesperson license number 01848743. Respondent Garcia's license is scheduled to expire on November 23, 2020. Respondent Garcia is licensed under the employment of respondent New Wave. There is no history of prior discipline on respondent Garcia's license.
4. On January 8, 2002, the Bureau issued respondent Bokhchalian real estate salesperson license number 01325511. Respondent Bokhchalian's license is scheduled to expire on January 7, 2018. Respondent Bokhchalian is licensed under the employment of respondent New Wave. There is no history of prior discipline on respondent Bokhchalian's license.
5. On June 15, 2006, the Bureau issued respondent Boyadzhyan real estate salesperson license number 01749904. Respondent Boyadzhyan's real estate salesperson license is scheduled to expire on June 14, 2018. Respondent Boyadzhyan is licensed under the employment of respondent New Wave. There is no history of prior discipline on respondent Boyadzhyan's real estate salesperson license.
6. Respondents Galadzhyan, Garcia, Bokhchalian and Boyadzhyan were each employed by respondent New Wave during the events in question.
7. On October 7, 2016, complainant, acting in her official capacity, filed the Accusation seeking discipline of respondents' licenses based on the acts described below. Respondents timely requested a hearing, and this proceeding ensued.

The Subject Sales

8. The allegations in the Accusation relate generally to the sale and subsequent resale of a residential duplex located at 200 Onyx Avenue, Newport Beach, California (Property).

9(a). The first sale of the Property was a short sale,¹ whereby owner Evelyn Do Couto (Do Couto) sold the Property to buyer Parkway Trust (Parkway) for \$1,295,500, which was less than the amount owed by Do Couto on the mortgage loan issued by, and deed of trust held by, Chase Manhattan Bank (Chase). The unpaid balance of the loan at the time was more than \$1.5 million. Respondent New Wave was the broker for both the buyer and the seller; respondent Garcia represented Do Couto and respondent Galadzhyan represented Parkway. Respondent New Wave disclosed the dual agency to Do Couto on the Parkway residential purchase agreement and other transaction documents. The listing agreement provided to Do Couto disclosed the amount to be paid to respondent New Wave as commission for the sale.

9(b). Parkway's original offer for the Property was \$850,000. Do Couto accepted this offer, which she then presented to Chase for its approval. In response, Chase demanded \$1.47 million for the Property. Chase ultimately approved a short sale for the Property in the amount of \$1,295,500 under certain conditions discussed in more detail below. The short sale closed on February 4, 2015. Chase received \$1,175,000 as payment for its loan after deduction of costs, which included respondent New Wave's commission of \$77,730.² Upon receipt of the proceeds, Chase released its lien against the Property and waived any deficiency on the loan. Chase also paid \$35,000 to Do Couto as a financial incentive to assist her with relocation expenses.

10. The second sale of the Property, from Parkway to the Donna Martin Family Trust (Martin Trust), was for \$1,592,000, \$296,500 more than Parkway paid Do Couto for the Property in the short sale. Mr. James Hirschberg (Hirschberg), on behalf of Martin Trust, had submitted to respondent Garcia an all cash offer of \$1,400,000 for the Property several weeks after Do Couto had submitted the Parkway offer to Chase. The grant deed transferring the Property to the Martin Trust was signed on February 5, 2015; the sale ultimately closed on March 6, 2015. Respondents New Wave and Galadzhyan acted as Parkway's broker and agent, respectively, in the sale. Respondent New Wave received a commission of \$15,920

¹ In a short sale, the property owner typically is in arrears on his or her mortgage loan for the property. To avoid foreclosure, "the borrower sells the home to a third party for an amount that falls short of the outstanding loan balance; the lender agrees to release its lien on the property to facilitate the sale; and the borrower agrees to give all the proceeds to the lender." *Coker v. JPMorgan Chase Bank, N.A.* (2016) 62 Cal.4th 667, 671.

² New Wave subsequently, by amendment to the escrow instructions, allocated \$13,152.50 and \$43,796 of the \$77,000 commission to Do Couto and Parkway, respectively.

for the second sale. Respondent Boyadzhyan, through his company ABCS, received nearly \$205,000 from the proceeds of the sale.

The Parties' Contentions

11. Complainant contends respondents engaged in fraudulent "short sale flipping" in connection with the two sales. In a fraudulent "short sale flipping" scheme, the buyer or her agent receives a higher offer for the property than the short sale offer made to the lender, the buyer or her agent does not disclose the higher offer to the lender during the short sale approval process, and the buyer immediately resells the property for a higher price the same day or shortly after the short sale closes. According to complainant, respondents induced Do Couto to agree to an artificially low price for the Property, failed to disclose to Chase that a higher offer for the Property had been made by the Martin Trust, and then agreed to "flip" the Property to the Martin Trust several days after the closing of the short sale for significant profit. Complainant further contends respondents made substantial misrepresentations to Do Couto, Hirschberg, the Martin Trust and Chase regarding the short sale and the resale of the Property as part of their scheme. Complainant has also claimed respondent Galadzhyan failed to exercise appropriate supervision and control over the activities of the other respondents in connection with the subject transactions.

12. The Accusation stems from a May 2016 complaint filed with the Bureau by Do Couto regarding respondents' conduct. Hirschberg provided a declaration in support of Do Couto's complaint. Both Do Couto and Hirschberg testified at the hearing, along with Eric Duckworth, a Bureau investigator. Complainant also relied on e-mails sent by Do Couto, Hirschberg, respondents and other interested third parties, sales documentation, and correspondence with Chase to support the Accusation.

13(a). Do Couto was a California-licensed real estate salesperson from approximately 1995 to 2007. In 2007, Do Couto's license was revoked based on an earlier criminal conviction for shoplifting and on her inconsistent testimony at her disciplinary hearing.³ Even in the absence of her license discipline, however, Do Couto's testimony was evasive and implausible and, consequently, is of little probative value. Do Couto's complaint to the Bureau was motivated by respondents' refusal to share with her the proceeds of the resale of the Property. She made repeated demands for respondents to pay upwards of \$375,000 from the proceeds of the resale, even though doing so would be unlawful and constitute a fraud on Chase.⁴

³ See Exhibit R22 at p. 5: "[R]espondent's testimony contained inconsistencies. . . . Moreover, the crime of which Respondent was convicted involves dishonesty, which, of itself, casts doubt on the reliability of Respondents testimony."

⁴ This was not the first time Do Couto attempted to defraud Chase. One of Do Couto's former real estate agents terminated their relationship because Do Couto insisted on getting "illegal money on the side" in the short sale of the Property. (Exhibit R24, admitted

13(b). Do Couto was also not honest in her dealings with respondent Garcia or with Chase. Do Couto signed a listing agreement for the Property with respondent Garcia and accepted the Parkway offer while knowing that the Property was listed with another broker. Do Couto also misled Chase to believe that the Property was her residence, when it was an investment property, and thus potentially became eligible for more favorable loan terms and other benefits.

14. Hirschberg has been a broker in good standing for thirty years. He also holds a mortgage loan originator license. He has no prior relationship with Do Couto, Parkway or any of the respondents. He filed a declaration with the Bureau in support of Do Couto's complaint, but he admitted at the hearing that the declaration was based in part on Do Couto's characterization of the events in question, not on his own first-hand knowledge. Hirschberg's testimony was credible with respect to those facts of which he has first-hand knowledge.⁵

15. Bureau Investigator Duckworth testified he relied exclusively on the statements by Do Couto and Hirschberg to the Bureau as well as on the transactional documents; he did not interview any of the respondents, any other New Wave employee or anyone else involved in the transaction as part of his investigation. Accordingly, his testimony is of little value.

16. Respondents have denied complainant's allegations of fraud and other wrongdoing. They either dispute that the alleged misrepresentations and omissions were made in the first place or they blame any misrepresentations and omissions on their own carelessness or the carelessness of third parties. Each of the respondents testified at the hearing. While much of their testimony seemed incredible, particularly given the striking absence of corroborating documentation in many instances, disbelief of testimony does not create affirmative evidence to the contrary and is thus insufficient by itself to establish complainant's claims.⁶

as administrative hearsay under Gov. Code § 11513, subd. (d), which allows the admission of hearsay evidence to support or explain other evidence, in this case Do Couto's testimony.)

⁵ Before the short sale had closed, Hirschberg suggested that the parties utilize a "double escrow" to allow the Martin Trust to purchase the Property. A double escrow transaction, although not illegal, is oftentimes considered to be unethical because it can be used to hide the parties to the transaction and to avoid taxes. Hirschberg's suggestion to use an unethical practice is not sufficient to discredit his entire testimony. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.)

⁶ "Disbelief does not create affirmative evidence to the contrary of that which is discarded. The fact that a jury may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other

Alleged Misrepresentations and Fraudulent Conduct

17(a). Complainant alleges⁷ that respondent Garcia improperly induced Do Couto to accept an artificially low listing price for the Property (\$975,000) and then to accept Parkway's even lower offer of \$850,000 for the Property. To support this allegation, complainant points to the fact that respondent Garcia did not provide Do Couto with any other offers before presenting the Parkway offer. There is not sufficient evidence to support this allegation.

17(b). Respondent Garcia set the listing price low to solicit interest in the Property. There had been little interest in the Property before Do Couto signed the New Wave listing agreement, and respondent Garcia hoped that the \$975,000 price would create a bidding frenzy. Hirschberg, an experienced broker, agreed with respondent Garcia's approach, testifying it made sense to "underlist." Do Couto did not register any complaint about the listing price either at the time she signed the listing agreement or at the hearing. She was anxious to avoid foreclosure, and respondent Garcia advised her that the best option to do so would be to sell the Property in a short sale. In that way, Do Couto could possibly avoid any deficiency judgment and collect the \$35,000 Chase had promised her to assist with moving expenses.

17(c). Do Couto also was not improperly pressured to accept Parkway's offer. Notwithstanding the differential between the listing price and Parkway's offer for the Property, respondent Garcia recommended accepting Parkway's offer and forwarding it to Chase. By doing so, respondent Garcia hoped to jumpstart negotiations with Chase in order to delay the impending trustee sale. At the time of Parkway's offer, Do Couto had been in default on the Chase mortgage for more than three years (since May 24, 2011). Chase had scheduled a trustee sale for July 7, 2014, after several already cancelled sales, to dispose of the Property, and had indicated that it was unwilling to delay the sale any further. Do Couto agreed with respondent Garcia's strategy. No other offers for the Property were made at this time, and waiting for another offer would only jeopardize the opportunity to delay foreclosure. Respondent Garcia's strategy ultimately proved successful, and the trustee sale was postponed while Chase reviewed Parkway's offer.

18(a). Complainant alleges that respondents New Wave, Galadzhyan and Garcia failed to disclose to Do Couto that respondent Bokhchalian, the owner and president of Parkway, was a real estate salesperson who worked with respondents Garcia and Galadzhyan at New Wave. Respondent Garcia testified he orally informed Do Couto of the relationship

evidence in the case to support such affirmative.'" (*Miller v. Stults* (1956) 143 Cal.App.2d 592, 603 [citations omitted].)

⁷ Factual Findings and Legal Conclusions in the Proposed Decision are limited to the allegations in the Accusation. Except as necessary to resolve credibility, the Proposed Decision will not address claims made in complainant's closing briefs that were not included or referenced in the Accusation.

between New Wave and Parkway. He acknowledged he was obligated to make such disclosures in writing. He had admitted he failed to do so, which he attributed to inadvertence. Respondent Galadzhyan testified respondent Garcia had told her that Do Couto knew of the relationship; she had no first-hand knowledge of any conversation between respondent Garcia and Do Couto on the issue. She acknowledged that the relationship between New Wave and Parkway should have been disclosed to Do Couto in writing and that she did not detect the omission in her review of the transaction documents.

18(b). Do Couto testified respondents did not tell her of the relationship between New Wave and Parkway and she only learned of the relationship after the short sale of the Property had closed. Do Couto's testimony, in light of her damaged credibility, was not sufficient to convincingly refute respondent Garcia's testimony and establish respondent Garcia's failure to inform Do Couto orally about the New Wave - Parkway relationship.⁸

19. Complainant alleges that respondents New Wave, Galadzhyan and Garcia misled Do Couto by listing Galadzhyan as Parkway's agent in the short sale, when in fact respondent Garcia was responsible for the lion's share of the work on behalf of both Do Couto and Parkway. Complainant did not establish that respondents committed any wrongdoing in connection with respondent Galadzhyan's participation in the short sale. Respondent Galadzhyan testified (i) she was not aware of the back-up offer for the Property; (ii) she was not involved with negotiations with Chase regarding the short sale; and (iii) she did not provide instructions with respect to the short sale to the escrow company involved in the sale. No evidence was introduced to establish that these tasks were required to be performed by the buyer's agent, or that somehow respondent Galadzhyan was delinquent in her duties to her client Parkway. Nor was any evidence adduced that respondents New Wave, Garcia or Galadzhyan either made any representation to Do Couto regarding respondent Galadzhyan's responsibilities in the short sale or that the allegedly tangential role respondent Galadzhyan played in connection in the short sale was a material fact that respondents needed to disclose to Do Couto.

20(a). Complainant alleges that respondent Garcia failed to present the Martin Trust offer for the Property to Do Couto and to Chase. Respondent Garcia denied both allegations. He testified he had disclosed the Martin Trust offer to Do Couto and also kept her abreast of his continuing negotiations with the Martin Trust. Respondent Galadzhyan testified respondent Garcia told her that he made Do Couto aware of the Martin Trust offer, and that she trusted that he did so. Respondents did not produce evidence memorializing or reflecting any communications between respondent Garcia and Do Couto with respect to these issues.

⁸ See *Showalter v. W. Pac. R. Co.* (1940) 16 Cal.2d 460, 476 ["where proven facts give equal support to each of two inconsistent inferences; in which event, neither of them being established, judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover"].

20(b). Do Couto testified respondent Garcia never presented her with the Martin Trust offer or informed her about any other back-up offer for the Property. She further testified she only found out about the Martin Trust offer after the close of the short sale. While the absence of documentation of respondent Garcia's communications with Do Couto regarding the Martin Trust offer is troubling, Do Couto's testimony was not sufficient to convincingly refute respondent Garcia's testimony and to establish respondent Garcia's failure to disclose Martin Trust's offer to her.

20(c). Respondent Garcia also testified he apprised Chase of the Martin Trust offer by telephone soon after he received it. According to respondent Garcia, Chase was not interested in reviewing Martin Trust's offer while it was reviewing the accepted Parkway offer that Do Couto had earlier presented. Respondents presented no documentary evidence memorializing respondent Garcia's communication with Chase. Respondent Galadzhyan confirmed respondent Garcia's account solely based on his representations to her.

20(d). Complainant introduced no evidence contradicting respondent Garcia's account. No representative from Chase testified at the hearing. The Short Sale Addendum states that "Lender may require Seller for forward any other offer received." None of the documents supplied to Chase or exchanged between Parkway and Do Couto require that Do Couto forward all back-up offers to Chase.

21(a). Complainant alleges that respondent Garcia falsely stated to Hirschberg that another buyer had submitted an offer higher than the Martin Trust offer and that Chase had agreed to an offer of \$1,592,000 for the short sale of the Property. The evidence clearly and convincingly supports this allegation.

21(b). Hirschberg testified that after he had submitted the \$1.4 million offer on behalf of the Martin Trust in July 2014, respondent Garcia had informed him that a higher offer already had been accepted for the Property and that the Martin Trust offer was in back-up position. Hirschberg stayed in contact with respondent Garcia over the next several months to seek information about the status of the short sale. In January 2015, prior to closing the short sale, respondent Garcia contacted Hirschberg and told him that Chase had approved a purchase price of \$1,592,000 for the Property and the buyer in the short sale would sell the Property to the Martin Trust for that price.

21(c). Hirschberg's testimony is supported by a January 22, 2015 letter, which Hirschberg sent to respondent Garcia before the closing of the short sale. The letter states in relevant part as follows:

I want to summarize our meeting in writing so that we are on the same page.

The lender has been in negotiations with your buyers and has agreed to sell them the property for \$1.592 million. Your buyers have decided not to buy the property for whatever

reason. You presented our offer as a full price cash back-up to the lender, however; the lender indicated if there is a new offer they must start from scratch and obtain new appraisals, values etc.

To keep from starting this process over. A process which so far has exceeded 6 months. You suggest that we let the original buyer close the property and we buy it from him.

[¶ . . . ¶]

That's pretty much it, unless you can think of anything else. 1 ½ million dollars is a lot of money to part without some assurances as I'm sure you understand. Let me know what you find out and you can put me in touch with escrow and Title. I'll let you know when I have termite scheduled.

(Exhibit R13 (admitted as administrative hearsay).)

21(d). Respondent Garcia denied telling Hirschberg that the original Parkway offer was higher than the Martin Trust offer or that Chase had agreed to a \$1.592 million sales price. Respondent Garcia's testimony is unreliable and incredible.⁹ Respondent Garcia falsely represented many aspects of the short sale to Hirschberg, including that Chase had requested information regarding the Martin Trust's ability to fund the transaction and that the original buyers were considering cancellation of their offer, when neither was the case. Respondents did not present any evidence that respondent Garcia questioned or corrected Hirschberg's statement in the January 22, 2015 letter that Chase agreed to a short sale price of \$1.592 million. Respondent Garcia also had no explanation as to why Hirschberg would have increased the Martin Trust offer for the Property from \$1.4 million to \$1.592 million on his own accord. Respondent Bokhchalian testified he had no conversations with Hirschberg on the issue; respondent Galadzhyan testified she was unaware of respondent Garcia's communications with Hirschberg. There was no evidence of any other negotiations regarding the Property's sales price between Parkway and the Martin Trust. In addition, Hirschberg's version of the events was repeated by his attorney in a letter sent to respondent Garcia on February 25, 2015. Respondent Garcia never responded to the charges.

⁹ Testimony may be disregarded if "the witness is not telling the truth or his testimony is inherently improbable due to its inaccuracy, due to uncertainty, lapse of time, or interest or bias of the witness. All of these things may be properly considered in determining the weight to be given the testimony of a witness although there be no adverse testimony adduced. . . . A witness may be contradicted by the facts he states as completely as by direct adverse testimony, and there may be so many omissions in his account of particular transactions or of his own conduct as to discredit his whole story." (*Tom Thumb Glove Co. v. Han* (1978) 78 Cal.App.3d 1, 5, citing *La Jolla Casa deManana v. Hopkins* (1950) 98 Cal.App.2d 339, 345-346.)

21(e). In their closing briefs, respondents argue that respondent Garcia's testimony is supported by the fact that Martin Trust's offer of \$1.592 million for the Property was made after the short sale closed, and that respondent Garcia did not represent Parkway in either the short sale or the resale. Respondents ignore, however, that Hirschberg submitted two earlier offers on the Martin Trust's behalf to respondent Garcia for \$1.592 million while the short sale was pending (one in early January 2015 and one accompanying his January 22, 2015 letter; neither of which was part of the New Wave file provided to the Bureau). In addition, Hirschberg was of the belief, at least until mid-February 2015, that respondent Garcia did represent Parkway in both the sale and resale, and respondent Garcia never disabused Hirschberg of the idea.

21(f). Once he learned that that Chase had approved the short sale for \$1,295,500 and not for the \$1.592 million he had been told, Hirschberg attempted to re-negotiate the purchase price for the Property from \$1.592 million to the \$1.4 million the Martin Trust had originally offered. Parkway refused to do so, but offered to allow the Martin Trust to cancel its purchase contract. The Martin Trust declined the offer, and the sale of the Property for \$1.592 million to the Martin Trust closed on March 6, 2015.

22(a). Complainant alleges that respondents New Wave, Garcia and Galadzhyan misrepresented to Chase the nature of the short sale and the resale of the Property when they signed, under penalty of perjury, an Affidavit of Arm's Length Transaction (Arm's Length Affidavit), which Chase required as a condition of its approval of the short sale. The Arm's Length Affidavit provided, among other things, that: i) the transaction had been negotiated by unrelated parties; ii) the sale price was based on fair market value; iii) the agents for the seller and buyer were acting in the best interests of their respective principals; iv) no agent of the seller or buyer was a business associate of the borrower; and v) there were no hidden terms or agreements or special understandings between the seller and buyer or among their respective agents that had not been reflected in the residential purchase agreement or the escrow instructions associated with the transaction.¹⁹

22(b). Respondents New Wave, Garcia and Galadzhyan correctly represented that the short sale was negotiated by unrelated parties. Respondents did not misrepresent the relationship of the parties to the transaction to Chase. As Do Couto and Parkway were the only parties to the transaction, respondents correctly attested that they were unrelated.

22(c). Complainant did not establish that respondents New Wave, Garcia and Galadzhyan misrepresented the fair market value of the Property when they attested that the sales price of \$1,295,500 was based on such fair market value. Section 1263.320 of the Code of Civil Procedure provides: "The fair market value of the property is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell, but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy, but under no particular necessity for so doing, each dealing with the

¹⁹ The Arm's Length Affidavit was also signed under penalty of perjury by Do Couto and respondent Bokhchalian, as President of Parkway.

other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." In determining fair market value, sales prices of comparable properties and the actual sales price are considered. (Miller & Starr, Cal. Real Estate (4th ed. 2017) § 24:26.) Chase agreed to Parkway's offer of \$1,295,500 after months of review and its own appraisal. There was no evidence that the \$1,295,500 sales price was less than any sales price for comparable properties at the time the Arm's Length Affidavit was signed. Although there was at least one offer that was higher (the Martin Trust offer), that offer had not yet been accepted, so no sale at that price had yet been consummated.

22(d). Complainant also did not establish that respondents New Wave, Garcia and Galadzhyan were not acting in the best interest of Do Couto. As indicated above, no evidence was submitted that respondents' low ball strategy to kick-start negotiations with Chase ill served Do Couto. Nor can it be necessarily concluded that respondents' decision not to present the Martin Trust offer after Chase made its counter-demand to the original \$850,000 proposed short sale was contrary to Do Couto's interests. Even if Chase would have been interested in reviewing the offer at that time, as complainant appears to suggest, Do Couto would not necessarily benefit if Chase had done so. According to respondent Garcia's undisputed testimony, consideration of a new offer from a new party would only serve to delay the short sale, and thus delay payment to Do Couto of the \$35,000 promised by Chase. The amount of the offer Chase ultimately accepted would have made no difference to Do Couto as Chase was required to waive any deficiency on the mortgage regardless how much it received from the proceeds of the sale if the property was owner-occupied, which Chase apparently believed to be the case. And while Do Couto potentially might have suffered adverse tax or credit rating consequences if the actual deficiency had been smaller, no evidence was introduced that Do Couto in fact suffered such consequences.

22(e). Respondents New Wave, Garcia, Galadzhyan and Bokhchalian correctly represented the relationship between the parties, the agents and Chase. Neither Parkway nor any of the respondents is a family member or business associate of either Do Couto or Chase. Information regarding the relationship between respondent New Wave and Parkway was not sought by Chase.

22(f). Complainant failed to establish that there were "hidden agreements" or "special understandings" among respondents New Wave, Garcia, Galadzhyan and Bokhchalian in either the accepted Parkway purchase agreement or the short sale escrow instructions with respect to the short sale or the resale of the Property. Respondent Garcia apparently reached agreement with Hirschberg regarding the resale price of the Property well before respondents signed the Arm's Length Affidavit on February 2, 2016. He also had email communications with Hirschberg regarding the escrow package for the resale of the Property on the same day he signed the Arm's Length Affidavit. There was no evidence that he shared either his agreement with Hirschberg regarding the price of the Property or his other communications regarding the escrow package with any of the other respondents. While it is suspicious that respondent Bokhchalian signed the grant deed transferring the Property to the Martin Trust on February 5, 2015, three days after respondents signed the Arm's Length Affidavit and only a day after the short sale closed, there is insufficient

evidence to establish that respondents had a special understanding *among* themselves to resell the Property to the Martin Trust at the time the Arm's Length Affidavit was signed.

22(g). Likewise, there is insufficient evidence to establish that respondents New Wave, Garcia, Galadzhyan and Bokhchalian had a special understanding at the time they signed the Arm's Length Affidavit that a company respondent Boyadzhyan owned would receive the lion's share of the proceeds from the resale of the Property. There was no evidence as to when Parkway or Bokhchalian decided to pay respondent Boyadzhyan's company out of the proceeds of the resale of the Property or who, if anyone, was aware of such decision as of February 2, 2015. Nor was there any evidence demonstrating that this was the kind of information required to be disclosed in either the Parkway purchase agreement for the short sale or the short sale escrow instructions.

22(h). Complainant likewise has not established that respondents New Wave, Garcia, Galadzhyan and Bokhchalian had a hidden agreement or special understanding regarding the involvement of Meroojohn Ordegian (Ordegian) in the short sale as a lender and his receipt of proceeds in the resale of the Property. No evidence was adduced whether any respondent other than respondent Bokhchalian knew about Ordegian's involvement and, if so, when Ordegian's involvement became known to respondents (i.e., before or after the signing of the Arm's Length Affidavit). In addition, information regarding the identity of the lenders and recipients of funds in connection with the short sale are not reflected in the Parkway purchase agreement or escrow instructions, and therefore cannot be considered hidden terms.

23(a). Complainant alleges that respondent Garcia failed to disclose to Do Couto that escrow had closed on the short sale of the Property. There is insufficient evidence to support this allegation. Respondent Garcia testified that he informed Do Couto of the closing of the short sale, and had spoken to her the day the short sale closed as well as the day after. There are no documents memorializing respondent Garcia's conversations with Do Couto.

23(b). Do Couto testified she was never told of the closing of the short sale, and she first learned of the closing in a conversation she had with Chase on the day of the closing. She also claimed she never signed any of the closing documents. Do Couto's testimony is implausible for several reasons. When asked, Do Couto could not explain how her signature or initials to the short sale closing documents were forged, and if the signatures were forgeries, how the forgeries differed from her own signature. In addition, the notary public who attested to Do Couto's signature on the deed of trust credibly testified that she signed the deed of trust and provided her thumbprint as well.¹¹ The veracity of Do Couto's testimony is further challenged by the fact that she received at least two notices from Chase informing her of the closing date for the short sale: the first stated the short sale would close on January 30, 2015; the second stated the short sale would close on February 4, 2015. Do Couto also never sought to undo or protest the short sale after it occurred based on either the

¹¹ No evidence was adduced from the notary or any of the parties regarding the different dates on the notarized deed of trust. Determining the meaning or the effect of the discrepancy without such evidence therefore would be speculative.

so-called forged documents or lack of notice; instead, Do Couto, without objection, cashed the \$35,000 check Chase paid her in connection with the short sale immediately after it was made available to her.

24. Complainant alleges that respondent Boyadzhyan improperly acted as Do Couto's real estate agent in connection with the sale of the Property. There is insufficient evidence to support the allegation. Respondent Boyadzhyan testified he did not represent Do Couto in the short sale transaction and he did not participate in any negotiations for the short sale of the Property. He denied complainant's charge that he signed or authorized anyone to sign his name as Do Couto's agent to the Application for Report of Residential Building Records that was submitted to the Building Division of the Newport Beach Community Development Department in connection with the short sale of the Property. Respondent Boyadzhyan further testified his only involvement was to review the HUD-1 Settlement Statement in the short sale for errors at respondent Garcia's request. Complainant offered no evidence to refute respondent Boyadzhyan's testimony, and his limited review of a document generated by the escrow company does not give rise to an agency relationship with Do Couto.

25(a). Complainant alleges that respondents did not provide a copy of the Amended Escrow Instructions for the short sale to either Do Couto or Chase. There is insufficient evidence to support the allegation. The Amended Escrow Instructions, dated February 4, 2015, directed the escrow company to reallocate some of the commission respondent New Wave received in the short sale to Do Couto and Parkway. (See footnote 2, *supra*.) Do Couto testified she never received the Amended Escrow Instructions. However, even if Do Couto's testimony can be credited, complainant did not establish that it was respondents' obligation, and not that of the escrow company, to provide the Amended Escrow Instructions to Do Couto. No one from the escrow company testified regarding their duty to supply the Amended Escrow Instructions to Do Couto and whether in fact they did so.

25(b) Chase was provided a copy of the Amended Escrow Instructions. It produced a copy of the Instructions in response to complainant's subpoena.

26. Complainant alleges that respondents New Wave, Garcia, Galadzhyan and Bokhchalian misrepresented in the Sale Escrow Instructions that Parkway had already paid a \$50,000 deposit to the escrow company in connection with the short sale, when in fact it had not. There is insufficient evidence to support this allegation. Complainant relies solely on a copy of the Final HUD-1 Statement (Statement), which reflects that no deposits were paid at all in connection with the short sale. The Statement was not signed by either Do Couto or Parkway, and no one from Cal Smart Escrow testified as to whether the deposit was ever paid. In addition, no testimony was elicited regarding whether respondents in fact paid the \$50,000 deposit. The Statement is insufficient by itself to establish that respondents did not make any deposits or earnest money payments.

27. Complainant alleges that respondents misrepresented the selling agent in the Sale Escrow Instructions for the short sale of the Property. The Sale Escrow Instructions listed Victorian Homes as the selling agent for Parkway, instead of respondent New Wave. There is insufficient evidence to support this allegation. Respondents credibly testified that: (i) the inclusion of Victorian Homes in the Sale Escrow Instructions was a mistake; (ii) they had no knowledge of any entity named Victorian Homes and (iii) the escrow company made the entry.

Supervision by Respondent Galadzhyan

28. Respondent Galadzhyan is the owner of respondent New Wave. She is responsible for supervising respondent New Wave's employees. She is a member of the Glendale Association of Realtors and the Southland Regional Association of Realtors.

29. Respondent Galadzhyan's testimony at the hearing was evasive and lacked credibility. Although she was charged with supervising both the short sale and the resale of the Property and also acted as the agent for Parkway in both transactions, she had little or no first-hand knowledge about either transaction. She could identify neither the nature of the other offers made for the Property during the short sale process nor the individuals who were negotiating on behalf of Parkway in connection with the resale of the Property (for instance, Arthur Toukhajian). In addition, the information respondent Galadzhyan possessed about the two transactions appeared to be based on what her salespersons reported to her, even though she represented Parkway in both transactions.

30. Respondent Galadzhyan's supervision of respondents' activities was lacking. She was unable to explain why she was not copied on communications respondent Garcia had with Hirschberg regarding the resale of the Property by Parkway. She also had no explanation regarding the absence of any written documentation reflecting respondent Garcia's communications with Do Couto, Chase or Hirschberg. She did not independently investigate the complaints of either Do Couto or Hirschberg's attorney relating to the sales; instead, she relied completely on her conversations with respondent Garcia.

31. Respondent New Wave's record-keeping was sloppy and haphazard. Respondent Galadzhyan could not point to any procedures at respondent New Wave whereby agents were required to memorialize their communications with their clients, prospective buyers, lenders or other third parties. There appeared to be no log of transaction activities for either sale, and there was no documentation of the date and time offers were received, replied to or presented. Respondent Galadzhyan also stated that respondent New Wave's practice was to destroy or shred back-up offers, even though the agency is required to keep such records along with other sales-related documentation for at least three years. (See Bus. & Prof. Code, §10148, subd. (a) ["licensed real estate broker shall retain for three years copies of all . . . documents obtained by him or her in connection with any transactions for which a real estate broker license is required"].)

32. The only mistake respondent Galadzhyan acknowledged was her failure to make sure that respondent New Wave's relationship with Parkway had been disclosed in writing to Do Couto. Respondent Galadzhyan admitted that respondent New Wave failed to make this written disclosure. To prevent such occurrences in the future, respondent New Wave has now retained a transaction consultant who is responsible for reviewing all transactions and making sure each are properly documented and the documentation includes the appropriate disclosures. Respondent Galadzhyan also meets regularly with respondents and other employees of New Wave to discuss new laws and regulations as well as good office practices.

Costs of Prosecution

33. The Bureau submitted evidence of its costs of investigation (\$2,447.15) and enforcement (\$5,718.25), in the total amount of \$8,165.40. These costs are reasonable.

LEGAL CONCLUSIONS

Burden of Proof

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. Clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt; it must be sufficiently strong to command the unhesitating assent of every reasonable mind. This requirement presents a heavy burden, far in excess of the preponderance of evidence standard that is sufficient for most civil litigation. (*Christian Research Inst. v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Law

3. "The relationship between a broker and his principal is fiduciary in nature, and imposes upon the broker the duty of acting in the highest good faith toward his [or her] principal. This duty of good faith precludes the broker from assuming a position adverse to that of his [or her] principal unless the principal consents. Moreover, it places upon the broker a legal obligation to disclose to his [or her] principal all the facts within his [or her] knowledge which are material to the matter in connection with which he [or she] is employed." (*In re De Hart's Estate* (1961) 196 Cal.App.2d 452, 455 [listing broker who also represented purchaser breached fiduciary duty to seller when he failed to disclose that purchaser was his mother and that his mother resold property at higher price before first sale closed]; see also Civ. Code, § 2230 [charging real estate agent with the "duty of fullest disclosure of all material facts concerning the transaction that might affect the principal's decision"].)

4. Although the seller's agent does not generally owe a fiduciary duty to the buyer, he or she nonetheless owes the buyer the affirmative duties of care, honesty, good faith, fair dealing and disclosure. (*Holmes v. Sumner* (2010) 188 Cal. App. 4th 1510, 1528.) Respondents also have a duty to be honest to the members of the public. (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1994) 22 Cal.App.4th 1814, 1821 [one purpose of the Real Estate Law "is to insure, as far as possible, that real estate licensees will be honest and truthful in their dealings *with members of the public*" (emphasis added)].)

5. Misrepresentation may be intentional or negligent. (Miller & Starr, Cal. Real Estate, *supra*, §§ 1:143, 1:144.) "An intentional misrepresentation consists of a false representation, concealment or nondisclosure: 'the suggestion, as a fact, of that which is true, by one who does not believe it to be true.'" (*Id.*, § 1.143, citing Civ. Code § 1572, subd. (3).) "A negligent misrepresentation is a species of 'actual fraud' and a form of deceit." (*Id.*, § 1.144.) "It arises from '[t]he positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, although he believes it to be true.'" (*Id.*, citing Civ. Code § 1710, subd. (2).)

6. Fraud can be either actual or constructive. Civil Code section 1572 provides in relevant part: "Actual fraud . . . consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract: 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; [¶ - ¶] 3. The suppression of that which is true, by one having knowledge or belief of the fact; 4. A promise made without any intention of performing it; or, 5. Any other act fitted to deceive."

7. Under Business and Professions Code¹² section 10176, a real estate licensee may have his license disciplined for:

(a) Making any substantial misrepresentation.

[¶ . . . ¶]

(c) A continued or flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

[¶ . . . ¶]

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission,

¹² All further statutory references are to the Business and Professions Code.

or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

[¶ . . . ¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

8. Under section 10177, a real estate licensee may have his or her license disciplined for: willfully violating or disregarding the Real Estate Law or regulations (subd. (d)); negligence or incompetence in performing an act requiring a license (subd. (g)); or, engaging in "any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing." (subd. (j).)

9. For the purposes of section 10176 and 10177, it is immaterial whether any individual or entity was injured by respondents' misrepresentations and misconduct. Absence of injury does not exempt respondents from discipline. (*Norman I. Krug Real Estate Investments, Inc. v. Praszker, supra*, 22 Cal.App.4th at 1821-22 [immaterial that respondents received no advantage from failure to disclose].) As set forth in *Buckley v. Savage* (1960) 184 Cal.App.2d 18, 31-32:

It was appropriately stated in 11 Opinions Attorney General 108, 110: 'A licensee who utters a substantial falsehood in connection with a real estate transaction is not to be insulated from the consequences of his dishonesty simply because the other party to the transaction suffers no pecuniary loss. Regardless of the lack of pecuniary damage occasioned by the falsehood, the licensee has demonstrated a lack of integrity. * * * It is of no significance that conduct justifying disciplinary action against the licensee might not justify an action for damages or rescission on the part of the aggrieved person.'

(Citations omitted.)

Respondent Garcia

10. Respondent Garcia made substantial misrepresentations to Hirschberg and the Martin Trust regarding the price paid for the Property during the short sale. (Factual Findings 21 and 22(f); Legal Conclusions 4 and 5.) Respondent Garcia had a duty of honesty and good faith to Hirschberg and the Martin Trust, as potential buyers of the Property in the short sale and as members of the public. Cause therefore exists to discipline respondent Garcia's real estate salesperson license under section 10176, subdivision (a).

11. Respondent Garcia engaged in conduct that constitutes fraud or dishonest dealing in connection with the resale of the Property when he misrepresented the sales price of the Property in the short sale to Hirschberg and the Martin Trust to persuade the Martin Trust to increase its offer for the Property. Hirschberg and the Martin Trust relied to their detriment on respondent Garcia's misrepresentation. (Factual Findings 21 and 22(f); Legal Conclusions 4, 5, 6, and 10.) Cause therefore exists to discipline respondent Garcia's real estate salesperson license under section 10176, subdivision (i) and section 10177, subdivisions (i) and (j).

12. Respondent Garcia was negligent or incompetent when he failed to disclose in writing to Do Couto the relationship between New Wave and Parkway. (Factual Finding 18; Legal Conclusion 3.) Cause therefore exists to discipline respondent Garcia's real estate salesperson license under section 10177, subdivision (b).

13. Respondent Garcia willfully violated or disregarded the Real Estate Law or regulations in connection with the short sale or resale of the Property by failing to disclose New Wave's relationship with Parkway and by engaging in fraudulent negotiations with Hirschberg. (Factual Findings 18, 21 and 22(f); Legal Conclusions 3 through 6, 10 through 12) Cause therefore exists to discipline respondent Garcia's real estate salesperson license under section 10177, subdivision (d).

14. It was not established that respondent Garcia engaged in a continued or flagrant course of misrepresentation. No cause therefore exists to discipline respondent Garcia's real estate salesperson license under section 10176, subdivision (c).

15. Respondent Garcia disclosed to Do Couto that respondent New Wave represented the buyer and seller of the Property in the short sale. No cause therefore exists to discipline respondent Garcia's real estate salesperson license under section 10176, subdivision (d).

16. It was not established that respondent Garcia received any secret or undisclosed amount of compensation, commission, or profit in connection with the short sale and resale of the Property. No cause therefore exists to discipline respondent Garcia's real estate salesperson license under section 10176, subdivision (g).

Respondent Bokhchalian

17. It was not established that respondent Bokhchalian made any substantial misrepresentation or engaged in any continued or flagrant course of misrepresentation in connection with either the short sale or resale of the Property. No cause therefore exists to discipline respondent Bokhchalian's real estate salesperson license under section 10176, subdivisions (a) or (c).

18. Respondent Bokhchalian was not the real estate agent for any of the parties involved in the short sale or resale of the Property. No cause therefore exists to discipline respondent Bokhchalian's real estate salesperson license under section 10176, subdivision (d).

19. It was not established that respondent Bokhchalian received any secret or undisclosed amount of compensation, commission, or profit in connection with the resale of the Property. No cause therefore exists to discipline respondent Bokhchalian's real estate salesperson license under section 10176, subdivision (g).

20. It was not established that respondent Bokhchalian engaged in conduct that constitutes fraud or dishonest dealing in connection with the short sale or resale of the Property. No cause therefore exists to discipline respondent Bokhchalian's real estate salesperson license under section 10176, subdivision (i), or section 10177, subdivisions (i) or (j).

21. It was not established that respondent Bokhchalian was negligent or incompetent with respect to any action in connection with the short sale or the resale of the Property. No cause therefore exists to discipline respondent Bokhchalian's real estate salesperson license under section 10177, subdivision (b).

22. It was not established that respondent Bokhchalian willfully violated or disregarded the Real Estate Law or regulations in connection with the short sale or resale of the Property. No cause therefore exists to discipline respondent real estate salesperson Bokhchalian's license under section 10177, subdivision (d).

Respondent Boyadzhyan

23. It was not established that respondent Boyadzhyan made any substantial misrepresentation or engaged in any continued or flagrant course of misrepresentation in connection with either the short sale or resale of the Property. No cause therefore exists to discipline respondent Boyadzhyan's real estate salesperson license under section 10176, subdivisions (a) or (c).

24. It was not established that respondent Boyadzhyan was the real estate agent for any of the parties involved in the short sale or resale of the Property. No cause therefore exists to discipline respondent Boyadzhyan's real estate salesperson license under section 10176, subdivision (d).

25. It was not established that respondent Boyadzhyan received any secret or undisclosed amount of compensation, commission, or profit in connection with the short sale or the resale of the Property. No cause therefore exists to discipline respondent Boyadzhyan's real estate salesperson license under section 10176, subdivision (g).

26. It was not established that respondent Boyadzhyan engaged in conduct that constitutes fraud or dishonest dealing in connection with the short sale or resale of the Property. No cause therefore exists to discipline respondent Boyadzhyan's real estate salesperson license under section 10176, subdivision (i), or section 10177, subdivisions (i) or (j).

27. It was not established that respondent Boyadzhyan was negligent or incompetent with respect to any action in connection with the short sale or the resale of the Property. No cause therefore exists to discipline respondent Boyadzhyan's real estate salesperson license under section 10177, subdivision (b).

28. It was not established that respondent Boyadzhyan willfully violated or disregarded the Real Estate Law or regulations in connection with the short sale or resale of the Property. No cause therefore exists to discipline respondent Boyadzhyan's real estate salesperson license under section 10177, subdivision (d).

Respondent Galadzhyan – Conduct as Broker for Parkway

29. Respondent Galadzhyan was negligent or incompetent when she failed to disclose the relationship between New Wave and Parkway in writing to Do Couto. (Factual Finding 18; Legal Conclusion 3.) Cause therefore exists to discipline respondent Galadzhyan's real estate broker license under section 10177, subdivision (b).

30. Respondent Galadzhyan willfully violated or disregarded the Real Estate Law or regulations in connection with the short sale of the Property by failing to disclose New Wave's relationship with Parkway. (Factual Finding 18; Legal Conclusions 3 and 29.) Cause therefore exists to discipline respondent Galadzhyan's real estate broker license under section 10177, subdivision (d).

31. It was not established that respondent Galadzhyan made any substantial misrepresentations in connection with the short sale and resale of the Property. No cause therefore exists to discipline respondent Galadzhyan's real estate broker license under section 10176, subdivision (a).

32. It was not established that respondent Galadzhyan engaged in any continued or flagrant course of misrepresentation in connection with either the short sale or resale of the Property. No cause therefore exists to discipline respondent Galadzhyan's real estate broker license under section 10176, subdivision (c).

33. Respondent Galadzhyan disclosed to Do Couto that respondent New Wave represented the buyer and seller of the Property in the short sale. No cause therefore exists to discipline respondent Galadzhyan's real estate broker license under section 10176, subdivision (d).

34. It was not established that respondent Galadzhyan received any secret or undisclosed amount of compensation, commission, or profit in connection with the short sale and resale of the Property. No cause therefore exists to discipline respondent Galadzhyan's real estate broker license under section 10176, subdivision (g).

35. It was not established that respondent Galadzhyan engaged in conduct that constitutes fraud or dishonest dealing in connection with the short sale or resale of the Property. No cause therefore exists to discipline respondent Galadzhyan's real estate broker license under section 10176, subdivision (i) and section 10177, subdivisions (i) or (j).

Respondent Galadzhyan – Conduct as Designated Officer of Parkway and Supervisor of Parkway Personnel

36. Under section 10177, subdivision (h), a real estate licensee may have his or her license disciplined for failing to exercise reasonable supervision over the activities of his or her salespersons.

37. Section 10159.2, subdivision (a), provides in relevant part that the designated officer of a corporate broker licensee "shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required."

38. Under California Code of Regulations (CCR), title 10, section 2725, a real estate broker shall exercise reasonable supervision over the activities of her salespersons. Such supervision includes, among other things, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: transactions requiring a real estate license; documents which may have a material effect upon the rights or obligations of a party to the transaction; filing, storage and maintenance of such documents; and regular and consistent reports of licensed activities of salespersons. Section 2725 further provides that a real estate broker is to establish a system for monitoring compliance with such rules, policies and procedures.

39. As the designated corporate broker-officer of respondent New Wave, respondent Galadzhyan was responsible for the supervision and control of the activities conducted on New Wave's behalf by respondents Garcia, Bokhchalian and Boyadzhyan. Respondent Galadzhyan failed to exercise reasonable supervision over respondents. She failed to detect omissions in the documentation relating to the short sale regarding New Wave's relationship with Parkway. She also failed to establish policies regarding the documentation and preservation of those written records that would have materially affected the rights of Do Couto, Hirschberg, the Martin Trust and Chase. (Factual Findings 28 through 31; Legal Conclusions 36 through 38.) Cause therefore exists to discipline respondent Galadzhyan's real estate broker license under sections 10177, subdivision (h), and 10159.2, subdivision (a), and CCR, title 10, section 2725.

Respondent New Wave

40. Cause exists to discipline respondent New Wave's corporate real estate license under section 10176, subdivision (a) because respondent Garcia made substantial misrepresentations to Hirschberg and the Martin Trust when acting on behalf of New Wave. (Factual Findings 6, 21 and 22(f); Legal Conclusions 3, 4 and 10.)

41. Respondent New Wave engaged in conduct that constitutes fraud or dishonest dealing in connection with the resale of the Property when respondent Garcia, acting on New Wave's behalf, misrepresented the sales price in the short sale to Hirschberg and the Martin Trust. (Factual Findings 21 and 22(f); Legal Conclusions 4, 5, 6, 10 and 11.) Cause therefore exists to discipline respondent New Wave's corporate real estate license under section 10176, subdivision (i) and section 10177, subdivisions (i) and (j).

42. Respondent New Wave was negligent or incompetent when respondents Garcia and Galadzhyan, acting on New Wave's behalf, failed to disclose its relationship with Parkway to Do Couto. (Factual Findings 6 and 18; Legal Conclusions 3, 12 and 29.) Respondent Galadzhyan, New Wave's designated broker of record, was negligent by her failure to reasonably supervise respondent Garcia's activities on behalf of New Wave. Respondent New Wave also failed to put in place procedures regarding the documentation, preservation and storage of those records that may have had a material effect upon the rights or obligations of the parties to the short sale and resale of the Property. (Factual Findings 28 through 31; Legal Conclusions 36 through 39.) Cause therefore exists to discipline respondent New Wave's corporate real estate license under section 10177, subdivision (b).

43. Respondent New Wave willfully violated or disregarded the Real Estate Law or regulations because respondent Garcia, acting on New Wave's behalf, made substantial misrepresentations when acting on behalf of New Wave (Factual Findings 6, 21 and 22(f); Legal Conclusions 3, 4 and 10) and because respondents Garcia and Galadzhyan, acting on behalf of New Wave, failed to disclose New Wave's relationship with Parkway. (Factual Findings 6 and 18; Legal Conclusions 3, 12, 29 and 42.) In addition, respondent Galadzhyan failed to supervise respondent Garcia. Respondent New Wave also failed to put in place procedures regarding the documentation, preservation and storage of those records that may have had a material effect upon the rights or obligations of the parties to the short sale and resale of the Property. (Factual Findings 28 through 31; Legal Conclusions 36 through 39.) Cause therefore exists to discipline respondent New Wave's corporate real estate license under section 10177, subdivision (d).

44. It was not established that respondent New Wave engaged in a continued or flagrant course of misrepresentation in connection with the short sale or resale of the Property by virtue of respondent Garcia's conduct. Cause therefore does not exist to discipline respondent New Wave's corporate real estate license under section 10176, subdivision (c).

45. Respondent New Wave disclosed to Do Couto that New Wave represented the buyer and seller of the Property in the short sale. No cause therefore exists to discipline respondent New Wave's corporate real estate license under section 10176, subdivision (d).

46. It was not established that respondent New Wave received any secret or undisclosed amount of compensation, commission, or profit in connection with the short sale and resale of the Property. No cause therefore exists to discipline respondent New Wave's corporate real estate license under section 10176, subdivision (g).

Discipline

47. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) 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 the practice of real estate, "[h]onesty and integrity are deeply and daily involved in various aspects of the practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176). "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (*Id.* at 177-178.)

48(a). Here, respondents are all experienced licensees with no discipline history. Although there was potential of great harm by respondents' conduct, there was no evidence of actual harm to respondents' clients, potential purchasers or lenders.

48(b). Nonetheless, respondent Garcia's actions were unethical and unlawful. He failed to disclose New Wave's relationship to Parkway in writing, and he repeatedly lied to a potential buyer in order to obtain a higher price for a Property in which his colleagues stood to profit. Under all of the facts and circumstances, and to adequately protect the public safety and welfare, it is appropriate to revoke respondent Garcia's salesperson license and allow him to receive a restricted salesperson license, which shall be suspended for 30 days from the date of issuance of the restricted license. Both the probation, which will include the requirement of taking and passing the Department's Professional Responsibility Examination, and the suspension shall serve to remind respondent that he must comport himself at all times in an honest and straightforward manner in performing activities under his license.

48(c). Respondent Galadzhyan, the designated corporate officer and the agent for Parkway in the two subject transactions, was negligent in her representation of Parkway and her supervision of her employees. She also failed to ensure that New Wave was abiding by the real estate laws and regulations. While the hiring of a transaction coordinator is a productive first step in ensuring that proper disclosures are provided and correct documentation is used, it is not sufficient to ensure that New Wave will act lawfully unless new procedures are implemented to ensure that transactions are properly tracked and

communications with clients, lenders and others are properly documented and preserved. Under all of the facts and circumstances, and to adequately protect the public safety and welfare, it is appropriate to revoke respondent Galadzhyan's real estate broker license and allow her to receive a restricted broker's license, which shall be suspended for 30 days from the date of issuance of the restricted license.

48(d). Through its employee respondent Garcia and its designated corporate officer respondent Galadzhyan, respondent New Wave made substantial misrepresentations, engaged in fraud and was negligent in communicating with its clients and supervising its salespersons. Under all of the facts and circumstances, and to adequately protect the public safety and welfare, it is appropriate to revoke respondent New Wave's corporate real estate broker license and allow it to receive a restricted broker's license.

Costs

49. Under section 10106, the Bureau may request an order for the licensee to pay the reasonable cost of investigation and enforcement of the case. This cost is \$8,165.40 as set forth in Factual Finding 28. However, complainant failed to prove more than half of its allegations against respondents. Apportionment of costs is addressed in *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, where it was found that a licensing board "may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a . . . [licensee] engaged in relatively innocuous conduct." Here, complainant failed to establish by clear and convincing evidence that respondents Bokhchalian and Boyadzhyan were subject to discipline. Complainant also failed to establish many other allegations of wrongdoing against respondents New Wave, Galadzhyan and Garcia. Accordingly, the costs herein will be reduced by 50 percent, for a total of reasonable costs of \$4,082.70.

ORDER

Respondent Rick Louis Garcia

A. All licenses and licensing rights of respondent Rick Louis Garcia under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent Garcia pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Bureau 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 Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted real estate license issued to respondent Garcia pursuant to this Decision shall be suspended for 30 days from the date of issuance of said restricted license.
2. The restricted license issued to respondent Garcia may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Garcia's conviction or plea of nolo contendere to a crime which is substantially related to respondent Garcia's fitness or capacity as a real estate licensee.
3. The restricted license issued to respondent Garcia may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Garcia 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.
4. Respondent Garcia 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 two years have elapsed from the effective date of this Decision.
5. Respondent Garcia shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
6. Respondent Garcia shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent Garcia 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 Garcia fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Garcia presents such evidence. The Commissioner shall afford respondent Garcia the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
7. Respondent Garcia shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If respondent Garcia fails to satisfy this condition, the Commissioner may order suspension of respondent Garcia's license until respondent Garcia passes the examination.

8. Respondent Garcia is jointly and severally responsible with respondents Galadzhyan and New Wave and shall pay the cost of investigation and enforcement of the case in the amount of \$4,082.70 on a schedule acceptable to the Bureau.

Respondent Lilit Lily Galadzhyan

B. All licenses and licensing rights of respondent Lilit Lily Galadzhyan under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent Galadzhyan pursuant to Section 10156.5 of the Business and Professions Code if respondent Galadzhyan 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 Galadzhyan 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 real estate license issued to respondent Galadzhyan pursuant to this Decision shall be suspended for 30 days from the date of issuance of said restricted license.

2. The restricted license issued to respondent Galadzhyan 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.

3. The restricted license issued to respondent Galadzhyan 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.

4. Respondent Galadzhyan 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 two years have elapsed from the effective date of this Decision.

5. Respondent Galadzhyan shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent Galadzhyan 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 Galadzhyan fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Galadzhyan presents such evidence. The Commissioner

shall afford respondent Galadzhyan the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent Galadzhyan shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent Galadzhyan fails to satisfy this condition, the Commissioner may order suspension of respondent Galadzhyan's license until respondent passes the examination.

7. Respondent Galadzhyan shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent Galadzhyan's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent Galadzhyan and periodic summaries of salient information concerning each real estate transaction in which the respondent Galadzhyan engaged during the period covered by the report.

8. Respondent Galadzhyan is jointly and severally responsible with respondents Garcia and New Wave and shall pay the cost of investigation and enforcement of the case in the amount of \$4,082.70 on a schedule acceptable to the Bureau.

Respondent New Wave Realty and Finance, Inc.

C. All licenses and licensing rights of respondent New Wave Realty and Finance, Inc., under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent New Wave pursuant to Section 10156.5 of the Business and Professions Code if respondent New Wave 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 New Wave 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 New Wave may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent New Wave's conviction or plea of nolo contendere to a crime which is substantially related to respondent New Wave's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent New Wave may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent New Wave 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 New Wave 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 two years have elapsed from the effective date of this Decision.

4. Respondent New Wave shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning New Wave's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent New Wave and periodic summaries of salient information concerning each real estate transaction in which the respondent New Wave engaged during the period covered by the report.

5. Respondent New Wave is jointly and severally responsible with respondents Galadzhyan and Garcia and shall pay the cost of investigation and enforcement of the case in the amount of \$4,082.70 on a schedule acceptable to the Bureau.

Respondent Haik Bokhchalian

The Accusation against respondent Haik Bokhchalian is dismissed.

Respondent Arthur Boyadzhyan

The Accusation against respondent Arthur Boyadzhyan is dismissed.

DATED: August 2, 2017

DocuSigned by:

Cindy Forman

7F48-53C9031440

CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings