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BEFORE THE DEPARTMENT OF REAL ESTATE

**FILED**

STATE OF CALIFORNIA

AUG 13 2020

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DEPT. OF REAL ESTATE  
By 

In the Matter of the Accusation of:  
JANNETTE PARRA, LUIS ALEJANDRO CAMPOS,  
OMG REALTY INC., LEADERSHIP GROUP INC.,  
DONALD GRANT CHERRY, individually and as  
designated officer of OMG Realty Inc. and Leadership  
Group Inc. and LUIS RAUL SANCHEZ  
  
Respondents

) DRE No. H-40977 LA  
) OAH No. 2019080630

DECISION

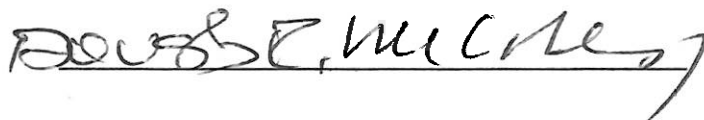
The Proposed Decision dated June 8, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The accusation herein filed on February 04, 2020, against Luis Alejandro Campos, Ledership Group, Inc., and Luis Raul Sanchez, are DISMISSED.

This Decision shall become effective at 12 o'clock noon on September 11, 2020,

IT IS SO ORDERED 8-3-20.

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER



**FILED**

AUG 13 2020

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE  
By 

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In the Matter of the Accusation of:	)	DRE No. H-40977 LA
<u>JANNETTE PARRA</u> , LUIS ALEJANDRO CAMPOS,	)	
<u>OMG REALTY INC.</u> , LEADERSHIP GROUP INC.,	)	OAH No. 2019080630
<u>DONALD GRANT CHERRY</u> , individually and as	)	
designated officer of OMG Realty Inc. and Leadership	)	
Group Inc. and LUIS RAUL SANCHEZ	)	
	)	
Respondents	)	
_____	)	

DECISION

The Proposed Decision dated June 8, 2020 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.

The Decision suspends or revokes one or more real estate licenses. Pursuant to Government Code Section 11521, the Department 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 Department'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.

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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 11, 2020.

IT IS SO ORDERED 7.30.20

DOUGLAS R. McCAULEY  
ACTING REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**In the Matter of the Second Amended Accusation Against:  
JANETTE PARRA, LUIS ALEJANDRO CAMPOS, OMG REALTY,  
INC., LEADERSHIP GROUP, INC., DONALD GRANT CHERRY,  
Individually and as Designated Officer of OMG REALTY, INC.  
and of LEADERSHIP GROUP, INC., and LUIS RAUL SANCHEZ,  
Respondents**

**Case No. H-40977**

**OAH Case No. 2019080630**

**PROPOSED DECISION**

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on January 29 and 30, 2020, in Los Angeles, California.

Complainant Maria Suarez was represented by Steve Chu, Counsel, Department of Real Estate (Department). Respondents were represented by James E. Klinkert and Kelly A. Neavel, Ritchie, Klinkert & Gutierrez, now Klinkert, Gutierrez and Neavel. Respondents Janette Parra, Luis Alejandro Campos, Donald Grant Cherry, and Luis Raul Sanchez were present during the hearing.

Complainant filed a Second Amended Accusation on the second day of the hearing. Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 30, 2020.

Thereafter, the ALJ issued an order re-opening the record, to obtain updated license certifications, and to have Complainant cite authority for a number of her factual claims. That order issued on March 2, 2020, and Complainant's counsel was obligated to respond within 10 days, or March 12, 2020. Respondents were to make any argument in response within 10 days of service of Complainant's submission. Complainant submitted a response on March 11, 2020, which created a deadline for March 23, 2020, as the tenth day after Complainant's submission fell on Saturday, March 21, 2020.

Respondent's made no response by March 23, 2020. Then, on April 14, 2020, counsel for Respondents submitted a written objection to Complainant's brief, because counsel had not been properly served with it. Mr. Chu's staff sent Complainant's brief to the wrong address, and the tenants at that address forwarded the brief to Respondents' attorney, who vowed to submit a brief by April 24, 2020, which she did. Thereafter, on May 11, 2020, the ALJ again re-opened the record, to receive Respondents' brief.

The license certifications submitted by Complainant along with her brief shall be received as Complainant's exhibit 25. Complainant's post hearing brief shall be identified as Complainant's exhibit 26. Respondents' objection to Complainant's post hearing brief shall be identified as Respondents' exhibit 4, and their post hearing brief shall be identified as Respondents' exhibit 5.

Per the ALJ's May 11, 2020 order, the matter is deemed re-submitted for decision as of May 7, 2020. The ALJ hereafter makes his factual findings, legal conclusions, and orders.

## **INTRODUCTION AND STATEMENT OF THE CASE**

In this case Complainant seeks to discipline the Respondents' licenses on a number of theories, based on two "short sale"<sup>1</sup> transactions. One of the transactions did not close, and one did close. The transaction that did not close was the attempted short sale of a property on 3rd Street in Duarte, California. (Hereafter 3rd Street property or transaction.) The lender in that matter was Wells Fargo. The other transaction involved the short sale of a residence on Otterbein Avenue in Rowland Heights, California. (Hereafter the Otterbein property or transaction). The lender in that transaction was Ocwen Loan Servicing, LLP. In each transaction some of the Respondents represented the seller, and some of the Respondents were the buyer.

In the most serious charges, Complainant alleges misrepresentation and dishonest dealing. Other charges include a claim that Respondent Cherry failed to supervise sales agents.

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<sup>1</sup> A short sale is a transaction where a property owner sells their property to another party for an amount less than the seller owes to holder of the mortgage on the to-be-sold property. It effectively requires the lender's agreement to be paid less than the mortgage amount. It may also have a negative tax consequence to the seller.

In this matter Complainant was obligated to prove her claims by clear and convincing evidence. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204.) She has done so as to some claims, and has been unable to meet that standard as to other claims. The decision that follows establishes cause to discipline the licenses of OMG Realty, Inc., Janette Parra, and Donald Grant Cherry. The claims against the other Respondents shall be dismissed.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters: The Parties and Procedural History**

1. Complainant maintained this proceeding while acting in her official capacity as a Supervising Special Investigator of the State of California.

2. (A) At all times relevant to this matter, Respondent Janette Parra (Parra) was licensed as a real estate salesperson, holding license number 018770915. She was first licensed in May 2011.

(B) From May 25, 2011, through June 13, 2017, Parra's employing broker was Donald Grant Cherry (Cherry), one of the respondents in this matter. On June 14, 2017, her employing broker changed to respondent OMG Realty, Inc. Her license is due to expire on July 28, 2023.

3. (A) Respondent Luis Alejandro Campos (Campos) is licensed by the Department as a real estate salesperson, holding license number 01874182. He was first licensed in June 2011. His license expired on June 22, 2019.

(B) Campos's license was originally issued in the employ of respondent Cherry. Campos had no broker affiliation between June 5, 2015 and December 18,

2015. On December 21, 2015, his license was activated in the employ of OMG Realty, Inc. Campos's affiliation with OMG ended on June 22, 2019, when his license expired.

4. OMG Realty, Inc. (OMG) was first licensed as a corporate real estate broker on December 10, 2007, with Respondent Cherry as its designated officer. OMG's license expired on December 9, 2019, and Cherry ceased being its designated officer on that day.

5. (A) Respondent Cherry was licensed by the Department as a real estate salesperson from April 23, 1993 until April 22, 2001. The Department issued Cherry a broker's license on June 23, 2001, number 01158329. He obtained an Individual Mortgage Loan Originator Endorsement as of December 14, 2010. His broker's license is set to expire on September 12, 2021.

(B) Cherry is or has been the designated officer of five companies since he was first licensed as a broker. The two relevant to this matter are OMG, and Leadership Group, Inc.

6. Leadership Group, Inc. (LGI) was first licensed by the Department as a corporate real estate broker on December 10, 2007, with Respondent Cherry as its designated officer. The Department authorized the fictitious business name LR Financial Consulting as of September 2009. At all times relevant Cherry has been the designated officer of LGI. LGI'S license expired on December 9, 2019, and Cherry ceased being the designated officer on that day.

7. (A) The Department first licensed Respondent Luis Raul Sanchez (Sanchez) as a real estate salesperson on June 25, 2010, license number 01874183. He was first licensed in Respondent Cherry's employ, but in September 2010, his employing broker became LGI.



(B) Sanchez left LGI on May 14, 2014, and he was not affiliated with another broker until September 15, 2015, when his license was activated in the employ of OMG. He remained in the employ of OMG until its license expired. Sanchez's license is due to expire on October 23, 2022.

8. At the times relevant to this matter, and through the present day, Parra and Campos have been married to each other.

9. At all times relevant to this matter, Campos and Sanchez owned and controlled OMG, LGI, and another firm relevant to these matters, High Quality Investments LLC (High Quality).

10. After the filing and service of the original Accusation in this matter, Respondents submitted Notices of Defense, contesting the claims against them and seeking a hearing. By operation of law, they are deemed to controvert the allegations of the First Amended and Second Amended Accusations. Notwithstanding the expiration of some of the Respondents' licenses, all jurisdictional requirements have been met.

### **Prior Discipline of OMG, LGI, Cherry, and Sanchez**

11. In August 2011, the Department filed an accusation against LGI, Cherry, and Sanchez, alleging various violations of the Real Estate Law (the prior proceeding). At the times relevant to the prior proceeding (December 10, 2007 to July 31, 2010), Sanchez owned LGI and was that firm's president. In a stipulated settlement and agreement, Cherry, LGI, and Sanchez agreed that their licenses would be disciplined for various violations of the Real Estate Law and the regulations promulgated by the Commissioner of Real Estate. The stipulation was executed in April 2012, was approved by the Commissioner, and became effective on June 14, 2012.

12. The stipulated violations are summarized as follows:

(A) For a period of approximately 18 months, between December 10, 2007 and July 29, 2009, LGI was unlicensed. During that time, LGI performed acts for which a license was required, in violation of Business and Professions Code section 10130.<sup>2</sup>

(B) For approximately seven months before Sanchez was licensed by the Department, LGI and Cherry allowed Sanchez to act as a real estate salesperson in violation of section 10137.

(C) Sanchez conducted licensed activities without a license for approximately seven months, in violation of section 10130.

(D) LGI and Cherry failed to notify the Department of the employment of Sanchez as a real estate salesperson, in violation of section 10161.8, and California Code of Regulations (CCR), title 10, section 2752.<sup>3</sup>

(E) LGI and Cherry failed to maintain a signed broker-salesman agreement with Sanchez in violation of CCR section 2726.

(F) Cherry failed to exercise reasonable control and supervision over LGI's activities to secure compliance with the Real Estate Law and the Commissioner's regulations. He had no system in place to regularly monitor compliance, and thereby violated sections 10159.2, 10177, subdivision (h), and CCR section 2725.

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<sup>2</sup> All further statutory citations are to the Business and Professions Code.

<sup>3</sup> Further references to the CCR are to title 10 thereof.

(G) LGI, Cherry and Sanchez engaged in loan modification services, obtaining advance fees from homeowner-applicants without having an advance fee agreement that had been previously approved by the Department. They made misrepresentations to obtain the advance fees, did not obtain loan modifications, and failed to refund money to consumers, in violation of sections 10176, subdivisions (a), (b), (i), (j), and (g), and section 10177, subdivision (d), by violating section 10185 and CCR section 2970.

(H) The conduct of LGI and Cherry in connection with the loan modification transactions constituted breaches of fiduciary duty in violation of section 10176, subdivisions (i) and (g), or both.

13. In connection with six loan modification transactions, LGI, Cherry, and Sanchez collected over \$11,000 in advance fees.

14. The stipulated discipline order suspended the licenses of LGI, Cherry, and Sanchez for 60 days, but the suspensions were stayed for two years on terms and conditions. The suspensions were stayed for 30 days as to each of the three respondents on the condition that they each pay a fine of \$1,500. The balance of each suspension term (30 days as to each respondent) were stayed so long as the three respondents obeyed all laws and no further cause for disciplinary action occurred during the two year stay. Cherry and Sanchez had to pass the Professional Responsibility Examination, and comply with continuing education requirements.

### **The Department's Investigation of Respondents' Activities Beginning in 2016**

15. On May 25, 2016, a representative of Well Fargo Bank (Wells Fargo) wrote to the Los Angeles District Attorney, alleging irregularities in connection with a

failed "short sale" of the 3rd Street property. On June 20, 2016, the District Attorney's staff forwarded the matter to the Department's predecessor agency, the Bureau of Real Estate.<sup>4</sup> The letter from Wells Fargo, found at exhibit 4, was accompanied by several documents pertaining to the failed 3rd Street transaction.<sup>5</sup> The Bureau eventually investigated the matter.

16. In late May or early June 2017, William Pak, a Department investigator, contacted Respondent Cherry and scheduled a survey of the two corporate respondents, OMG and LGI. In a letter confirming the appointment, Pak informed Cherry that various records would have to be made available for Pak's review. Some of the documents to be reviewed were of general relevance to the operations of the two firms. But, Pak also focused on specific transactions. Thus, he specifically called for copies of the complete transaction file for the 3rd Street transaction as well as another transaction not relevant to this matter. Pak also posed a number of questions about the two specific transactions.

17. On June 15, 2017, Pak appeared at the Respondents' offices in Rancho Cucamonga, California. He met with Cherry and the other individual Respondent's, and

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<sup>4</sup> During much of the period describe hereafter, the Bureau of Real Estate was the investigating agency. For ease of reference, it will be denominated as the Department, given that the Bureau's activities were assumed by the Department.

<sup>5</sup> The letter, containing hearsay allegations, was received in evidence only for the purpose of establishing that there was a complaint, and the effect that had on the Department and its staff. The accompanying transaction documents were received in evidence.

he examined a number of files. He obtained copies of documents from some of the files, and responses to his written queries. However, not all the information was complete, and during the course of the meeting he took steps to obtain more information, which was provided to him.

18. Pak obtained documents pertaining to the 3rd Street transaction. He also obtained documents pertaining to the completed short sale for the Otterbein property.

19. During the meeting Pak was given a Residential Purchase Agreement and Joint Escrow Instructions for the 3rd Street property, which was on a standard California Association of Realtors (CAR) form. It was dated "7/11/15." The purchase amount on that document was \$279,000, with a \$1,500 deposit. A second such purchase agreement for the 3rd Street property, dated "4/08/2016," was also provided to Pak, with a sale price of \$349,000, again with a deposit of \$1,500. In the first contract, the buyer was identified as "leadership group." (Ex. 7, p. 92.)<sup>6</sup> The second contract identified the buyer as "High Quality Investments LLC." (*Id.*, p. 102.) As set forth in Factual Finding 9, both firms are owned by Sanchez and Campos.

20. Pak also obtained copies of purchase agreements pertaining to the Otterbein property. He obtained a contract dated April 1, 2016, identifying High Quality Investments LLC as the buyer, with a purchase price of \$325,000; the purchase agreement provided for a \$1,500 deposit. Pak was provided with a four-page document, again what appears to be a standard CAR form, captioned as "Disclosure of

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<sup>6</sup> Complainant's exhibits have "Bates stamp" numbers, which are referenced in exhibit citations.

Real Estate Agency Relationship." (Ex. 9, p. 133.) Further, he was provided a CAR form entitled "Statewide Buyer and Seller Advisory."

21. The documents described in Factual Findings 19 and 20 were the only documents provided to Pak during his office survey that were relevant to the 3rd Street and Otterbein transactions. However, Pak's June 2, 2017 letter to OMG, LGI, and Cherry dated June 2, 2017, had asked for a "complete transaction file," to include, but not be limited to, listing agreements, offers received, emails, any and all agreements, amendments, advertisements, notes, memos, receipts, escrow documents, commission instructions, commission checks, MSL printouts and other writings. (Ex. 5, pp. 82-83.) It is plain that a complete transaction file was not provided for the 3rd Street or Otterbein transactions. The fact that the three documents that Wells Fargo sent to the District Attorney (and through her the Department) were not provided to Pak in June 2017 proves that Respondents either did not comply with Pak's instructions, or that their files were incomplete. That Respondents did not produce a listing agreement for the 3rd Street transaction is further evidence that the complete transaction file was not produced. It is plain from the record that there was an effort made to obtain Wells Fargo's consent to a short sale, but no documentation of communications with that firm have been produced.

22. Several months later, on January 3, 2018, Pak served a subpoena duces tecum upon OMG and Cherry; Cherry acknowledged receipt of the subpoena on the aforementioned date. The subpoena sought, for the period from January 1, 2015, through the date of the subpoena, the following:

(A) Broker-salesperson relationship agreements including but not limited to those with Campos, Parra, Sanchez, and two other named individuals.

(B) For both the Otterbein and 3rd Street properties, the transaction files for each property, including but not limited to listing agreements, amendments, disclosures, extensions and modifications, authorizations for publications in any multiple listing service, real estate purchase contracts and receipts for deposit, counter offers and other documents indicating an agreement to sell or purchase the subject properties including offers not presented or accepted by seller or purchaser. Further, all real estate transfer documents were sought, along with escrow documents, receipts for deposits whether to the broker or escrow, and copies of the front and back of commission checks.

23. On January 25, 2018, Cherry executed a Declaration of Custodian of Records as the custodian of records for OMG, and he transmitted various documents to the Department. Those documents included:

(A) Copies of the 7/11/15 and 4/08/2016 purchase agreements for the 3rd Street property, previously received from Respondents, but with some modifications discussed below. Also included, and relevant to the 3rd Street transaction was a CAR form listing agreement, ostensibly dated July 11, 2015. (Ex. 13, p. 160-164.)

(B) Escrow documents from Crossroads Escrow Services, Inc. (Crossroads), three pages, including a Seller's Final Closing Statement and a commission authorization. These documents pertained to the Otterbein transaction.

(C) Copies of two checks from Crossroads to OMG, for \$10,700 each, and a check from OMG to Parra \$9,750. These checks involved the Otterbein transaction.

(D) Various documents from Ocwen Loan Servicing, LLC (Ocwen) regarding the short sale of the Otterbein property. Included was a document entitled "Affidavit of 'Arm's Length Transaction.'" (Ex. 16, pp. 199-201.)

(E) Copies of emails pertaining to the Otterbein transaction.

(F) Documents pertaining to the sale of the Otterbein property, on CAR forms, including a Residential Listing Agreement dated 4/1/16; a Residential Purchase Agreement dated 4/1/16; a Short Sale Addendum; a Disclosure Regarding Real Estate Agency Relationship; Buyer Counter Offers, numbers 1 and 2; Short Sale Information and Advisory dated February 8, 2017; and a Statewide Buyer and Seller Advisory, dated February 8, 2017.

(G) One other document produced, not on a CAR form, was a typewritten document purporting to be an acknowledgement by the seller of the Otterbein property that Parra was married to Campos, and that Campos was one of the owners of OMG, LGI, High Quality Insurance Solutions, Inc., and High Quality Investments, Inc. The document had a date of April 1, 2016.

24. Not produced during the June 2017 office survey or in response to the January 2018 subpoena are:

(A) A CAR form Residential Listing Agreement for the 3rd Street property dated 6/7/15, with the seller's signature date of 6/03/2015.

(B) A CAR form Residential Purchase Agreement for the 3rd Street property, dated 6/3/15, for \$279,000.

(C) A CAR form Residential Purchase Agreement for the 3rd Street property, dated 4/08/2016, for \$349,000.



(D) The three documents identified in Factual Findings 24(A) to (C) were part of the documents that were forwarded by Wells Fargo Bank to the District Attorney, and through the District Attorney to the Department.

(E) No deposit receipts were provided, although both the 3rd Street and Otterbein purchase agreements provided for a \$1,500 deposit. Whether a deposit was actually obtained for the sellers' benefit cannot be established from this record.

### **Irregularities in the Transaction Documents**

25. There are irregularities in the transaction documents. The first irregularity is that neither document production provided all of the requested documents, including documents that would be expected. That no listing agreement for the 3rd Street property was produced, nor any letters, emails, and other communications for that transaction, even if it did not close, is irregular. The documents described in Factual Finding 24, forwarded by Wells Fargo, should have been in the 3rd Street transaction file, but were not. At best, this indicates sloppy and unprofessional record keeping, and at worst an effort to filter the documentation provided to the Department.

26. (A) On some documents, dates had been changed, and new dates added. This was accomplished with white out for dates of the July 11, 2015 version of the 3rd Street Purchase agreement, found in exhibit 7. At hearing it was acknowledged that an earlier version of the purchase agreement had the earlier dates whited out, and then "7/11/15" written over the whited-out dates. This includes the date of the agreement found at the top of every page of the July version of the agreement, as well as the

dates that Parra purportedly signed the July version.<sup>7</sup> The explanation for this conduct, described below, does not excuse the conduct of altering documents critical to a real estate transaction, such as purchase agreements.

(B) It is clear that the version of the 3rd Street listing agreement that was produced in response to the subpoena had altered dates. Comparison of the June 2015 listing agreement, found at exhibit 4, pages 55-59, to the later version, found at exhibit 13, pages 160-164, makes it clear that Parra changed the original. The first page of the purported July 2015 listing agreement shows that white-out partly blocked the printed "Duarte." Examination of the dates at the last page shows that the dates were changed. Further, the "later" version shows that Parra inserted her initials at places where they are not found in the June version. Hence, exhibit 13, page 163 shows Parra initialed the "Dispute Resolution" provisions on the later version as the broker; no broker's initials are contained in the June version of the listing agreement. (Ex. 4, p. 59.)

27. A document pertaining to the Otterbein transaction had a date changed. That document, the Short Sale Information and Advisory, a CAR form, had printed dates throughout, the dates being February 8, 2017. This included the signature dates. However, the signature date for Campos signature, where he signed for High Quality

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<sup>7</sup> It appears that Parra modified the June 3, 2015 Purchase agreement, a copy of which was provided by Wells Fargo, and found at exhibit 4, pp. 61-70. Both the June and July versions show Campos signed the document on behalf of "leadership group" on June 3, although Parra changed the date at one of the two places Campos signed the document. (Ex. 4, pp. 69, 70; ex. 7, pp. 100, 101.)

Investments, LLC, was changed to April 1, 2016. (Ex. 18, p. 239.) It should be noted that Ms. Parra initialed each page of that document as reviewed by her on March 24, 2017.

28. A number of the documents produced to Mr. Pak in June were altered before the response to the subpoena. This included Parra inserting license numbers and broker signature dates on several transaction documents. These are found on the April 1, 2016, purchase agreement for the Otterbein property, specifically at exhibit 18, pp. 228 and 251 (as opposed to exhibit 9, pp. 132 and 149). In several places she inserted license numbers, including exhibit 18, pages 232 and 236 (as opposed to exhibit 9, pages 137 and 149). Parra also inserted license numbers on one of the 3rd Street purchase agreements, specifically at exhibit 13, page 174 (as opposed to exhibit 7, page 101). She added a buyer's signature date to the Otterbein agreement, at exhibit 18, p. 227; that date was not on a prior version of the same document, exhibit 7, page 101.

29. In many instances, the documents identify the broker as "OMG Realty," which is not the firm's complete name. Examples are found in the April 1, 2016 listing agreement for the Otterbein property (Ex. 18, p. 218), and the disclosure document for that transaction. (Ex. 18, p. 232.) Likewise, "OMG Realty" identified as the broker on the "July 11, 2016" version of the listing agreement for the 3rd Street transaction. (Ex. 13, p. 160.) Other examples abound. (E.g., ex. 4, pp. 55, 59; ex. 18, p. 214.)

### **Payment of Commissions from the Otterbein Transaction**

30. When the Otterbein transaction closed in late March 2017, the escrow company disbursed payments for commissions. OMG was paid for representing the seller the amount of \$10,700, and an equal amount for representing the buyer, High

Quality; thus commissions totaled \$21,400. Thereafter, OMG paid Parra a commission for representing both the seller and buyer, of \$9,750. Cherry was paid as well.

### **The Alleged Non-Disclosure of the Respondents' Interrelationships**

31. As set out in Factual Findings 8 and 9, Campos and Parra are married, and Campos and Sanchez own or owned OMG, Leadership, and High Quality. Complainant asserts that these facts had to be disclosed to the lenders as well as the sellers. (It would not need to be disclosed to the buyers, because one of Respondents' firms were the buyers in the two relevant transactions,).

32. First produced in response to the subpoena is a disclosure document signed by Ms. Palafox, seller of the Otterbein property. As noted in Factual Finding 23(G), it is a typewritten form, which could be used for any transaction, whereby a seller or buyer would be informed of the Parra-Campos marriage, and the fact that Campos is an owner of OMG, LGI, and High Quality. The document, found in exhibit 18, page 229, and also as exhibit 24, was purportedly signed by the seller on April 1, 2016.

33. Complainant argued that there is an indication that the seller's signature was cut-and-pasted to the disclosure document. Parra testified that the seller in fact signed it. On this record it cannot be established that the disclosure was faked. Although it was not produced at the office survey, it was produced with other documents pertinent to the Otterbein transaction, including the commission checks; the late production by itself does not provide enough evidence to find the document was created out of thin air. It must be found that the interrelationships of Parra, Campos, and OMG, LGI, and High Quality was disclosed to Palafox, the seller of the Otterbein property.

34. Parra testified that it is her custom to use her disclosure form for all of her transactions. During her testimony she was essentially led to say that she had transmitted the disclosure that Palafax signed to Ocwen. However, there is no documentary evidence that she did so in either that transaction, or in connection with the 3rd Street transaction. There is no evidence that she obtained the seller's acknowledgement of Parra's relationships, nor that the lender, Wells Fargo obtained such a disclosure. Parra's testimony on this point is not accepted as credible.

35. Prior to the close of the Otterbein transaction, the lender, Ocwen, required that the seller, Parra, and someone acting for the escrow company sign an "Affidavit of 'Arm's Length Transaction'" (Affidavit). That document is found at exhibit 16, pages 199 to 201. It was provided by Ocwen to the seller with other information and directions as to how the short sale, from the lender's position, would have to be finalized.

36. (A) The parties have contested the scope and meaning of the Affidavit. It does provide that all borrowers—here the seller—as well as "real estate agents representing any of the parties," will certify a number of things under penalty of perjury as a condition of completing the transaction. (Ex. 16, p. 199.) Those certifications include that the sale of the mortgaged premises is an "arm's length" transaction, between "parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise, and that there are no agreements to have the seller/borrower as a tenant or to later obtain title to the property." (*Ibid.*)

(B) The Affidavit further provides a representation that "neither the Borrower(s) or purchaser(s) will receive any funds or commissions from the sale of the Mortgaged Premises." (Ex. 16, p. 199, ¶ (c).) Further, it provides that each signatory to

the Affidavit understands, agrees, and intends for the loan servicer to rely on the statements made in the Affidavit. (*Id.*, ¶ (d).)

(C) The Affidavit states, to the borrower/seller that "you cannot list the property with or sell the property to anyone that you are related to or with whom you have a close personal or business relationship. In legal language, it must be an 'arm's length transaction. If you have a real estate license, you cannot earn a commission by listing your own property. . . . The purchaser of a property subject to a short sale must agree not to resell the property within 30 calendar days of closing . . . ." The Affidavit further provides that the purchaser may not resell the property for a price greater than 120 percent of the sales price within 31 to 90 days of closing. (Ex. 16, p. 200.)

37. Parra signed the Affidavit as the seller's agent, and as the agent for the buyer, High Quality. This disclosed, at least, her dual agency. It did not disclose her marriage to one of the owners of the buyer, who was also one of the owners of the corporate broker, OMG.

38. (A) It has not been established by clear and convincing evidence that Parra or other Respondents made misrepresentations, or omitted to disclose material facts by signing the Affidavit and submitting it to Ocwen.

(B) As noted in Factual Finding 36(A), Ocwen required certification that the transaction was between parties unrelated by family, marriage, or commercial enterprise. There is no evidence that Parra or her husband or Sanchez, the other owner of High Quality were related to the seller, Palafox by family or marriage, or by commercial enterprise. Ocwen documents identified the parties to the transaction as the borrower/seller and the buyer; strictly speaking the agent and broker (Parra and OMG) were not parties to the transaction.

(C) The other key issue in the Affidavit is the certification that the buyer would not receive commissions or funds from the transaction. (Factual Finding 34(B), citing Ex. 16, p. 199, ¶ (c).) The commission checks indicate that OMG received commissions from both the seller and buyer, and a significant portion of that money was paid to Parra for her commission, and Cherry received funds as well. The buyer, High Quality, is a corporation. That one of both of its shareholders and officers received income through their ownership of OMG as a result of this transaction does not establish that the buyer received commissions or payments.<sup>8</sup> OMG and High Quality are corporations distinct from their shareholders, unless and until it can be demonstrated that the corporate structures should be pierced. The record does not provide any support for such a remedy, which has not been requested.

### **Other Findings**

39. Parra, when representing the parties to the 3rd Street and Otterbein transactions, was purporting to act for OMG. However, during this period her license was associated with Cherry, and not OMG. She received commission payments on the Otterbein transaction from OMG.

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<sup>8</sup> While OMG received several thousand dollars of income as the broker in the transaction, there is no evidence that it flowed through to Campos or Sanchez, and to presume it did would be speculation. The funds might well have been spent on overhead such as rent or advertising. In any event, Campos was not the buyer; High Desert was.

40. OMG used the name "OMG Realty," and not its proper name throughout documents from both transactions. During the two relevant transactions Respondent OMG did not have a fictitious name permit to call itself OMG Realty.

41. (A) Parra reviewed and initialed documents, such as purchase agreements or listing agreements, in ways that identified her as a broker.

(B) Parra testified that she reviewed the Otterbein agreement with Cherry over the phone, because he was not available. She understood that he was satisfied with the agreement, and that is why she put her initials onto the document indicating that they had been reviewed.

(C) There is no evidence that Cherry had ever delegated supervisory responsibility to Parra, as required by CCR section 2724, subdivision (b).

(D) Parra held herself out as a broker by initialing the agreements and other documents. This was an act of misrepresentation on her part.

42. (A) Parra testified that she changed dates on various documents. She testified that the seller approved this, but there is no documentary corroboration for that claim, not a note to the file, an email, or screen shot of a text. That claim by Parra is not credited. She also claimed to have transmitted various documents to Well Fargo, but again, there were no documents produced that would support her claims. She, and Cherry, tended to excuse the unorthodox practice of altering documents through claims that the pace of short sale transactions, which they painted as volatile, and where more than one offer or counter offer might have to be communicated to the lender, so as to obtain their cooperation and approval of the process. Thus, it was expedient to take the June 3, 2015 purchase agreement for 3rd Street, and to change the dates or other key information so that it appeared that the contract was prepared



on July 11, 2015. Likewise, it was somehow expedient to change the effective dates of the 3rd Street listing agreement for the period from June 17, 2015 through June 17, 2015, to the period from July 11, 2015 through July 11, 2016. (Ex. 4, p. 55; Ex. 13, p. 160.)

(B) The version of the listing agreement obtained by Wells Fargo was for the period 6/17/15 to 6/17/16. (Ex. 4, p. 55.) It was apparently signed by the seller Rojas, on June 3, 2015. (*Id.*, p. 59.) The first residential purchase agreement, between "leadership group" and Rojas, was dated June 3, 2015, the purchase price being \$279,000, with a \$1,500 deposit. (*Id.*, p. 61; 69-70.) Thus, the purchase agreement predated the effective date of the listing agreement. Later, as noted above, the 3rd Street listing agreement was altered to show an effective date of July 11, 2015.

(C) There is virtually no support for the Respondents' claims that the press of business required Parra to alter documents pertaining to the sale of real estate. The documents are on standard CAR forms, and in terms of drafting new forms, such could likely be generated nearly as fast as one could copy the existing documents, white out the dates, wait for the white out to dry, and then place the new dates on the document. And, it is likely that the forms are generated from computer forms, but even hard copy forms could be generated quickly. What cannot be done quickly is to get new signatures and initials from the seller; obtaining Campos's signatures or initials should have been no problem.

(D) As set forth in Factual Finding 42(A), Parra's claim that the seller consented to changing the purchase agreements and other documents is not credited. To generate new purchase agreement forms that would supersede then-current agreements, without obtaining new approval and consent to the superseding forms from the seller, is at best unprofessional, and at worst, misleading. To introduce those

altered forms into the stream of commerce without the approval of the seller, and without informing the lender whose reliance upon the documents was sought, amounts to misrepresentation to the lender.

43. (A) The totality of the circumstances establishes that Cherry was not adequately supervising the activities of OMG and Parra. He was Parra's broker of record, but allowing her to conduct activities requiring licensure on the part of OMG, which paid her for her work on the Otterbein transaction, even though she was not affiliated with OMG. He was allowing her to initial documents in a way that communicated that she was a real estate broker. On his watch, real estate listing and sale agreements were modified and used in a misleading way. In his activities he failed to adequately supervise OMG, since he allowed Parra to act on behalf of that firm, and to be paid by it, while altering transaction documents.

(B) It was alleged that Cherry failed to adequately supervise LGI, Sanchez, and Campos. LGI was a times a party to the two transactions in question, with Sanchez or Campos acting as representatives of those two firms. It has not been established by the requisite burden of proof that he failed to supervise LGI in its efforts to buy either property; it does not appear that he has to supervise the activity of purchasing a property.

44. It must be noted that Cherry testified in this matter, and in his demeanor on cross-examination made his testimony lack credibility. His answers to straightforward questions about his prior discipline were evasive and "cute"; when asked if he had previously been disciplined for failure to supervise his response was "you tell me." Cherry claimed he "honestly" could not say why he was previously disciplined, and could not say why he moved Parra's license from his supervision to OMG's in June 2017. In response to another question he essentially stated he is a busy

man, "Dude," referring to Mr. Chu. As stated on the record by the ALJ at the time, Cherry's behavior was disrespectful of Complainant's counsel, the ALJ, and the hearing process.

45. Much of Parra's direct testimony was her answering leading questions, which detracted from her credibility. On cross-examination, her memory of events was less than exact. Overall, her testimony lacked credibility, and there was no documentary evidence to support key claims, such as that she had obtained Rojas's permission to alter documents pertaining to the 3rd Street short sale, or that she had sent a disclosure to Wells Fargo that revealed her marriage to Campos, and her husband's ownership interests in OMG, LGI, and High Quality.

46. Respondents failed to adduce evidence in mitigation, or of rehabilitation in this case.

47. The Department incurred costs during the investigation and prosecution of this matter, totaling \$6,831.92. Those costs are reasonable on their face.

## **LEGAL CONCLUSIONS**

1. Jurisdiction to proceed in this matter was established pursuant to sections 118, subdivision (b), 10100, and 10103, based on Factual Findings 1 through 10.

2. (A) It was established that Parra and OMG submitted altered documents to Wells Fargo in connection with the 3rd Street transaction, which constitutes a substantial misrepresentation, and fraud and dishonest dealing, in violation of sections 10176, subdivisions (a) and (i), and section 10177, subdivision (j). Parra and OMG

altered documents provided in response to the subpoena from the Department, which evinced dishonest dealing toward the Department, in violation of sections 10176, subdivision (i), and 10177, subdivision (j). Parra and OMG indicated on various documents that Parra was reviewing the documents as the broker, which was also a misrepresentation, and she held herself out as a broker by initialing documents where the documents called for the broker's initials. Further, Parra did not disclose to Wells Fargo or Rojas that she was married to Campos, and that he had an interest in OMG, LGI, and High Quality. This Conclusion is based on Factual Findings 15 through 29, 34, 39 through 42, 44 and 45. This misconduct occurred while Cherry was ostensibly supervising both Parra and OMG.

(B) It was not established by the clear and convincing evidence that Campos, Sanchez, or LGI engaged in such misrepresentations.

3. It was not established, as alleged in the Second Cause of Action, that Respondent Campos claimed or took any secret or undisclosed compensation, commission, or profit from the Otterbein transaction in violation of section 10176, subdivision (g). This Conclusion is based on Factual Findings 30 through 38.

4. It was established that Parra was employed by OMG during the time she represented the sellers in the 3rd Street and Otterbein transactions, when her license was associated with Respondent Cherry. She was paid commissions by OMG during this time period. This conduct on her part, on OMG's part, and on Cherry's part violated sections 10137 and 10161.8. Their licenses are therefore subject to discipline pursuant to section 10137, fifth paragraph, and section 10177, subdivisions (d) and (g). This Conclusion is based on Factual Findings 2, 5, 30, 37, and 39.

5. It was established that Parra and OMG used the fictitious business name OMG Realty in the place of OMG Realty, Inc., on numerous occasions. OMG Realty was not a licensed fictitious business name for that corporate broker. This conduct violated CCR section 2725, and section 10159.5. Respondents OMG and Parra are therefore subject to discipline pursuant to section 10177, subdivision (d), and subdivision (g). This Conclusion is based on Factual Finding 40.

6. It was established that Cherry failed to properly supervise OMG and Parra, and failed to ensure compliance with the Real Estate Law on numerous occasions, in violation of CCR section 2725, and section 10159.2. This Conclusion is based upon Legal Conclusions 2(A), 4, 5 and their factual predicates, and Factual Findings 41, and 43(A). Respondent Cherry is therefore subject to discipline pursuant to section 10177, subdivisions (d), (g), and (h).

7. The Department is entitled to recover its costs of investigation and enforcement pursuant to section 10106 from Respondents OMG, Parra, and Cherry based on Legal Conclusions 1, 2(A), 4, 5, and 6. The reasonable amount of those costs is \$6,831.92 based on Factual Finding 47 and all the foregoing.

8. (A) Complainant was unable to prove a number of her claims. For example, she alleged that Parra should have disclosed license numbers on various documents, and should have provided a short sale disclosure form in the 3rd Street transaction. However, the requirement to provide license numbers did not become the law until 2018, when section 10140.6 became law. There was no citation to any authority that would require provision of the short sale disclosure form, although it would be best to do so. Complainant asserted that a broker is not obligated to initial boxes on the CAR forms, but it must be noted that Parra did so anyway, thereby misrepresenting her status.

(B) The claim that the parties were acting fraudulently in failing to mention the Campos-Parra marriage and his ownership interest in OMG, High Quality, and LGI could not be supported. The relationships were not in the ambit of the Affidavit, and there was not sufficient evidence to establish that Olcwen relied on the face of the Affidavit to its detriment.

9. On the other hand, it was established by clear and convincing evidence that Parra and OMG were conducting licensed activities with altered documents, and they tendered altered documents to the Department in response to a subpoena. The claim that they thought the documents should be brought up to the standards Pak spoke about during the survey meeting would be better received if it was the only instance of such behavior, and the sole misbehavior in this case. The abysmal state of the "transaction files" produced by OMG during the survey meeting and in response to the survey establishes that some of Parra's claims that she made disclosures to third parties have no support. It raises the spectre that OMG did not turn over all the records; there is not one piece of correspondence between OMG and Parra on the one hand, and Wells Fargo on the other hand.

10. Mr. Cherry was ostensibly supervising Parra during this period, even though she was working for OMG, while her license was "hung" with Cherry. Under his seemingly watchless eye, Parra was using altered documents, with unlicensed fictitious names, while being paid by a firm Cherry was ostensibly supervising, for work Parra should not have been doing for that firm.

11. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Respondents Cherry and Parra have provided no evidence in mitigation, none indicating rehabilitation, and in aggregation Cherry apparently learned nothing from

his prior discipline for failing to supervise, instead failing and refusing to acknowledge that discipline during the hearing. In these circumstances public protection requires the revocation of the licenses of OMG, Parra, and Cherry.

12. The Second Amended Accusation shall be dismissed as to LGI, High Quality, Campos and Sanchez, as grounds to discipline those licenses was not established by the requisite standard of proof.

### **ORDER**

1. All licenses and licensing rights of OMG Realty, Inc. are hereby revoked.
2. All licenses and licensing rights of Donald Grant Cherry are hereby revoked.
3. All licenses and licensing rights of Janette Parra are hereby revoked.
4. The Second Amended Accusation is hereby dismissed as to Luis Alejandro Campos, Leadership Group, Inc., and Luis Raul Sanchez.

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5. Respondents OMG Realty, Inc., Donald Grant Cherry, and Janette Para shall pay costs of \$6,831.93 to the Department within 60 days of the effective date of this decision. OMG Realty, Inc., Donald Grant Cherry, and Janette Parra shall be jointly and severally liable for those costs.

DATE: June 8, 2020

DocuSigned by:  
*Joseph D. Montoya*  
JOSEPH D. MONTOYA  
Administrative Law Judge  
Office of Administrative Hearings