FILED

SEP 23 2009

DEPARTMENT OF REAL ESTATE

By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Order to Desist and Refrain Issued against:	)	NO. H-3972 SD
PABLO RODOLFO GONZALEZ, dba PRG SYSTEMS, PRG$ INVESTMENTS, PRG$SYSTEMS, and/or any other names or fictitious names. Respondent.	)	OAH NO. 2009070884

DECISION

The Proposed Decision dated September 3, 2009, 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 23 2009.

IT IS SO ORDERED 9-23-09.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Order to Desist and Refrain Directed to: PABLO RODOLFO GONZALEZ, dba PRG SYSTEMS, PRG$ INVESTMENTS, PRG$SYSTEMS, and/or any other names or fictitious names. Respondent.	Case No. H-3972 SD OAH No. 2009070884

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on August 10, 2009.

John Van Driel, Assistant Chief Counsel, Department of Real Estate, State of California, represented Complainant, the Real Estate Commissioner of California. Mr. Van Driel appeared via teleconference from the Sacramento Office of Administrative Hearings.

Harold M. Stanley, Attorney at Law, represented Respondent Pablo Rodolfo Gonzalez. Mr. Stanley and Respondent appeared via teleconference from the San Diego Office of Administrative Hearings.

The record closed on August 10, 2009.

FACTUAL FINDINGS

1. On July 21, 2009, Jeff Davi, in his capacity as Real Estate Commissioner (Commissioner) of the Department of Real Estate (Department), issued an Order to Desist and Refrain (Order) directed to Pablo Rodolfo Gonzalez, doing business under his own name, using the names PRG Systems, PRG$ Investments, and/or PRG$Systems, or any other names or fictitious names, based upon the Commissioner's authority under Business and Professions Code section 10086. In pertinent part, that provision provides:

> If the Commissioner determines through an investigation that a person has engaged or is engaging in an activity which is a violation of a provision [of the real estate law], the commissioner may direct the person to desist and refrain from such activity by issuance of an order.

2. The basis for the Order in this matter was the Commissioner's determination that Respondent was performing services for borrowers in connection with loans secured by real property. Pursuant to Business and Professions Code section 10131, subdivision (d), such services may only be performed by licensed real estate brokers.

3. At no time herein mentioned was Respondent licensed by the Department as a real estate broker or real estate salesperson.

4. The Parties stipulated that the standard of proof to be applied in this proceeding would be clear and convincing evidence.

5. Sergio Zepeda testified at the Oakland location with the assistance of a Spanish-speaking interpreter. Despite this assistance, his testimony was often difficult to understand.

6. Zepeda and his wife owned a home on Linkfield Drive in San Jose. There were two mortgages on the home, held by the same lender, totaling $900,000. They had not kept up with payments and a Notice of Default was filed. Artemio (no last name given) was a tax preparer that had prepared the Zepedas' taxes for about three years and they trusted him. Zepeda told Artemio about the problem, and Artemio offered help.

7. Artemio told Zepeda that he worked for a private company called PRG. Artemio told Zepeda that he would "take the house" for $400,000, more or less, at 12 percent interest. If the bank accepted this, later on he would sell the house back to the Zepedas for $400,000. If they could not pay 12 percent interest, they would have a year to sell it, during which time the equity would grow. In the end, as Zepeda understood it, he would be able to sell the house and earn $150,000. For this service, Zepeda understood that Artemio would receive payment. The amount of the anticipated payment was not clearly established; the sums of $1,000 and $3,000 were both mentioned. A form entitled "Client/Consultant Short Payoff Service Agreement" provides for a consultant fee of "10% of the fair market value of the property at the time of Close of Escrow." This form does not identify the name of the consultant and only page one of a two-page document is in evidence.

8. Artemio told Zepeda that PRG was owned by two men and one woman: Maria, Gabriel, and Respondent. At one point, Artemio played a video in a computer and the Zepedas watched it. There was a photograph of a man in the video and Artemio told Zepeda that this man was the owner of the private company, and that Artemio worked with "these people, the people with the short payoff." When asked at hearing if he could identify

Respondent as the man in the photograph, Zepeda viewed Respondent on the teleconference screen and stated that he appeared to be the same man, but that he was "not too sure." Zepeda never talked to or met Respondent.

9. Zepeda and his wife signed a variety of documents in connection with the proposed transaction, including one entitled "Real Estate Short Payoff Purchase Agreement Sale By Owner." In the documents, the names of Pablo R. Gonzalez, Maria Agosto and Gabriel Ruiz appear on certain forms, as does Respondent's business address of 183 Broadway, Chula Vista. A form entitled Sale by Owner Notification states that the Zepedas are selling their home to "Pablo R. Gonzalez, a private real estate investor, and or assigns . . . ."

10. A letter dated December 12, 2008, from Jessica Fry of the Fair Housing Law Project in San Jose is addressed to Respondent, Maria Agosto, and Gabriel Ruiz. In the letter, Fry writes that the Zepedas are rescinding the contract because of a "multitude of legal issues" including that the contract documents are in English. The contract was negotiated in Spanish, but the documents are all in English and the Zepedas do not read English.

11. Also in evidence is a printout dated April 27, 2009, from the website prgsystem.com. The printout states that PRG$SYSTEM "was founded by Pablo Rodolfo Gonzales in Chula Vista California. For more than thirty years he has specialized in Real Estate as a private investor." It also states: "In our system, we will negotiate the non-performing note of your home with the bank at a discount of a maximum of sixty five percent of the FAIR MARKET VALUE (F.M.V.). Even if you are one, two, three and up to six months late, with this we could reduce your mortgage almost by half and your new payments could be lower. Now you could gain equity in your home, something that you did not have before with this system."

12. Maria Agosto was called as a witness by Complainant and testified from the San Diego location. She protested that she did not wish to testify "right now" and that she was only present because she drove Respondent to the hearing. Agosto repeatedly stated that she was "just an employee." She assists in the PRG office. Agosto stated that PRG does not do "short sales." She saw Artemio one time when he came to a seminar put on by Respondent to "teach the people" and give them information.

13. Respondent did not testify or offer any other evidence.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10130 provides in pertinent part:

> It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker

> or real estate salesman within this state without first obtaining a real estate license from the department.

Complainant alleges that Respondent has violated this section because he acted as a real estate broker as defined by Business and Professions Code section 10131, subdivision (d):

> 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 . . . 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.

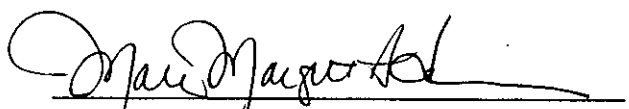
2. The evidence demonstrated that the Zepedas were solicited by their tax preparer, Artemio, in connection with an attempt to save their home from foreclosure. Respondent's name is on a website that describes a business that is connected with short sales payoffs and Respondent's name appears on documents connected with a sales transaction attempted by Artemio that was not completed. But it was not proven that Artemio worked for Respondent or that Respondent participated in the attempted transaction.

3. It was not established by clear and convincing evidence that Respondent engaged in activities for which a real estate license is required in California. Accordingly, cause does not exist to sustain the Department's order that Respondent desist and refrain, pursuant to Business and Professions Code sections 10086, 10130, and 10131, subdivision (d), from engaging in activities requiring a real estate license.

ORDER

The Department's Order to Desist and Refrain issued against Respondent Pablo Gonzalez is vacated.

DATED: September 3, 2009



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

DEPARTMENT OF REAL ESTATE
P. O. Box 187007
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Telephone: (916) 227-0791

FILED

JUN - 3 2009

DEPARTMENT OF REAL ESTATE

By

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

To:	
PABLO RODOLFO GONZALEZ, dba PRG SYSTEMS, PRG$ INVESTMENTS, PRG$SYSTEMS, and/or any other names or fictitious names.	NO. H-3972 SD ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Commissioner (Commissioner) of the California Department of Real Estate (Department) caused an investigation to be made of the activities of PABLO RODOLFO GONZALEZ, doing business as PRG SYSTEMS, PRG$ INVESTMENTS, and/or PRG$SYSTEMS (GONZALEZ). Based on the investigation, the Commissioner has determined that GONZALEZ has engaged in, is engaging in, or is attempting to engage in, acts or practices constituting violations of the California Business and Professions Code (Code) and/or Title 10, Chapter 6, California Code of Regulations (Regulations), including the business of, acting in the capacity of, and/or advertising or assuming to act as, a real estate broker in the State of California

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within the meaning of Section 10131(d) (performing services for borrowers in connection with loans secured by real property) of the Code. Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

Whenever acts referred to below are attributed to GONZALEZ, those acts are alleged to have been done by GONZALEZ, acting by himself, or by and/or through one or more agents, associates, affiliates, and/or co-conspirators, and using the names PRG SYSTEMS, PRG$ INVESTMENTS, and/or PRG$SYSTEMS, or other names or fictitious names unknown at this time.

FINDINGS OF FACT

1. At no time herein mentioned has GONZALEZ been licensed by the Department in any capacity.

2. During the period of time set out below, GONZALEZ solicited 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 in connection with loans secured directly or collaterally by one or more liens on real property, in violation of Section 10130 of the Code.

3. For an unknown period of time prior to December 2008, until and including May 2, 2009, GONZALEZ advertised, and continues to advertise, his services under one or more business names including PRG SYSTEMS, PRG$ INVESTMENTS, and/or PRG$SYSTEMS on a website located at **http://prgsystem.com**. Those advertisements solicited, and continue to solicit, borrowers, offering "loan loss mitigation" services, including, but not limited to,

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negotiating a "short pay off" with the borrower's lender.

4. On or about December 11, 2008, GONZALEZ entered into a written "Real Estate Short Payoff Purchase Agreement Sale By Owner", and a "Client/Consultant Short Payoff Service Agreement" with Sergio and Ana Zepeda (Zepeda) concerning their property located at 3165 Linkfield Way, San Jose, CA 95135, obligating Zepeda to pay to GONZALEZ, as his fee for services, ten percent (10%) of the fair market value of the property at close of escrow, in violation of Sections 10130 and 10131(d) of the Code.

CONCLUSIONS OF LAW

5. Based on the findings of fact contained in paragraphs 1 through 4, GONZALEZ, acting by himself, or by and/or through one or more agents, associates, affiliates, and/or co-conspirators, and using the names PRG SYSTEMS, PRG$ INVESTMENTS, and/or PRG$SYSTEMS, or other names or fictitious names unknown at this time, solicited borrowers and performed services for those borrowers and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property, which requires a real estate license under Section 10131(d) of the Code, during a period of time when GONZALEZ was not licensed by the Department in any capacity.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, you

PABLO RODOLFO GONZALEZ, doing business under your own name, using the names PRG SYSTEMS, PRG$ INVESTMENTS, and/or PRG$SYSTEMS, or any other names or fictitious names, ARE HEREBY ORDERED to immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required, and in particular, soliciting borrowers and/or performing services for borrowers or lenders in connection

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with loans secured directly or collaterally by one or more liens on real property, unless and until you obtain a real estate broker license issued by the Department.

DATED: 5/25, 2009

JEFF DAVI
Real Estate Commissioner

By _____

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Notice: Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)."

cc: PABLO RODOLFO GONZALEZ
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PABLO RODOLFO GONZALEZ
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