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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 CHRISTOPHER JAMES MESUNAS, and MICHAEL GARCIA, Respondents.	DRE No. H-5197 SAC OAH No. 2009050725

DECISION AFTER REJECTION

Administrative Law Judge Stephen J. Smith, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on September 9, 2009.

Truly Sughrue, Counsel, represented the Department of Real Estate (the Department), State of California.

David Boucher, Attorney at Law, represented Respondent CHRISTOPHER JAMES MESUNAS (Respondent), who appeared.

There was no appearance by or on behalf of Michael Garcia, as the Accusation with respect to Mr. Garcia was resolved before the commencement of the evidentiary hearing. The hearing was conducted as to Respondent only.

The matter was submitted on September 9, 2009.

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On December 28, 2009, the Administrative Law Judge rendered a Proposed Decision which, on February 2, 2009, the Real Estate Commissioner declined to adopt as his Decision herein.

Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon the record, the transcript of proceedings held on September 9, 2009, and upon written argument offered by Respondent and Complainant.

Written argument was not submitted on behalf of Respondent. Written argument was submitted on behalf of the Complainant and Department.

I have given careful consideration to the record in this case, including the transcript of proceedings of September 9, 2009, and the written argument offered by the Complainant and Department.

The following shall constitute the Decision of the Real Estate Commissioner in these proceedings.

FACTUAL FINDINGS

1. Joe M. Carrillo, acting in his official capacity as a Deputy Real Estate Commissioner of the Department, made the charges and allegations contained in the Accusation and caused it to be filed on April 22, 2009. The Department has jurisdiction to suspend or revoke any real estate license issued in the State of California by the Department upon satisfactory proof that cause exists for the action.[1]

2. CHRISTOPHER JAMES MESUNAS (Respondent) and Michael Garcia timely filed Notices of Defense to the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings.

3. Respondent is currently licensed by the Department and has licensing rights as an individual real estate broker, as well as being the qualifying principal of two corporate licensees,

[1] Business and Professions Code section 10175.

Mesunas Properties, Inc., and Realty World-Superior Properties, Inc. The Department issued the licenses on a date not proved but in August 2002. Respondent was previously licensed by the Department as a real estate salesperson beginning in 1998. At all times relevant to this decision, Realty World-Superior Properties, Inc., and Mesunas Properties, Inc., Fair Oaks, California were licensed as corporate real estate brokers by the Department. Respondent is the responsible managing principal and controlling stockholder of both corporate licensees.[2] At all times relevant to this decision, Respondent, individually and through his corporate licensees, was actively engaged in the business of listing, offering for sale, selling and buying residential real estate secured by loans on real property, and in brokering loans secured by real property, in expectation of compensation. Respondent's real estate broker licenses have been continuously renewed since issuance, are in full force and effect and are due to expire on October 6, 2012. There is no history of any previous disciplinary action by the Department against Respondent or any of his corporate licensees or entities for which he was the responsible principal.

4. At the time of the filing of the Accusation, Michael Garcia was licensed by the Department with a restricted real estate salesperson license. The Department acted, effective May 28, 2008, to revoke the real estate salesperson license issued to Mr. Garcia, but stayed the revocation and issued Mr. Garcia the right to a restricted real estate salesperson license, which right he exercised. Through August 2009, Mr. Garcia remained a restricted real estate salesperson licensee, with his license under the supervision of Respondent and his brokerage.

5. On August 6, 2009, the Department issued an Order Accepting Voluntary Surrender of Real Estate License, granting Mr. Garcia's July 1, 2009, Petition for Voluntary Surrender of Real Estate License. Pursuant to Business and Professions Code section 10100.2, Mr. Garcia's real estate license was surrendered and all his licensing rights under the California Real Estate Law were terminated, in lieu of proceeding with disciplinary proceedings against him.

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[2] Mr. Mesunas individually will be referred to as "Respondent" unless stated otherwise. Hereafter, reference is to Mr. Mesunas' corporations, Mesunas Properties, Inc., and Realty World-Superior Properties, Inc., will be to "the corporate licensees."

6. In late 2007, Respondent became aware that Mr. Garcia was operating his own real estate business from and through Respondent's business, and was operating this business collateral to Mr. Garcia's activities that were subject to Respondent's supervision. Mr. Garcia was operating a loan modification and rehabilitation business on his own, offering to negotiate modifications or restructuring of loans secured by real estate, typically the borrower's home. Respondent was previously unaware of these activities. Mr. Garcia called his business Second Chance Negotiations. Mr. Garcia created Second Chance Negotiations to offer services to assist homeowners trying to prevent foreclosure on their loans and homes by offering to assist them in obtaining from lenders modification or restructuring of their home loans, for a one-time fee paid in advance of any services being rendered. It was not entirely clear in the evidence how Mr. Garcia was able to operate this business out of Respondent's brokerage offices in Fair Oaks, California without Respondent's knowledge, or for how long Mr. Garcia operated the business before Respondent discovered his activities.

7. At no time has Mr. Garcia or Second Chance Negotiations, at the time it was wholly owned and operated by Mr. Garcia, ever been licensed as a real estate broker in the State of California.

8. When Respondent discovered that Mr. Garcia was operating Second Chance Negations, Respondent spoke to Mr. Garcia about this activity. The two discussed Mr. Garcia operating loan modification and restructuring activities out of Respondent's licensed brokerage without his knowledge, consent or subject to his supervision. Ultimately, Respondent and Mr. Garcia decided to form a corporation to engage in operating this business together. They retained legal counsel, Kristan Kelsch, to assist them in forming the business.

9. Respondent and Mr. Garcia formally incorporated under the name Second Chance Negotiations, Inc. (Second Chance). Articles of incorporation were filed with the Secretary of State on January 15, 2008. At the time of incorporation, Second Chance listed Respondent as the agent for service of process, and Ms. Kelsch as incorporator. As of April 16, 2008, Second Chance listed Respondent as Chief Executive Officer and Chief Financial Officer, and Mr. Garcia as Secretary. Respondent and Mr. Garcia each owned fifty percent (50%) of the stock of the closely-held

corporation. Respondent and Mr. Garcia were the only directors. Respondent's primary business address on Sunset Avenue in Fair Oaks, California was listed as the primary place of business for Second Chance.

10. At no time relevant to this decision was the successor corporation Second Chance ever licensed as a real estate broker in the State of California.

11. From June 2008 forward, Respondent and Mr. Garcia, through Second Chance, solicited and performed services for borrowers in conjunction with loans secured by real property with the expectation of compensation. Specifically, Respondent and Mr. Garcia solicited mortgage borrowers who were delinquent or in default and facing foreclosure on their secured real estate loans and offered them services to assist them in obtaining modifications or restructuring of their loans. All clients solicited for loan modification or restructuring services were borrowers on loans that were secured by real property, typically by their homes.

12. Respondent testified that Second Chance grew rapidly, and by the time the Department performed an audit in March 2009, Second Chance had obtained modifications, forgiveness or restructuring of more than 600 secured real estate loans, and had 900 more loans in the process of modification or restructuring for which Second Chance had already been paid fully in advance. For the period January 2008 to January 2009, Second Chance had received more than $3.2 million in fees in advance for loan modification or restructuring services. The borrower/clients of Second Chance during this period of time were located not only in California but in several other states.

13. In conjunction with the business of offering loan modification services for borrowers holding impaired secured real estate loans, Respondent and Mr. Garcia collected full payment in advance, a one-time payment based on the size of the impaired loan that was to cover all services in obtaining modification or restructuring of the loan. The contract between Second Chance and the borrower spelled out certain contingencies that were required to occur before Second Chance could keep the money. Typically, the contingency was that the lender on the borrower's loan made an offer to the borrower client for modification. The loan need not be successfully modified, but a bona

fide offer needed to be made by the lender for Second Chance to get paid. A representative sampling of Second Chance contracts in evidence reflected that advance payments made to Second Chance by borrowers seeking modification or rehabilitation of the borrower's real estate loan through Second Chance ranged from a low of $650 to a high of $3,700 per borrower. These fees constituted advance fees, within the meaning of that term in Business and Professions Code section 10085, constituting full payment in advance by the borrower in trust to Second Chance for all services to be rendered in the future for the borrower in seeking and obtaining a loan modification.

14. At no time relevant to this decision were any advance fees collected by Second Chance ever deposited into a trust account at a neutral depository. Instead, the fees were all deposited into an undifferentiated, commingled general business checking account in the name of Second Chance at American River Bank, with both Respondent and Mr. Garcia having signature authority. The Department's auditor discovered in her review of this checking account that Second Chance made withdrawals from this undifferentiated checking account for "general business expenses."

15. At no time relevant to this decision did Respondent, Mr. Garcia or Second Chance submit an advance fee agreement to the Department for approval before Second Chance accepted advance fees or undertook loan modifications.

16. At no time relevant to this decision did Respondent, Mr. Garcia, or Second Chance provide any borrower who had paid advance fees to Second Chance an individualized accounting of the receipt and use of that borrower's advance fees. All of the advance fees received from secured borrowers by Second Chance were deposited into the single general commingled business checking account. Since Second Chance was not a licensed real estate broker at the time the advance fee funds were received and deposited, the funds were not deposited in the name of a real estate broker as trustee.

17. There was no evidence that the general business checking account maintained by Second Chance for receipt of advance fees ever had a written control record of all trust funds received and disbursed containing all of the information required by California Code of Regulations (CCR), title 10, section 2831. There was no evidence that Mr. Garcia, Respondent, or Second Chance maintained

separate beneficiary or transaction records containing all the information required by CCR, title 10, section 2831.1, for any advance fees received. There was no evidence that any reconciliation of balances of advance fees received against expenses incurred per beneficiary occurred or that separate transaction records or control records of funds received and disbursed were kept and reconciled at least once per month for each account identified individually by beneficiary, as required by section 2831.2.

18. Respondent testified that he was very concerned that he fully comply with all laws that might apply with the formation and operation of Second Chance. He insisted in discussing the formation of the company with Mr. Garcia that they retain legal counsel for the drafting of the Articles of Incorporation, to insure compliance with all applicable laws, and for the preparation of all contracts and forms for use by Second Chance, once it began operating.

19. Respondent testified that he specifically inquired of the two different attorneys that he and Mr. Garcia used during the process of starting Second Chance regarding the necessity for Second Chance to be licensed by the Department in order to lawfully operate a loan modification business. Respondent testified that Ms. Kelsch continued to advise them that Second Chance did not need a real estate broker license from the Department to engage in the loan modification and rehabilitation activities they pursued. Respondent and Mr. Garcia discharged Ms. Kelsch and hired attorney Marc Caraska to represent them. Mr. Caraska was also a licensed real estate broker with an active brokerage practice. There was no evidence that Respondent, Mr. Garcia or Ms. Kelsch ever discussed the matter of the need for a real estate broker license to perform loan modification and rehabilitation services or to accept advance fees for those services with anyone at the Department in a position to provide a binding legal opinion before Mr. Caraska was retained.

20. In late 2008, Respondent was contacted by a Department representative concerning some questions regarding Second Chance and its lack of licensing by the Department. Respondent referred the inquiring Department employee to counsel Mr. Caraska, and later met with this employee with Mr. Caraska present. Respondent testified that Mr. Caraska continued to advise him, following the meeting with the Department representative, that a real estate broker license from the Department was not required for Second Chance to offer and perform loan modification and

rehabilitation services or to accept advance fees for those services. Respondent acknowledged he did not confirm this advice himself with anyone in a position of authority at the Department, or verify that what Mr. Caraska said accurately reflected the difference between his opinion and the Department's position. Nevertheless, Respondent testified that Mr. Caraska advised Respondent that in order to avoid further conflict with the Department, Respondent and Second Chance should file for issuance of a California Finance Lender Law (CFLL) license from the Commissioner of Corporations (Commissioner). Respondent agreed and, through counsel, sought the CFLL license for Second Chance.

21. On October 7, 2008, Second Chance, by Mr. Caraska and Respondent, filed an application with the Commissioner for the issuance of a CFLL license. The application listed Respondent as the person in charge of the business, as well as listing him as Chief Executive Officer, Secretary, and director. On the application, the following appeared in the section of the application for a description of the business activities of the entity seeking the license:

> "Applicant plans to primarily provide mortgage brokerage services for residential consumer loans and small-business real estate loans. Applicant plans to act as lender for the same types of loans utilizing its own funds and that of a license warehouse lender."

22. As is discussed further below, the statement on the CFLL license regarding Second Chance's business activities is patently false.

23. Mr. Caraska signed the CFLL application as representative of the applicant and respondent signed as the President of Second Chance. It is not clear whether respondent or Mr. Caraska wrote the statement regarding Second Chance's business activities quoted above on the CFLL application. Mr. Garcia's name does not appear on the application anywhere. The Commissioner issued the CFLL license on December 15, 2008, in part in reliance upon the veracity and accuracy of the statement of business purpose disclosed in the application, as quoted above.

24. On March 24, 2009, the Commissioner issued an immediate Desist and Refrain Order (the Order) against Second Chance for violation of California Financial Code sections 22300, 22154, 22161, and 22170. The Order was issued because the Commissioner's representatives

discovered that Second Chance was acting as an intermediary in hundreds of loan modification transactions with California borrowers. The Commissioner found in the Order that Second Chance's business activities were unlawful under the CFLL license, in that California Financial Code section 22300 provides that no licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature unless a loan is actually made. The Commissioner concluded that since loan modification does not involve the making of a loan, a lender licensed by the Commissioner may not engage in loan modification intermediary activity under the authority of the CFLL license, and may not receive payment in advance of any loan being made. In effect, the Order found that every aspect of Second Chance's business violated the governing law and the limitations placed on a CFLL licensee. In addition, the Commissioner found in the Order that Second Chance advertised, displayed, published and or distributed a statement or representation referring to the supervision of the business by the state that was false, misleading, or deceptive in violation of California Financial Code section 22161. Finally, the Commissioner found that the representations made by Second Chance to the Commissioner regarding the in the application regarding Second Chance's business activities (quoted above) were materially false and misleading. Second Chance additionally failed to disclose in the application that its primary [and only] business activity was that of loan modifications. After issuing the Order, the Commissioner immediately suspended Second Chance's CFLL license, which was ultimately revoked.

25. The Department's representative again contacted Respondent in January 2009, and advised Respondent that the Department was seeking to audit Respondent's records for Mesunas Properties, Inc. The audit was scheduled for March 5, 2009. A follow-up audit that focused on Second Chance's operations took place on March 19, 2009, after the auditor discovered that the loan modification and rehabilitation activities were taking place through an unlicensed entity (Second Chance) operating within Respondent's brokerage. The second audit reviewed Second Chance's loan modification and rehabilitation transactions for the one (1) year period from January 2008 through January 2009.

26. Respondent contends that during the first audit, the Department's auditor informed Respondent for the first time that Respondent was required to have a preapproved advance

fee agreement from the Department in place before accepting any advance fees, and that he could obtain all information necessary to submit an advance fee agreement to the Department for preapproval from the Department's website. Upon discovering the requirement for a preapproved advance fee agreement, Respondent immediately filed and obtained Department approval of an advance fee agreement.

27. The Department served Second Chance, respondent, and Mr. Garcia with an Order to Desist and Refrain (the D&R Order) on March 24, 2009. The D&R Order required Respondent, Mr. Garcia, and Second Chance to immediately stop performing loan modification services through Second Chance without a license, and to immediately cease receiving any advance fees without having obtained prior approval from the Department of an advance fee agreement, and required compliance with all trust account procedures. Following discussion with the Department's representatives, and the Department's representatives confirming that Respondent had recently submitted an advance fee agreement for prior approval to the Department on March 5, 2009, the Department relaxed the Order. The Department agreed to permit Respondent to continue to process loan modifications that had already been commenced, but imposed limitations including that no additional fees could be charged. In addition, the Department required Respondent to refund to any client all advance fees received if the client did not want to continue with a loan modification, and to transfer all the activities to take place under Respondent's corporate real estate brokerage license, Mesunas Properties, Inc. Respondent was precluded by the D&R Order from initiating any new loan modifications. Respondent complied, dissolved Second Chance in March 2009, and transferred all remaining accounts to Mesunas Properties, Inc.

28. Respondent contends he relied upon the advice of experienced counsel specializing in the real estate field in failing to seek licensure by the Department for Second Chance and its operations. Respondent also contends counsel's incorrect advice is understandable because the field of loan modification is relatively new, and few entities engaging in this service had been correctly licensed and organized. Respondent also contended that the misapprehension was understandable because loan modification is considerably less flexible than loan origination, due to a marked

difference between the amount of flexibility and discretion the broker has in being able to negotiate- and arrange terms, and does not result in the origination of a new loan. Respondent acknowledged that he did not directly inquire of anyone at the Department whether Second Chance was required to be licensed separately as a real estate broker in order to operate a loan modification service, or to accept advance fees for loan modifications not yet arranged or completed. Respondent contends that had he known that Second Chance was required to be separately licensed by the Department in order to engage in loan modification services, he would have simply and easily applied for a corporate license similar to the one he already held for his brokerage, or operated through his already licensed corporate brokerage.

29. Unfortunately, Respondent's testimony sought in some respects to shift the blame to others and came across as trying to talk his way out of the rather significant problems Second Chance created. All the talk and blame shifting failed to address the central problem with the manner in which Second Chance was operated, which Respondent later discovered to his financial harm.

30. The failure of Respondent to attempt to have Second Chance properly licensed to legally perform services for borrowers or lenders in connection with loans secured by real property, and the glaring lack of accounting and accountability for more than 1,500 loan modification transactions undertaken in a year's time, and $3.2 million in advance fees received in the course of that year, without any way to trace how those funds were used and the inability to attribute any particular receipt or expenditure to any particular individual person seeking a loan modification, are the core problems presented in this case. Respondent failed to address this point, even though Respondent testified he refunded more than $300,000 to clients who had paid advance fees for loan modifications but wanted to withdraw after the Department became involved and clients were given the option of doing so. Respondent's closest brush with recognition of the real problem was his acknowledgement that his cost controls were "loose and inadequate" with respect to this business, which he later found very costly. Respondent testified that he found himself unable to continue making refunds to clients who asked for one because the available cash in the undifferentiated Second Chance bank account was quickly exhausted in trying to satisfy the refund demands, and that he was required to start contributing

personal savings and assets to the company to meet the refund demands.

31. Respondent testified he has endured a personal financial catastrophe in unwinding the affairs of Second Chance, and through following up on his personal commitment to complete all loan modification contracts for clients from whom advance fees were received who did not request refunds. Respondent testified that he has been required to dig deep into his own pocket to complete the transactions, and the process is not yet quite complete. Mr. Garcia conveniently absented himself during this process, and after Mr. Garcia surrendered his license, Respondent and his new attorney asked Mr. Garcia not to return. Respondent testified that he has been required to liquidate his personal and corporate retirement accounts and contribute all of his personal net worth to fund the completion of these transactions, and that, as of the date of the evidentiary hearing, Respondent still has between 40 and 50 transactions to complete. Respondent contends he "has done the right thing" with respect to his clients, suffering personal loss rather than abandon his contractual obligations to these persons. But the fact that Respondent is being bankrupted by the process of completing transactions for which he was presumably paid in full in advance for each and all demonstrates the glaring deficiency in the failure to account for these transactions individually. By proceeding as Respondent did, he had no method to track and control his costs to any individual borrower.

32. Respondent testified at one point that he had lost "everything" as a result of unwinding Second Chance. Later he testified he is still operating Mesunas Properties, Inc. and employs four salespersons. Respondent testified that he engages in a mix of real estate listing and resales, short sales and refinancing, and loan brokerage activities. Respondent is obviously quite knowledgeable about negotiation and brokerage of loans secured by real property. Respondent hired a new attorney who became a full time employee in order to help him finish the portfolio of loan modifications and clean up the business. This attorney, Mr. Sutliff, made a supportive declaration in favor of Respondent's effort to retain his license, detailing the great personal cost endured by Respondent in his effort to "do right by every client." He expressed disappointment with many of the clients' lack of appreciation of these extraordinary efforts and with their failure to acknowledge the fact that Respondent did not just default and strand them. Counsel was supportive of Respondent's effort to

salvage what is left and continue to practice, commenting that his work with Respondent has shown Respondent to be a person of high integrity, honesty and ethical behavior, as clearly demonstrated by his willingness to continue to contribute his personal assets to satisfying the obligations of Second Chance to his great personal harm.

33. Respondent took and completed a three hour continuing education course in trust fund handling on September 2, 2009. Respondent met with Department representatives and legal staff at least twice since March 2009. One of the Department's representatives who participated in these compliance meetings testified. He acknowledged Respondent was currently in full compliance with all Department laws and regulations, and that Respondent had made efforts to make certain his operations came into compliance. He confirmed that there has never been a complaint or compliance problem with Respondent's traditional real estate brokerage operations through the corporate licenses.

34. Respondent testified that he is involved in community activities; that he serves as the youth group leader at his church and participates in several real estate professional organizations; that he has served as the President of Realty World Council; and that he is a Desert Storm U.S. Army decorated combat veteran and a veteran of the California National Guard.

CONCLUSIONS OF LAW

Purpose of Disciplinary Action.

1. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public; that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome. Such proceedings are not conducted for the primary purpose of punishing an individual (*Small v. Small* (1971) 16 Cal.App.3d 450, 457).

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2. In an administrative action seeking to impose discipline against the holder of a professional license, the burden of proof is on Complainant to establish the allegations by clear and convincing evidence and not by a mere preponderance of the evidence (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856). Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay (*Small v. Smith, supra,* 16 Cal.App.3d at 457).

3. The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662).

First Cause of Action

1. Business and Professions Code section 10177, subdivision (d) states:

> The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:
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> [¶] ... [¶]
>
> (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.
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> [¶] ... [¶]

2. Business and Professions Code section 10130 states:

> "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 a real estate salesman within this state without first obtaining a real estate license from the department.
> The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial.
>
> [¶] ... [¶]

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur."

3. Respondent violated sections 10130 and 10177, subdivision (d) with respect to his operation of Second Chance Negotiations, Inc. It was not disputed that this entity was required to be licensed by the Department as a corporate real estate broker to engage in the mortgage loan modification services it offered, and was not so licensed until the Department and the Commissioner intervened and issued their Desist and Refrain Orders. Therefore, legal cause exists pursuant to section 10177, subdivision (d), to revoke or suspend Respondent's real estate broker licenses.

4. In mitigation, at all times relevant to this Decision, Respondent has been licensed as a corporate and individual real estate broker, and has fully complied with all laws and requirements individually and with respect to his corporate licenses, excepting Second Chance. Further, Respondent has, at considerable personal cost, caused Second Chance's operations to come into compliance with the law and regulations, and insured that no client of Second Chance has lost any money due to its operation. In aggravation, the CFLL license was procured by fraudulent representations and the operations of Second Chance were "out of control" when the Department and the Commissioner of Corporations' staff intervened.

Second Cause Of Action

5. Business and Professions Code section 10085 states:

"The commissioner may require that any or all materials used in obtaining advance fee agreements ... be submitted to him or her at least 10 calendar days before they are used.

[¶] ... [¶]

The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part.

Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under

Section 10081 of this code, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided."

6. Business and Professions Code section 10146 states:

Any real estate broker who contracts for or collects an advance fee from any other person, hereinafter referred to as the "principal," shall deposit any such amount or amounts, when collected in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned hereinafter have been mailed to the principal.

The commissioner may issue such rules and regulations as he deems necessary to regulate the method of accounting, and to accomplish the purpose of the provisions of this code relating to advance fees including, but not limited to, establishing forms for and determining information to be included in such accountings. Each principal shall be furnished a verified copy of such accountings at the end of each calendar quarter and when the contract has been completely performed by the licensee. The Real Estate Commissioner shall be furnished a verified copy of any account or all accounts on his demand therefor.

Where advance fees actually paid by or on behalf of any principal are not handled in accordance with the preceding paragraph, it shall be presumed that the agent has violated Sections 506 and 506a of the Penal Code. The principal may recover treble damages for amounts so misapplied and shall be entitled to reasonable attorneys' fees in any action brought to recover the same."

7. California Code of Regulations (CCR), title 10, section 2970 in part states:

"(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.

[¶] ... [¶]"

8. California Code of Regulations (CCR), title 10, section 2972 states:

"Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:

(a) The name of the agent.
(b) The name of the principal.
(c) Description of the services rendered or to be rendered.
(d) Identification of the trust fund account into which the advance fee has

been deposited.

(e) The amount of the advance fee collected.

(f) The amount allocated or disbursed from the advance fee for each of the following:

(1) In providing each of the services enumerated under (c) above.

(2) Commissions paid to field agents and representatives.

(3) Overhead costs and profit.

(g) In cases in which disbursements has been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.

(h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.

9. Respondent violated section 10177, subdivision (d), in that he violated sections 10085, and CCR, title 10, sections 2970 and 2972. As set forth in the Factual Findings, Respondent collected advance fees for and through Second Chance without having an advance fee agreement in place and preapproved by the Real Estate Commissioner, and failed to comply with sections 2970 and 2972 in collecting and not properly accounting for the more than $3.2 million in advance fees received by Second Chance. Separate legal cause therefore exists to revoke or suspend respondent's real estate broker's licenses.

Third Cause Of Action

10. Business and Professions Code section 10145 states:

"(a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

[¶] ... [¶]

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) 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.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.
(2) All of the funds in the account are covered by insurance provided by an agency of the United States.
(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.
(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.
(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.
(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

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(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code." *(Emphasis added).*

11. California Code of Regulations (CCR), title 10, section 2832 states:

"(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

[¶] ... [¶]

(e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson."

12. California Code of Regulations (CCR), title 10, section 2831 states:

(a) Every broker shall keep a record of all trust funds received, including

uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.
(2) From whom trust funds received.
(3) Amount received.
(4) With respect to funds deposited in an account, date of said deposit.
(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed $1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks."

13. California Code of Regulations (CCR), title 10, section 2831.1 states:

"(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the

transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.
(2) Amount of deposit.
(3) Date of each related disbursement.
(4) Check number of each related disbursement.
(5) Amount of each related disbursement.
(6) If applicable, dates and amounts of interest earned and credited to the account.
(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2."

14. California Code of Regulations (CCR), title 10, section 2831.2 states:

"The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions."

15. As set forth in the Factual Findings, Respondent violated section 10177, subdivision (d), by virtue of violating section 10145 and 2832 of the Regulations of the Real Estate Commissioner (the Regulations), in that Respondent failed to deposit advance fees, which constituted trust funds within the meaning of these provisions, into an account maintained in the name of a licensed real estate broker as trustee for the funds, and instead deposited the funds into a business checking account maintained in the name of Second Chance. Separate legal cause therefore exists to revoke or suspend Respondent's real estate broker licenses.

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16. As set forth in the Factual Findings, Respondent violated section 10177, subdivision (d), by virtue of violating section 2831 of the Regulations, in that Respondent failed to keep a written control record of any and all advance fees received and disbursed by Second Chance. Separate legal cause therefore exists to revoke or suspend Respondent's real estate broker licenses.

17. As set forth in the Factual Findings, respondent violated section 10177, subdivision (d), by virtue of violating section 2831.1 of the Regulations, in that Respondent failed to keep written beneficiary and transaction records containing all the detailed information required by section 2831.1 with respect to all advance fees received by Second Chance. Separate legal cause therefore exists to revoke or suspend Respondent's real estate broker licenses.

18. As set forth in the Factual Findings, Respondent violated section 10177, subdivision (d), by virtue of violating section 2831.2 of the Regulations, in that Respondent failed to reconcile the balance of separate beneficiary and transaction records of advance fees received in trust and funds disbursed, on an at least once monthly basis, and failed to maintain a record of reconciliations of accounts per beneficiary or account, as required by section 2831.2, with respect to all advance fees received by Second Chance. Separate legal cause therefore exists to revoke or suspend Respondent's real estate broker licenses.

19. California Code of Regulations (CCR), title 10, section 2912 states:

> The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated *on account of a crime committed by the licensee.*[3]
>
> [¶] ... [¶]
>
> (b) Restitution to any person who has suffered monetary losses through

[3] Although these criteria were adopted for the specific purpose of evaluating whether a licensee convicted of a crime is rehabilitated, many of the criteria are equally relevant to assessing the facts in mitigation and rehabilitation regarding other forms of violations of law and regulations resulting in disciplinary action. Thus, to the extent applicable, the criteria are "borrowed" here to act as guidance for making the assessment required in this action that does not involve any criminal action or activity.

'substantially related' acts or omissions of the licensee.

[¶] ... [¶]

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

[¶] ... [¶]

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question [or violations of law and regulation] as evidenced by any or all of the following:

(1) Testimony of applicant.
(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question."

20. As set forth in detail in the Factual Findings, Respondent did not dispute the accusatory allegations to any great extent. Instead, Respondent directed his energy to making a case for mitigation and rehabilitation, consistent with his efforts to reconcile the problems with Second Chance once Respondent was alerted to the nature and gravity of the problems the loan modification business had caused. Respondent's defense to the suggestion that he was "asleep at the wheel" as the CEO and a principal of Second Chance, and either naïve or disinterested in compliance with the requirements for licensure and structuring the operations of Second Chance, was largely explained by Respondent's reliance upon the advice of specialist real estate counsel. Troubling is the fact that

Respondent failed to check and verify his position with the Department and its legal staff, especially after the Department contacted Respondent and alerted him there might be a problem with a lack of licensure for his operations. Undeniably, setting up another real estate broker corporation and getting it licensed should not have been too much of a problem, or even rolling the operations over into Mesunas Properties, Inc. In fact, it is curious that Respondent and his several attorneys never mentioned why they did not set up Second Chance within Respondent's existing structure in the first instance, or create a parallel licensed business structure, if it was so easy. This contention thus cuts both ways. There is a reason, to date not revealed, why Respondent and Mr. Garcia did not take these easy steps to park Second Chance's operations under one of Respondent's corporate broker licenses, or just get another Department corporation license for that business alone. The reviewer is left to speculate. Certainly when the auditor began to examine the operation, and Second Chance unwound, fiscal mismanagement was revealed.

21. None of the foregoing attempts to mitigate the damage done by Respondent diminishes Respondent's culpability for the difficulties Respondent permitted to ensue as a result of his utter failure to exercise reasonable supervision and control over the Second Chance operations. Respondent failed to exercise such control by permitting the commingling of client-held trust funds, which were millions of dollars in the aggregate, with general business funds in a non-trust account. As a direct result, trust funds went missing and Respondent was forced to repay the funds out of his own pocket.[4] Respondent owed a fiduciary duty to Second Chance's clients. This duty included the protection and preservation of trust funds belonging to Second Chance's clients. To undertake such lackadaisical oversight created his financial difficulties and clearly breached his fiduciary duty to Second Chance's clients. Had Respondent exercised reasonable supervision and control over Second Chance, there would not have been the need for Respondent to "step up" and use personal assets to repay Second Chance's clients. Simply put, Respondent used his personal funds to mitigate his

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[4] It is fortunate that Respondent had the financial wherewithal to repay the clients wronged by his failure to fulfill his responsibilities. However, the fact that he went into his personal fortune to make his clients whole does not permit the Department to ignore the cause of this need, which was Respondent's misfeasance.

liability to Second Chance's clients for his misfeasance and breach of fiduciary duties owed to his clients. There is a good chance that some of those funds used to mitigate client losses were obtained from the approximately $3.2 million in advance fees collected by Respondent and Second Chance in violation of the law. The losses Respondent paid were a direct result of his mismanagement of trust funds received from those who were already in dire financial straights and in need of a work-out agreement from their lenders. The fact that Respondent expressed a willingness to correct problems discovered during the Department's audit does not vitiate his utter failure to conduct Second Chance's business in compliance with the law.

22. It is unfortunate that Respondent's failures have placed his employees' employment in jeopardy. However, it is Respondent's violations of relevant Real Estate Law that placed these jobs in jeopardy, not the Department's disciplinary action. The primary goal of licensing laws is to protect the public not only from unscrupulous individuals, but also from irresponsible persons as well (*Merrill v. Department of Motor Vehicles* (1969) 71 Cal.2d 907, 918; *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1029). The disciplinary procedures are designed to protect the public not only from conniving real estate salespersons but also from the uninformed, negligent, or unknowledgeable licensee (*Handeland v. Dept. of Real Estate* (1976) 58 Cal.App.3d 513, 517-518). Here, based on the clear and convincing evidence of Respondent's misfeasance, the issue is whether to: (i) permit Respondent to continue as a real estate broker with a restricted broker license with strict terms; (ii) revoke his real estate broker license and permit Respondent to continue to work under the supervision of another real estate broker as a licensed real estate professional with a restricted real estate salesperson license, or (iii) revoke Respondent's license outright. The decision turns on whether Respondent's actions create a risk to the real estate public.

23. Among the other violations proven and enumerated above and despite Respondent's mitigation of damages, Respondent mishandled trust funds, commingled client trust funds with Second Chance business funds, failed to employ required trust fund accounting checks and balances, breached his fiduciary duty to Second Chance clients, failed to submit Second Chance's advance fee contract to the Department for review prior to its use, failed to obtain a real estate license

for Second Chance before undertaking real estate activities under the Second Chance banner, and made misrepresentations to the Department of Corporations in connection with his CCFL License application. Respondent not only damaged his clients, but he created a serious risk to the real estate community and public by clearly demonstrating his lack of understanding respecting the conduct of real estate activities. There is simply too great a risk to the public to permit Respondent to continue to hold a real estate license in any capacity, as Respondent has demonstrated that he is uninformed about the laws and regulations governing real estate licensees. Respondent's misfeasance must not be ignored because of his acts of apparent contrition and mitigation of his liability to his clients. Therefore, it is not in the best interests of the public to permit Respondent to continue to hold a real estate licensee under any conditions at this time.

ORDER

All licenses and licensing rights of Respondent CHRISTOPHER JAMES MESUNAS under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon on JUN 22 2010.

IT IS SO ORDERED 6/1/10.

JEFF DAVI
Real Estate Commissioner

FILED

JUN - 1 2010

DEPARTMENT OF REAL ESTATE

BY

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation against CHRISTOPHER JAMES MESUNAS and MICHAEL GARCIA, Respondents.	No. H-5197 SAC

ORDER DENYING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On April 22, 2009, an Accusation was filed in this matter against the above-entitled Respondents.

On or about April 14, 2010, Respondent CHRISTOPHER JAMES MESUNAS petitioned the Commissioner to voluntarily surrender his real estate broker and corporate officer licenses pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent CHRISTOPHER JAMES MESUNAS's petition for voluntary surrender of his real estate broker and corporate officer licenses is denied.

This Order shall become effective at 12 o'clock noon on JUN 22 2010.

DATED: 6/1/10

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED

FEB - 4 2010

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CHRISTOPHER JAMES MESUNAS and MICHAEL GARCIA, Respondents.	No. H-5197 SAC OAH No. 2009050725

NOTICE

TO: CHRISTOPHER JAMES MESUNAS and MICHAEL GARCIA, Respondents, and DAVID BOUCHER, attorney for Christopher James Mesunas.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 28, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 28, 2009, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on September 9, 2009, and any written argument hereafter submitted on behalf of Respondents and Complainant.

Written argument of Respondents to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of September 9, 2009, at the

Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondents at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 2-2-2010

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CHRISTOPHER JAMES MESUNAS, MESUNAS PROPERTIES, INC., REALTY WORLD-SUPERIOR PROPERTIES, INC., and MICHAEL GARCIA, Real Estate Salesperson Licensee Respondents.	Case No. H-5197 SAC OAH No. 2009050725

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on September 9, 2009.

Truly Sugrue, Counsel, represented the Department of Real Estate (the Department), State of California.

David Boucher, Attorney at Law, represented Christopher James Mesunas, who appeared.

There was no appearance by or on behalf of Michael Garcia, as the Accusation with respect to Mr. Garcia was resolved before the commencement of the evidentiary hearing (below). The hearing was conducted as to Mr. Mesunas only.

The matter was submitted on September 9, 2009.

FACTUAL FINDINGS

1. Joe M. Carillo, acting in his official capacity only as a Deputy Real Estate Commissioner of the Department, made the charges and allegations contained in the Accusation and caused it to be filed on April 22, 2009. The Department has jurisdiction to suspend or revoke any real estate license issued in the State of California by the Department upon satisfactory proof that cause exists for the action.[1]

2. Christopher James Mesunas (respondent) and Michael Garcia timely filed Notices of Defense to the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings.

3. Respondent is currently licensed by the Department and has licensing rights as an individual real estate broker, as well as being the qualifying principal of two corporate licensees, Mesunas Properties, Inc., and Realty World-Superior Properties, Inc. The Department issued the licenses on a date not proved but in August 2002. Respondent was previously licensed by the Department as a real estate salesperson beginning in 1998. At all times relevant to this decision, Realty World-Superior Realty, Inc., and Mesunas Properties, Inc., Fair Oaks, California were licensed as corporate real estate brokers by the Department. Mr. Mesunas is the responsible managing principal and controlling stockholder of both corporate licensees.[2] At all times relevant to this decision, respondent, individually and through his corporate licensees, was actively engaged in the business of listing, offering for sale, selling and buying residential real estate secured by loans on real property, and in brokering loans secured by real property, in expectation of compensation. Respondent's real estate broker licenses have been continuously renewed since issuance, are in full force and effect and are due to expire on October 6, 2012. There is no history of any previous disciplinary action by the Department against respondent or any of his corporate licenses or entities for which he was the responsible principal.

4. At the time of the filing of the Accusation, Michael Garcia was licensed by the Department with a restricted real estate salesperson license. The Department acted, effective May 28, 2008, to revoke the real estate salesperson license issued to Mr. Garcia, but stayed the revocation and issued Mr. Garcia the right to a restricted real estate salesperson license, which right he exercised. Through August 2009, Mr. Garcia remained a restricted real estate salesperson licensee, with his license under the supervision of respondent and his brokerage.

5. On August 6, 2009, the Department issued an Order Accepting Voluntary Surrender of Real Estate License, granting Mr. Garcia's July 1, 2009, Petition for Voluntary Surrender of Real Estate License. Pursuant to Business and Professions Code section 10100.2, Mr. Garcia's real estate license was surrendered and all his licensing rights under

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[1] Business and Professions Code section 10175.

[2] Mr. Mesunas individually will be referred to as "respondent," unless stated otherwise. Hereafter, reference is to Mr. Mesunas' corporations, Mesunas Properties, Inc., and Realty World-Superior Properties, Inc., will be to "the corporate licensees."

the California Real Estate Law were terminated, in lieu of proceeding with disciplinary proceedings against him.

6. In late 2007, respondent became aware that Mr. Garcia was operating his own real estate business from and through respondent's business, and was operating this business collateral to Mr. Garcia's activities that were subject to respondent's supervision. Mr. Garcia was operating a loan modification and rehabilitation business on his own, offering to negotiate modifications or restructuring of loans secured by real estate, typically the borrower's home. Respondent was previously unaware of these activities. Mr. Garcia called his business Second Chance Negotiations. Mr. Garcia created Second Chance Negotiations to offer services to assist homeowners trying to prevent foreclosure on their loans and homes by offering to assist them in obtaining from lenders modification or restructuring of their home loans, for a one-time fee paid in advance of any services being rendered. It was not entirely clear in the evidence how Mr. Garcia was able to operate this business out of respondent's brokerage offices in Fair Oaks, California without respondent's knowledge, or for how long Mr. Garcia operated the business before respondent discovered his activities.

7. At no time has Mr. Garcia or Second Chance Negotiations, at the time it was wholly owned and operated by Mr. Garcia, ever been licensed as a real estate broker in the State of California.

8. When respondent discovered that Mr. Garcia was operating Second Chance Negations, he spoke to Mr. Garcia about this activity. The two discussed Mr. Garcia operating loan modification and restructuring activities out of respondent's licensed brokerage without his knowledge, consent or subject to his supervision. Ultimately, respondent and Mr. Garcia decided to form a corporation to engage in operating this business together. They retained legal counsel, Kristan Kelsch, to assist them in forming the business.

9. Respondent and Mr. Garcia formally incorporated under the name Second Chance Negotiations, Inc. (Second Chance). Articles of incorporation were filed with the Secretary of State on January 15, 2008. At the time of incorporation, Second Chance listed respondent as the agent for service of process, and Ms. Kelsch as incorporator. As of April 16, 2008, Second Chance listed respondent as Chief Executive Officer and Chief Financial Officer, and Mr. Garcia as Secretary. Respondent and Mr. Garcia each owned fifty percent of the stock of the closely-held corporation. Respondent and Mr. Garcia were the only directors. Respondent's primary business address on Sunset Avenue in Fair Oaks, California was listed as the primary place of business for Second Chance.

10. At no time relevant to this decision was the successor corporation Second Chance ever licensed as a real estate broker in the State of California.

11. From June 2008 forward, respondent and Mr. Garcia, through Second Chance, solicited and performed services for borrowers in conjunction with loans secured by real property with the expectation of compensation. Specifically, respondent and Mr. Garcia solicited mortgage borrowers who were delinquent or in default and facing foreclosure on

their secured real estate loans and offered them services to assist them in obtaining modifications or restructuring of their loans. All clients solicited for loan modification or restructuring services were borrowers on loans that were secured by real property, typically by their homes.

12. Second Chance grew rapidly, and by the time the Department performed an audit in March 2009, Second Chance had obtained modifications, forgiveness or restructuring of more than 600 secured real estate loans, and had 900 more loans in the process of modification or restructuring for which Second Chance had already been paid fully in advance. For the period January 2008 to January 2009, Second Chance had received more than $3.2 million in fees in advance for loan modification or restructuring services. The borrower/clients of Second Chance during this period of time were located not only in California but in several other states.

13. In conjunction with the business of offering loan modification services for borrowers holding impaired secured real estate loans, respondent and Mr. Garcia collected full payment in advance, a one-time payment based on the size of the impaired loan that was to cover all services in obtaining modification or restructuring of the loan. The contract between Second Chance and the borrower spelled out certain contingencies that were required to occur before Second Chance could keep the money. Typically, the contingency was that the lender on the borrower's loan made an offer to the borrower client for modification. The loan need not be successfully modified, but a bone fide offer needed to be made by the lender for Second Chance to get paid. A representative sampling of Second Chance contracts in evidence reflected that advance payments made to Second Chance by borrowers seeking modification or rehabilitation of the borrower's real estate loan through Second Chance ranged from a low of $650 to a high of $3700 per borrower. These fees constituted advance fees, within the meaning of that term in Business and Professions Code section 10085, constituting full payment in advance by the borrower in trust to Second Chance for all services to be rendered in the future for the borrower in obtaining a loan modification.

14. At no time relevant to this decision were any advance fees collected by Second Chance ever deposited into a trust account at a neutral depository. Instead, the fees were all deposited into an undifferentiated, commingled general business checking account in the name of Second Chance at American River Bank, with both respondent and Mr. Garcia having signature authority. The Department's auditor discovered in her review of this checking account that Second Chance made withdrawals from this undifferentiated checking account for "general business expenses."

15. At no time relevant to this decision did respondent, Mr. Garcia or Second Chance submit an advance fee agreement to the Department for approval before Second Chance accepted advance fees or undertook loan modifications.

16. At no time relevant to this decision did respondent, Mr. Garcia, or Second Chance provide any borrower who had paid advance fees to Second Chance an individualized accounting of the receipt and use of that borrower's advance fees. All of the advance fees received from secured borrowers by Second Chance were deposited into the single general comingled business checking account. Since Second Chance was not a licensed real estate broker at the time the advance fee funds were received and deposited, the funds were not deposited in the name of a real estate broker as trustee.

17. There was no evidence that the general business checking account maintained by Second Chance for receipt of advance fees ever had a written control record of all trust funds received and disbursed containing all of the information required by California Code of Regulations (CCR), title 10, section 2831. There was no evidence that Mr. Garcia, respondent, or Second Chance maintained separate beneficiary or transaction records containing all the information required by CCR, title 10, section 2831.1, for any advance fees received. There was no evidence that any reconciliation of balances of advance fees received against expenses incurred per beneficiary occurred or that separate transaction records or control records of funds received and disbursed were kept and reconciled at least once per month for each account identified individually by beneficiary, as required by section 2831.2.

18. Respondent testified that he was very concerned that he fully comply with all laws that might apply with the formation and operation of Second Chance. He insisted in discussing the formation of the company with Mr. Garcia that they retain legal counsel for the drafting of the Articles of Incorporation, to insure compliance with all applicable laws, and for the preparation of all contracts and forms for use by Second Chance, once it began operating.

19. Respondent testified that he specifically inquired of the two different attorneys that he and Mr. Garcia used during the process of starting Second Chance regarding the necessity for Second Chance to be licensed by the Department in order to lawfully operate a loan modification business. Respondent testified that Ms. Kelsch continued to advise them that Second Chance did not need a real estate broker license from the Department to engage in the loan modification and rehabilitation activities they pursued. Respondent and Mr. Garcia discharged Ms. Kelsch and hired real estate specialist attorney, Marc Caraska, to represent them. Mr. Caraska, a real estate specialist attorney, was also a licensed real estate broker with an active brokerage practice. There was no evidence that respondent, Mr. Garcia or Ms. Kelsch ever discussed the matter of the need for a real estate broker's license to perform loan modification and rehabilitation services or to accept advance fees for those services with anyone at the Department in a position to provide a binding legal opinion before Mr. Caraska was retained.

20. In late 2008, respondent was contacted by a Department representative concerning some questions regarding Second Chance and its lack of licensing by the Department. Respondent referred the inquiring Department employee to counsel Mr. Caraska, and later met with this employee with Mr. Caraska present. Respondent testified that Mr. Caraska continued to advise him, following the meeting with the Department

representative, that a real estate broker's license from the Department was not required for Second Chance to offer and perform loan modification and rehabilitation services or to accept advance fees for those services. Respondent acknowledged he did not confirm this advice himself with anyone in a position of authority at the Department, or verify that what Mr. Caraska said accurately reflected the contradiction between his opinion and the Department's position. Nevertheless, respondent testified that counsel advised respondent that in order to avoid further conflict with the Department, respondent and Second Chance should file for issuance of a California Finance Lender Law (CFLL) license from the Commissioner of Corporations (Commissioner). Respondent agreed and, through counsel, sought the CFLL license for Second Chance.

21. On October 7, 2008, Second Chance, by Mr. Caraska and respondent, filed an application with the Commissioner for the issuance of a CFLL license. The application listed respondent as the person in charge of the business, as well as listing him as Chief Executive Officer, Secretary, and director. On the application, the following appeared in the section of the application for a description of the business activities of the entity seeking the license:

> Applicant plans to primarily provide mortgage brokerage services for residential consumer loans and small-business real estate loans. Applicant plans to act as lender for the same types of loans utilizing its own funds and that of a license warehouse lender.

22. As is discussed further below, the statement on the CFLL license regarding Second Chance's business activities is patently false.

23. Mr. Caraska signed the CFLL application as representative of the applicant and respondent signed as the President of Second Chance. It is not clear whether respondent or Mr. Caraska wrote the statement regarding Second Chance's business activities quoted above on the CFLL application. Mr. Garcia's name does not appear on the application anywhere. The Commissioner issued the CFLL license on December 15, 2008, in part in reliance upon the veracity and accuracy of the statement of business purpose disclosed in the application, as quoted above.

24. On March 24, 2009, the Commissioner issued an immediate Desist and Refrain Order (the Order) against Second Chance for violation of California Financial Code sections 22300, 22154, 22161, and 22170. The Order was issued because the Commissioner's representatives discovered that Second Chance was acting as an intermediary in hundreds of loan modification transactions with California borrowers. The Commissioner found in the Order that Second Chance's business activities were unlawful under the CFLL license, in that California Financial Code section 22300 provides that no licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature unless a loan is actually made. The Commissioner concluded that since loan modification does not involve the making of a loan, a lender licensed by the Commissioner may not engage in loan modification intermediary activity under the authority of the CFLL license, and may not receive payment in advance of any loan being made. In effect, the

Order found that every aspect of Second Chance's business violated the governing law and the limitations placed on a CFLL licensee. In addition, the Commissioner found in the Order that Second Chance advertised, displayed, published and or distributed a statement or representation referring to the supervision of the business by the state that was false, misleading, or deceptive in violation of California Financial Code section 22161. Finally, the Commissioner found that the representations made by Second Chance to the Commissioner regarding the in the application regarding Second Chance's business activities (quoted above) were materially false and misleading. Second Chance additionally failed to disclose in the application that its primary [and only] business activity was that of loan modifications. After issuing the Order, the Commissioner immediately suspended Second Chance's CFLL license, which was ultimately revoked.

25. The Department's representative again contacted respondent in January 2009, and advised respondent that the Department was seeking to audit respondent's records for Mesunas Properties, Inc. The audit was scheduled for March 5, 2009. There was no dispute that respondent was fully cooperative with the Department's auditor and permitted the Department's auditor unrestricted access to all records maintained by and on behalf of Second Chance. A follow-up audit that focused on Second Chance's operations took place on March 19, 2009, after the auditor discovered that the loan modification and rehabilitation activities were taking place through an unlicensed entity (Second Chance) operating within respondent's brokerage. The second audit reviewed Second Chance's loan modification and rehabilitation transactions for the one year period from January 2008 through January 2009.

26. Respondent contends that during the first audit, the Department's auditor informed respondent for the first time that respondent was required to have a preapproved advance fee agreement from the Department in place before accepting any advance fees, and that he could obtain all information necessary to submit an advance fee agreement to the Department for preapproval from the Department's website. There was no dispute that upon discovering the requirement for a preapproved advance fee agreement, respondent immediately filed and obtained Department approval of an advance fee agreement.

27. The Department served Second Chance, respondent, and Mr. Garcia with an Order to Desist and Refrain (the DR Order) on March 24, 2009. The DR Order required respondent, Mr. Garcia, and Second Chance to immediately stop performing loan modification services through Second Chance without a license, and to immediately cease receiving any advance fees without having obtained prior approval from the Department of an advance fee agreement, and required compliance with all trust account procedures. Following discussion with the Department's representatives, and the Department's representatives confirming that respondent had recently submitted an advance fee agreement for prior approval to the Department on March 5, 2009, the Department relaxed the Order. The department agreed to permit respondent to continue to process loan modifications that had already been commenced, but imposed limitations including that no additional fees could be charged. In addition, the Department required respondent to refund to any client all advance fees received if the client did not want to continue with a loan modification, and to transfer all the activities to take place under respondent's corporate real estate brokerage

license Mesunas Properties, Inc. Respondent was precluded by the DR Order from initiating any new loan modification. Respondent complied, dissolved Second Chance in March 2009, and transferred all remaining accounts to Mesunas Properties, Inc.

28. Respondent contends he relied upon the advice of experienced counsel specializing in the real estate field in failing to seek licensure by the Department for Second Chance and its operations. He also contends counsel's incorrect advice is understandable because the field of loan modification is relatively new, and few entities engaging in this service had been correctly licensed and organized. He also contended that the misapprehension was understandable because loan modification is considerably less flexible than loan origination, due to a marked difference between the amount of flexibility and discretion the broker has in being able to negotiate and arrange terms, and does not result in the origination of a new loan. Respondent acknowledged that he did not directly inquire of anyone at the Department whether Second Chance was required to be licensed separately as a real estate broker in order to operate a loan modification service, or to accept advance fees for loan modifications not yet arranged or completed. He contends that had he known that Second Chance was required to be separately licensed by the Department in order to engage in loan modification services, he would have simply and easily applied for a corporate license similar to the one he already held for his brokerage, or operated through his already licensed corporate brokerage.

29. Unfortunately, respondent's testimony sought in some respects to shift the blame to others and came across as trying to talk his way out of the rather significant problems Second Chance created. All the talk and blame shifting failed to address the central problem with the manner in which Second Chance was operated, which respondent later discovered to his great financial harm.

30. The core problem was not the form of business organization under which respondent operated Second Chance or its licensure, so much as it was the glaring lack of accounting and accountability for more than 1,500 loan modification transactions undertaken in a year's time, and $3.2 million in advance fees received in the course of that year, without any way to trace how those funds were used and the inability to attribute any particular receipt or expenditure to any particular individual person seeking a loan modification. Respondent failed to address this point, even though he testified he refunded more than $300,000 to clients who had paid advance fees for loan modifications but wanted to withdraw after the Department became involved and clients were given the option of doing so. Respondent's closest brush with recognition of the real problem was his acknowledgement that his cost controls were "loose and inadequate" with respect to this business, which he later found very costly. He found himself unable to continue making refunds to clients who asked for one because the available cash in the undifferentiated Second Chance bank account was quickly exhausted in trying to satisfy the refund demands, and respondent was required to start contributing personal savings and assets to the company to meet the refund demands.

31. Respondent testified he has endured a personal financial catastrophe in unwinding the affairs of Second Chance, and through following up on his personal commitment to complete all loan modification contracts for clients from whom advance fees were received who did not request refunds. There is little doubt that respondent has been required to dig deep into his own pocket to complete the transactions, and the process is not yet quite complete. Mr. Garcia conveniently absented himself during this process, and after he surrendered his license, respondent and his new attorney asked Mr. Garcia not to return. Respondent has been required to liquidate his personal and corporate retirement accounts and contribute all of his personal net worth to fund the completion of these transactions. As of the date of the evidentiary hearing, he still has between 40 and 50 transactions to complete. He contends he "has done the right thing" with respect to his clients, suffering personal loss rather than abandon his contractual obligations to these persons, and so he has. But the fact that he is being bankrupted by the process of completing transactions for which he was presumably paid in full in advance for each and all demonstrates the glaring deficiency in the failure to account for these transactions individually. By proceeding as he did, he had no method to track and control his costs to any individual borrower.

32. Respondent testified at one point that he had lost "everything," as a result of unwinding Second Chance. Later he testified he is still operating Mesunas Properties, Inc. and employs four salespersons. He engages in a mix of real estate listing and resales, short sales and refinancing, and loan brokerage activities. He is obviously quite knowledgeable about negotiation and brokerage of loans secured by real property. He hired a new attorney who became a full time employee in order to help him finish the portfolio of loan modifications and clean up the business. This attorney, Mr. Sutliff, made a very supportive declaration in support of respondent's effort to retain his license, detailing the great personal cost endured by respondent in his effort to "do right by every client." He expressed disappointment with many of the clients' lack of appreciation of these extraordinary efforts and with their failure to acknowledge the fact that respondent did not just default and strand them. Counsel was supportive of respondent's effort to salvage what is left and continue to practice, commenting that his work with respondent has shown respondent to be a person of high integrity, honesty and ethical behavior, as clearly demonstrated by his willingness to continue to contribute his personal assets to satisfying the obligations of Second Chance to his great personal harm.

33. Respondent took and completed a three hour continuing education course in trust fund handling on September 2, 2009. Respondent met with Department representatives and legal staff at least twice since March 2009. One of the Department's representatives who participated in these compliance meetings testified. He acknowledged respondent was currently in full compliance with all Department laws and regulations, and that respondent had been quite diligent in his efforts to make certain his operations came into compliance. He confirmed that there has never been a complaint or compliance problem with respondent's traditional real estate brokerage operations through the corporate licenses. This testimony was rather persuasive and constituted strong indirect support for permitting respondent to retain his licenses in a restricted status.

34. Respondent is involved in community activities. He serves as the youth group leader at his church and participates in several real estate professional organizations. He has served as the President of Realty World Council. He is a Desert Storm U.S. Army decorated combat veteran and a veteran of the California National Guard.

LEGAL CONCLUSIONS

First Cause Of Action

1. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶] ... [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.[3]

[¶] ... [¶]

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

The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial.

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.[4]

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[3] Business and Professions Code section 10177, subdivision (d).
[4] Business and Professions Code section 10130.

3. Respondent violated sections 10130 and 11077, subdivision (b) with respect to his operation of Second Chance Negotiations, Inc. It was not disputed that this entity was required to be licensed by the Department as a corporate real estate broker to engage in the mortgage loan modification services it offered, and was not so licensed until the Department and the Commissioner intervened and issued their Desist and Refrain Orders. Therefore, legal cause exists pursuant to section 10177, subdivision (d), to revoke or suspend respondent's real estate broker's licenses.

4. In mitigation, at all times relevant to this Decision, respondent has been licensed as a corporate and individual real estate broker, and has fully complied with all laws and requirements individually and with respect to his corporate licenses, excepting Second Chance. Further, he has, at considerable personal cost, caused Second Chance's operations to come into compliance with the law and regulations, and insured that no client of Second Chance has lost any money due to its operation. In aggravation, the CFLL license was procured by fraudulent representations and the operations of Second Chance were "out of control" when the Department and the Commissioner of Corporations' staff intervened.

Second Cause Of Action

> 5. The commissioner may require that any or all materials used in obtaining advance fee agreements ... be submitted to him or her at least 10 calendar days before they are used.
>
> [¶] ... [¶]
>
> The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part.
> Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under Section 10081 of this code, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided.[5]
>
> 6. Any real estate broker who contracts for or collects an advance fee from any other person, hereinafter referred to as the "principal," shall deposit any such amount or amounts, when collected in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned hereinafter have been mailed to the principal.

[5] Business and Professions Code section 10085.

[¶] ... [¶]

The commissioner may issue such rules and regulations as he deems necessary to regulate the method of accounting, and to accomplish the purpose of the provisions of this code relating to advance fees including, but not limited to, establishing forms for and determining information to be included in such accountings. Each principal shall be furnished a verified copy of such accountings at the end of each calendar quarter and when the contract has been completely performed by the licensee. The Real Estate Commissioner shall be furnished a verified copy of any account or all accounts on his demand therefor.

Where advance fees actually paid by or on behalf of any principal are not handled in accordance with the preceding paragraph, it shall be presumed that the agent has violated Sections 506 and 506a of the Penal Code. The principal may recover treble damages for amounts so misapplied and shall be entitled to reasonable attorneys' fees in any action brought to recover the same.[6]

7. (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.[7]

[¶] ... [¶]

8. Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:

(a) The name of the agent.
(b) The name of the principal.
(c) Description of the services rendered or to be rendered.
(d) Identification of the trust fund account into which the advance fee has been deposited.
(e) The amount of the advance fee collected.
(f) The amount allocated or disbursed from the advance fee for each of the following:
(1) In providing each of the services enumerated under (c) above.

[6] Business and Professions Code section 10146.
[7] California Code of Regulations (CCR), title 10, section 2970.

(2) Commissions paid to field agents and representatives.
(3) Overhead costs and profit.

(g) In cases in which disbursements has been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.

(h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.[8]

9. Respondent violated section 10177, subdivision (d), in that he violated sections 10085, and CCR, title 10, sections 2970 and 2972. As set forth in the Factual Findings, respondent collected advance fees for and through Second Chance without having an advance fee agreement in place and preapproved by the Real Estate Commissioner, and failed to comply with sections 2970 and 2972 in collecting and accounting for the more than $3.2 million in advance fees received by Second Chance. Separate legal cause therefore exists to revoke or suspend respondent's real estate broker's licenses.

Third Cause Of Action

10. (a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

[¶] ... [¶]

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) 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] CCR, title 10, section 2972.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) *The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.*

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.[9]

11. (a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

[¶] ... [¶]

(e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.[10]

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[9] Business and Professions Code section 10145.(italics added)
[10] CCR, title 10, section 2832.

12. (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed $1,000. Upon request of the Department or the maker of such checks, a broker shall account for the

receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.[11]

13. (a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.[12]

14. The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or

[11] CCR, title 10. section 2831.
[12] CCR, title 10, section 2831.1.

transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.[13]

15. As set forth in the Factual Findings, respondent violated section 10177, subdivision (d), by virtue of violating section 10145 and 2832 of the Regulations of the Real Estate Commissioner (the Regulations), in that respondent failed to deposit advance fees, which constituted trust funds within the meaning of these provisions, into an account maintained in the name of a licensed real estate broker as trustee for the funds, and instead deposited the funds into a business checking account maintained in the name of Second Chance. Separate legal cause therefore exists to revoke or suspend respondent's real estate broker's licenses.

16. As set forth in the Factual Findings, respondent violated section 10177, subdivision (b), by virtue of violating section 2831 of the Regulations, in that respondent failed to keep a written control record of any and all advance fees received and disbursed by Second Chance. Separate legal cause therefore exists to revoke or suspend respondent's real estate broker's licenses.

17. As set forth in the Factual Findings, respondent violated section 10177, subdivision (b), by virtue of violating section 2831.1 of the Regulations, in that respondent failed to keep written beneficiary and transaction records containing all the detailed information required by section 2831.1, with respect to all advance fees received by Second Chance. Separate legal cause therefore exists to revoke or suspend respondent's real estate broker's licenses.

18. As set forth in the Factual Findings, respondent violated section 10177, subdivision (b), by virtue of violating section 2831.2 of the Regulations, in that respondent failed to reconcile the balance of separate beneficiary and transaction records of advance fees received in trust and funds disbursed, on an at least once monthly basis, and failed to maintain a record of reconciliations of accounts per beneficiary or account, as required by section 2831.2, with respect to all advance fees received by Second Chance. Separate legal cause therefore exists to revoke or suspend respondent's real estate broker's licenses.

19. The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated *on account of a crime committed by the licensee.*[14]

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[13] CCR, title 10, section 2831.2.

[14] Although these criteria were adopted for the specific purpose of evaluating whether a licensee convicted of a crime is rehabilitated, many of the criteria are equally relevant to assessing the facts in mitigation and rehabilitation regarding other forms of violations of law and regulations resulting in disciplinary action. Thus, to the extent applicable, the criteria are "borrowed" here to act as guidance for making the assessment required in this action that does not involve any criminal action or activity.

[¶] ... [¶]

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

[¶] ... [¶]

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

[¶] ... [¶]

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question [or violations of law and regulation] as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.[15]

20. As set forth in detail in the Factual Findings, respondent did not dispute the accusatory allegations to any great extent. Instead, he directed his energy to making a case for mitigation and rehabilitation, consistent with his efforts to reconcile the problems with

[15] CCR, title 10, section 2912.

Second Chance once he was alerted to the nature and gravity of the problems the loan modification business had caused. Respondent's defense to the suggestion that he was "asleep at the wheel" as the CEO and a principal of Second Chance, and either naïve or disinterested in compliance with the requirements for licensure and structuring the operations of Second Chance was largely explained by his reliance upon the advice of specialist real estate counsel. Troubling is the fact that respondent failed to check and verify his position with the Department and its legal staff, especially after the Department contacted respondent and alerted him there might be a problem with a lack of licensure for his operations. Undeniably, setting up another real estate broker corporation and getting it licensed should not have been too much of a problem, or even rolling the operations over into Mesunas Properties, Inc. In fact, it is curious that respondent and his several attorneys never mentioned why they did not set up Second Chance within respondent's existing structure in the first instance, or create a parallel licensed business structure, if it was so easy. This contention thus cuts both ways. There is a reason, to date not revealed, why respondent and Mr. Garcia did not take these easy steps to park Second Chance's operations under one of respondent's corporate broker's licenses, or just get another Department corporation license for that business alone. The reviewer is left to speculate. Certainly when the auditor began to examine the operation, and Second Chance unwound, fiscal mismanagement galore was revealed.

21. None of the foregoing should diminish the responsible and praiseworthy manner in which respondent dealt with cleaning up the mess that was Second Chance, and the manner in which he "stepped up," as Mr. Sutliff put it, and accepted financial responsibility for his own and the misdeeds of many others who abandoned him when the regulators moved in and found the problems. Respondent received no contributions from any of these others who profited from and were active participants in Second Chance. He bore his own and the fault of others as well. To date, he has "made good" all of Second Chance's financial and services obligations, at considerable personal cost. This is a very significant factor in mitigation, and the single weightiest reason respondent's licenses are not being revoked outright.[16] In addition, the Department's employee, who testified regarding the efforts respondent made to meet with Department representatives and legal staff and the efforts respondent made to bring Second Chance's operations into compliance with the Department's directions, was very persuasive, in that this reveals respondent's attitude toward complying with the Department's oversight and the laws and regulations governing his real estate practice. Respondent has demonstrated by his actions that he can and will take responsibility for his failures and violations of the law and will make his clients whole, even at grave personal cost. This conduct speaks volumes about his integrity and ethics, and his suitability for continued licensure.

[16] According to the Department's website, it is now unlawful for any broker to accept advance fees for loan modification work. Going forward, this new law will make such work a good deal less fraught with potential for abuse.

22. The issue at the end of the analysis is whether to permit respondent to continue as a real estate broker with a restricted license with strict terms, or to revoke the broker's license and permit respondent to continue to work as a licensed real estate professional with a restricted real estate salesperson license, under the supervision of another real estate broker. The decision holds, among other things, the jobs of four other real estate professionals in the balance, as well as respondent's office staff employees. The decision centers upon whether respondent can and should be trusted to supervise and manage a brokerage and the activities of others after he made such a catastrophe of his oversight of Second Chance. The turning point is the manner in which respondent behaved after March 9, 2009, the time of the first audit, and particularly after March 24, when the Department's DR Order was issued. Respondent "figured it out" with help from two attorneys who finally gave him some meaningful assistance. Mr. Sutliff's declaration, describing uncontested respondent's behavior and approach to voluntary compliance after March 2009, and his "digging deep" to take responsibility for not only his own actions but those for which he bore a supervisory responsibility, was very persuasive in this regard.

23. On balance, the public interest will not be harmed by permitting respondent to continue as a real estate broker with a restricted license and strict terms of compliance, including a cap on the number of salespeople he may employ, a bar on any loan modification or rehabilitation business during the restricted license period, and appointing an independent real estate broker to periodically review a sampling of his transactions for compliance, with a report to the Department.

ORDER

not adopted

All licenses and licensing rights of Christopher James Mesunas, Mesunas Properties, Inc., and Realty World-Superior Properties, Inc., for which Mr. Mesunas is an officer, director or principal shareholder, issued pursuant to the California Real Estate Law, are revoked, separately and severally, and separately and severally for each of the causes set forth in the legal Conclusions; provided, however, restricted real estate broker's licenses shall be issued to Respondent and his licensed corporate entities pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted licenses issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted licenses issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent 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.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent 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 fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

not adopted

5. Respondent shall submit to the Department a plan of oversight and supervision by a licensed real estate broker within ninety (90) days of the effective date of this Decision. The supervising broker shall be subject to the advance approval of the Department. The reviewing broker shall certify initially to the Department that he or she has read this Decision permitting the issuance of the restricted license(s) and the reasons therefor, and agree to exercise supervisory and review authority as described here, as well as provide advice and support in the event that the reviewer finds any practice or procedure followed in respondent's practice requires correction or modification in order to comply with the Real Estate Law, Regulations or appropriate professional real estate standards of practice. The supervising broker shall, at respondent's cost, review no less frequently than every six months during the time respondent holds a restricted license, a representative sample of transactions completed or in progress in respondent's brokerage during the six month period pervious to the review. The review shall consist of no less than 10 transactions and no more than 25. The reviewing broker shall make a brief report to the Department no less than twice annually, certifying to the Department that respondent's transactions fully comply with the Real Estate Law

not adopted

and Regulations and all applicable professional real estate standards. Respondent shall bear all costs of the semi-annual reviews.

6. During all periods of time respondent holds a restricted license, he shall employ and supervise no more than five (5) real estate salespersons, unless the Department, in its discretion, and for good cause shown, allows more.

7. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

8. During the period any restricted license is in effect, respondent may not engage in loan modification or rehabilitation of loan secured by real property, saving and excepting the continuing work to complete all Second Chance transactions. To the extent that any Second Chance loans are still in process, the Department's previous Desist and Refrain order, as modified, remains in full force and effect, unless the Department, in its discretion, modifies or dissolves it.

DATED: December 28, 2009

Stephen J. Smith

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

FILED

AUG - 6 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MICHAEL GARCIA, Respondent.	No. H-5197 SAC

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On April 22, 2009, an Accusation was filed in this matter against Respondent MICHAEL GARCIA.

On July 1, 2009, Respondent MICHAEL GARCIA petitioned the Commissioner to voluntarily surrender his restricted real estate salesperson license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent MICHAEL GARCIA's petition for voluntary surrender of his restricted real estate salesperson license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the Declaration executed by Respondent MICHAEL GARCIA on July 1, 2009 (attached as Exhibit "A" hereto).

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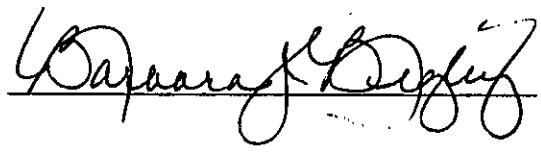
Respondent MICHAEL GARCIA's license certificate and pocket card shall be sent to the below-listed address so that they reach the Department on or before the effective date of this Order:

DEPARTMENT OF REAL ESTATE
Attention: Licensing Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on AUG 27 2009

DATED: 7-31-09

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 Accusation of CHRISTOPHER JAMES MESUNAS and MICHAEL GARCIA, Respondents.	No. H- 5197 SAC

DECLARATION

My name is MICHAEL GARCIA and I am currently licensed as a restricted real estate salesperson and/or have license rights with respect to said license. I am represented by David Boucher in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code) I wish to voluntarily surrender my real estate license(s) issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that by so voluntarily surrendering my license(s), that I may be relicensed as a broker or as a salesperson only by petitioning for reinstatement pursuant to

Section 11522 of the Government Code. I also understand that by so voluntarily surrendering my license(s), I agree to the following:

The filing of this Declaration shall be deemed as my petition for voluntary surrender. It shall also be deemed to be an understanding and agreement by me that I waive all rights I have to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that I also waive other rights afforded to me in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses. I further agree that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-5197 SAC, may be considered by the Department to be true and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code Section 11522.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that I freely and voluntarily surrender all my license(s) and license rights under the Real Estate Law.

7-15-09 Roseville CA

Date and Place

MICHAEL GARCIA

TRULY SUGHRUE, Counsel
State Bar No. 223266
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0781

FILED

APR 22 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CHRISTOPHER JAMES MESUNAS, and MICHAEL GARCIA, Respondents.	No. H-5197 SAC ACCUSATION

The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CHRISTOPHER JAMES MESUNAS, and MICHAEL GARCIA, (hereinafter "Respondents"), are informed and alleges as follows:

PRELIMINARY ALLEGATIONS

1

The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

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3

At all times mentioned, Respondent CHRISTOPHER JAMES MESUNAS, (hereinafter "MENSUNAS") was and is licensed by the State of California Department of Real Estate (hereinafter "the Department") individually as a real estate broker.

4

At all times mentioned, Respondent MICHAEL GARCIA (hereinafter "GARCIA") was and is licensed by the Department as a restricted real estate salesperson.

5

At no times mentioned was 2nd Chance Negotiations Inc., (hereinafter "2nd Chance") licensed by the Department as a real estate broker corporation.

6

At all times mentioned herein, 2nd Chance, MESUNAS, and GARCIA engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers 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 each of them 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.

FIRST CAUSE OF ACTION

7

Each and every allegation in Paragraphs 1 through 6, inclusive, above, is incorporated by this reference as if fully set forth herein.

8

Beginning about June 2008 and continuing thereafter, GARCIA and/or MENSUNAS willfully caused, suffered, permitted, and/or disregarded the real estate law by

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allowing 2nd Chance to perform the acts and conduct the real estate activities described in Paragraph 6, above, including but not limited to the activities described in Paragraph 9, below.

9

Beginning about June 2008 and continuing thereafter, in the course of the employment and activities described in Paragraph 8, above, MENSUNAS and/or GARCIA and/or other agents or employees of 2nd Chance whose identities are unknown at this time, on behalf of 2nd Chance, solicited and/or performed services for borrowers, in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of compensation. Such activities include, but are no limited to:

BORROWER	PROPERTY ADDRESS
Juanita and Juan Ceja	5350 Great Smokey, Sacramento, California
Todd Barnett	1012 Village Circle, Winters, California
Michael and Colleen Menzel	9683 Shelby Drive, Whitelake, Michigan
Amado Molina	2744 Ellen Street, Sacramento, California
Joe Rodriguez	1621 Los Robles Blvd., Sacramento, California

10

In acting as described in paragraphs 8 through 9, above, MENSUNAS and/or GARCIA willfully caused, suffered, and/or permitted, 2nd Chance to willfully disregard Section 10130 of the Code.

11

The facts described above as to the First Cause of Accusation constitute cause to suspend or revoke all licenses and license rights of MENSUNAS and GARCIA pursuant to the provisions of Section 10130 of the Code in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACTION

12

Each and every allegation in Paragraphs 1 through 11, inclusive, above are incorporated by this reference as if fully set forth herein.

13

In connection with the operation and conduct of the real estate activities described in Paragraph 6, MENSUNAS and/or GARCIA willfully caused, suffered, permitted, and/or disregarded the real estate law by allowing 2nd Chance to engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 (hereinafter "advance fee") of the Code including but not limited to the following:

HOMEOWNER	DATE	AMOUNT
Juanita Ceja	5/29/08	$800
Todd Barnet	6/30/08	$1,995
Amado Molina	8/20/08	$2,000
Joe Rodriquez	8/6/08	$1,500
Angela Sbitner	7/30/08	$3,700
Hector R. Ortiz	4/15/08	$650
Brenda Williams	8/13/08	$1,795
Charles Taylor	7/7/08	$1,650

14

In connection with the collection and handling of said advance fee, MENSUNAS and/or GARCIA willfully caused, suffered, permitted, and/or disregarded the real estate law by allowing 2nd Chance:

(a) Failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations (hereinafter "the Regulations").

(b) Failed to immediately deliver said trust funds into a neutral escrow depository, or into a trust fund account in violation of Section 10146 of the Code.

(c) Failed to furnish the principal borrower the verified accounting required by Section 10146 of the Code and Section 2972 of the Regulations.

15

The acts and/or omissions of MENSUNAS and GARCIA described in the Second Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085 and 10146 of the Code, and Sections 2970 and 2972 of the Regulations, and are cause for the suspension or revocation of MENSUNAS and GARCIA's license and license rights.

THIRD CAUSE OF ACTION

16

Each and every allegation in Paragraphs 1 through 15, inclusive, above, is incorporated by this reference as if fully set forth herein.

17

In connection with the operation and conduct of the real estate activities described in Paragraph 6, MENSUNAS and/or GARCIA and/or other agents or employees of 2nd Chance whose identities are unknown at this time, on behalf of 2nd Chance, accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, investors, note purchasers, borrowers, and others in connection with the servicing, solicitation, negotiation, processing, and consummation of mortgage loan investments by 2nd Chance.

18

The aforesaid trust funds accepted or received by MENSUNAS and/or GARCIA and/or other agents or employees of 2nd Chance whose identities are unknown at this time, on behalf of 2nd Chance were deposited or caused to be deposited into on or more bank accounts

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(hereinafter "trust funds accounts") maintained by MENSUNAS and/or GARCIA for the handling of trust funds, including but not limited to the following:

TITLE AND ACCOUNT NUMBERS	BANK
2nd Change Negotiation Inc. Account No. 0210033852 (Bank #1)	American River Bank 9750 Business Park Drive #100 Sacramento, CA 95872
2nd Chance Negotiations Inc. Client Trust Account Account No. 0210034428 (Trust #1)	American River Bank 9750 Business Park Drive #100 Sacramento, CA 95872

19

In the course of activities described in Paragraph 6 and for each of the trust funds accounts identified in Paragraph 18, MENSUNAS and/or GARCIA willfully caused, suffered, permitted, and/or disregarded the real estate law by allowing 2nd Chance:

(a) Failed to deposit trust funds into one or more trust funds accounts in the name of a real estate broker as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of the Regulations.

(b) Failed to maintain a written control record of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations.

(c) Failed to maintain separate beneficiary or transaction records containing all information required by Section 2831.1 of the Regulations.

(d) Failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each account as required by Section 2831.2 of the Regulations.

20

The acts and/or omissions of MENSUNAS and GARCIA willfully caused, suffered, and/or permitted 2nd Chance to willfully disregard the real estate law as alleged in the Third Cause of Action constitute grounds for disciplinary action under the following provisions:

(a) As to Paragraph 19(a), under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;

(b) As to Paragraph 19(b), under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

(c) As to Paragraph 19(c), under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code; and

(d) As to Paragraph 19(d), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code.

PRIOR PROCEEDINGS

21

On or about March 24, 2009, in Case No. H-5181 SAC before the Department of Real Estate, the Real Estate Commissioner issued an Order to Desist and Refrain against 2nd Chance, MESUNAS, and GARCIA for violation of Sections 10085, 10085.5, 10046, 10177(d), 10130, 10139, 10177(j), and 10137 of the Code, and Sections 2970 and 2972 of the Regulations.

22

Effective May 28, 2008, in Case No. H-4897 SAC before the State of California Department of Real Estate, GARCIA's real estate salesperson license was revoked, but granted the right to a restricted salesperson license for violation of Sections 490 and 10177(b) of the Code.

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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 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 provisions of law.

JOE M. CARRILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 16 day of April, 2009