DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007

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FILED

AUG - 9 2011

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of SERGIO CHAVEZ, Respondent.	NO. H-2491 FR STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

It is hereby stipulated by and between Respondent SERGIO CHAVEZ (herein "Respondent CHAVEZ"), individually, by and through Jeff Reich, attorney of record herein for Respondent CHAVEZ, and the Complainant, acting by and through Mary F. Clarke, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on May 29, 2010, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent CHAVEZ at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement in Settlement and Order.

2. Respondent CHAVEZ has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA, and the Accusation filed by the Department in this proceeding.

3. A Notice of Defense was filed on June 14, 2010, by Respondent CHAVEZ pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent CHAVEZ hereby freely and voluntarily withdraws said Notice of Defense. Respondent CHAVEZ acknowledges that he understands that by withdrawing said Notice of Defense, he will thereby waive his right to require the Real Estate Commissioner (herein "the Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. Respondent CHAVEZ, pursuant to the limitations set forth below, hereby admits that the factual allegations pertaining to him in the Accusation filed in this proceeding are true and correct and the Commissioner shall not be required to provide further evidence of such allegations.

5. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement in Settlement and Order as his Decision in this matter thereby imposing the penalty and sanctions on Respondent CHAVEZ's real estate license and license rights as set forth in the below "Order". In the event the Commissioner in his discretion does not adopt the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect, and Respondent CHAVEZ shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. The Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar to any further administrative or civil proceedings by the Department with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

I

The acts and omissions of Respondent CHAVEZ as described in the Accusation, in that he failed to act under a real estate broker's supervision when he collected an advance fee for a loan modification prior to having obtained an advance fee agreement, are violations of Sections 10130, 10085, and 10085.5 of the Business and Professions Code (herein "the Code"); and Section 2970 of Title 10, Chapter 6 of the California Code of Regulations.

ORDER

All licenses and licensing rights of Respondent CHAVEZ under the Real Estate Law are revoked; provided, however, a restricted real estate sales license shall be issued to Respondent CHAVEZ pursuant to Section 10156.5 of the Code if, within 90 days from the effective date of the Decision entered pursuant to this Order, Respondent CHAVEZ, prior to and as a condition of the issuance of said restricted license makes application for the restricted license and pays to the Department the appropriate fee therefor.

The restricted license issued to Respondent CHAVEZ shall be subject to all of the provisions of Section 10156.7 of the 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 CHAVEZ may be suspended prior to hearing by Order of the Commissioner in the event of Respondent CHAVEZ's conviction or plea of nolo contendere to a crime which is substantially related to Respondent CHAVEZ's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent CHAVEZ may be suspended prior to hearing by Order of the Commissioner until such time as Respondent provides to the Department proof satisfactory to the Commissioner that Respondent has within 60-days of the effective date of the Order herein, reimbursed Francisco Dominguez (Dominguez) in full the sum of $2,500.00; the amount of the advance fee he collected from Dominguez.

3. The restricted license issued to Respondent CHAVEZ may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that Respondent CHAVEZ 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 CHAVEZ shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations, or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Order.

5. Respondent 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 Department 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 CHAVEZ shall, within nine (9) months from the effective date of the Order, present evidence satisfactory to the Commissioner that Respondent CHAVEZ 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 CHAVEZ fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent CHAVEZ presents such evidence. The Commissioner shall afford Respondent CHAVEZ the opportunity for a hearing pursuant to the APA to present such evidence.

7. Respondent CHAVEZ shall, within six (6) months from the issuance of the restricted license, take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If Respondent CHAVEZ fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent CHAVEZ passes the examination.

6-28-11
DATED

MARY F. CLARKE, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement in Settlement and Order and have discussed it with my attorney and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California APA (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

6-22-11
DATED

SERGIO CHAVEZ, Respondent

* * *

I have reviewed the Stipulation and Agreement in Settlement and Order as to form and content and have advised my client accordingly.

6-22-11
DATED

JEFF REICH
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on August 29, 2011.

IT IS SO ORDERED 8/5, 2011.

BARBARA BIGBY
Acting Real Estate Commissioner

MARY F. CLARKE, Counsel (SBN 186744)
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P. O. Box 187007
Sacramento, CA 95818-7007

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FILED

MAY 29 2010

DEPARTMENT OF REAL ESTATE

By R. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of SERGIO CHAVEZ, Respondent.	NO. H-2491 FR ACCUSATION

The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the State of California, for Accusation against SERGIO CHAVEZ (herein "Respondent"), is informed and alleges as follows:

1

The Complainant makes this Accusation against Respondent in his official capacity.

2

At all times herein mentioned, Respondent was licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

3

At all times herein mentioned, Respondent was and now is licensed by the Department as a real estate salesperson; however, Respondent was not in the employ of any broker between July 13, 2008 and about March 4, 2010.

4

At all times herein mentioned Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker on behalf of others, for compensation or in expectation of compensation within the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein Respondent solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property, including loan modification services.

5

On about July 26, 2008, Respondent solicited and met with Francisco Dominguez (herein "Dominguez") to discuss a loan modification for Dominguez' residence located at 4582 E. Cambridge Avenue, Fresno, CA. Respondent promised to obtain an affordable loan modification for Dominguez, had him sign a Loss Mitigation Agreement and Holding Instructions, and collected an advanced fee in the amount of $1,250 payable to Respondent, in violation of Section 10130 of the Code.

6

At all times herein mentioned, Respondent failed to submit to the Department any or all materials used in advanced fee agreements, including but not limited to the contract form, any letters or cards used to solicit prospective sellers, and radio and television advertising, at least 10 calendar days before it was used in obtaining said advance fee agreement, as described in Paragraph 5, above, in violation of Section of 10085 of the Code and Section 2970 of Title 10, Chapter 6 of the California Code of Regulations (herein "the Regulations").

7

At all times herein mentioned, Respondent claimed, demanded, charged, and collected an advanced fee from Dominguez for performing services in connection with a loan to be secured directly or collaterally by a lien on real property, as described in Paragraphs 5 and 6,

above, before Dominguez became obligated to complete the loan, in violation of Section 10085.5 of the Code.

8

The facts alleged above are grounds for the suspension or revocation of the license and license rights of Respondent under the following provisions of the Code and/or the Regulations:

(a) as to Paragraph 5 under Section 10130 of the Code, in conjunction with Section 10177(d) of the Code;

(b) as to Paragraph 6 under Section 10085 of the Code, and Section 2970 of the Regulations, in conjunction with Section 10177(d) of the Code; and,

(c) as to Paragraph 7 under Section 10085.5 of the Code, in conjunction with Section 10177(d) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

LeMartin

LUKE MARTIN
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 11th day of May, 2010.