BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED
DEC 19 2011
DEPARTMENT OF REAL ESTATE
BY: [signature]

* * * *

In the Matter of the Accusation No. H-36874 LA

MARK ALAN SHOEMAKER; FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO,

Respondents.

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on November 2, 2011, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision suspends or revokes one or more real estate licenses on the ground of the violation of the Real Estate Law (commencing with Section 10000 of the Business and Professions Code (Code)) or Chapter 1 (commencing with Section 11000 of the Code) 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 the Code) of Part 2.

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.

FINDINGS OF FACT

I

On May 10, 2011, Dionne Faulk made the Second Amended Accusation ("Accusation") in her official capacity as a Deputy

Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondent's last known mailing address on file with the Department on May 10, 2011.

Respondent failed to file a Notice of Defense within the time required by Section 11506 of the Government Code. Respondent's default was entered herein on November 2, 2011.

II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a real estate salesperson.

III

The evidence established that on or about November 7, 2008, Barbara Ramos paid an advance fee of $1,652.00 to Respondent SOLANO on behalf of Respondent Mark Alan Shoemaker, doing business as Advocate. On December 15, 2008, Barbara Ramos paid an additional advance fee of $1,000. At the time mentioned Respondent SOLANO was a licensed real estate salesperson employed by a broker other than Respondent Mark Alan Shoemaker. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent Mark Alan Shoemaker, through Advocate, with respect to a loan secured by real property located in Rialto, California.

IV

The evidence established that Respondent SOLANO performed and/or participated in loan solicitation, negotiation, and modification activities which require a real estate broker license under the provisions of Code Sections 10131(d) during a period of time when Respondent was not licensed by the Department as a real estate broker nor employed as a real estate salesperson by a broker on whose behalf the activities were performed.

V

The conduct, acts and/or omissions of Respondent SOLANO violate Code Section 10130, and are cause for the

suspension or revocation of the license and license rights of Respondent SOLANO pursuant to Code Section 10177(d).

DETERMINATION OF ISSUES

I

Respondent is in violation of Code Section 10130. Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code Sections 10177(d).

II

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The licenses and license rights of Respondent ANA MARIA SOLANO, under the provisions of Part I of Division 4 of the Business and Professions Code, are revoked.

This Decision shall become effective at 12 o'clock noon JAN 09 2012.

DATED: 12/6/11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105
(213) 576-6982

FILED

NOV 02 2011

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of ANA MARIA SOLANO, Respondent.	NO. H-36874 LA DEFAULT ORDER

Respondent, ANA MARIA SOLANO, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED NOVEMBER 2, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

By: PHILLIP IHDE
Regional Manager

FILED

DEC 28 2011

DEPARTMENT OF REAL ESTATE

BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation MARK ALAN SHOEMAKER; LUIS ENRIQUE BAHENA; and ARTURO FERNANDEZ, Respondents.	No. 36732 LA No. L-2010080855
In the Matter of the Accusation MARK ALAN SHOEMAKER; **FERNANDO TORIBIO**; CARLOS ESTUPINIAN; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO, Respondents.	No. H-36874 LA No. L-2010110840

ORDER EXTENDING TIME

On June 6, 2011, a Decision was made suspending Respondent's real estate broker license for a period of thirty days from the effective date of the Decision, June 30, 2011. The entire period of the suspension was stayed on certain terms

and conditions. The Decision obligated Respondent to take and pass the Professional Responsibility Examination within six months of the effective date of the Decision.

Good cause having been shown, the time during which Respondent must complete the condition described above is hereby extended to June 30, 2012.

This Order shall be effective immediately.

DATED: 12/27, 2011

BARBARA J. BIGBY
Acting Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

FILED

DEC 14 2011

DEPARTMENT OF REAL ESTATE

BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation MARK ALAN SHOEMAKER; LUIS ENRIQUE BAHENA; and ARTURO FERNANDEZ, Respondents.	No. 36732 LA No. L-2010080855
In the Matter of the Accusation MARK ALAN SHOEMAKER; FERNANDO TORIBIO; **CARLOS ESTUPINIAN**; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO, Respondents.	No. H-36874 LA No. L-2010110840

ORDER EXTENDING TIME

On June 6, 2011, a Decision was made suspending Respondent's real estate broker license for a period of thirty days from the effective date of the Decision, June 30, 2011. The entire period of the suspension was stayed on certain terms

and conditions. The Decision obligated Respondent to take and pass the Professional Responsibility Examination within six months of the effective date of the Decision.

Good cause having been shown, the time during which Respondent must complete the condition described above is hereby extended to June 30, 2012.

This Order shall be effective immediately.

DATED: 12/7, 2011

BARBARA J. BIGBY
Acting Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

FILED

DEPARTMENT OF REAL ESTATE

OCT 0 4 2011

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: [signature]

* * * * *

In the Matter of the Accusation of MARK ALAN SHOEMAKER, Respondent.	No. H-36732 LA L-2010080855
In the Matter of the Second Amended Accusation of MARK ALAN SHOEMAKER, Respondent.	No. H-36874 LA L-2010110840

DECISION

The Proposed Decision dated August 24, 2011, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on OCT 2 4 2011.

IT IS SO ORDERED 9/28/11.

Barbara J. Bigby
Acting Real Estate Commissioner

[signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. H-36732-LA
MARK ALAN SHOEMAKER,	OAH No. 2010080855
Respondents	
In the Matter of the Second Amended Accusation Against:	Case No. H-36874-LA
MARK ALAN SHOEMAKER,	OAH No. 2010110840
Respondents.	

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard these consolidated matters on July 1, 2011, in Los Angeles, California.

Cheryl D. Keily, Real Estate Counsel, represented Robin Trujillo and Dionne Faulk (collectively, complainants), Deputies Real Estate Commissioner of the State of California.

Mark Alan Shoemaker (respondent) represented himself.[1]

Evidence was received, and the record was left open for the parties to submit simultaneous closing briefs and simultaneous reply briefs. Complainant's Closing Brief and Respondent's Closing Brief were received on July 22, 2011, and marked as Exhibits 18 and Q, respectively. Complainant's Reply Brief was received on August 4, 2011, and marked as Exhibit 19. Respondent's Reply Brief was received the following day and marked as Exhibit R. The record was closed and the matter submitted for decision on August 5, 2011.

[1] Prior to the hearing, Deputy Commissioner Trujillo reached a settlement with Luis Enrique Bahena and Arturo Fernandez in Case No. H-36732 and Deputy Commissioner Faulk reached a settlement with Fernando Toribio, Carlos Estupinian, Maricela Esther Cygan, and Ana Maria Solano in Case No. H-36874.

SUMMARY

Respondent is a licensed real estate broker and, until recently, an attorney licensed to practice in California. Complainants seek to discipline respondent's broker license on the grounds that respondent: 1) collected advance fees from clients without the approval of the Department; 2) employed or compensated unlicensed individuals (or individuals licensed under another broker) to collect the advance fees; 3) conducted business under a fictitious business name under which he was not licensed; and 4) was disbarred from the practice of law by the California Supreme Court. Cause to discipline respondent's license exists based on his use of a fictitious business name under which he was not licensed and his disbarment from the practice of law. The evidence establishes that he has not begun the road to rehabilitation since he continues to challenge the factual basis for his disbarment despite having stipulated to such discipline. Therefore, the only discipline supported by the evidence is the outright revocation of respondent's broker license.

FACTUAL FINDINGS

1. On January 30, 2006, the Department of Real Estate (Department) issued respondent Real Estate Broker License No. B01731858 (broker license). The license expired on January 29, 2010, and has not been renewed.[2] The Department issued a Desist and Refrain Order against respondent on October 19, 2010. There is no other history of discipline of the broker license.

2. On June 14, 1988, the State Bar of California issued respondent State Bar No. 134828 (State Bar license). On February 23, 2010, a representative of the State Bar Court of California and respondent executed a Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving; Order of Involuntary Inactive Enrollment, whereby the parties agreed to the State Bar Court issuing an order recommending to the California Supreme Court that respondent be disbarred from the practice of law. On September 30, 2010, the State Bar Court approved the Stipulation. The California Supreme Court issued an order disbarring respondent from the practice of law on February 2, 2011. The order became final on March 4, 2011. (See, Cal. Rules of Court, rule 9.18(a) [the Supreme Court's order of discipline becomes final 30 days after it is filed, unless otherwise ordered].) There is no other history of discipline of the State Bar license.

3. On August 16, 2010, Robin Trujillo, acting solely in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed an Accusation seeking to discipline the broker license on the grounds that respondent:

---

[2] The expiration of a real estate license does not divest the Department of jurisdiction to discipline such license. (Bus. & Prof. Code, § 10103.)

1) collected an advance fee from Luisana Gutierrez, Jose Hernandez, Armando Camacho, and Diana Castro pursuant to a written advance fee agreement that was not approved by the Department; 2) employed or compensated individuals who were unlicensed (or were licensed under a different broker) to collect the advance fees; and 3) acted without Department authorization in using the fictitious name "Advocate for Fair Lending, LLC" to engage in activities requiring a real estate license. (Case No. 36732.)

4. On May 10, 2011, Dionne Faulk, acting solely in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed a Second Amended Accusation seeking to discipline the broker license on the grounds that respondent: 1) collected an advance fee from Alicia Gomez, Barbara Lee Factor, Nicolas Tejeda, Barbara Ramos, Pedro Morales, Maximino Ferreira Lima, and Eduardo Medina Perez pursuant to a written advance fee agreement that was not approved by the Department; 2) employed or compensated individuals who were unlicensed (or were licensed under a different broker) to collect the advance fees; and 3) was ordered disbarred by the California Supreme Court for intentional, reckless, or repeated failure to perform legal services with competence; failure to promptly refund unearned advance fees; failure to adequately communicate with clients; failure to render appropriate accountings to clients; failure to release client files when requested; charging an unconscionable fee and engaging in an act of overreaching; failing to deposit client advanced costs into a client trust account; and aiding a non-attorney in the unauthorized practice of law. (Case No. 36874.)

Background Regarding Respondent's Activities

5. Respondent passed the California State Bar Examination in May 1988 and was issued his State Bar license the following month. He explained that for the first several years, his law practice focused primarily on advising business entities regarding fiscal matters and handling their litigation needs. Over time, he observed that there was a "big focus" on the interest rates for loans in the mortgage industry. He testified that he learned from account representatives for lenders and brokers that the industry issued interest rate cards and many lenders and brokers tried to obtain the highest interest rate possible for loans they issued, regardless of the particular borrower's credit worthiness. He asked one lender whether a prospective borrower should be told that he qualifies for a lower interest rate than the lender was offering, and the lender thought respondent was "crazy" and stated that such information should never be disclosed.

According to respondent, he researched the Federal Truth and Lending Act (15 U.S.C. §§ 1601-1667f, as amended (Act)) and the federal regulations interpreting the Act and concluded that lenders and mortgage brokers were violating the Act by not disclosing to borrowers the fact that they qualified for a lower interest rate than they were being offered. He concluded that borrowers who discovered such violations within three years of issuance of their loan had grounds for rescinding their loans and

any concomitant security agreements. He claimed to have spoken with staff attorneys with the Federal Reserve Bank in January 2008, who purportedly verified the accuracy of his conclusions.

6. On January 28, 2008, respondent filed Articles of Organization for Advocate For Fair Lending, LLC (Advocate). He was, and continuously has been, the owner and president of Advocate. He marketed Advocate as a business that helped "home owners that are trapped in their mortgages," that Advocate had "a team of attorneys that specialize in mortgage loans." He publicized and advertised Advocate primarily through mortgage brokers, many who became "net branches" of Advocate's "corporate office." A "net branch" was responsible for selling Advocate's services in return for a commission based on those sales. Clients paid monthly payments to Advocate for three months in an amount that was 70 percent of their monthly loan payment, with a minimum payment of $1,000.

Once a client had engaged Advocate's services, they, or Advocate acting as their agent, would retrieve relevant loan documents from the lender. Advocate's "auditors" would then "audit" the loan documents using a software program in order to identify any violations of the Act. If violations were found, Advocate would draft and send a "demand" letter to the lender stating that violations had been found and offering a "settlement" in the form of a loan "restructure." The letter threatened that the loan would be "rescinded according to law" if the demand was not accepted.

While Advocate's client agreement stated that Advocate was "not engaged in loan modification services" and "is not a law firm," it also stated that the services included "analyz[ing] every client loan," "initiat[ing] legal action if necessary," "demand[ing] appropriate revision of Client's [sic] loan as appropriate based upon details of the audit process," and "rescind[ing] Client loan as appropriate." Advocate was able to perform these services through a limited power of attorney all clients were required to sign.

Advocate's demand letters were often ignored by lenders. In such instances, the client was told that legal action would be necessary and that they needed to hire an attorney. Respondent was often the attorney who was offered as an option. Respondent agreed to represent the client for $1,000, which he characterized as "costs" or "expenses." His retainer agreement stated that he would "look to the opposing parties and the court for an award of attorneys fees" and that the client would not be responsible for any amount beyond that which he originally charged.

Improper Collection of an Advance Fee

7. Complainants alleged that respondent collected advance fees from Luisana Gutierrez, Jose Hernandez, Armando Camacho, Diana Castro, Alicia Gomez, Barbara Lee Factor, Nicolas Tejeda, Barbara Ramos, Pedro Morales, Maximino Ferreira Lima, and Eduardo Medina Perez pursuant to a written advance fee

agreement that was not approved by the Department. (Factual Findings 3 and 4.) The sole evidence offered to establish that the Department never approved an advance fee contract or advance fee advertising materials for use by respondent or Advocate was a Negative Affidavit signed by Sylvia I. Yrigollen. However, Ms. Yrigollen declared that she searched for, and did not find any, advance fee materials submitted for use by "Total Solution Mortgage, Inc.," or "Mark Alan Showmaker [sic], Designated Officer." Her declaration was silent about any such documents from Advocate or respondent in his capacity as the owner and president of Advocate. Additionally, Ms. Yrigollen said nothing about how long the Department maintains advance fee materials that have been submitted for approval or that she searched for such records submitted during the relevant time period. Therefore, it is impossible to determine whether she found no records because none in fact were ever submitted to the Department, such records were purged from the Department's files pursuant to a document retention policy, or she conducted an incomplete search.

Furthermore, complainant offered no evidence that any of the people alleged to have paid an advance fee, except for Diana Castro, did in fact pay such fee. (Factual Findings 3 and 4.) Other than Ms. Castro, none of the people who the Supreme Court concluded had paid an advance fee were alleged in the Accusation or Second Amended Accusation as having paid an advance fee.[3] While Senior Deputy Commissioner James Howard Alston[4] testified about complaints the Department received from Mr. Castro, Luisana Gutierrez, Jose Hernandez, and Armando Camacho at the hearing, the Department did not establish the witness' personal knowledge about the content of those complaints and his hearing testimony was based on his simultaneous reading of the declarations signed by those individuals.[5]

Complainant failed to prove that respondent collected an advance fee without the approval of the Department from Luisana Gutierrez, Jose Hernandez, Armando Camacho, Diana Castro, Alicia Gomez, Barbara Lee Factor, Nicolas Tejeda, Barbara Ramos, Pedro Morales, Maximino Ferreira Lima, or Eduardo Medina Perez, as explained in Legal Conclusion 4.

---

[3] The Supreme Court's conclusion that Ms. Castro paid an advance fee was based on the Rules of Professional Conduct and did not consider the Real Estate Law.

[4] Complainant's sole witness.

[5] The declarations were admitted into evidence as administrative hearsay pursuant to Government Code section 11514, subdivision (a), because respondent timely requested, but was denied, the opportunity to cross-examine the declarants. There was no non-hearsay evidence for the declarations to supplement or explain. Therefore, none of the declarations were considered. (Gov. Code, § 11513, subd. (d).)

Improper Employment or Compensation of Unlicensed Individuals

8. Complainants alleged that respondent employed or compensated unlicensed individuals (or individuals licensed under a different broker) to collect advance fees from Luisana Gutierrez, Jose Hernandez, Armando Camacho, Diana Castro, Alicia Gomez, Barbara Lee Factor, Nicolas Tejeda, Barbara Ramos, Pedro Morales, Maximino Ferreira Lima, and Eduardo Medina Perez. (Factual Findings 3 and 4.) Complainants failed to prove that respondent employed or compensated any individuals, whether licensed or not, to collect advance fees from anyone. In fact, the evidence established that those individuals were employed or compensated by Advocate. Furthermore, there is no evidence that Luisana Gutierrez, Jose Hernandez, Armando Camacho, Alicia Gomez, Barbara Lee Factor, Nicolas Tejeda, Barbara Ramos, Pedro Morales, Maximino Ferreira Lima, or Eduardo Medina Perez paid an advance fee to anyone, as discussed in Factual Finding 7.

Unauthorized Use of a Fictitious Business Name

9. Respondent provided his loan modification services under the fictitious business name of "Advocate for Fair Lending, LLC." (Factual Finding 6.) However, his broker license was issued to him as an individual, not him doing business under a fictitious business name. (Factual Finding 1.)

Disbarment from the Practice of Law

10. The California Supreme Court's order disbarring respondent from the practice of law became final on March 4, 2011. (Factual Finding 2.) The order contained the following conclusions of law about respondent's actions:

> a. By not performing any legal services of value for any of the above listed clients, including but not limited to, negotiating and obtaining a home mortgage "restructure," "modification," or any other change, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
>
> b. By failing to refund promptly any part of the advance fees or costs each of the above listed clients paid, despite not having earned that fee or expended those costs, Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

c. By failing to provide his clients with an accounting of advance fees and/or costs they paid, Respondent willfully failed to render appropriate accounts to his clients in willful violation of rule 4-100(b)(3) of the Rules of Professional Conduct.

d. By failing to deposit the advance costs clients paid into a client trust account, Respondent willfully violated rule 4-100(A) of the Rules of Professions Conduct.

Factors in Aggravation, Mitigation, and Rehabilitation

11. Respondent offered little, if any, evidence to rebut complainants' evidence. (Evid. Code, § 413 [a party's failure to rebut incriminating evidence raises an inference that he cannot].) Instead, he chose to focus his efforts on challenging the Department's jurisdiction to discipline his broker license. As discussed in Legal Conclusions 1 through 3, each of his arguments is rejected.

12. As discussed below, cause exists to discipline respondent's broker license because he conducted business under Advocate's name even though he was licensed solely in his individual capacity and the California Supreme Court disbarred him from the practice of law. His belated attempt to collaterally attack the Supreme Court's order established that he has not begun the road towards rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."]; see also, *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402 ["Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."]; *In re Andreani* (1939) 14 Cal.2d 736, 749 [the existence of rehabilitation is difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."]) Therefore, the only discipline supported by the evidence is the outright revocation of his license.

LEGAL CONCLUSION

Jurisdiction

1. Respondent challenged the Department's authority to discipline his broker license on the ground that he was not acting as a real estate broker when he was providing his loan modification services to clients through Advocate. His argument is based on an overly myopic reading of the statutory definition of "real estate broker," which is, in relevant part:

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

(Bus. & Prof. Code, § 10131.)

Respondent argued that Advocate simply performed "audits" of clients' home loans to determine whether the lender violated the Act. Clients were provided with a report, which noted any violations, for the purpose of contacting their lenders and negotiating a loan modification. But the evidence established that Advocate went much further. After the loan audit was performed and violations of the Act were discovered, Advocate drafted a "demand" letter, which was sent to the particular lender and pointed out any violations of the Act discovered by Advocate's auditors. The letter offered a "settlement" in the form of a loan "restructure." If this settlement was rejected, the letter threatened legal action, in which case the loan would be "rescinded according to law." (Factual Finding 6.)

The evidence established that the Advocate provided loan modification services and that respondent was acting as a real estate broker by providing such services. The Department has jurisdiction to discipline respondent's broker license.

2. Respondent also challenged the Department's jurisdiction to discipline his broker license for his alleged advance fee violations on the ground that prior to 2009, a broker was allowed to collect an advance fee in connection with providing loan modification services. On October 11, 2009, the Governor signed S.B. 94, which now prohibits such activity. (Bus. & Prof. Code, § 10085.6, subd. (a).) Complainant seeks discipline for respondent's violation of Business and Professions Code section 10085 for collecting advance fees pursuant to an advance fee agreement that was not approved by the Department, not because he collected advance fees in connection with his provision of loan modification services. Besides, respondent's challenge is moot in light of the absence of cause for discipline for alleged advance fee violations as discussed in Legal Conclusion 4.

3. Respondent challenged the Department's jurisdiction to discipline his broker license based on his disbarment from the practice of law because he gave the State Bar notice that he was rescinding the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving, the factual basis for his disbarment. The notice of rescission, he opined, automatically vitiated the Supreme Court's order disbarring him. He is wrong. While he is correct that stipulated settlements in administrative proceedings are treated the same as those in civil matters and may be rescinded on the same grounds as any other contract (see, *Stermer v. Board of Dental Examiners* (2002) 95 Cal.App.4th 128, 133), the Stipulation was merged into the Supreme Court's opinion on February 2, 2011. (Factual Finding 2; see, *Munoz v. MacMillan* (2011) 195 Cal.App.4th 648, 660 [all contractual rights are merged into and extinguished by entry of judgment].) The Supreme Court's order became final on March 4, 2011. (Factual Finding 2.) Respondent did not establish that the Supreme Court's opinion has been rescinded.

Cause to Discipline Respondent's Broker License

4. A broker license may be disciplined if the licensee claims, demands, charges, receives, collects, or contracts for the collection of an advance fee without first obtaining Department approval of materials used to collect such fee. (Bus. & Prof. Code, § 10085; see, Bus. & Prof. Code, § 10177, subds. (d) and (g).) There is no evidence that the Department never approved respondent's advance fee materials. (Factual Finding 7.) Nor is there any evidence that he collected an advance fee from Luisana Gutierrez, Jose Hernandez, Armando Camacho, Alicia Gomez, Barbara Lee Factor, Nicolas Tejeda, Barbara Ramos, Pedro Morales, Maximino Ferreira Lima, or Eduardo Medina Perez, as alleged in the Accusation and Second Amended Accusation. (Factual Findings 3, 4, and 7; see, *Linda Jones General Builder v. Contractors' State License Board* (1987) 194 Cal.app.3d 1320, 1324 ["Disciplinary action can be founded only upon charges made in the accusation."]; *Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 526-527 [the order of discipline must be based on the law and facts alleged in the accusation].)[6] Therefore, no cause exists to discipline respondent's broker license pursuant to Business and Professions Code sections 10085 or 10177, subdivisions (d) or (g).

5. A broker license may be disciplined if the licensee employs or compensates an unlicensed individual (or an individual licensed under a different broker) for performing activities for which a real estate license is required. (Bus. & Prof. Code, § 10137; see, Bus. & Prof Code, § 10177, subds. (d) and (g).) Since it was Advocate who employed or compensated individuals to collect advance fees and

---

[6] While the Supreme Court's order disbarring respondent from the practice of law is conclusive evidence that he collected an advance fee from Ms. Castro, there was no evidence that such fee was collected pursuant to an advance fee agreement that was never approved by the Department. (Factual Finding 7.)

there was no evidence that respondent collected advance fees from Luisana Gutierrez, Jose Hernandez, Armando Camacho, Alicia Gomez, Barbara Lee Factor, Nicolas Tejeda, Barbara Ramos, Pedro Morales, Maximino Ferreira Lima, and Eduardo Medina Perez (Factual Finding 8; Legal Conclusion 4), no cause exists for disciplining respondent's broker license pursuant to Business and Professions Code sections 10137 or 10177, subdivisions (d) or (g), based on his alleged unlawful employment or compensation of an unlicensed individual (or an individual licensed under a different broker) for collecting such fees (Factual Finding 8).

6. A person cannot perform services under a fictitious business name if the performance of such services requires a real estate license, unless he has a real estate license in the name of the fictitious business. (Cal. Code Regs., tit. 10, § 2731, subd. (a); see, Bus. & Prof. Code, § 10159.5 [applicants seeking a license under a fictitious business name must include a copy of their fictitious business name statement that was filed with the County with their application].)

Respondent performed loan modification services under the fictitious name of "Advocate," even though he was licensed solely in his individual capacity. (Factual Finding 9.) Therefore, cause to discipline the broker license exists pursuant to Business and Professions Code section 10177, subdivision (d), based on his willful violation of the Real Estate Law, or a regulation adopted pursuant to such law. No cause exists to discipline the broker license pursuant to Business and Professions Code section 10177, subdivision (g), because respondent did not negligently or incompetently perform an act for which he was required to be licensed.

7. A broker license may be disciplined when the licensee is also a licensed attorney and the State Bar has disciplined his license to practice law for conduct which, if committed by a broker, would also constitute grounds for discipline under the Real Estate Law. Business and Professions Code section 10177, subdivision (f), provides for discipline if the licensee has:

> Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with

> Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(See, *Berg v. Davi* (2005) 130 Cal.App.4th 223 [affirming denial of application for real estate license on the grounds that the applicant was previously disbarred from the practice of law].)

The California Supreme Court issued an order disbarring respondent from the practice of law on February 2, 2011, and the order became final on March 4, 2011. (Factual Finding 2.) Some of the conduct for which respondent was disbarred would also constitute grounds for discipline under the Real Estate Law if committed by a real estate licensee. (Factual Findings 10(a), 10(b), 10(c), and 10(d); see, Bus. & Prof. Code, §§ 10145, subd. (a)(1); 10146; 10176, subds. (a), (b), and (i); 10177, subd. (d).) The Supreme Court's findings that respondent committed such conduct are binding on respondent and cannot be collaterally attacked. (See, *State Bar of California v. Statile* (2009) 168 Cal.App.4th 650, 671 [the State Bar Court's decision to grant an application for reimbursement by the Client Security Fund collaterally estops the attorney from challenging the Client Security Fund's claim for reimbursement in a subsequent action]; *Berg v. Davi, supra*, 130 Cal.App.4th 223, 231 [collateral estoppel applies in administrative proceedings].) Furthermore, respondent stipulated to the factual basis for his disbarment. (See, *Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 754-758 [a party's stipulation to facts constitutes a judicial admission]; *Palmer v. City of Long Beach* (1948) 33 Cal.2d 134, 141-142 ["Unless the trial court . . . permits a party to withdraw from a stipulation, it is conclusive upon the parties, and the truth of the facts contained therein cannot be contradicted."])

Respondent's Reply Brief distinguishes *Berg* on grounds which are not relevant here. He argued that *Berg* involved an administrative decision which did not deny a fundamental right. There is no question that the discipline of a professional license such as respondent's broker license involves a fundamental right and that cause for discipline must be established by clear and convincing evidence. (See, *The Grubb Company, Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1502.) That does not alter *Berg's* holding that the discipline of a real estate licensee's State Bar license constitutes grounds for disciplining his real estate license under Business and Professions Code section 10177, subdivision (f). (*Berg v. Davi, supra*, 130 Cal.App.4th at p. 225.)

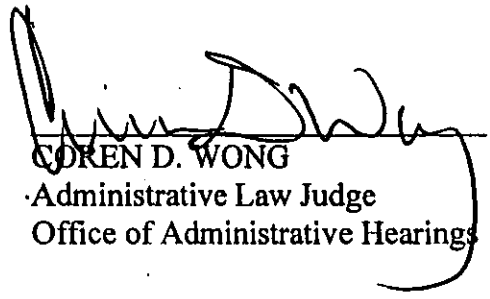
For the reasons discussed above, cause exists to discipline respondent's broker license pursuant to Business and Professions Code section 10177, subdivision (f).

8. Cause exists to discipline respondent's broker license for the reasons discussed in Legal Conclusions 6 and 7, individually and collectively. As discussed in Factual Finding 12, the appropriate discipline is the outright revocation of his license.

ORDER

All licenses and licensing rights of respondent Mark Alan Shoemaker under the Real Estate Law are REVOKED.

DATED: August 24, 2011



COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED
JUN 10 2011
DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation MARK ALAN SHOEMAKER; LUIS ENRIQUE BAHENA; and ARTURO FERNANDEZ, Respondents.	No. 36732 LA No. L-2010080855 STIPULATION AND AGREEMENT
In the Matter of the Accusation MARK ALAN SHOEMAKER; FERNANDO TORIBIO; **CARLOS ESTUPINIAN**; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO, Respondents.	No. H-36874 LA No. L-2010110840

It is hereby stipulated by and between CARLOS ESTUPINIAN (sometimes referred to as "Respondent"), and the Complainant, acting by and through Cheryl Keily, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation in this matter, which was originally filed on October 20, 2010, and thereafter amended

on January 4, 2011.

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate ("Department") in this proceeding.

3. On November 1, 2010, Respondent filed a Notice of Defense, pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he will thereby waive his right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This Stipulation and Agreement is based on the factual allegations contained in the Accusation filed in this

proceeding. In the interest of expedience and economy, Respondent chooses not to litigate these allegations at a formal administrative hearing, but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. This Stipulation and Agreement and Respondent's decision not to contest the Accusation are hereby expressly limited to this proceeding and made for the sole purpose of reaching an agreed disposition of this proceeding. Respondent's decision not to contest the factual allegations at a formal administrative hearing is made solely for the purpose of effectuating this Stipulation and Agreement and is intended to be non-binding upon Respondent in any actions against him by third parties. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and sanctions on Respondent's real estate licenses and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing and

proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions, and waivers, and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct of Respondent, as described in the Accusation, is in violation of Business and Professions Code Section 10130, and is a basis for discipline of Respondent's license and license rights as violations of the Real Estate Law pursuant to Business and Professions Code Section 10177(g).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I. ALL licenses and licensing rights of Respondent CARLOS ESTUPINIAN under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this

Decision. The entire period of the thirty (30) day suspension shall be stayed for one (1) year upon the following terms and conditions:

a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2. 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.

DATED: May 16, 2011

CHERYL D. KEILY, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to

me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following telephone/fax number (213) 576-6917. Respondent agrees, acknowledges, and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED: 04/28/11

CARLOS ESTUPINIAN,
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on JUN 30 2011, 2011.

IT IS SO ORDERED 6/6, 2011.

Barbara J. Bigelow
Real Estate Commissioner

Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED

JUN 10 2011

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation MARK ALAN SHOEMAKER; LUIS ENRIQUE BAHENA; and ARTURO FERNANDEZ, Respondents.	No. 36732 LA No. L-2010080855 STIPULATION AND AGREEMENT
In the Matter of the Accusation MARK ALAN SHOEMAKER; **FERNANDO TORIBIO**; CARLOS ESTUPINIAN; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO, Respondents.	No. H-36874 LA No. L-2010110840

It is hereby stipulated by and between FERNANDO TORIBIO (sometimes referred to as "Respondent"), and the Complainant, acting by and through Cheryl Keily, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation in this matter, which was originally filed on October 20, 2010, and thereafter amended

on January 4, 2011.

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate ("Department") in this proceeding.

3. On November 3, 2010, Respondent filed a Notice of Defense, pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he will thereby waive his right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This Stipulation and Agreement is based on the factual allegations contained in the Accusation filed in this

proceeding. In the interest of expedience and economy, Respondent chooses not to litigate these allegations at a formal administrative hearing, but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. This Stipulation and Agreement and Respondent's decision not to contest the Accusation are hereby expressly limited to this proceeding and made for the sole purpose of reaching an agreed disposition of this proceeding. Respondent's decision not to contest the factual allegations at a formal administrative hearing is made solely for the purpose of effectuating this Stipulation and Agreement and is intended to be non-binding upon Respondent in any actions against him by third parties. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and sanctions on Respondent's real estate licenses and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing and

proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions, and waivers, and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct of Respondent, as described in the Accusation, is in violation of Business and Professions Code Section 10130, and is a basis for discipline of Respondent's license and license rights as violations of the Real Estate Law pursuant to Business and Professions Code Section 10177(g).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I. ALL licenses and licensing rights of Respondent FERNANDO TORIBIO under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this

Decision. The entire period of the thirty (30) day suspension shall be stayed for one (1) year upon the following terms and conditions:

a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2. 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.

DATED: May 16, 2011

CHERYL D. KEILY, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to

me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following telephone/fax number (213) 576-6917. Respondent agrees, acknowledges, and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED: 5/5/2011

FERNANDO TORIBIO,
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on JUN 30 2011, 2011.

IT IS SO ORDERED 6/6, 2011.

Real Estate Commissioner

Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED

JUN 10 2011

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation MARK ALAN SHOEMAKER; LUIS ENRIQUE BAHENA; and ARTURO FERNANDEZ, Respondents.	No. 36732 LA No. L-2010080855 STIPULATION AND AGREEMENT
In the Matter of the Accusation MARK ALAN SHOEMAKER; FERNANDO TORIBIO; CARLOS ESTUPINIAN; **MARICELA ESTHER CYGAN**; and ANA MARIA SOLANO, Respondents.	No. H-36874 LA No. L-2010110840

It is hereby stipulated by and between MARICELA ESTHER CYGAN (sometimes referred to as "Respondent"), and her attorney, Aimee E. Dominguez, and the Complainant, acting by and through Cheryl Keily, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation in this matter, which was originally filed on October

20, 2010, and thereafter amended on January 4, 2011.

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate ("Department") in this proceeding.

3. On November 1, 2010, Respondent filed a Notice of Defense, pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he will thereby waive his right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This Stipulation and Agreement is based on the factual allegations contained in the Accusation filed in this

proceeding. In the interest of expedience and economy, Respondent chooses not to litigate these allegations at a formal administrative hearing, but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. This Stipulation and Agreement and Respondent's decision not to contest the Accusation are hereby expressly limited to this proceeding and made for the sole purpose of reaching an agreed disposition of this proceeding. Respondent's decision not to contest the factual allegations at a formal administrative hearing is made solely for the purpose of effectuating this Stipulation and Agreement and is intended to be non-binding upon Respondent in any actions against him by third parties. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and sanctions on Respondent's real estate licenses and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing and

proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions, and waivers, and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct of Respondent, as described in the Accusation, is in violation of Business and Professions Code Section 10130, and is a basis for discipline of Respondent's license and license rights as violations of the Real Estate Law pursuant to Business and Professions Code Section 10177(g).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I. ALL licenses and licensing rights of Respondent MARICELA ESTHER CYGAN under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this

Decision. The entire period of the thirty (30) day suspension shall be stayed for one (1) year upon the following terms and conditions:

a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2. 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.

DATED: May 16, 2011

CHERYL D. KEILY, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to

me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following telephone/fax number (213) 576-6917. Respondent agrees, acknowledges, and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED: 4/29/11

MARICELA ESTHER CYGAN,
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

DATED: 4/29/11

Aimee E. Dominguez, Esq.
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on JUN 30 2011, 2011.

IT IS SO ORDERED 6/6, 2011.

Real Estate Commissioner

CHERYL D. KEILY, SNB# 94008
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013

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

FILED

MAY 10 2011

DEPARTMENT OF REAL ESTATE
BY: _____

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation

No. H-36874 LA

MARK ALAN SHOEMAKER; FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO,

Respondents.

SECOND AMENDED ACCUSATION

This Second Amended Accusation amends the First Amended Accusation filed on January 4, 2011.

The Complainant, Dionne Faulk, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MARK ALAN SHOEMAKER ("SHOEMAKER"); FERNANDO TORIBIO ("TORIBIO"); CARLOS ESTUPINIAN ("ESTUPINIAN"); MARICELA ESTHER CYGAN aka Maricela Nunez ("CYGAN"); and ANA MARIA SOLANO ("SOLANO") alleges as follows:

///

1.

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

2.

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

3.

Respondents TORIBIO, ESTUPINIAN, CYGAN and SOLANO are presently licensed and/or have license rights under the Real Estate Law as real estate salespersons.

4.

At no time relevant herein was Advocate for Fair Lending, LLC ("Advocate") or Dennis Dubkowski licensed by the Department in any capacity.

5.

Respondent SHOEMAKER ordered, caused, authorized or participated in the conduct of Advocate, as is alleged in this Accusation.

FIRST CAUSE OF ACCUSATION
(Advance Fee Violation)

6.

At all times mentioned herein, Respondent SHOEMAKER engaged in the business of a real estate broker in the State of California within the meaning of Code Sections 10131(d) and 10131.2 including brokering mortgage loans and performing loan

modification activities and claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee, within the meaning of Code Section 10026, including, but not limited to, the following loan modification activities with respect to loans which were secured by liens on real property:

a. On or about December 8, 2008, Alicia Gomez paid an advance fee of $7,280.79 to SHOEMAKER, doing business as Advocate. The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER, doing business as Advocate, with respect to a loan secured by real property in Santa Ana, California.

b. On or about September 5, 2008, Barbara Lee Factor paid an advance fee of $4,500 to SHOEMAKER, doing business as Advocate. The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Chino, California.

c. Nicolas Tejeda paid an advance fee of $3,751.32 on November 1, 2008, and an additional advance fee of $3,751.30 on December 5, 2008, to TORIBIO on behalf of Respondent SHOEMAKER, doing business as Advocate. At the time mentioned TORIBIO was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected

pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided with respect to a loan secured by real property located in Los Angeles, California.

d. On or about November 7, 2008, Barbara Ramos paid an advance fee of $1,652.00 to SOLANO on behalf of SHOEMAKER, doing business as Advocate. On December 15, 2008, Barbara Ramos paid an additional advance fee of $1,000. At the time mentioned SOLANO was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Rialto, California.

e. Pedro Morales paid an advance fee of $500 on each of October 29, 2008, November 17, 2008 and February 10, 2009. The advance fees were paid to Dennis Dubkowski on behalf of SHOEMAKER, doing business as Advocate. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Buena Park, California.

f. Commencing on or about December 1, 2008, Maximino Ferreira Lima paid a series of advance fees totaling $3,126.00

to ESTUPINIAN on behalf of SHOEMAKER, doing business as Advocate. At the time mentioned ESTUPINIAN was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Van Nuys, California. Thereafter, Maximino Ferreira Lima paid an additional $1,000 as a retainer to Respondent SHOEMAKER.

g. On or about September 29, 2008, Eduardo Medina Perez paid an advance fee of $1,200 to CYGAN on behalf of SHOEMAKER, doing business as Advocate. Thereafter, Eduardo Medina Perez paid additional advance fees of $1,200 on November 3, 2008, and $700 on December 3, 2008. At the time mentioned CYGAN was a licensed real estate salesperson, but she had not placed her license under the broker's license of Respondent SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Highland, California.

7.

Respondents collected the advance fees described in Paragraph 6, above, pursuant to the provisions of written

agreements which constitute an advance fee agreement within the meaning of Code Section 10085.

8.

Respondent SHOEMAKER failed to submit the written agreement referred to in Paragraphs 6 and 7, above, to the Commissioner ten days before using it in violation of Code Section 10085 and Section 2970, Title 10, Chapter 6, Code of Regulations ("Regulations").

9.

The conduct, acts and/or omissions of Respondents, as set forth above, are cause for the suspension or revocation of the licenses and license rights of Respondents pursuant to Code Sections 10085, 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION

(Unlicensed Activity by Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO)

10.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 9, above.

11.

On the occasion set forth in Paragraph 6c., above, Respondent TORIBIO engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than a broker who then employed him.

///

12.

On the occasion set forth in Paragraph 6f., above, though Respondent ESTUPINIAN was then employed under the broker license of Mayra Patricia Santana, Respondent ESTUPINIAN engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker who then employed him.

13.

On the occasion set forth in Paragraph 6g., above, though Respondent CYGAN was then employed under the broker license of Money Wise Investments Inc., Respondent CYGAN engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker who then employed her.

14.

On the occasion set forth in Paragraph 6d., above, though Respondent SOLANO was then employed under the broker license of Samsons Realty, Respondent SOLANO engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker

who then employed her.

15.

Based on the information contained in Paragraphs 11, 12, 13 and 14, above, Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO performed and/or participated in loan solicitation, negotiation, and modification activities which require a real estate broker license under the provisions of Code Sections 10131(d) during a period of time when Respondents were not licensed by the Department as a real estate broker nor employed as a real estate salesperson by a broker on whose behalf the activities were performed.

16.

The conduct, acts and/or omissions of Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO violate Code Section 10130, and are cause for the suspension or revocation of the licenses and license rights of Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO pursuant to Code Sections 10177(d) and/or 10177(g) and/or 10177(j).

THIRD CAUSE OF ACCUSATION
(Violation of Code Section 10137 by Respondent SHOEMAKER in Employing and/or Compensating Unlicensed Individuals)

17.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 16, above.

18.

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

Code. Respondent SHOEMAKER violated Section 10137 of the Code by employing and/or compensating individuals who were not licensed as a real estate salesperson or as a broker to perform activities requiring a license as follows:

a. Respondent SHOEMAKER employed and/or compensated Respondent TORIBIO to perform some or all of the services alleged in Paragraph 6, subsection (c), above, though he was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

b. Respondent SHOEMAKER employed and/or compensated Respondent SOLANO to perform some or all of the services alleged in Paragraph 6, subsection (d), above, though she was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

c. Respondent SHOEMAKER employed and/or compensated Dennis Dubkowski to perform some or all of the services alleged in Paragraph 6, subsection (e), above, though he was not licensed as a real estate salesperson or broker.

d. Respondent SHOEMAKER employed and/or compensated Respondent ESTUPINIAN to perform some or all of the services alleged in Paragraph 6, subsection (f), above, though he was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

e. Respondent SHOEMAKER employed and/or compensated Respondent CYGAN to perform some or all of the services alleged in Paragraph 6, subsection (g), above, though she was not

employed under the broker license of Respondent SHOEMAKER, and was instead working under the license of another broker.

19.

The conduct, acts and/or omissions of Respondent SHOEMAKER, as set forth in Paragraph 18, above, violate Code Section 10137, and is cause for the suspension or revocation of the licenses and license rights of Respondent SHOEMAKER pursuant to Code Sections 10137, 10177(d) and/or 10177(g).

FOURTH CAUSE OF ACCUSATION
(License Discipline Against Professional License of Respondent MARK ALAN SHOEMAKER Only)

20.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 19, above.

21.

On or about February 2, 2011, in Case No. S188549 of the California Supreme Court, ordered Respondent MARK ALAN SHOEMAKER disbarred from the practice of law in California pursuant to the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving in Case No. 09-O-11260 et al., filed on October 6, 2010, by the State Bar of California, Hearing Department. Revocation was based on the following willful violations: (1) Rule 3-110(A) of the Rules of Professional Conduct (Intentional, reckless or repeated failure to perform legal services with competence); (2) Rule 3-700(D)(2) of the Rules of Professional Conduct (Failure to promptly refund any part of an unearned advance fee); (3) Code Section 6068(m)

(Failure to adequately communicate with clients); (4) Rule 4-100(B)(3) of the Rules of Professional Conduct (Failure to render appropriate accounts to clients); (5) Rule 3-700(D)(1) of the Rules of Professional Conduct (Failure to release client files when requested); (6) Rule 4-200(A) of the Rules of Professional Conduct and Code Section 6106 (Charging an unconscionable fee and engaging in an act of overreaching); (7) Rule 4-100(A) of the Rules of Professional Conduct (Failing to deposit client advanced costs into a client trust account); and (8) Rule 1-300(A) of the Rules of Professional Conduct (Aiding a non-attorney in the unauthorized practice of law).

22.

The acts resulting in the revocation of Respondent MARK ALAN SHOEMAKER's license to practice law, as is alleged herein above in Paragraph 21, constitute cause under Sections 480(a)(3) and/or 10177(f) of the Code for the suspension or revocation of the license and license rights of Respondent MARK ALAN SHOEMAKER under the Real Estate Law.

///

///

///

///

///

///

///

///

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 Respondents MARK ALAN SHOEMAKER, FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO 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 10th day of May, 2011.

Dionne Faulk
Deputy Real Estate Commissioner

cc: Mark Alan Shoemaker
Fernando Toribio
Carlos Estupinian
Maricela Esther Cygan
Ana Maria Solano
Dionne Faulk
Sacto.
OAH

FLAG

FILED

JAN 25 2011

DEPARTMENT OF REAL ESTATE

BY: _____

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation No. H-36874 LA

MARK ALAN SHOEMAKER; FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA NUNEZ; and ANA MARIA SOLANO,

Respondents.

DISMISSAL

On October 20, 2010, the Department of Real Estate ("Department") filed an Accusation against among others, MARICELA NUNEZ, in Department Case No. H-36874 LA. Good cause has been shown that MARICELA NUNEZ with Department License No. 01715386 did not commit the acts set forth in the Accusation. Based

///

///

///

thereon, the Accusation filed on October 20, 2010, against MARICELA NUNEZ with Department License No. 01715386 is DISMISSED.

DATED: 1-20, 2011.

JEFF DAVI
Real Estate Commissioner

cc: Maricela Nunez
8959 Valley View Avenue
Whittier, California 90605

FLAG

CHERYL D. KEILY, SNB# 94008
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013

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

FILED

JAN 04 2011

DEPARTMENT OF REAL ESTATE
BY: _____

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation

No. H-36874 LA

MARK ALAN SHOEMAKER; FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO,

Respondents.

FIRST AMENDED ACCUSATION

This First Amended Accusation amends the Accusation filed on October 20, 2010.

The Complainant, Dionne Faulk, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MARK ALAN SHOEMAKER ("SHOEMAKER"); FERNANDO TORIBIO ("TORIBIO"); CARLOS ESTUPINIAN ("ESTUPINIAN"); MARICELA ESTHER CYGAN aka Maricela Nunez ("CYGAN"); and ANA MARIA SOLANO ("SOLANO") alleges as follows:

///

1.

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

2.

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

3.

Respondents TORIBIO, ESTUPINIAN, CYGAN and SOLANO are presently licensed and/or have license rights under the Real Estate Law as real estate salespersons.

4.

At no time relevant herein was Advocate for Fair Lending, LLC ("Advocate") or Dennis Dubkowski licensed by the Department in any capacity.

5.

Respondent SHOEMAKER ordered, caused, authorized or participated in the conduct of Advocate, as is alleged in this Accusation.

FIRST CAUSE OF ACCUSATION
(Advance Fee Violation)

6.

At all times mentioned herein, Respondent SHOEMAKER engaged in the business of a real estate broker in the State of California within the meaning of Code Sections 10131(d) and 10131.2 including brokering mortgage loans and performing loan

modification activities and claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee, within the meaning of Code Section 10026, including, but not limited to, the following loan modification activities with respect to loans which were secured by liens on real property:

a. On or about December 8, 2008, Alicia Gomez paid an advance fee of $7,280.79 to SHOEMAKER, doing business as Advocate. The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER, doing business as Advocate, with respect to a loan secured by real property in Santa Ana, California.

b. On or about September 5, 2008, Barbara Lee Factor paid an advance fee of $4,500 to SHOEMAKER, doing business as Advocate. The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Chino, California.

c. Nicolas Tejeda paid an advance fee of $3,751.32 on November 1, 2008, and an additional advance fee of $3,751.30 on December 5, 2008, to TORIBIO on behalf of Respondent SHOEMAKER, doing business as Advocate. At the time mentioned TORIBIO was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected

pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided with respect to a loan secured by real property located in Los Angeles, California.

d. On or about November 7, 2008, Barbara Ramos paid an advance fee of $1,652.00 to SOLANO on behalf of SHOEMAKER, doing business as Advocate. On December 15, 2008, Barbara Ramos paid an additional advance fee of $1,000. At the time mentioned SOLANO was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Rialto, California.

e. Pedro Morales paid an advance fee of $500 on each of October 29, 2008, November 17, 2008 and February 10, 2009. The advance fees were paid to Dennis Dubkowski on behalf of SHOEMAKER, doing business as Advocate. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Buena Park, California.

f. Commencing on or about December 1, 2008, Maximino Ferreira Lima paid a series of advance fees totaling $3,126.00

to ESTUPINIAN on behalf of SHOEMAKER, doing business as Advocate. At the time mentioned ESTUPINIAN was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Van Nuys, California. Thereafter, Maximino Ferreira Lima paid an additional $1,000 as a retainer to Respondent SHOEMAKER.

g. On or about September 29, 2008, Eduardo Medina Perez paid an advance fee of $1,200 to CYGAN on behalf of SHOEMAKER, doing business as Advocate. Thereafter, Eduardo Medina Perez paid additional advance fees of $1,200 on November 3, 2008, and $700 on December 3, 2008. At the time mentioned CYGAN was a licensed real estate salesperson, but she had not placed her license under the broker's license of Respondent SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through Advocate with respect to a loan secured by real property located in Highland, California.

7.

Respondents collected the advance fees described in Paragraph 6, above, pursuant to the provisions of written

agreements which constitute an advance fee agreement within the meaning of Code Section 10085.

8.

Respondent SHOEMAKER failed to submit the written agreement referred to in Paragraphs 6 and 7, above, to the Commissioner ten days before using it in violation of Code Section 10085 and Section 2970, Title 10, Chapter 6, Code of Regulations ("Regulations").

9.

The conduct, acts and/or omissions of Respondents, as set forth above, are cause for the suspension or revocation of the licenses and license rights of Respondents pursuant to Code Sections 10085, 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION

(Unlicensed Activity by Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO)

10.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 9, above.

11.

On the occasion set forth in Paragraph 6c., above, Respondent TORIBIO engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than a broker who then employed him.

///

12.

On the occasion set forth in Paragraph 6f., above, though Respondent ESTUPINIAN was then employed under the broker license of Mayra Patricia Santana, Respondent ESTUPINIAN engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker who then employed him.

13.

On the occasion set forth in Paragraph 6g., above, though Respondent CYGAN was then employed under the broker license of Money Wise Investments Inc., Respondent CYGAN engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker who then employed her.

14.

On the occasion set forth in Paragraph 6d., above, though Respondent SOLANO was then employed under the broker license of Samsons Realty, Respondent SOLANO engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker

who then employed her.

15.

Based on the information contained in Paragraphs 11, 12, 13 and 14, above, Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO performed and/or participated in loan solicitation, negotiation, and modification activities which require a real estate broker license under the provisions of Code Sections 10131(d) during a period of time when Respondents were not licensed by the Department as a real estate broker nor employed as a real estate salesperson by a broker on whose behalf the activities were performed.

16.

The conduct, acts and/or omissions of Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO violate Code Section 10130, and are cause for the suspension or revocation of the licenses and license rights of Respondents TORIBIO, ESTUPINIAN, CYGAN, and SOLANO pursuant to Code Sections 10177(d) and/or 10177(g) and/or 10177(j).

THIRD CAUSE OF ACCUSATION
(Violation of Code Section 10137 by Respondent SHOEMAKER in Employing and/or Compensating Unlicensed Individuals)

17.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 16, above.

18.

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

Code. Respondent SHOEMAKER violated Section 10137 of the Code by employing and/or compensating individuals who were not licensed as a real estate salesperson or as a broker to perform activities requiring a license as follows:

a. Respondent SHOEMAKER employed and/or compensated Respondent TORIBIO to perform some or all of the services alleged in Paragraph 6, subsection (c), above, though he was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

b. Respondent SHOEMAKER employed and/or compensated Respondent SOLANO to perform some or all of the services alleged in Paragraph 6, subsection (d), above, though she was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

c. Respondent SHOEMAKER employed and/or compensated Dennis Dubkowski to perform some or all of the services alleged in Paragraph 6, subsection (e), above, though he was not licensed as a real estate salesperson or broker.

d. Respondent SHOEMAKER employed and/or compensated Respondent ESTUPINIAN to perform some or all of the services alleged in Paragraph 6, subsection (f), above, though he was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

e. Respondent SHOEMAKER employed and/or compensated Respondent CYGAN to perform some or all of the services alleged in Paragraph 6, subsection (g), above, though she was not

employed under the broker license of Respondent SHOEMAKER, and was instead working under the license of another broker.

19.

The conduct, acts and/or omissions of Respondent SHOEMAKER, as set forth in Paragraph 18, above, violate Code Section 10137, and is cause for the suspension or revocation of the licenses and license rights of Respondent SHOEMAKER pursuant to Code Sections 10137, 10177(d) and/or 10177(g).

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 Respondents MARK ALAN SHOEMAKER, FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA ESTHER CYGAN; and ANA MARIA SOLANO 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 4 day of January, 2011.

Dionne Faulk
Deputy Real Estate Commissioner

cc: Mark Alan Shoemaker
Fernando Toribio
Carlos Estupinian
Maricela Esther Cygan
Ana Maria Solano
Dionne Faulk
Sacto.

CHERYL D. KEILY, SNB# 94008
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013

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

FILED

OCT 20 2010

DEPARTMENT OF REAL ESTATE
BY: _____

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation

No. H-36874 LA

MARK ALAN SHOEMAKER; FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA NUNEZ; and ANA MARIA SOLANO,

Respondents.

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 MARK ALAN SHOEMAKER ("SHOEMAKER"); FERNANDO TORIBIO ("TORIBIO"); CARLOS ESTUPINIAN ("ESTUPINIAN"); MARICELA NUNEZ ("NUNEZ"); and ANA MARIA SOLANO ("SOLANO") 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.

2.

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

3.

Respondents TORIBIO, ESTUPINIAN, NUNEZ and SOLANO are presently licensed and/or have license rights under the Real Estate Law as real estate salespersons.

4.

At no time relevant herein was Advocate for Fair Lending, LLC ("Advocate") or Dennis Dubkowski licensed by the Department in any capacity.

5.

Respondent SHOEMAKER ordered, caused, authorized or participated in the conduct of Advocate, as is alleged in this Accusation.

FIRST CAUSE OF ACCUSATION
(Advance Fee Violation)

6.

At all times mentioned herein, Respondent SHOEMAKER engaged in the business of a real estate broker in the State of California within the meaning of Code Sections 10131(d) and 10131.2 including brokering mortgage loans and performing loan modification activities and claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee, within the meaning of Code Section 10026, including, but not limited to, the following loan modification activities

with respect to loans which were secured by liens on real property:

a. On or about December 8, 2008, Alicia Gomez paid an advance fee of $7,280.79 to SHOEMAKER, doing business as ADVOCATE. The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER, doing business as ADVOCATE, with respect to a loan secured by real property in Santa Ana, California.

b. On or about September 5, 2008, Barbara Lee Factor paid an advance fee of $4,500 to SHOEMAKER, doing business as ADVOCATE. The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through ADVOCATE with respect to a loan secured by real property located in Chino, California.

c. Nicolas Tejeda paid an advance fee of $3,751.32 on November 1, 2008, and an additional advance fee of $3,751.30 on December 5, 2008, to TORIBIO on behalf of Respondent SHOEMAKER, doing business as ADVOCATE. At the time mentioned TORIBIO was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided with respect to a loan secured by real property located in Los Angeles, California.

d. On or about November 7, 2008, Barbara Ramos paid an advance fee of $1,652.00 to SOLANO on behalf of SHOEMAKER, doing business as ADVOCATE. On December 15, 2008, Barbara Ramos paid an additional advance fee of $1,000. At the time mentioned SOLANO was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through ADVOCATE with respect to a loan secured by real property located in Rialto, California.

e. Pedro Morales paid an advance fee of $500 on each of October 29, 2008, November 17, 2008 and February 10, 2009. The advance fees were paid to Dennis Dubkowski on behalf of SHOEMAKER, doing business as ADVOCATE. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through ADVOCATE with respect to a loan secured by real property located in Buena Park, California.

f. Commencing on or about December 1, 2008, Maximino Ferreira Lima paid a series of advance fees totaling $3,126.00 to ESTUPINIAN on behalf of SHOEMAKER, doing business as ADVOCATE. At the time mentioned ESTUPINIAN was a licensed real estate salesperson employed by a broker other than SHOEMAKER. The advance fees were collected pursuant to the provisions of an

agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through ADVOCATE with respect to a loan secured by real property located in Van Nuys, California. Thereafter, Maximino Ferreira Lima paid an additional $1,000 as a retainer to Respondent SHOEMAKER.

g. On or about September 29, 2008, Eduardo Medina Perez paid an advance fee of $1,200 to NUNEZ behalf of SHOEMAKER, doing business as ADVOCATE. Thereafter, Eduardo Medina Perez paid additional advance fees of $1,200 on November 3, 2008, and $700 on December 3, 2008. At the time mentioned NUNEZ was a licensed real estate salesperson, but she had not placed her license under the broker's license of Respondent SHOEMAKER. The advance fees were collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondent SHOEMAKER through ADVOCATE with respect to a loan secured by real property located in Highland, California.

7.

Respondents collected the advance fees described in Paragraph 6, above, pursuant to the provisions of written agreements which constitute an advance fee agreement within the meaning of Code Section 10085.

8.

Respondent SHOEMAKER failed to submit the written agreement referred to in Paragraphs 6 and 7, above, to the

Commissioner ten days before using it in violation of Code Section 10085 and Section 2970, Title 10, Chapter 6, Code of Regulations ("Regulations").

9.

The conduct, acts and/or omissions of Respondents, as set forth above, are cause for the suspension or revocation of the licenses and license rights of Respondents pursuant to Code Sections 10085, 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION

(Unlicensed Activity by Respondents TORIBIO, ESTUPINIAN, NUNEZ, and SOLANO)

10.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 9, above.

11.

On the occasion set forth in Paragraph 6c., above, Respondent TORIBIO engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than a broker who then employed him.

12.

On the occasion set forth in Paragraph 6f., above, though Respondent ESTUPINIAN was then employed under the broker license of Mayra Patricia Santana, Respondent ESTUPINIAN engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or

collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker who then employed him.

13.

On the occasion set forth in Paragraph 6g., above, though Respondent NUNEZ was then employed under the broker license of Michel Maximino, Respondent NUNEZ engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker who then employed her.

14.

On the occasion set forth in Paragraph 6d., above, though Respondent SOLANO was then employed under the broker license of Samsons Realty, Respondent SOLANO engaged in the business of negotiating, or offering to negotiate, loan modifications in connection with loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation from someone other than the broker who then employed her.

15.

Based on the information contained in Paragraphs 11, 12, 13 and 14, above, Respondents TORIBIO, ESTUPINIAN, NUNEZ, and SOLANO performed and/or participated in loan solicitation, negotiation, and modification activities which require a real

estate broker license under the provisions of Code Sections 10131(d) during a period of time when Respondents were not licensed by the Department as a real estate broker nor employed as a real estate salesperson by a broker on whose behalf the activities were performed.

16.

The conduct, acts and/or omissions of Respondents TORIBIO, ESTUPINIAN, NUNEZ, and SOLANO violate Code Section 10130, and are cause for the suspension or revocation of the licenses and license rights of Respondents TORIBIO, ESTUPINIAN, NUNEZ, and SOLANO pursuant to Code Sections 10177(d) and/or 10177(g) and/or 10177(j).

THIRD CAUSE OF ACCUSATION
(Violation of Code Section 10137 by Respondent SHOEMAKER in Employing and/or Compensating Unlicensed Individuals)

17.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 16, above.

18.

The activities described in Paragraph 6, above, require a real estate license under Sections 10131(d) and 10131.2 of the Code. Respondent SHOEMAKER violated Section 10137 of the Code by employing and/or compensating individuals who were not licensed as a real estate salesperson or as a broker to perform activities requiring a license as follows:

a. Respondent SHOEMAKER employed and/or compensated Respondent TORIBIO to perform some or all of the services alleged

in Paragraph 6, subsection (c), above, though he was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

b. Respondent SHOEMAKER employed and/or compensated Respondent SOLANO to perform some or all of the services alleged in Paragraph 6, subsection (d), above, though she was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

c. Respondent SHOEMAKER employed and/or compensated Dennis Dubkowski to perform some or all of the services alleged in Paragraph 6, subsection (e), above, though he was not licensed as a real estate salesperson or broker.

d. Respondent SHOEMAKER employed and/or compensated Respondent ESTUPINIAN to perform some or all of the services alleged in Paragraph 6, subsection (f), above, though he was not employed by Respondent SHOEMAKER, and was instead working under the license of another broker.

e. Respondent SHOEMAKER employed and/or compensated Respondent NUNEZ to perform some or all of the services alleged in Paragraph 6, subsection (g), above, though she was not employed the broker license of Respondent SHOEMAKER.

19.

The conduct, acts and/or omissions of Respondent SHOEMAKER, as set forth in Paragraph 18, above, violate Code Section 10137, and is cause for the suspension or revocation of

the licenses and license rights of Respondent SHOEMAKER pursuant to Code Sections 10137, 10177(d) and/or 10177(g).

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 Respondents MARK ALAN SHOEMAKER, FERNANDO TORIBIO; CARLOS ESTUPINIAN; MARICELA NUNEZ; and ANA MARIA SOLANO 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 14 day of October, 2010.

Robin Trujillo
Deputy Real Estate Commissioner

cc: Mark Alan Shoemaker
Fernando Toribio
Carlos Estupinian
Maricela Nunez
Ana Maria Solano
Robin Trujillo
Sacto.