FILED

JAN 31 2012

DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of CHRISTINA L. FLANARY and DAVID E. MENDEZ, Respondents.	)	H-2660 FR

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on December 13, 2011, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondents' express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate licenses and/or license rights of Respondents on grounds of violation of Sections 10085 (collection of advance fees), 10085.5 (failure to comply with advance fee regulations), 10085.6 (collection of advance fees prior to performance of services), 10176(i) (fraud or dishonest dealing), 10177(d) (willful disregard of real estate law) and 10177(g) (negligence) of the California Business and Professions Code ("the Code"), and Sections 2970 (submission of advance fee agreements) of Title 10, Chapter 6, California Code of Regulations ("the Regulations). In addition, DAVID E. MENDEZ violated 10177(h) (reasonable supervision by broker) of the Code, and Section 2725 (supervision responsibility of designated broker/officer) of the Regulations.

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

FINDINGS OF FACT

1

On August 5, 2011, Luke Martin made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondents' last known mailing addresses on file with the Department on August 23, 2011.

On December 13, 2011, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondents' defaults were entered herein.

2

CHRISTINA L. FLANARY ("FLANARY") is presently licensed and/or has license rights under the Code as a real estate salesperson.

3

DAVID E. MENDEZ ("MENDEZ") is presently licensed and/or has license rights under the Code as a real estate broker.

4

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the California Business and Professions Code (performing services for borrowers and/or lenders in connection with loans secured by real property), ("the Code"), including performing services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

5

In connection with the activities described in Paragraph 4, above, Respondents collected advance fees within the meaning of Sections 10026 and 10131.2 ("advance fee") of the Code in exchange for providing loan modification services, including, but not limited to, the following:

a. On or about October 30, 2009, FLANARY, using the fictitious business name of "The Pro Per Legal Professionals", entered into an advance fee

agreement to perform loan modification services for Ana Maria Garza on her property located at 1317 Shawdowglen Road, Sacramento, California. On or about November 4, 2009, Ana Maria Garza paid an advance fee of $1,595.00 to FLANARY for the loan modification services.

b. On or about October 7, 2009, FLANARY, using the fictitious business name of "The Pro Per Legal Professionals", entered into an agreement with Elida L. Garza to perform loan modification services on property located at 33444 Canvas Back, Woodland, California, in exchange for an initial advance fee payment of $250.00. On or about November 11, 2009, FLANARY demanded and received an additional payment of $1,595.00 from Elida L. Garza to enroll her in the "The Hedge Fund Program" loan modification program.

6

At all time mentioned, MENDEZ was aware of FLANARY'S loan modification and advance fee activities under the name of 'The Pro Per Legal Professionals" while she was employed under his real estate broker license.

7

After receiving advance fee payments from each of the borrowers identified in Paragraph 5, above, Respondents failed to obtain loan modifications for them and did not repay the advance fees received from those borrowers. Respondents' failure to provide the services promised or to refund the borrowers' funds constitutes dishonest dealing.

8

In connection with the collection and handling of advance fees as alleged in Paragraph 5, above, Respondents failed to submit the advance fee contract and all materials used in obtaining those advance fee agreements to the Department of Real Estate for approval prior to their use in obtaining advance fees.

9

At all times mentioned, MENDEZ failed to exercise reasonable supervision over the acts of his agents and employees in such a manner as to allow the acts and omissions as set forth in Paragraphs 5 through 8 above, to occur.

DETERMINATION OF ISSUES

1

Cause of disciplinary action against Respondents exists with reference to the acts and or omissions set out in Paragraphs 5 through 9, above, pursuant to Business and Professions

Code Sections 10085, 10085.5, 10085.6, 10176(i), 10177(d) and 10177(g) and Section 2970 of the California Code of Regulations. In addition, cause of disciplinary action against DAVID E. MENDEZ exists for violation of Section 10177(h) of the Code and Section 2725 of the Regulations.

2

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

All licenses and licensing rights of Respondents CHRISTINA L. FLANARY and DAVID E. MENDEZ under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on FEB 21 2012.

DATED: 1/24/12

BARBARA J. BIGBY
Acting Real Estate Commissioner

Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
DEC 13 2011
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of CHRISTINA L. FLANARY and DAVID E. MENDEZ, Respondents.	H-2660 FR DEFAULT ORDER

Respondents, CHRISTINA L. FLANARY and DAVID E. MENDEZ, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, are now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED December 13, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

By: Phillip Ihde
PHILLIP IHDE
Northern Regional Manager

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FILED
AUG 23 2011
DEPARTMENT OF REAL ESTATE
By L. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CHRISTINA L. FLANARY and DAVID E. MENDEZ, Respondents.	NO. H-2660 FR ACCUSATION

The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the State of California ("Complainant"), for Accusation against Respondents CHRISTINA L. FLANARY, individually and doing business as "The Pro Per Legal Professionals", ("FLANARY"), and DAVID E. MENDEZ, ("MENDEZ"), (collectively "Respondents"), is informed and alleges as follows:

1

Complainant makes this Accusation against Respondents in his official capacity.

2

At all times mentioned, FLANARY was and now is licensed by the State of California Department of Real Estate ("the Department") as a real estate salesperson employed by MENDEZ.

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3

At all times mentioned, MENDEZ was and now is licensed by the Department as a real estate broker.

4

At no time has "The Pro Per Legal Professionals" been licensed by the Department in any capacity or registered as a fictitious business name to MENDEZ.

5

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the California Business and Professions Code (performing services for borrowers and/or lenders in connection with loans secured by real property), ("the Code"), including performing services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

FIRST CAUSE OF ACTION

6

In connection with the activities described in Paragraph 5, above, Respondents collected advance fees within the meaning of Sections 10026 and 10131.2 ("advance fee") of the Code in exchange for providing loan modification services, including, but not limited to, the following:

a. On or about October 30, 2009, FLANARY, using the fictitious business name of "The Pro Per Legal Professionals", entered into an advance fee agreement to perform loan modification services for Ana Maria Garza on

her property located at 1317 Shawdowglen Road, Sacramento, California. On or about November 4, 2009, Ana Maria Garza paid an advance fee of $1,595.00 to FLANARY for the loan modification services.

b. On or about October 7, 2009, FLANARY, using the fictitious business name of "The Pro Per Legal Professionals", entered into an agreement with Elida L. Garza to perform loan modification services on property located at 33444 Canvas Back, Woodland, California, in exchange for an initial advance fee payment of $250.00. On or about November 11, 2009, FLANARY demanded and received an additional payment of $1,595.00 from Elida L. Garza to enroll her in the "The Hedge Fund Program" loan modification program.

7

At all time mentioned, MENDEZ was aware of FLANARY'S loan modification and advance fee activities under the name of 'The Pro Per Legal Professionals" while she was employed under his real estate broker license.

8

After receiving advance fee payments from each of the borrowers identified in Paragraph 6, above, Respondents failed to obtain loan modifications for them and did not repay the advance fees received from those borrowers. Respondents' failure to provide the services promised or to refund the borrowers' funds constitutes dishonest dealing.

9

The acts and/or omissions by Respondents as alleged in Paragraphs 6 through 8, above, violate Sections 10085.5 (failure to comply with advance fees collection regulations) and 10085.6 (collection of advance fees prior to performance of services) of the Code, and are grounds for the revocation or suspension of Respondents' real estate licenses or license rights

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under Sections 10177(d), and 10176(i) (fraud or dishonest dealing) or 10177(g) (negligence) of the Code.

SECOND CAUSE OF ACTION

10

In connection with the collection and handling of advance fees as alleged in Paragraph 6, above, Respondents failed to submit the advance fee contract and all materials used in obtaining those advance fee agreements to the Department of Real Estate for approval prior to their use in obtaining advance fees.

11

The acts and/or omissions of Respondents described above violate Sections 10085.5, 10085.6 and 10177(d) in conjunction with Section 10085 (submission of advance fee agreements and materials) of the Code, and Sections 2970 (submission of advance fee agreements and materials) and 2972 (content requirements of verified accounting) of Title 10, Chapter 6, California Code of Regulations ("the Regulations"), and are grounds for the suspension or revocation of Respondents' licenses and license rights under Sections 10177(d) and 10177(g) of the Code.

THIRD CAUSE OF ACTION

12

At all times mentioned, MENDEZ failed to exercise reasonable supervision over the acts of and its agents and employees in such a manner as to allow the acts and omissions as set forth in Paragraphs 6 through 10 above, to occur.

13

The acts and/or omissions by MENDEZ as alleged in Paragraph 12, above, violate Section 10159.2 (supervision responsibility of designated broker/officer) of the Code and Section 2725 (reasonable supervision by broker) of the Regulations, and are grounds for the suspension or revocation of the license or license rights of MENDEZ under Sections 10177(d), 10177(g) and 10177(h) (reasonable supervision by broker) 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 Respondents under the Code and for such other and further relief as may be proper under other provisions of law.

LUKE MARTIN
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 5th day of August, 2011.