FILED

SEP 12 2013

BUREAU OF REAL ESTATE

By Norma Simms

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RICHARD LEON MORRIS, Respondent.	No. H-35465 LA

ORDER DENYING REINSTATEMENT OF LICENSE

On December 30, 2009, a Decision was rendered revoking the real estate broker license of Respondent, but granting Respondent the right to apply for a restricted salesperson license. The restricted salesperson license was not issued.

On April 19, 2012, Respondent petitioned for reinstatement of said real estate broker license.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate broker license at this time.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the

prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

The Department has developed criteria in Section 2911 of Title 10, California Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for removal of restrictions of a license. Among the criteria relevant in this proceeding are:

Regulation 2911(j)—Discharge of, or bona fide efforts toward discharging debts or monetary obligations

Respondent has a federal tax lien of $23,416 from 2010, and a state tax lien of $4,209 from 2011.

Regulation 2911(l) - Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

Respondent has not provided evidence of qualifying community service activities.

Regulation 2911(n) - Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

Respondent failed to disclose in the Petition Application the federal and state tax liens.

Given the violations found and the fact that Respondent has not established that Respondent has complied with Regulations 2911 (j), (l) and (n)(1), I am not satisfied that Respondent is sufficiently rehabilitated to receive a real estate broker license.

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NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement of Respondent's real estate broker license is denied.

This Order shall become effective at 12 o'clock noon on OCT 02 2013.

IT IS SO ORDERED 7/22/2013

Real Estate Commissioner

WAYNE S. BELL

FILED
FEB 18 2010
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of RICHARD LEON MORRIS, et al., Respondents.	No. H-35465 LA L-2009010732 ORDER DENYING RECONSIDERATION

On December 30, 2009, a Decision was rendered in the above-entitled matter. The Decision was to become effective on January 19, 2010, but was stayed by separate Order to February 18, 2010.

On January 26, 2010, Respondent petitioned for reconsideration of the Decision of December 30, 2010.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of December 30, 2010, and reconsideration is hereby denied.

IT IS SO ORDERED FEB 18 2010.

JEFF DAVI
Real Estate Commissioner

SACTO. Flag

FILED
JAN 14 2010
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of RICHARD LEON MORRIS, et al., Respondents.	No. H-35465 LA L-2009010732

ORDER STAYING EFFECTIVE DATE

On December 30, 2009, a Decision was rendered in the above-entitled matter to become effective January 19, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision of December 30, 2009, is stayed for a period of 30 days.

The Decision of December 30, 2009, shall become effective at 12 o'clock noon on February 18, 2010.

DATED: January 12, 2010.

JEFF DAVI
Real Estate Commissioner

By: Dolores Weeks
DOLORES WEEKS
Regional Manager

FILED
DEC 3 0 2009
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC., and RICHARD LEON MORRIS, individually and as designated broker-officer of The Firm-Loans, Insurance & Investments, Inc., Respondents.	No. H-35465 LA L-2009010732

DECISION AFTER REJECTION

Eric Sawyer, Administrative Law Judge ("ALJ") Office of Administrative Hearings, State of California, heard this matter on June 23 and 24, 2009 in Los Angeles.

James R. Peel, Counsel, represented Robin L. Trujillo, Deputy Real Estate Commissioner ("Complainant"), California Department of Real Estate ("Department").

Frank M. Buda, Esq., represented RICHARD LEON MORRIS ("Respondent"), who was present at hearing.

Oral and documentary evidence was received and the matter was submitted for decision on June 24, 2009. On July 21, 2009, the ALJ submitted a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California,

Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would decide the case upon the record, the transcript of proceedings held on June 23 and 24, 2009, and upon any written argument offered by Respondent and Complainant. Respondent submitted further argument on October 20, 2009. Complainant submitted further argument on October 28, 2009.

I have given careful consideration to the record in this case, including the transcript of proceedings of June 23 and 24, 2009. I have also considered the arguments submitted by Respondent and by Complainant. The following shall constitute the Decision of the Real Estate Commissioner ("Commissioner") in this proceeding:

FINDINGS OF FACT

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

2. Respondent is licensed by the Department as a real estate broker. He has been licensed by the Department since 1991. Respondent's license will expire on December 18, 2011, unless renewed.

3. The Firm-Loans, Insurance & Investments, Inc. ("The Firm") was first licensed by the Department as a corporate real estate broker on April 5, 2007. The Firm was originally a respondent in this case, but the Commissioner accepted the voluntary surrender of its license in resolution of that matter.

4. At all times relevant, Respondent was the broker-officer for The Firm designated pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for the supervision and control of activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the Real Estate Law. Respondent served as the designated officer from April 5, 2007 through July 17, 2007, at which time his officer designation was cancelled. Between July 18, 2007 and April 6, 2008, Dean Eric

Toro served as the corporation's designated officer. Then, between April 7, 2008 and January 22, 2009, Respondent again served as the designated officer. He cancelled his designation on January 22, 2009.

5. From April 5, 2007 through September 27, 2008, Respondent and The Firm maintained the same main office address of record with the Department -- 10374 Trademark, Rancho Cucamonga, CA 91730. Effective on or about October 1, 2008, Respondent changed his main office and mailing address to 3535 Inland Empire Boulevard, Ontario, CA 91764, but retained a branch office at 10374 Trademark, Rancho Cucamonga. The branch office license in Rancho Cucamonga was cancelled on or about June 23, 2009.

6. At all times relevant, Respondent and The Firm engaged in the business of, and acted in the capacity of, real estate brokers in the State of California.

Activities of the Firm

7. The Firm was engaged in the business of loan modifications, among other business activities. In performing loan modifications, The Firm would charge its customers an advance fee, in exchange for The Firm agreeing to contact the holder of the customer's residential property mortgage and attempt to renegotiate the loan balances, interest and monthly payments to terms more favorable to its customers.

8. Between April and June of 2008, The Firm was retained by the Menjivar family, the Scriven family, the Gonzalez family, and the Losoya family to engage in loan modification work for their residential properties.

a. Each of the families signed written agreements with The Firm which called for payment of upfront fees in exchange for The Firm's assistance in negotiating with lenders on their behalf to modify their loan situations and prevent their homes from being lost in foreclosure. The agreements reflected the parties' understanding that The Firm and The Firm's attorneys would renegotiate the terms of existing debt, refinance into fixed loan terms, and/or represent the parties in the "quick sale" of the home in the event that a modification of existing terms or refinance was not possible.

b. In each case, the family was charged, and paid, a fee between $4,500.00 to $10,325.00. In each case, The Firm did not achieve a favorable result for the homeowners. Each of the families complained to The Firm and demanded refunds. The Menjivar family was refunded $5,500.00 of the $7,000.00 fee they were charged. The Losoya family was refunded $3,200.00 of the $4, 500.00 fee they were charged. The Scriven and Gonzalez families were not given any refunds. It was not established that The Firm used any of the fees obtained for the benefit of the four families.

9. The "loan modification" work engaged in by The Firm falls within the definition of activities requiring a real estate license under the Real Estate law. Specifically, the Firm solicited borrowers or lenders to negotiate loans or perform services for borrowers, lenders and/or note owners in connection with loans secured by real property.[1] In this case, the fees obtained by The Firm from the four families constituted advance fees, as they were fees collected for performance of the real estate services to be performed.[2]

10. Copies of the front and back sides of the checks reflecting the fees paid by the families listed above in Finding 8 were admitted into evidence at hearing. The back of each check reflects that the checks were deposited into one of several accounts held by The Firm. However, it was not established at hearing whether or not any of those accounts were trust accounts. Therefore, violation of Business and Professions Code section 10146 was not established,[3] since no evidence on this issue was presented, other than the negotiated checks from the four families.

11. With regard to the four families, The Firm failed to submit advance fee materials to the Department, including the form of the advance fee agreement proposed for use, before collecting the advance fees. This was in violation of Title 10, Chapter 6 of the California Code of Regulations ("Regulations"), and Regulation 2970.[4]

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[1] See Business and Professions Code section 10131, subdivision (d).
[2] See Business and Professions Code Section 10026.
[3] All further references to the "Code" refer to the Business and Professions Code unless otherwise noted.
[4] Further references to "Regulations" refer to Title 10, Chapter 6 of the California Code of Regulations.

12. The Firm, acting by and through Respondent as its designated broker-officer, did not submit any proposed agreement to collect advance fees for loan modification activity to the Department until October 20, 2008.[5] The initial submissions were objected. On or about January 16, 2009, the Department notified The Firm and Respondent that it did not object to the proposed advance fee agreement and materials submitted at that time. Respondent subsequently resigned as designated broker-officer.

Respondent's Activities

13. Respondent failed to supervise activities of The Firm in the performance of acts for which a real estate license is required, including the soliciting of borrowers for "loan modification" work, as well as the negotiations with lenders on behalf of client/borrowers. As a result, The Firm collected the above-described advance fees without agreements or documents previously submitted to the Commissioner for review, failed to account for the fees collected, failed to perform services promised, and failed to provide refunds of unearned fees. No evidence was presented that Respondent was directly involved in the transactions set forth in Finding No. 8 above, or in any other "loan modification" activity performed by The Firm and its employees. However, the "loan modification" business was conducted at the main and mailing address of record for Respondent's real estate license, which was the same address as The Firm, and was the only address out of which Respondent was licensed to perform real estate activities during that time. Respondent failed to establish that he had in place adequate policies and procedures to oversee and manage transactions requiring a real estate license and a system for monitoring compliance with the Real Estate law.

14. Respondent testified that initially he believed the Real Estate Law did not apply to loan modification activity, particularly if The Firm employed attorneys who would be involved in that activity. However, although it was established that The Firm had employed attorneys, it was not established that the attorneys were involved in any part of the loan

[5] According to licensing records (Ex. 2 and Ex. B), this was close in time to when the Department filed its Desist and Refrain Order against Respondent and The Firm, in Case No. H-35465 LA.

modification process, other than meeting with angry customers who demanded refunds.[6] Respondent also testified that, early in his tenure with The Firm, he was assured by the Department that a broker license was not required for loan modification activity, provided an attorney was involved in the transactions. However, Respondent did not establish that he in fact made any such contact; or, if he did, that the Department had advised him so. In any event, Respondent did not establish that he undertook any efforts to determine or confirm the level of The Firm's attorney-employees' involvement with the loan modification activity. Under these circumstances, Respondent's testimony indicates that, in fact, he had a suspicion that the Real Estate Law applied to The Firm's loan modification activity, but that he failed to take measures to secure The Firm's compliance with it.

15. When Respondent returned to The Firm in 2008, he was told by the owner of the company that he was only responsible for overseeing loan origination work, and he was directed to have no involvement in the loan modification activity. At that time, Respondent was told by the company's owner, Mr. Nehad Ayyoub, that it was his belief that the Department had no jurisdiction over the loan modification activity because The Firm employed attorneys. Mr. Ayyoub testified in this matter, and confirmed that he had made that representation to Respondent, after being advised by one of The Firm's attorneys that the Department had no jurisdiction over loan modifications. Ther was no written agreement between Respondent, as designated broker, and Ayyoub, as an unlicensed business owner, spelling out Respondent's responsibilities. Respondent relied on Ayyoub's assessment that no real estate license was required to perform loan modifications, even though Ayyoub was not a real estate licensee. Respondent never independently obtained legal advice. In fact, Respondent testified that he was not sure what "loan modification" entailed, and did not ask Ayyoub about the details. He did not review any of the loan modification files or materials himself to make a determination based on

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[6] Code section 10133, subdivision (a) (3), provides an exemption from having a real estate license to perform the acts enumerated in section 10131, if performed by "an attorney at law in rendering legal services to a client." This exemption does not apply in this case where it was not established that The Firm's attorneys rendered legal services to The Firm's clients.

his own lengthy experience in the real estate loan business. Nor did he inquire about who would perform the work and how fees were handled. In essence, Respondent and Ayyoub had an implicit agreement that Respondent would not inquire about the details of The Firm's work and would rely solely on Ayyoub's verbal assurances that no real estate license was required for the loan modification activities. In this way, Respondent turned a blind eye to the business of The Firm, a corporate licensee that was only authorized to conduct real estate business when acting by and through Respondent as its supervising broker. In retrospect, Respondent testified that he, "...had no knowledge that, basically, what they were doing was stealing from clients.[7]"

Mitigation and Rehabilitation

16. Respondent established the following facts in mitigation:

A. He has been licensed by the Department since 1985 (initially as a real estate salesperson). He has no prior record of discipline with the Department.

B. He also has a vehicle salesperson license with the Department of Motor Vehicles and has no record of discipline by that agency.

C. The Firm was not involved in loan modification activity when Respondent was initially employed there in 2007.

D. Respondent was not involved in any of the transactions pertaining to the four families discussed above. He received no compensation from The Firm relative to any of its loan modification activity. Respondent had no ownership interest in The Firm.

17. Respondent has taken measures to correct the problems described above. For example, he has cooperated with the Department since becoming aware of this case in October of 2008. He terminated his affiliation with The Firm in January of 2009 after he learned that the Firm began doing loan modification work again after it had been served with a Desist and Refrain Order prohibiting it from doing so. On his own initiative, Respondent submitted to the Commissioner a proposed advance fee agreement. He was advised that the Commissioner did

[7] Transcript of Proceedings, June 23, 2009, page 121:6-7.

not object to his materials, as of March 12, 2009. Respondent has not subsequently become involved in loan modification activity and he has severed his ties with the owners of The Firm.

18. Respondent is currently self-employed as a real estate broker. He is involved in real estate sales and loan origination work. He is a member of the Inland Valley Board of Realtors. Respondent submitted character reference evidence from a fellow licensed real estate broker who has known him for several years and from a long-time vehicle sales customer. Both references indicate that Respondent is generally honest and has acted with integrity in all of their dealings.

LEGAL CONCLUSIONS

1. *First Cause for Discipline.* Cause was not established for disciplinary action against Respondent's real estate broker license pursuant to Code section 10177, subdivisions (d) (willful disregard or violation of the Real Estate Law) or (g) (negligence or incompetence in performing an act for which a license is required). In this case, it was not established that Respondent personally disregarded (willfully or otherwise), or violated the Real Estate Law. Neither was it established that he undertook any action for which a license was required in a negligent or incompetent manner. While it was established that other employees of The Firm violated the Real Estate Law with respect to its loan modification activity, Code section 10179 provides that Respondent's broker license is not subject to discipline for violations committed by others, unless he had "guilty knowledge" of such violations. In this case, it was not established that Respondent knew or understood at the time in question that The Firm was violating the Real Estate Law through its loan modification activity. (Factual Findings 1-15)

2. *Second Cause for Discipline.* Cause was established for disciplinary action against Respondent's real estate broker license pursuant to Code section 10177, subdivision (h), which provides for discipline against an officer designated by a corporate broker licensee who fails to exercise reasonable supervision and control of the activities of the corporation for which a real state license is required. In this case, Code Section 10159.2 required Respondent to exercise reasonable supervision and control of the activities of The Firm such as to ensure full

compliance with the Real Estate Law. Respondent failed to exercise any supervision and control over The Firm's loan modification activity, and he undertook no efforts to ensure The Firm's compliance with the Real Estate Law pertaining to the submission of proposed advance fee agreements and materials before collecting advance fees for loan modification activity. In light of the duties of supervision and control imposed by Code sections 10177, subdivision (h) and 10159.2, the "guilty knowledge" defense of Code section 10179 does not exonerate Respondent from his own shortcomings or omissions in supervising and controlling the actions of the other employees of The Firm. (Factual Findings 1-15).

3. *Discipline.* Respondent's misconduct in this case stemmed from his failure to supervise the actions of The Firm's officers and employees regarding its loan modification activity. As a result, at least four families were induced to provide advance fees that were not legally permissible under the circumstances, from which the families derived no benefit. Although Respondent established facts indicating that his misconduct was unintentional, he relied on the verbal assurances of the business owner, and failed to take reasonable measures to ensure compliance with the Real Estate Law. In essence, he turned a blind eye, and failed to honor his legal obligations as the designated broker licensee. In so doing, he breached the trust inherent with a broker's license. (Factual Findings 1-15).

4. However, Respondent also established a significant level of rehabilitative activity since the misconduct in question, indicating that it is unlikely that he will commit similar misconduct in the future. Respondent has no other record of discipline with the Department and has proven himself to be a generally honest person, who has acted with integrity in his business affairs. He severed his ties with The Firm, after attempting to bring them into compliance. For these reasons, the following Order is warranted in this case to protect the public. (Factual Findings 16-17).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent RICHARD LEON MORRIS

under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10165.5 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 license within 90 days from the effective date of this Decision. The restricted license 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 license 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 license 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 two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

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b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. 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.

6. Respondent shall, prior to the issuance of an unrestricted license and as a condition of the issuance of said unrestricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of $1,000 to each of the following families: Mr. and Mrs. Waldo Menjivar; Mr. and Mrs. Ronald Scriven; Ms. Mayra Gonzalez; and Mr. and Mrs. Genaro Losoya.

This Decision shall become effective at 12 o'clock noon on 1-19-10.

IT IS SO ORDERED 12/30/09.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED
SEP - 3 2009
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RICHARD LEON MORRIS, Individually and as designated officer of The Firm-Loans, Insurance & Investments, Inc., Respondent.	No. H-35465 LA L-2009010732

NOTICE

TO: RICHARD LEON MORRIS, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 21, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 21, 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 June 23-24, 2009, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of June 23-24, 2009, at the Los Angeles

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 Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 8/31/2009

JEFF DAVI
Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 2 8 2009
DEPARTMENT OF REAL ESTATE
By

In the Matter of the Accusation Against: **RICHARD LEON MORRIS**, individually and as designated officer of The Firm-Loans, Insurance & Investments, Inc., Respondent.	Case No. H-35465 OAH No. 2009010732

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 23-24, 2009, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

James R. Peel, Counsel, represented Robin L. Trujillo, Deputy Real Estate Commissioner (Complainant), California Department of Real Estate (Department).

Frank M. Buda, Esq., represented Richard Leon Morris (Respondent), who was present.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

2. The Department issued a real estate broker license to Respondent on December 19, 1991. Respondent's license will expire on December 18, 2011, unless renewed.

3. The Department issued a real estate broker license to The Firm-Loans, Insurance & Investments, Inc. (The Firm), on April 5, 2007. As of that date, Respondent was the designated officer for The Firm, and he remained in that position until his officer designation was cancelled on July 17, 2007. Respondent again became The Firm's designated officer on April 7, 2008, and remained in that position until he again cancelled the designation on January 22, 2009.[1]

[1] The Firm was also a respondent in this case, but the Commissioner of the Department accepted the voluntary surrender of its license in resolution of that matter.

4. At all times relevant, Respondent engaged in the business of, and acted in the capacity of, a real estate broker in the State of California.

Activities of The Firm

5. The Firm was engaged in the business of loan modifications, among other business activities. In performing loan modifications, The Firm would charge its customers an advance fee, in exchange for The Firm agreeing to contact the holder of the customer's residential property mortgage and attempt to renegotiate the mortgage to terms more favorable to its customers. The Firm told its customers that it would attempt to get mortgage holders to agree to reduce the monthly mortgage payments, the interest rate on the loan, the balance of the loan, or some combination.

6. Between April and June of 2008, The Firm was retained by the following homeowners to engage in loan modification work for their residential properties: the Menjivar family, the Scriven family, the Gonzalez family, and the Losoya family. In each case, the family was charged, and paid, a fee of between $4,500 to $10,325, and requested to sign a written contract, which they did. In each case, The Firm did not achieve a favorable result for the homeowners. Each of the families complained to The Firm and demanded refunds. The Menjivar family was refunded $5,000 of the $7,000 fee they were charged. The Losoya family was refunded $3,200 of the $4,500 fee they were charged. The Scriven and Gonzalez families were not given any refunds. It was not established that The Firm used any of the fees obtained for the benefit of the four families.

7. It was not established that the fees obtained from the families were not deposited by The Firm into a real estate broker trust account in violation of Business and Professions Code section 10146.[2] No evidence on this issue was presented, other than the negotiated checks from the four families. However, the checks do not establish whether the proceeds were placed in a non-trust account.

8. With regard to the four families, The Firm failed to submit to the Commissioner of the Department (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, in violation of California Code of Regulations, title 10 (Regulation), section 2970.[3]

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[2] All further statutory references are to the Business and Professions Code unless otherwise noted.

[3] Pursuant to section 10131, subdivision (d), a real estate broker's license is required to solicit borrowers or lenders or to negotiate loans or collect payments or perform services for borrowers or lenders or note owners in connections with loans secured by real property. The loan modification work engaged in by The Firm falls within this definition. An advance fee is defined by section 10026 as "a fee demanded, charged, received, collected or

9. The Firm did not submit any proposed agreement to collect advance fees for loan modification activity to the Commissioner until October 30, 2008. The Commissioner notified The Firm that he did not object to its proposed advance fee agreement and materials on or about January 16, 2009.

Respondent's Activities

10. With regard to The Firm's loan modification activity, Respondent failed to supervise and control the activities conducted on behalf of The Firm by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required. As a result, The Firm collected the above-described advance fees without agreements or documents previously having been submitted to the Commissioner for review.

11. Respondent testified that initially he believed the Real Estate Law did not apply to loan modification activity, particularly if The Firm employed attorneys who would be involved in that activity. However, although it was established that The Firm had employed attorneys, it was not established that the attorneys were involved in any part of the loan modification process, other than meeting with angry customers who demanded refunds.[4] Respondent also testified that, early in his tenure with The Firm, he was assured by the Department that a broker license was not required for loan modification activity, provided an attorney was involved in the transactions. However, Respondent did not establish that he made any such contact; or, if he did, that the Department had advised him so. In any event, Respondent did not establish that he undertook any efforts to determine or confirm the level of The Firm's attorney-employees' involvement with the loan modification activity. Under these circumstances, Respondent's testimony indicates that, in fact, he had a suspicion that the Real Estate Law applied to The Firm's loan modification activity, but that he failed to take measures to secure The Firm's compliance with it.

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contracted from a principal for . . . soliciting borrowers or lenders for, or to negotiate loans on . . . real estate." In this case, the fees obtained by The Firm from the four families qualified as advance fees. Therefore, pursuant to Regulation section 2970, The Firm was required to submit to the Commissioner for review an advance fee agreement and related materials before obtaining advance fees from it customers for the loan modification activity.

[4] Section 10133, subdivision (a)(3), provides an exemption from having a real estate license to perform the acts enumerated in section 10131, if performed by "an attorney at law in rendering legal services to a client." This exemption does not apply in this case where it was not established that The Firm's attorneys rendered legal services to The Firm's clients.

Mitigation and Rehabilitation

12. Respondent established the following facts in mitigation:

A. He has been licensed by the Department since 1985 (initially as a real estate salesperson). He has no prior record of discipline with the Department.

B. He also has a vehicle salesperson license with the California Department of Motor Vehicles and has no record of discipline by that agency.

C. The Firm was not involved in loan modification activity when Respondent was initially employed there in 2007.

D. When Respondent returned to The Firm in 2008, he was told by the owner of the company that he was only responsible for overseeing loan origination work, and he was directed to have no involvement in the loan modification activity. At that time, Respondent was told by the company's owner, Mr. Nehad Ayyoub, that it was his belief that the Department had no jurisdiction over the loan modification activity because The Firm employed attorneys. Mr. Ayyoub testified in this matter, and confirmed that he had made that representation to Respondent, after being advised by one of The Firm's attorneys that the Department had no jurisdiction over loan modifications for that reason.

E. Respondent was not involved in any of the transactions pertaining to the four families discussed above. He received no compensation from The Firm relative to any of its loan modification activity. Respondent had no ownership interest in The Firm.

13. Respondent has taken measures to correct the problems described above. For example, he has cooperated with the Department since becoming aware of this case in October of 2008. He terminated his affiliation with The Firm in January of 2009 after he learned that The Firm began doing loan modification work again after it had been served with a Desist and Refrain Order prohibiting it from doing so. On his own initiative, Respondent submitted to the Commissioner a proposed advance fee agreement; he was advised that the Commissioner did not object to his materials, as of March 12, 2009. Respondent has not subsequently become involved in loan modification activity and he has severed his ties with the owner of The Firm.

14. Respondent is currently self-employed as a real estate broker. He is involved in real estate sales and loan origination work. He is a member of the Inland Valley Board of Realtors. Respondent submitted character reference evidence from a fellow licensed real estate broker who has known him for several years, and from a long-time vehicle sales customer. Both references indicate that Respondent is generally honest and has acted with integrity in all of their dealings.

LEGAL CONCLUSIONS

1. *First Cause for Discipline.* Cause was not established for disciplinary action against Respondent's real estate broker license pursuant to section 10177, subdivisions (d) (willful disregard or violation of the Real Estate Law) or (g) (negligence or incompetence in performing an act for which a license is required). In this case, it was not established that Respondent personally disregarded (willfully or otherwise) or violated the Real Estate Law. Neither was it established that he undertook any action for which a license was required in a negligent or incompetent manner. While it was established that other employees of The Firm violated the Real Estate Law with respect to its loan modification activity, section 10179 provides that Respondent's broker license is not subject to discipline for violations committed by others, unless he had "guilty knowledge" of such violations. In this case, it was not established that Respondent knew or understood at the time in question that The Firm was violating the Real Estate Law through its loan modification activity. (Factual Findings 1-12.)

2. *Second Cause for Discipline.* Cause was established for disciplinary action against Respondent's real estate broker license pursuant to section 10177, subdivision (h), which provides for discipline against an officer designated by a corporate broker licensee who fails to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. In this case, section 10159.2 required Respondent to exercise reasonable supervision and control of the activities of The Firm such as to ensure full compliance with the Real Estate Law. Respondent failed to exercise any supervision and control over The Firm's loan modification activity, and he undertook no efforts to ensure The Firm's compliance with the Real Estate Law pertaining to the submission of proposed advance fee agreements and materials before collecting advance fees for loan modification activity. In light of the duties of supervision and control imposed by sections 10177, subdivision (h), and 10159.2, the "guilty knowledge" defense of section 10179 does not exonerate Respondent from his own shortcomings or omissions in supervising and controlling the actions of the other employees of The Firm. (Factual Findings 1-11.)

3. *Discipline.* Respondent's misconduct in this case stemmed from his failure to supervise the actions of The Firm's officers and employees regarding its loan modification activity. As a result, at least four families were induced to provide advance fees that were not legally permissible under the circumstances, from which the families derived no benefit. However, Respondent established a number of mitigating facts indicating that his misconduct was unintentional and that he did not profit from it. Respondent also established a significant level of rehabilitative activity since the misconduct in question, indicating that it is unlikely that he will commit similar misconduct in the future. Respondent has no other record of discipline with the Department and has proven himself to be a generally honest person, who has acted with integrity in his business affairs. For these reasons, the following Order is warranted in this case to protect the public health, safety or welfare. (Factual Findings 1-14.)

ORDER

All licenses and licensing rights of Respondent Richard Leon Morris under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license 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 license 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 license 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 one year has 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.

5. Respondent shall, prior to the issuance of an unrestricted license and as a condition of the issuance of said unrestricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of $1,000 to each of the following families: Mr. and Mrs. Waldo Menjivar; Mr. and Mrs. Ronald Scriven; Ms. Mayra Gonzalez; and Mr. and Mrs. Genaro Losoya.

not adopted

DATED: July 21, 2009

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

FILED

MAR 10 2009

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., Respondent.	No. H-35465 LA

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On November 14, 2008, an Accusation was filed in this matter against Respondent THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC.

On March 9, 2009, Respondent petitioned the Commissioner to voluntarily surrender its real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC.'s petition for voluntary surrender of its real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated March 9, 2009 (attached as Exhibit "A" hereto). Respondent's license certificate and pocket cards and any branch office license certificate 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
Attn: Licensing Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on MAR 3 1 2009.

DATED: 3/10/2009

JEFF DAVI
Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

"EXHIBIT A"

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation **THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC., and RICHARD LEON MORRIS, individually and as designated officer of The Firm-Loans, Insurance & Investments, Inc.,** Respondents.	Case No.: H-35465 LA

DECLARATION

My name is Jerry McGarvey and I am currently an officer of THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC., which is licensed as a real estate broker and/or has license rights with respect to said license. I am authorized and empowered to sign this declaration on behalf of THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC. THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC. is represented in this matter by Mary Work, Attorney at Law.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC. wishes to voluntarily surrender its real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC., by so voluntarily surrendering its license, can only have it reinstated in accordance with the provisions of Section 11522 of the Government Code. I also understand that by so voluntarily surrendering its license, THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC. agrees to the following:

The filing of this Declaration shall be deemed as its petition for voluntary surrender. It shall also be deemed to be an understanding and agreement by THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC. that, it waives all rights it has 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 it also waives other rights afforded to it 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 on behalf of THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC. 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-35465 LA, may be considered by the Department to be true and correct for the purpose of deciding whether or not to grant reinstatement of THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC.'s license 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 am acting freely and voluntarily on behalf of THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC. to surrender its license and all license rights attached thereto.

3-9-09 Ontario, CA
Date and Place

THE FIRM-LOANS, INSURANCE & INVESTMENTS, INC.
By Jerry McGarvey

3-9-09 Manhattan Beach, CA
Date and Place

Mary E. Work, Esq.

SACTO.

JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
-or- (213) 576-6913 (Direct)

FILED
NOV 14 2008
DEPARTMENT OF REAL ESTATE
By

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., and RICHARD LEON MORRIS, individually and as designated officer of The Firm-Loans, Insurance, & Investments, Inc., Respondents.	No. H-35465 LA A C C U S A T I O N

The Complainant, Robin L. Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., and RICHARD LOAN MORRIS, individually and as designated officer of The Firm-Loans, Insurance, & Investments, Inc., alleges as follows:

1.

The Complainant, Robin L. Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against

THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., and RICHARD LEON MORRIS.

2.

THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., and RICHARD LEON MORRIS, individually and as designated officer of The Firm-Loans, Insurance, & Investments, Inc. (hereinafter referred to as "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).

3.

Respondent THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., was originally licensed as a real estate broker on April 5, 2007. Pursuant to Code Section 10159.2, Respondent RICHARD LEON MORRIS is responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

4.

At all times material herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Sections 10131(d) and 10131(e) of the Code, including soliciting borrowers and lenders and negotiating loans on real property.

5.

Respondents acted in violation of the Real Estate Law as follows:

(1) Violated Section 10146 of the Code by collecting advance fees from the public and failing to deposit the fees into a real estate broker trust account.

(2) Violated Section 2970 of the Regulations of the Real Estate Commissioner (Title 10, Chapter 6, California Code of Regulations, hereinafter "Regulation") by failing to submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.

6.

The conduct, acts and/or omissions of Respondents THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., and RICHARD LEON MORRIS, as alleged above, subject their real estate licenses and license rights to suspension or revocation pursuant to Section 10177(d) and/or 10177(g) of the Code.

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7.

The conduct, acts and/or omissions of Respondent RICHARD LEON MORRIS in failing to ensure full compliance with the Real Estate Law by Respondent THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., are in violation of Section 10159.2 of the Code and subject his real estate licenses and license rights to suspension or revocation pursuant to Sections 10177(d), 10177(g) and/or 10177(h) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents THE FIRM-LOANS, INSURANCE, & INVESTMENTS, INC., and RICHARD LEON MORRIS as designated officer of The Firm-Loans, Insurance, & Investments, Inc., under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 12 day of November, 2008.

ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: The Firm-Loans,
Ins. & Invtmts. Inc.
Richard Leon Morris
Phillip Ihde
Robin L. Trujillo
Sacto.