FILED

DEC 16 2011

DEPARTMENT OF REAL ESTATE
BY: [illegible]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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| In the Matter of the Accusation of<br><br>NELLY ALVAREZ,<br><br>Respondent. | No. H-36595 LA |

ORDER SUSPENDING REAL ESTATE LICENSE

To: NELLY ALVAREZ
6520 Eastern Avenue, Suite 209
Bell Gardens, CA 90201

Your real estate salesperson license was revoked with the right to a restricted license on the terms, conditions, and restrictions set forth in the Real Estate Commissioner's Decision effective January 19, 2011 in Case No. H-36595 LA. Among those terms, conditions, and restrictions, you were required to take and pass the Professional Responsibility Examination within six months from the effective date of the Decision. The Commissioner has determined that as of July 19, 2011, you have failed to satisfy this condition.

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NOW, THEREFORE, IT IS ORDERED under authority of the Decision issued in this matter that the real estate salesperson license heretofore issued to Respondent and the exercise of any privileges thereunder are hereby suspended until such time as you provide proof satisfactory to the Department of Real Estate of compliance with the "condition" referred to above, or pending final determination after hearing (see "Hearing Right" set forth below).

IT IS FURTHER ORDERED that all license certificates and identification cards issued by the Department of Real Estate which are in your possession of Respondent be immediately surrendered by personal delivery or by mailing in the enclosed self-addressed envelope to:

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

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HEARING RIGHTS: You have the right to a hearing to contest the Commissioner's determination that you are in violation of the Order issued in this matter. If you desire a hearing, you must submit a written request. The request may be in any form, as long as it is in writing and indicates that you want a hearing. Unless a written request for a hearing, signed by or on behalf of you, is delivered or mailed to the Department of Real Estate at 320 West 4th Street, Suite 350, Los Angeles, CA 90013-1105, within 20 days after the date that this Order was mailed to or served on you, the Department of Real Estate will not be obligated or required to provide you with a hearing.

This Order shall be effective immediately.

Dated: 11/16, 2011.

BARBARA J. BIGBY,
Acting Real Estate Commissioner

FILED

DEC 30 2010

DEPARTMENT OF REAL ESTATE

BY: _____

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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|---|---|
| In the Matter of the Accusation of<br><br>NELLY ALVAREZ,<br><br>Respondent. | No. H-36595 LA<br><br>L-2010050844 |

DECISION

The Proposed Decision dated November 29, 2010, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following change is made to the Proposed Decision:

Page 1, paragraph 1, line 1, "held on October 28, 2010" is amended to read "held on October 29, 2010".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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

This Decision shall become effective at 12 o'clock noon on JAN 19 2011.

IT IS SO ORDERED 12/29/2010

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 Against: | Case No. H-36595 LA |
| NELLY ALVAREZ, | OAH No. 2010050844 |
| Respondent. | |

## PROPOSED DECISION

The hearing in the above-captioned matter was held on October ~~28~~ 29, 2010, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Complainant was represented by Cheryl D. Keily, Counsel, Department of Real Estate. Respondent Nelly Alvarez appeared and represented herself.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and orders.

## FACTUAL FINDINGS

1. Complainant Robin Trujillo filed and maintained the Accusation in this matter while acting in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department).

2. Respondent Nelly Alvarez is currently licensed as a real estate salesperson. She has been so licensed since December 2006 and holds license number 01782578. From September 21, 2007 until February 18, 2009, Respondent was in the employ of Guild Mortgage Company, and she was licensed to that firm. She has no prior disciplinary record.

3. In June 2008, Respondent was introduced to Carolyn Gomez (Gomez) by a third party. Gomez and her husband were interested in lowering their monthly mortgage on their house located on Bellflower Lane in Moreno Valley, California. Ms. Gomez and her husband were then one month behind in their mortgage payments, but they were worried about falling further behind.

4. At that time, Respondent was acting on behalf of United First, Inc. (United), a corporation that was not licensed as a real estate broker in California. Alvarez made a power point presentation to Gomez and her husband on approximately July 21, 2008. Respondent told Gomez that United would file a lawsuit against the lender on the property to prevent a

foreclosure on the Gomez home. Alvarez further stated that the attorney who would handle the lawsuit was named M.W. Roth.

5. During the July 21, 2008, meeting, Gomez provided financial information to Respondent. Respondent also had the homeowners execute a written agreement with United that was denominated as a "Joint Venture Agreement" (the agreement). At the same time, Gomez provided Respondent with a post-dated check, in the amount of $3,000, payable to United.

6. The agreement between United and Gomez is 13 pages long. It provides, in part, that United had studied the mortgage industry, and had decided to enter into joint ventures with homeowners "in their attempt [to] forestall and/or prevent foreclosure of subprime loans to salvage for the benefit of the joint venture an equity interest in the real property in foreclosure. (See p. 1 of the agreement, appended to Exhibit 3.) The agreement further provides as one of its purposes that the homeowner in question—Gomez—desires to obtain legal counsel to respond to impending foreclosure. (Agreement, p. 4.) Although United agreed to pay all expenses of legal representation of the homeowner against those who would foreclose on the home (agreement, p. 5, ¶ 5), in fact the homeowner agreed to pay substantial fees to United. The contract provided that the homeowner was to pay $500, which would be used to compensate Respondent. Furthermore, the homeowner was to pay an additional $2,503.77 to United when the agreement was executed, and was to pay $3,003.77 to United on a monthly basis. (*Id.*) The homeowner agreed to retain Mr. Roth as her attorney.

7. The homeowner's check bounced, but the homeowners subsequently paid three installments of $2,503.77 to United, in October, November, and December 2008.

8. In January 2009, Mr. Roth wrote Gomez and stated that efforts to stop the foreclosure had been unsuccessful. He advised that Gomez should contact a bankruptcy attorney.

9. During the hearing, Respondent explained that she was not using her salesperson's license in this or other similar transactions, but was essentially representing an attorney, Mr. Roth. She had spoken to him before undertaking any work, and he had told her to simply present the opportunity, to not discuss the legal issues, and to tell Gomez and others like her that the attorneys would file suit to prevent foreclosure. Respondent trusted Roth and believed that he and United would attempt to help distressed homeowners.

10. Respondent was provided with a powerpoint presentation to make to homeowners, a printed copy of which was placed in evidence by Respondent. The gist of the presentation is that many foreclosures had been defeated around the country because the persons asserting rights against homes could not show that they actually held the notes in question, having bought them in pools during the housing bubble. United represented that there could be a legal defense to foreclosures, but that legal costs could be prohibitive for most homeowners. It represented that its joint venture program could trim those costs. To be sure, it also represented that United's program should be the last resort, and that those

who could pay their debt, or could refinance, or could afford to file a lawsuit should do so, but that for some people, they had "nothing to lose [and] everything to gain" by putting the law on their side, with United's help. (Ex. A, p. 17.) Another part of the presentation showed some of the potential benefits of the "joint venture," such as allowing United to negotiate with the holder of the note, or, if the foreclosure was delayed, providing low cost housing for the homeowner. (*Id.*, p. 13.) The next-to-last page of the presentation was devoted to a resume of Mr. Roth and his law firm.

11. (A) The agreement claimed that United was not a foreclosure consultant "as that term is used in California Civil Code sections 2945 to 2945.11." The agreement quoted section 2945.1, which defines a foreclosure consultant, in its entirety. (Agreement, at p. 3.) However, it is clear from the agreement, the powerpoint presentation, and Respondent's testimony that the purpose of the agreement was to have a lawsuit filed, that United was indeed acting as a foreclosure consultant within the meaning of that statute. In part, this follows from the fact that subdivision (a)(1) of section 2945.1 provides that one is a foreclosure consultant if one represents, "in any manner," that he or she will "stop or postpone the foreclosure sale." Other aspects of the statute applied as well.

(B) Given that section 2945.1 was quoted in the agreement, it is inferred that Respondent had actual notice of that statute's provisions and notice that she was acting for a foreclosure consultant within the meaning of the Civil Code.

12. As noted above, Respondent has no prior discipline. She plainly did not comprehend the nature of the transactions in which she was engaging and for which she was being paid a flat fee of $500 to consummate. In mitigation, United's program was organized by sophisticated operators, and was clothed in a multi-page contract that provided a patina of legitimacy. At first blush, that agreement indicated that purely legal services, by an attorney would be provided, as opposed to mortgage services. Respondent is remorseful of the fact that some homeowners may have been harmed by the actions of United and Roth, and she feels that she too was taken in by them.

13. Respondent's broker of record was unaware of Respondent's activities on behalf of United.

## LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter pursuant to section 10175 of the Business and Professions Code,[1] based on Factual Findings 1 and 2.

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[1] All further statutory references shall be to the Business and Professions Code unless otherwise noted.

2. (A) Section 10131 defines real estate brokers in California as persons who perform certain activities for compensation or in the expectation of compensation. While working for United, Respondent's activities fell within the ambit of section 10131, subdivision (d), in that she performed services for borrowers in connection with loans secured by real property, by attempting to obtain legal services for them that would prevent enforcement of loans secured by real property. This Conclusion is based on Factual Findings 3 through 8, 10, and 11.

(B) Respondent could only perform the activities defined in section 10131, subdivision (d) if she was a real estate broker, or was acting as a salesperson for a licensed real estate broker, in compliance with section 10132.

(C) By receiving payment from an unlicensed person for work that must be performed by a real estate broker, Respondent violated section 10137, based on the foregoing.

(D) Respondent violated section 10130 by acting in a capacity for which she was not licensed, based on the foregoing.

3. Cause exists to suspend or revoke Respondent's salesperson's license for violation of section 10177, subdivision (d), for willful disregard of the Real Estate Law, based on Legal Conclusions 1 and 2 and their factual predicates.

4. Cause exists to suspend or revoke Respondent's salesperson's license for violation of section 10177, subdivision (g), for neglect in performing an act that requires a real estate license, based on Legal Conclusions 1 and 2 and their factual predicates.

5. Cause was not established to suspend or revoke Respondent's salesperson's license for violation of section 10177, subdivision (j), in that it was not established that Respondent engaged in any fraud upon any consumer. This Conclusion is based in part on Factual Findings 9 and 12, and in part on the lack of evidence that Respondent acted with an intent to defraud.

6. Respondent has no prior disciplinary record, and it does not appear that she set out to harm any consumer. She believed, in essence, that she was working for an attorney, and not as a salesperson. As noted by Complainant's counsel, she did not see the pitfalls of the arrangement with United, but her shortsightedness, and failure to properly analyze the transactions, cannot insulate her from discipline. It is appropriate to revoke Respondent's license, and to issue her a restricted license so that she will work in a supervised environment in the near future.

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## ORDER

All licenses and licensing rights of Respondent Nelly Alvarez (license number 01782578) are revoked; provided, however, that a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department the appropriate fee for the restricted license within 90 days of 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 three (3) 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

(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.

(C) Respondent shall obtain such a certification from her current broker of record within three weeks of the effective date of this order.

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, 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.

November 29, 2010

Joseph D. Montoya,
Administrative Law Judge
Office of Administrative Hearings

CHERYL D. KEILY SBN# 94008
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6905

FILED
APR 19 2010
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<br><br>NELLY ALVAREZ,<br><br>Respondent. | No. H-36595 LA<br><br>A C C U S A T I O N |

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against NELLY ALVAREZ ("Respondent") is informed and alleges as follows:

1.

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

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2.

Respondent is presently licensed and/or has license rights under the Real Estate Law as a real estate salesperson.

3.

From September 21, 2007, to February 18, 2009, Respondent was licensed to and employed by Guild Mortgage Company.

4.

At no time herein mentioned was United First Inc. ("United") licensed by the Department in any capacity.

5.

At all times herein mentioned United engaged in the business of, acted in the capacity of, or advertised a loan modification service and advance fee brokerage offering to perform and performing loan modification services with respect to loans which were secured by liens on real property for compensation or in expectation of compensation and for fees collected in advance.

6.

On or about September 1, 2008, Respondent solicited Carolyn Gomez ("Gomez") for the purpose of convincing Gomez to engage the services of United for loan modification and foreclosure rescue services. As a result of Respondent's solicitation Gomez paid an initial advance fee of $3,000 to Respondent on behalf of United. During the period October, 2008, to December, 2008, Gomez paid additional advance fees to

United so that the total amount paid to United as advance fees was $7,107.21. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by United with respect to a loan secured by the real property located at 12671 Bellflower Lane, Moreno Valley, California 92555.

7.

The activities described in Paragraph 6, above, require a real estate broker license under Sections 10131(d) and 10131.2 of the Code.

8.

Respondent performed and/or participated in loan solicitation, modification and negotiation activities which require a real estate broker license under the provisions of Code Sections 10131(d) and 10131.2 when Respondent was not licensed by the Department as a real estate broker nor employed as a real estate salesperson by the broker on whose behalf the activities were performed in violation of Sections 10130 and 10137 of the Code.

9.

Respondent's employing broker was not aware of the above transactions.

10.

The conduct, acts and/or omissions of Respondent, as set forth, above, violate Code Sections 10130 and 10137, and are cause for the suspension or revocation of the licenses and

license rights of Respondent pursuant to Code Sections 10177(d), 10177(g) and/or 10177(j).

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 the licenses and license rights of Respondent NELLY ALVAREZ under the Real Estate Law, and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 14 day of April, 2010.

Robin Trujillo
Deputy Real Estate Commissioner

cc: Nelly Alvarez
KPE Investments Inc.
Robin Trujillo
Sacto.