FILED

SEP 05 2013

BUREAU OF REAL ESTATE

By

BEFORE THE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-2787 FR
FRANCISCO RIOS,	)	
	)	OAH NO. 2012120835
Respondent.	)	
	)	

DECISION

The Proposed Decision dated August 1, 2013, 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.

This Decision shall become effective at 12 o'clock noon on SEP 25 2013.

IT IS SO ORDERED 9/3/2013

REAL ESTATE COMMISSIONER

Wayne S. Bell

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

In the Matter of the Accusation Against: FRANCISCO RIOS, aka PEDRO ESPARZA, Respondent.	Case No. H-2787 FR OAH No. 2012120835

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 29, 2013, in Sacramento, California.

Truly Sughrue, Counsel, represented Brenda Smith (complainant), a Deputy Real Estate Commissioner with the Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Francisco Rios, also known as Pedro Esparza (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on July 29, 2013.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.

2. On November 26, 2002, respondent was issued a real estate salesperson license.[1] Respondent's salesperson license will expire on November 25, 2014, unless renewed or revoked. At no time was respondent licensed as a real estate broker. Complainant seeks to revoke respondent's salesperson license based upon allegations that he illegally collected advance fees and acted in the capacity of a real estate broker.

[1] Respondent was originally licensed under the name Francisco Rios. On or about March 19, 2013, respondent changed his name with the Bureau to Pedro Esparza.

3. From April 8, 2008, to October 26, 2009, and December 21, 2009, to November 26, 2010, respondent's salesperson license was affiliated under the brokerage of Edgewater Executive Mortgage, Inc. (Edgewater). From December 31, 2010, to May 3, 2011, respondent's salesperson license was affiliated under the brokerage of 4 USA Loans, Inc. (4 USA Loans). From May 11, 2011, to July 12, 2012, respondent's salesperson license was affiliated under the brokerage of Renwick Penrose Russell (Russell). Since July 12, 2012, respondent's salesperson license has not been affiliated under any brokerage.

4. On February 10, 2009, respondent filed a Fictitious Business Name Statement with the Office of the Stanislaus County Clerk, which stated that respondent and Yolanda Rios,[2] his wife, as the registered owners, were doing business as Genesis Mortgage Solutions (Genesis). On November 25, 2009, respondent filed a Fictitious Business Name Statement with the Office of the Stanislaus County Clerk, which stated that he, as the registered owner, was doing business as Certified Forensic Loan Audits (Certified).[3]

5. Genesis and Certified have never been licensed by the Bureau in any capacity.

Antonia Pineda's Complaint

6. Since about 1999, Antonia Pineda owned a home in Parlier. In 2009, she was behind in her mortgage payments to her lender, HomEq Servicing (HomEq). On her own, she had tried to get HomEq to modify her loan terms, but was not successful. In about October 2009, she heard an advertisement on the radio for Genesis, which offered loan modification services without charge. Genesis's radio ad promised that its services were "100 percent certified and guaranteed," that home owners' loans would be modified and that home owners would not lose their homes. Ms. Pineda contacted Genesis and spoke to Yolanda Rios, respondent's wife, about Genesis's services. Shortly thereafter, Ms. Pineda had a second phone call, this time with Itzuri Esparza, respondent's daughter. During that second phone call, Ms. Pineda was informed that she would have to pay $1,500 to obtain Genesis's loan modification services.

7. On October 15, 2009, Ms. Pineda signed an Authorization to Release Information, which authorized her lender, HomEq, to "release and receive information to/from" Genesis and its agents, including respondent and Ms. Esparza. The information Ms. Pineda authorized HomEq to release included: "Any and all information pertaining to [her]

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[2] Complainant alleged that respondent's wife was once a real estate salesperson licensed by the Bureau, but her license was suspended on January 9, 2008. Respondent asserted that the Yolanda Rios referred to in the Accusation was not the same Yolanda Rios who is his wife. For the purposes of this proposed decision, there is no need to make any findings about the license status of respondent's wife.

[3] Respondent filed the Fictitious Business Name Statement for Genesis under the name of Francisco Rios. Respondent filed the Fictitious Business Name Statement for Certified under the name of Pedro Esparza.

loan(s) noted above, including but not limited to payoff information, arrearages, and reinstatement amount, and all information required for a loan modification, short sale or refinancing on [her] loan." This Authorization was the only document that Ms. Pineda signed which authorized Genesis and respondent to perform loan modification services for her.

8. For the loan modification services, Ms. Pineda paid Genesis $1,500 by cashier's check dated November 5, 2009.

9. Thereafter, respondent worked with Ms. Pineda and HomEq in an effort to modify Ms. Pineda's loan. Respondent was successful in getting HomEq to delay the foreclosure for a period of time, but on April 28, 2010, Ms. Pineda lost her home to foreclosure.

10. Ms. Pineda called Genesis to complain and request her money back. Initially, Ms. Pineda was informed that Genesis would not return any of her money. Thereafter, respondent returned $650 to Ms. Pineda. After Ms. Pineda complained to the Bureau and respondent spoke to Irene Reyes, a Bureau Special Investigator, respondent paid Ms. Pineda an additional $800.

Investigation and Interview of Respondent

11. Special Investigator Reyes conducted an investigation of Ms. Pineda's complaint to the Bureau. During the course of her investigation, she interviewed respondent on December 6, 2010, and reviewed files that he gave her on or about December 15, 2010.

12. During the interview on December 6, 2010, respondent stated that he conducted a "forensic loan audit" for Ms. Pineda. Respondent stated that during a forensic loan audit, he would analyze the loan for possible remedies and opportunities, and that a forensic loan audit did not guarantee to reduce the loan balance or interest rate. Respondent also stated that he charged $1,500 upfront for a forensic loan audit. If a modification was possible, he then charged an additional $1,000. When asked about Certified, he stated that he was the "auditor," but that he contracted with "someone else" in Modesto.

13. During the interview, respondent stated that he did "short sales and listings" with his then broker, but that his broker was not "involved" with loan modifications.

14. At the hearing, Special Investigator Reyes reviewed the file she had received from respondent relating to Ms. Pineda. Although Ms. Pineda paid a fee of $1,500 to Genesis, she did not enter into any agreements or other documents which provided that respondent was going to conduct a forensic loan audit for her. During her testimony, Ms. Pineda stated that, at one point in their conversations, Ms. Rios stated something about a forensic loan audit. But Ms. Pineda went to Genesis looking for a loan modification and that is what she paid for. There is nothing in respondent's file regarding Ms. Pineda to indicate

that she ever asked for a forensic loan audit or that respondent ever conducted a forensic loan audit on her mortgage loan.

Other Borrowers

15. During her testimony, Special Investigator Reyes discussed the files she had received from respondent relating to other borrowers: Abel and Eva C., Javier C., Graciela V., Maricela S. M., and Juan E.[4]

16. Abel and Eva C. On February 13, 2010, Abel C. entered into an agreement with Certified for a forensic loan audit relating to Abel and Eva C.'s mortgaged property. Pursuant to this agreement, the cost of the audit was $1,500, to be deposited when the agreement was signed.[5] There is nothing in the file to indicate that a forensic loan audit was ever conducted. On March 30, 2010, Abel and Eva C. signed a "Making Home Affordable Program Hardship Affidavit" in which they agreed that the information in that document was to evaluate their "eligibility for a loan modification or short sale or deed-in-lieu of foreclosure." On August 8, 2010, Abel and Eva C. signed an "Authorization to Release Information," which authorized their mortgage lender to "release and receive information to/from" Genesis and its agents, including respondent, regarding "payoff information, arrearages, and reinstatement amount, and all information required for a loan modification, short sale or refinancing on [their] loan." On October 19, 2010, Abel and Eva C. were approved to enter into a trial period plan under the Home Affordable Modification Program. On November 2, 2010, they paid Genesis $1,000.

17. Javier C. On June 1, 2010, Javier C. signed an "Authorization to Release Information," which authorized his mortgage lender to "release and receive information to/from" Genesis and its agents, including respondent, regarding "payoff information, arrearages, and reinstatement amount, and all information required for a loan modification, short sale or refinancing on [his] loan." On June 11, 2010, Javier C. paid Certified $1,000. On July 13, 2010, Javier C. signed a "Making Home Affordable Program Request for Modification and Affidavit." An "Important Notice" included in the information about that program, in relevant part, stated:

> Beware of Foreclosure Rescue Scams. Help is free!
>
> - There is never a fee to get assistance or information about the Making Home Affordable Program from your lender or a HUD-approved housing counselor...

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[4] Respondent's loan files regarding borrowers were placed under a protective order.

[5] Complainant submitted hearsay evidence from Eva C. which stated that she and her husband paid Certified $1,500 as provided in the agreement, but there were no receipts or cancelled checks in the file to corroborate this hearsay.

- Beware of any person or organization that asks you to pay a fee in exchange for housing counseling services or modification of a delinquent loan....

On July 30, 2010, Javier C. entered in an agreement with Certified for a forensic loan audit. On July 30, 2010, he paid Certified an additional $500. There is nothing in the file to indicate that a forensic loan audit was ever conducted. On September 3, 2010, Javier C. was approved to enter into a trial period plan under the Home Affordable Modification Program. On October 6, 2010, he paid an additional $500 to Certified. On November 16, 2010, he paid another $500 to Certified.

18. Graciela V. On February 22, 2010, Graciela V. signed an "Authorization to Release Information," which authorized her mortgage lender to "release and receive information to/from" Genesis and its agents, including respondent, regarding "payoff information, arrearages, and reinstatement amount, and all information required for a loan modification, short sale or refinancing on [her] loan." On March 12, 2010, Graciela V. entered into an agreement with Certified for a forensic loan audit. The cost of the audit was $1,500, to be deposited when the agreement was signed. There is nothing in the file to indicate that a forensic loan audit was ever conducted. The file indicates that on July 15, 2010, Graciela V. was approved to enter into a trial period plan under the Home Affordable Modification Program. The documentation regarding that program states that the "service provided by the housing counseling agency is **FREE**," and that "housing counseling services will be made available at NO COST TO YOU." (Bolding and capitalization in original.) On July 19, 2010, Graciela V. paid $1,000 to Genesis.

19. Marcela S. M. On April 4, 2010, Maricela S. M. paid Genesis $1,000 for "modification." On June 10, 2010, she entered in an agreement with Certified for a forensic loan audit. On that date she paid Certified $1,500. There is nothing in the file to indicate that a forensic loan audit was ever conducted. On September 1, 2010, she signed an "Authorization to Release Information," which authorized her mortgage lender to "release and receive information to/from" Genesis and its agents, including respondent, regarding "payoff information, arrearages, and reinstatement amount, and all information required for a loan modification, short sale or refinancing on [her] loan." On September 22, 2010, she was approved to enter into a trial period plan under the Home Affordable Modification Program.

20. Juan E. On March 20, 2010, Juan E. signed an "Authorization to Release Information," which authorized his mortgage lender to "release and receive information to/from" Genesis and its agents, including respondent, regarding "payoff information, arrearages, and reinstatement amount, and all information required for a loan modification, short sale or refinancing on [his] loan." On May 12, 2010, he entered in an agreement with Certified for a forensic loan audit. On that date, he paid Certified $2,000 for the audit. There is nothing in the file to indicate that such an audit was ever conducted. On July 16, 2010, he was approved to enter into a trial period plan under the Home Affordable Modification Program. On September 21, 2010, he paid Genesis $500.

Respondent's Brokers, Advance Fee Agreements and Loan Modifications

21. The Bureau has no record of any advance fee materials approved by the Bureau for use by respondent, Edgewater, 4 USA Loans, or Russell. The Bureau also has no record of any Advance Fee Agreements submitted by or on behalf of Certified or Genesis.

22. John Lemkau is the broker and owner of 4 USA Loans. He does not allow any of the real estate salespersons under his license to conduct business in "any way[,] shape or form regarding loan modifications." He also does not allow his real estate salespersons to collect "upfront fees." The contract that real estate salespersons enter into with 4 USA Loans states:

> 21. **LOAN MODIFICATIONS**: Associate-Licensee is **NOT** allowed to help their clients with a loan modification in any way. This includes, but is not limited to:
>
> 1. Representing them as your clients with a loan modification company.
> 2. Calling a loan modification company on their behalf.
> 3. Referring them to a loan modification company.
> 4. Getting paid by a loan modification company.
> 5. Helping them in any way with a loan modification.
> 6. Accepting an advance payment for a loan modification.
>
> The USA Realty and Loans E&O policy does not cover loan modifications. (Bolding and capitalization in original.)

Mr. Lemkau was not aware that respondent was conducting any type of loan modifications and collecting advance fees.

23. Joanna Gonda is the Designated Officer of Edgewater. Real estate salespersons who work under Edgewater's broker license are not permitted to do loan modifications with or without advance fees. Edgewater "forbids any business ventures that include loan modifications in any way, shape or form..." On November 10, 2009, Ms. Gonda met with respondent and discussed that Edgewater's salespersons were "not permitted to engage in any type of loan modification business activities." Respondent signed a "Statement of Non Engagement in Loan Modification Business Activity" in which he agreed that "his wife's business was a completely separate licensed entity that she owned and managed and that he would only be engaged in real estate buying and selling activities." On November 25, 2010, Edgewater terminated respondent's employment with Edgewater because they believed that he was "advising his wife in her loan modification business."

24. Renwick Penrose Russell has "never accepted advance fees or authorized any agent working for" him to accept advance fees. Mr. Russell's office does not do loan

modifications and never has. When Mr. Russell supervised respondent, he was not aware that respondent was collecting advance fees. Mr. Russell terminated respondent because "he was not providing [Mr. Russell] satisfactory answers to [Mr. Russell's] questions regarding his activities."

Discussion

25. During his testimony, respondent stated that Certified stopped conducting business when he delivered his files to Special Investigator Reyes on December 15, 2010. When asked whether he performed the forensic loan audits offered by Certified, his answers were confusing and contradictory. He stated that he initially began performing the audits. When he found that they required a "huge amount of work," he decided to hire a contractor to do them, but then he could not come to an agreement with that contractor about payment. He also stated that Certified performed "some kind of research" looking for "opportunities" to help "them have some leverage with the bank." He admitted that he only did one or two audits, but stated that he then got them through a company in Walnut Creek. He also stated that he obtained the audits from this company for a while, but then stopped. When told that none of the files admitted in this matter contained any indication that a forensic loan audit had been done, he stated he had a "bunch of them," but it took so long to do them, he destroyed them and did not keep the files.

26. Given respondent's confusing and contradictory testimony, and the absence of any forensic loan audits in any of the files in this matter, respondent's assertion that Certified conducted such audits was not credible. From all the evidence submitted in this case, it was apparent that the agreements that clients entered into with Certified for forensic loan audits were just a ruse for respondent to collect advance fees.[6]

27. Respondent's answers to questions about whether his employing brokers were aware of his loan modification activities were also contradictory and confusing. He said both that they were and they were not. When all the evidence submitted in this matter is considered, when respondent was engaging in his loan modification activities and collecting advance fees, he did so without the supervision, consent or knowledge of an employing

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[6] Business and Professions Code section 10026, subdivision (a), provides:

> The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

broker. There was no testimony or any evidence in respondent's files to indicate that respondent ever delivered the advance fees he collected to a broker, or deposited them with a neutral escrow or in a broker's trust fund account.

28. Respondent's responses to the questions about his current employment were evasive and equivocal. After trying to avoid the question entirely, he finally stated that, for the past two months, he has worked for a company called "WUCM 777" on matters relating to the "cloud of technology." His responses to questions about why he changed his name were similarly evasive and equivocal.

29. Respondent admitted that he continued to engage in loan modification activities and to collect fees after he was aware that SB 94 had gone into effect on October 11, 2009.[7] Respondent claimed that he helped 80 to 85 percent of his clients obtain loan modifications. Respondent did not present any evidence to substantiate this claim. But even if some of his clients may have eventually obtained loan modifications, the information in his files indicates that they could have received those modifications without having to pay for respondent's services.

30. In sum, when all the evidence is reviewed, complainant established that respondent collected advance fees from his clients, but did not obtain the Bureau's prior approval to enter into a contract for advance fees, and that his loan modification activities were done without the supervision, consent or knowledge of an employing broker. Given respondent's loan modification activities and his lack of candor during his interview with Special Investigator Reyes and at the hearing, in order to protect the public, respondent's real estate salesperson license must be revoked.

Costs

31. Complainant has requested that respondent be ordered to pay costs for the investigative work conducted by their Special Investigators in the amount of $4,413.20, and for the enforcement work conducted by their counsel in the amount of $3,293. Complainant submitted declarations explaining and supporting these costs. When all the cost information submitted by complainant is considered, complainant established that the requested costs are reasonable. During the course of the hearing, respondent did not raise an objection to complainant's request for costs or offer any evidence to show his ability to pay these costs. Complainant's request for costs is addressed in the Legal Conclusions below.

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[7] SB 94 was signed into law on October 11, 2009, and went into effect immediately. Among other things, it enacted Business and Professions Code section 10085.6, which is quoted in relevant part in Legal Conclusion 1 below.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10085.6, in relevant part, provides:

> (a) Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:
>
> (1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.

2. Civil Code section 2945.4, in relevant part, provides

> It shall be a violation for a foreclosure consultant to:
>
> (a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that he or she would perform.

3. Respondent violated Business and Professions Code section 10085.6, subdivision (a)(1), and Civil Code section 2945.4, subdivision (a), when he collected advance fees after October 10, 2009. (Findings 8, 16, 17, 18, 19, 20 and 26.) These violations establish cause to revoke respondent's real estate salesperson license under Business and Professions Code section 10177, subdivisions (d) (willful disregard or violation of the Real Estate Law),[8] and (q) (violation of the Civil Code).

4. Business and Professions Code section 10085, in relevant part, provides:

> The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used.

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[8] The Real Estate Law is found in Part 1 of Division 4 of the Business and Professions Code.

5. California Code of Regulations, title 10, section 2970, in relevant part, provides:

> (a) A person who proposes to collect an advance fee as defined in Section 10026 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.

6. Respondent claimed, demanded, charged, received, collected and/or contracted for advance fees in connection with loan modification services, and failed to submit the advance fee agreements and all materials used in obtaining advance fees to the Bureau in violation of Business and Professions Code section 10085 and California Code of Regulations, title 10, section 2970. (Finding 21.) These violations establish cause to revoke respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (d).

7. Business and Professions Code section 10145, subdivision (c), provides:

> A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

8. The advance fees that respondent collected were trust funds that were subject to Business and Professions Code section 10145, subdivision (c). Respondent failed to deliver these fees to his broker, or deposit them with a neutral escrow or into his broker's trust fund account, in violation of Business and Professions Code section 10145, subdivision (c). (Finding 27.) This violation establishes cause to revoke respondent's license under Business and Professions Code section 10177, subdivision (d).

9. Business and Professions Code section 10130, in relevant part, provides:

> It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the [Bureau]...

10. Business and Professions Code section 10131, subdivision (d), provides:

> A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:
>
> [¶] ... [¶]
>
> (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

11. After October 11, 2009, without the knowledge, consent or supervision of a real estate broker, respondent, using the fictitious business names of Genesis Mortgage Solutions and Certified Forensic Loan Audits, solicited borrowers, negotiated loans and collected payments, and performed services for borrowers in connection with loans secured by liens on real property for or in the expectation of compensation. (Findings 9, 16, 17, 18, 19, 20 and 27.) By engaging in these acts, respondent engaged in the business and acted in the capacity of a real estate broker as set forth in Business and Professions Code section 10131, subdivision (d), although he was not licensed to do so. These acts establish cause to revoke respondent's real estate salesperson license under Business and Professions Code sections 10130 and 10177, subdivision (d).

12. California Code of Regulations, title 10, section 2710, in relevant part, provides:

> (c) Notice of changes in license information or status required to be submitted to the Department under provisions of the Real Estate Law and regulations of the Commissioner shall be given on forms prescribed by the Department not later than five days after the effective date of the change unless otherwise provided in the applicable statute or regulation.

13. In 2009, respondent changed his name to Pedro Esparza (Finding 4, footnote 3), but did not notify the Bureau of this change until March 19, 2013. (Finding 2, footnote 1.) Respondent failed to timely notify the Bureau of his name change, in violation of California Code of Regulations, title 10, section 2710, subdivision (c). This failure constitutes cause to discipline respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (d).

14. As set forth in Finding 30, when all the evidence and arguments offered in this matter are considered, in order to protect the public, respondent's real estate salesperson license must be revoked.

15. Business and Professions Code section 10106, in relevant part, provides:

> (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

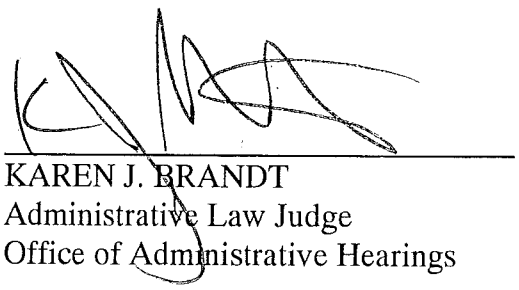
17. As set forth in Finding 31, complainant seeks $7,706.20 in investigation and enforcement costs. When all the *Zuckerman* factors are considered, these costs are reasonable. Consequently, respondent should be ordered to pay these costs in full to the Bureau.

ORDER

All licenses and license rights of respondent Francisco Rios, also known as Pedro Esparza, under the Real Estate Law, Business and Professions Code section 10000 et seq., including his real estate salesperson license, are REVOKED.

Within 30 days after the effective date of the decision in this matter, respondent shall pay costs to the Bureau in the amount of $7,706.20.

DATED: August 1, 2013



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

FILED

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October 26, 2012

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FRANCISCO RIOS, Respondent.	No. H-2787 FR ACCUSATION

The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against FRANCISCO RIOS, also known as Pedro Esparza, (Respondent), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

1

The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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3

At all times mentioned, FRANCISCO RIOS was and is licensed by the Department as a real estate salesperson. From on or about April 8, 2008, through November 25, 2009, FRANCISCO RIOS was licensed as a real estate salesperson under Edgewater Executive Mortgage, Inc., a corporate real estate broker. From on or about December 31, 2010, to May 2, 2011, FRANCISCO RIOS was licensed as a real estate salesperson under 4 USA Loans, Inc., a corporate real estate broker. From on or about May 11, 2011, to July 11, 2012, FRANCISCO RIOS was licensed as a real estate salesperson under Renwick Penrose Russell, an individual real estate broker. From on or about July 12, 2012, to the present, FRANCISCO RIOS has had no broker affiliation.

4

From on or about July 8, 2006, to July 7, 2010, Yolanda Rios was licensed by the Department as a real estate salesperson. Beginning on or about January 9, 2008 YOLANDA RIOS' real estate salesperson license was suspended pursuant to Section 10153.4 of the Code. At no time after July 7, 2010, was Yolanda Rios licensed by the Department in any capacity. At no time mentioned was Yolanda Rios affiliated under any real estate broker.

5

At no time mentioned was Certified Forensic Loan Audits licensed by the Department in any capacity. Certified Forensic Loan Audits is a fictitious business name owned by Respondent.

6

At no time mentioned was Genesis Mortgage Solutions licensed by the Department in any capacity. Genesis Mortgage Solutions is a fictitious business name owned by Respondent and Yolanda Rios.

7

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent, such allegation shall be deemed to mean that the employees, agents,

real estate licensees, and others employed by or associated with Respondent committed such act or omission while engaged in furtherance of the business or operations of Respondent and while acting within the course and scope of their authority and employment.

8

At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California, within the meaning of:

Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage and/or loan modification business with the public wherein Respondent solicited lenders and borrowers for or negotiated loans or collected payments and/or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation; and,

Section 10131.2 of the Code, including the claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

FIRST CAUSE OF ACTION

9

Each and every allegation in Paragraphs 1 through 8, inclusive, above is incorporated by this reference as if fully set forth herein.

10

While acting in the course and scope of a real estate licensee as described in Paragraph 8, Respondent and Yolanda Rios, using the fictitious business names Genesis Mortgage Solutions and/or Certified Forensic Loan Audits, claimed, demanded, charged, collected, and/or received advance fees in connection with loan modification services after October 10, 2009, in violation of Section 10085.6 (unlawful collection of advance fees related to

loan modifications) of the Code and Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the California Civil Code (Civil Code), for transactions, including but not limited to the following:

Borrower	Property	Advance Fee	Date Received	Status of Loan Modification
Antonia P.	1187 King Street, Parlier, CA	$1,500	11/6/09	Denied
Eva C.	4029 Anna Avenue, Keyes, CA	$1,500	2/13/10	Completed
Javier C.	450 Sharon Court, Manteca, CA	$1,500	6/11/10 & 7/30/10	Completed
Graciela V.	135 Ivy Avenue, Patterson, CA	$1,000	3/12/10	Completed
Maricela M.	2016 Boise Avenue, Modesto, CA	$2,500	4/01/10 & 6/10/10	Completed
Juan E.	109 South Fremont Street, Manteca, CA	$2,500	5/12/10 & 6/24/10	Completed

11

In connection with the operation and conduct of the activities and transactions described in Paragraph 9, Respondent:

(a) Claimed, demanded, charged, received, collected and/or contracted for advance fees in connection with loan modification services and failed to submit the advance fee agreements and all materials used in obtaining the advance fee agreements to the Department prior to use, without first obtaining a "No Objection Letter" as required by Sections 10085 (failure to submit materials used in collection of advance fees to Department) of the Code, and Section 2970 (materials used in collection of advance fees must be approved by Department prior to use) of Title 10 of the California Code of Regulations (Regulations);

(b) Failed to immediately deliver said trust funds to his broker, or at the broker's direction into the hands of the broker's principal, into a neutral escrow depository, or into his broker's trust fund account in violation of Section 10145(c) of the Code.

12

The acts and/or omissions of Respondent as alleged above constitute grounds for the suspension or revocation of all licenses and license rights of Respondent, pursuant to the following provisions of the Code and Regulations:

(a) As to Paragraph 10, under Section 10177(d) (willful disregard or violation of Real Estate Law) in conjunction with Section 10085.6 (unlawful collection of advance fees related to loan modifications) of the Code, and/or 10177(g) (negligence or incompetence in performing licensed act) of the Code, and/or Section 10177(q) (violation of Civil Code) of the Code, in conjunction with Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the Civil Code;

(b) As to Paragraph 11(a), under Sections 10177(d) (willful disregard or violation of Real Estate Law) in conjunction with Section 10085 (failure to submit materials used in collection of advance fees to Department) of the Code and Section 2970 (materials used in collection of advance fees must be approved by Department prior to use) of the Regulations, and/or 10177(g) (negligence or incompetence in performing licensed act) of the Code; and

(c) As to Paragraph 11(b), under Sections 10177(d) (willful disregard or violation of Real Estate Law) in conjunction with Sections 10145(c) (trust fund handling) of the Code.

SECOND CAUSE OF ACTION

13

Each and every allegation in Paragraphs 1 through 12, inclusive, is incorporated by this reference as if fully set forth herein.

14

Beginning on or about November 2009, Respondent, in the course of the real estate activities described in Paragraph 8, without the knowledge and consent of his employing real estate broker and using the fictitious business name(s) Genesis Mortgage Solutions and/or Certified Forensic Loan Audit, solicited lenders and borrowers for or negotiated loans or

collected payments and/or performed services for borrowers or lenders or note owners, in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation, including but not limited to the following:

Borrower	Property
Antonia P.	1187 King Street, Parlier, CA
Eva C.	4029 Anna Avenue, Keyes, CA
Javier C.	450 Sharon Court, Manteca, CA
Graciela V.	135 Ivy Avenue, Patterson, CA
Maricela M.	2016 Boise Avenue, Modesto, CA
Juan E.	109 South Fremont Street, Manteca, CA

15

By the commission of the acts alleged above, Respondent engaged in the business and acted in the capacity of a real estate broker within the State of California as defined by Section 10131(d) of the Code.

16

On or about April 29, 2009, above, Respondent changed his name to Pedro Esparza and failed to notify the Department of the change within 5 days after the effective date of the change in violation of Section 2710 of Title 10 of the Regulations.

17

The facts alleged in the Second Cause of Action are grounds for the suspension or revocation of the licenses of Respondent under Section 10130 of the Code in conjunction with 10177(d) of the Code.

18

The facts alleged in Paragraph 16 are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10177(d) of the Code in conjunction with Section 2710 of the Regulations.

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COST RECOVERY

19

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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 Code, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.

BRENDA SMITH
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 16 day of October, 2012

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.