FILED

JUNE 6, 2012

DEPARTMENT OF REAL ESTATE
BY: [illegible]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of THE DIAZ GROUP, INC. and HECTOR N. DIAZ, individually and as designated officer of The Diaz Group, Inc., Respondents.	DRE NO. H-36965 LA OAH NO. 2011010836

ORDER DENYING RECONSIDERATION

On April 11, 2012, a Decision was rendered in the above-entitled matter, revoking Respondent HECTOR N. DIAZ' real estate broker license and granting the right to a restricted real estate salesperson license. The Decision was to become effective on May 8, 2012, and was stayed by Order of May 4, 2012 to June 7, 2012.

On May 21, 2012, Respondent HECTOR N. DIAZ petitioned for reconsideration of the Decision of April 11, 2012.

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I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of April 11, 2012, and reconsideration is hereby denied.

IT IS SO ORDERED 6/3/2012.

Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

SKC

FILED

MAY 4, 2012

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of THE DIAZ GROUP, INC. and HECTOR N. DIAZ, individually and as designated officer of The Diaz Group, Inc., Respondents.	DRE NO. H-36965 LA OAH NO. 2011010836

ORDER STAYING EFFECTIVE DATE

On April 11, 2012, a Decision was rendered in the above-entitled matter to become effective May 8, 2012.

IT IS HEREBY ORDERED that the effective date of the Decision of April 11, 2012, is stayed for a period of thirty (30) days to allow Respondent HECTOR N. DIAZ to file a petition for reconsideration.

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The Decision of April 11, 2012, shall become effective at 12 o'clock noon on June 7, 2012.

DATED: May 4, 2012.

Real Estate Commissioner

By: Dolores Weeks

DOLORES WEEKS
Regional Manager

FILED

APR 18 2012

DEPARTMENT OF REAL ESTATE
BY: C-B

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of THE DIAZ GROUP, INC. and HECTOR N. DIAZ, individually and as designated officer of The Diaz Group, Inc., Respondents.	))))))))	No. H-36965 LA L-2011010836

DECISION

The Proposed Decision dated February 24, 2012, 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 May 8, 2012.

IT IS SO ORDERED April 11, 2012.

Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against THE DIAZ GROUP, INC.; and HECTOR N. DIAZ, individually, and as designated officer of THE DIAZ GROUP, INC., Respondents.	Case No. H-36965 LA OAH No. 2011010836

PROPOSED DECISION

This matter came on regularly for hearing on September 6, 7, and 8, 2011, in Los Angeles, California, before Mark Harman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Robin Trujillo (Complainant) was represented by Lissete Garcia, Counsel, California Department of Real Estate (Department). Respondents The Diaz Group, Inc. (Respondent TDG), and Hector N. Diaz (Respondent Diaz) (collectively, Respondents) were represented by Frank Buda, Attorney at Law.

Complainant seeks the revocation of Respondents' real estate brokers licenses based on allegations that Respondents caused or directed an unlicensed business entity, American National Group, and its unlicensed employees, to solicit and negotiate loans, and to charge and collect advance fees before having an advance fee agreement approved by the Department, in violation of the Real Estate Law. Complainant further alleges that Respondents failed to supervise the activities of an employee. Respondents deny any connection with American National Group and further deny the allegations of failure to supervise an employee.

Oral and documentary evidence was received. The record was closed on September 8, 2011, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Since June 7, 2005, Respondent Diaz has been licensed as a real estate broker by the Department and, during this time, also has been licensed to do business as

"Object Mortgage" and "Supremacy Realtors." From November 23, 2002, through June 6, 2005, Respondent Diaz was licensed by the Department as a real estate salesperson.

3. Respondent TDG was licensed as a corporate real estate broker on January 12, 2006, with Respondent Diaz as designated officer. Since that time, Respondent TDG has been authorized to act by and through Respondent Diaz and Respondent Diaz has been responsible for ensuring Respondent TDG's compliance with the Real Estate Law (Business and Professions Code section 10000 et seq.) The Department has not previously imposed discipline against Respondents' licenses.

4. At all times relevant, Respondents engaged in the business of real estate brokers at their main office located at 1721 West Katella Avenue, #L, Anaheim, California. From November 5, 2008, through April 19, 2010, Respondent TDG was licensed by the Department to maintain a branch office located at 1701 East Lincoln Avenue in Anaheim. From March 10, 2009, through October 4, 2009, Respondent Diaz was licensed by the Department to maintain a branch office located at 1701 East Lincoln Avenue in Anaheim.

Respondents, Marco Munoz, and American National Group

5. On June 20, 2008, Respondent TDG employed Marco Antonio Munoz (Munoz) as a real estate salesperson. Respondent Diaz was introduced to Munoz by Cesar A. Valdivia (Valdivia), Munoz's cousin. This meeting occurred at California Home Center Group, Inc. (CHCG), a licensed real estate broker owned and controlled by Valdivia, and also located in Anaheim. Valdivia was not CHCG's designated broker, since Valdivia held only a real estate salesperson's license issued on December 30, 2005. Valdivia told Respondent Diaz at that time he was offering loan modification services, which included referring customers to a real estate law firm.

6. Munoz was licensed as a real estate salesperson by the Department on November 12, 2005. He was employed at CHCG from March 6, 2006, through October 8, 2007, and again from March 6, 2008, until he started to work for Respondent TDG. Also, Munoz and Valdivia were offering loan modification services as American National Group (ANG), a fictitious business name registered on April 1, 2008, to Cavaldi Management, Inc. (Cavaldi), a Delaware corporation owned and controlled by Valdivia. ANG advertised, through its website, short sale and loan modification services, activities for which a real estate broker's license generally is required. ANG's website claimed it was "the nation's leading Foreclosure Mitigation Company" and it had assisted "thousands of customers in avoiding foreclosures and keeping their homes." Neither Cavaldi nor ANG were licensed real estate brokers. ANG, undoubtedly, was a fraudulent operation (see factual finding 10, *post*).[1]

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[1] On November 24, 2009, the Department ordered Valdivia, ANG, Munoz, Oscar Cortes, and Eddie Faycon to desist and refrain from charging, demanding, collecting, or receiving advance fees with respect to the performance of loan

7. On June 20, 2008, Respondent Diaz and Munoz signed an "Independent Contractor Agreement," which identified Munoz as associate-licensee and "The Diaz Group, Inc. DBA: Supremacy Realtors & Object Mortgage" as broker. Munoz agreed to use his best efforts to solicit and obtain listings, clients, and customers for, or otherwise promote, his broker's business of providing services in real estate transactions. The agreement gave Munoz control over how to perform his work, but he was under the control of Respondent TDG as to the results of his work. All real estate transactions under this agreement were to be taken and performed in the name of Respondent TDG. Clients were to be charged compensation for real estate services requiring a license, and Munoz was required to pay Respondent TDG "a flat fee of $500 per transaction on Real Estate and Mortgage Loans." (Exhibit T.) This amount is not the typical commission that a real estate broker would receive in a purchase or sales transaction.

8. After employing Munoz, Respondents allowed Munoz to work for Valdivia in ANG's office. Munoz kept ANG business cards showing him as "Loan Officer/Realtor" for ANG. These cards show ANG's contact information and an email address, mmunoz@anghelp.com, the same email address Munoz placed below his signature on a "Three-Party Agreement" that he and Respondent Diaz signed on June 20, 2008. Thus, Respondent Diaz had constructive notice that Munoz was still acting as ANG's representative. These findings are inconsistent with Respondent Diaz's testimony, in which he said that "Valdivia knew" Munoz was there "just for the purpose of real estate" and that he (Respondent Diaz) had told Munoz he could work from ANG's office as long as Munoz did not "work for another company."

9a. When Respondent TDG employed Munoz, ANG's office was located at 1020 South Anaheim Boulevard in Anaheim. On June 26, 2008, Respondent TDG obtained authority from the Department to maintain a branch license at the ANG office location. The office of ANG moved a few months later, to 1701 East Lincoln Avenue in Anaheim. In November 2008, Respondent TDG sought and obtained authority from the Department to maintain a branch license at ANG's new address. Respondent TDG did not pay any office rent on Munoz's behalf.

9b. Respondent TDG did not obtain any business cards for Munoz or promote Munoz's real estate activities. Respondent Diaz visited the ANG offices on Lincoln Avenue on several occasions, yet he never discussed with Valdivia or Munoz the nature of the real estate transactions that were performed there. Respondent Diaz testified that he did not know the legal requirements for somebody to do loan modifications. He said that, whenever he asked Munoz about his work, Munoz

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modifications or any other form of mortgage loan forbearance services, based on its finding that these persons had engaged in unlicensed real estate broker activity and had collected advance fees from customers without first submitting the advance fee agreement to the Department for approval, both in violation of the Real Estate Law. (Order to Desist and Refrain, § 10086; Department no. H-36367 LA.) (Exhibit Y.)

always said that he had "no activity going on." Respondent Diaz said, "If I own the entire office, my responsibility is to the whole office – [but] if it is just an individual, [I am responsible for] just the activities of [Respondent TDG] – just a little space."

ANG's loan modification activities

10. Between approximately November 2008 and May 2009, ANG and Valdivia employed approximately 15 individuals at the Lincoln Avenue address, including Munoz, Valdivia, Jaime Amayo aka Jemi Amayo, and Maria Delgado Nieto aka Mari Nieto. Eddy Faijo was the office manager. These individuals acted as solicitors or sales representatives in dealings with people who responded to ANG's website: people who had fallen behind in their monthly mortgage payments and risked losing their homes in foreclosure proceedings. None of ANG's employees was licensed by the Department in any capacity, except for Valdivia and Munoz. ANG offered to prepare a package on behalf of these distressed borrowers that could be forwarded to their lenders seeking more favorable loan terms or other repayment options. If a loan modification were not possible, ANG offered remedies such as arranging a short sale transaction, in which a lender agrees to accept less than the amount owed by the borrower at the time the property is sold. ANG and its employees also charged, demanded, or collected "advance fees" from customers as compensation for loan modification services. ANG and its employees also made misrepresentations to customers concerning these loan modification services.

11. Respondents have asserted they were not responsible for ANG's loan modification services and advance fee charges. Complainant failed to establish that Respondent Diaz solicited, met with, or collected advance fees from any of ANG's customers. ANG's advertising and loan modification agreements contain no references to Respondent Diaz or Respondent TDG. Respondent Diaz testified that he never employed anyone to perform loan modifications for ANG and that he had not been aware that ANG's real estate activities were illegal. Respondent Diaz ostensibly believed that Munoz, as his agent, would receive referrals from ANG and Valdivia of customers whose existing loans were not amenable to renegotiation and customers who might require the services of a real estate broker, either to refinance properties or to negotiate short sales transactions. Respondent Diaz testified he believed it was common in the real estate industry for persons offering loan modification services to refer particular customers to real estate brokers in this manner. Respondent Diaz, however, insisted that he did not refer any customers to Valdivia, and that Valdivia did not refer any customers to Respondents.

The Department's investigation of ANG and Respondents

12. In approximately May 2009, the Department learned about ANG's activities as a result of a complaint filed by Magaly Granados (Granados). Granados first became an ANG customer seeking loan modification services in August 2008, and later worked as an ANG sales representative. Granados, over a period of several

months, paid ANG several thousand dollars for loan modification services. ANG offered her employment in early 2009, which she accepted because she believed it would help her keep closer tabs on the status of her loan modifications. She learned the "up front" fees she had paid resulted in no services being performed by ANG or by real estate law firms supposedly contracted by ANG to handle loan modifications. Granados later obtained a list of ANG customers and provided it to the Department.

13. Department investigator Sam Delgado (Delgado) sent out a detailed questionnaire, in both Spanish and English, to ANG customers. Customers completed the questionnaires, signed them under penalty of perjury, and returned them to Delgado in early 2010.[2] Based on this information, the Department concluded that, between November 13, 2008, and March 16, 2009, at least 14 customers paid ANG a total of $27,520 in advance fees for loan modification services. The customers received little or no services, and when customers attempted to get ANG to return their money, ANG cut off all communications. By May 2009, ANG was bringing in few customers. Valdivia reportedly had returned to his native Peru.

Munoz's testimony

14. Munoz testified that Respondent Diaz was not aware of, and did not participate in, any of the loan modification services performed by ANG. Munoz also asserted that he, too, never performed any loan modifications services for ANG. He said, "I had a regular job; I never relied on real estate for my income." Munoz said he performed "credit repair" and "debt consolidation" services for ANG's customers. On cross-examination, Munoz provided vague responses to questions seeking more detail about his ANG activities. Munoz's testimony regarding the scope of his ANG activities is inconsistent with the statement of Granados, which identified Munoz as "the broker" in the ANG office, and other evidence demonstrating that Munoz had contact with customers who had sought loan modification services from ANG; therefore, this aspect of Munoz's testimony is given no credit.

15. The record is unclear as to how many times Munoz performed real estate services in the name of Respondent TDG. In Respondent Diaz's June 22, 2009 letter to the Department, he stated that Munoz had not closed "any transactions with our company." (Exhibit 9.) Both Respondent Diaz and Munoz, however, testified at hearing that Munoz closed one purchase transaction while employed by Respondent TDG between August 2008 and July 2009 involving a customer named Pineda.

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[2] At hearing, Complainant offered 14 "declarations" to support the allegations regarding ANG's loan modification services. Respondents requested to cross-examine these declarants, but only Granados testified at hearing. Respondents made hearsay objections to the admission of eight declarations, which were sustained. These eight declarations were admitted only as administrative hearsay and relevant information contained in them cannot be used to make a finding in this matter. (Gov. Code, §§ 11513 & 11514.) The other six declarations were admitted for all purposes.

Respondent Diaz never explained the inconsistency between his letter to the Department and his testimony. Complainant produced evidence regarding another listing for a short sale transaction involving Jose R. Flores (Flores) and Munoz.

16. In August 2008, Flores owed more on his mortgage than the value of his property and he discussed the situation with an ANG employee. Flores did not want to sell his property; nevertheless, in October 2008, Flores signed a listing agreement involving a short sale, i.e., Munoz as agent of Supremacy Realtors was authorized to sell the property for $100,000 less than the amount of the mortgage. The short sale listing agreement contained Munoz's contact information, including ANG's telephone number and Munoz's ANG email address. Respondent Diaz claims that Munoz never told him about the Flores agreement. He testified that Munoz only produced two listings between June 2008 and July 2009, and that Munoz wanted to cancel one of these agreements because "the seller did not want to sell any longer," but Respondent Diaz failed to offer any business records corroborating this testimony. Respondent Diaz never possessed those because he allowed Munoz to keep them, instead of requiring Munoz to turn real estate documents over to Respondent Diaz.

Respondent TDG submits advance fee agreement to Department

17. Respondent Diaz opined that the June 2008 employment agreement with Munoz did not contemplate that Munoz would be performing loan modification services. The written agreement, however, is silent on this issue. According to Respondent Diaz, Munoz later told him that he (Munoz) was interested in doing loan modification services. On April 6, 2009, Respondent TDG submitted an advance fee agreement and accounting format to the Department for approval. On April 20, 2009, the Department issued a "no objection letter" of approval of these documents. Prior to April 6, 2009, Respondents had not been approved by the Department to have an advance fee agreement to charge or collect advance fees.

18. On July 1, 2009, Respondents and Munoz modified their employment agreement as follows: "Agent Marco Munoz agrees to pay The Diaz Group, Inc. the amount of $300.00 for each loan modification he performs. This amount is payable from the advance fee collected from his customers. The $300.00 payable to The Diaz Group, Inc. is fully earned once phase one is completed and not refundable even if the full modification process does not go thru." Munoz never performed loan modification services pursuant to this modified agreement, but it is interesting in several aspects. First, ANG might have needed another partner, such as Respondents, because its business was collapsing. Munoz, however, had already ceased being licensed in the employ of Respondent TDG; "somebody" transferred Munoz's license from Respondent TDG to another employing broker, Castleview Direct, on June 29, 2009. Respondent Diaz maintained that he did not learn of this transfer until many months later. In sum Respondent Diaz asserts that Munoz never provided him any "signed loan modification agreements" under either Respondent TDG or ANG.

Delgado's Investigation of Munoz and Diaz

19. On July 30, 2009, Delgado traveled to 1701 East Lincoln Avenue in Anaheim, which appeared to be a former residence converted to office space. The location had a large advertising sign facing oncoming traffic, identifying the business as ANG. Delgado saw two men standing by the main entrance of the building. He asked the men if they could help him with a loan modification. They said they could. When Delgado told them he was from the Department and needed to talk to a broker in charge, there was a long delay; then, Munoz presented himself.

20. Delgado asked Munoz whether ANG was performing loan modification services as an unlicensed fictitious business name of Respondent TDG. According to Delgado, Munoz said that "they" were "contracted" to perform loan modification services under Respondent TDG and that Respondent TDG maintained a branch office at the location. Munoz also referred to the Department's April 2009 "no objection letter" regarding Respondent TDG's advance fee agreement. Delgado then told Munoz that he had received and reviewed a copy of the "agreement between the two," and that this agreement authorized transactions only in the name of Respondent TDG. Munoz testified at hearing that, when he spoke to Delgado, he told Delgado that he, Munoz, was authorized to do loan modifications. Munoz did not remember telling Delgado that ANG was authorized to perform loan modifications under Respondents' no objection letter. Nevertheless, during their conversation, Delgado told Munoz that the fact the location "was advertising themselves as ANG was breaking" this agreement. Munoz, at that moment, told Delgado that Delgado would have to speak to Valdivia.

Rehabilitation

21. Respondent has been married since 1997 and has two children, ages 14 and eight. He has a good family life and is the primary support for his family. He employs three or four real estate agents in his business. In 2011, he provided financial support to the non-profit Challenged Athletes Foundation, which his son also participates in.

LEGAL CONCLUSIONS

1. Cause exists to discipline the real estate broker licenses of The Diaz Group, Inc., and Hector N. Diaz, pursuant to Business and Professions Code[3] section 10177, subdivision (h), for failure to exercise reasonable supervision of licensed salesperson Marco Munoz or of Munoz's activities for which a real estate license is required, while Munoz worked at Respondents' branch office in Anaheim, California.

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[3] All undesignated statutory references hereafter are to the Business and Professions Code, unless specified otherwise.

2. Cause exists to discipline the real estate broker licenses of Respondents pursuant to section 10177, subdivisions (d) and (g), for negligent acts and incompetence in their failure to exercise reasonable supervision of an employee, Marco Munoz, and for acts that violated California Code of Regulations, title 10, section 2725. Complainant's evidence, however, has failed to demonstrate that Respondents directed, caused, or participated in, either directly or indirectly, the unlawful real estate activities of an unlicensed entity, ANG, or ANG's unlicensed employees, e.g., performing loan modification services or advance fee transactions, as described in factual finding numbers 10 and 11, in violation of the Real Estate Law.

3. Section 10131 defines a real estate broker, which includes "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." A real estate salesman is "a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in section 10131." (§ 10132.) It is unlawful for real estate brokers to employ an individual to perform an act for which he or she is required to hold a license, unless this individual is licensed.

4. Section 10137 provides, in pertinent part, as follows:

> "It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her . . . . [¶] *No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed.*" (Italics added.)

5. It also is necessary that real estate brokers, as well as salespersons, perform real estate activities only in the names that appear on the real estate license. Section 10159.5 provides that: "Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk." The Commissioner's regulation also prohibits the use of "a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name." (Cal. Code Regs., tit. 10, § 2731, subd. (a).) Munoz was engaged in real estate activities, e.g., loan modification services, that required a license, but he was acting in the name of ANG instead of the name of his broker, Respondent TDG, which was the only broker that was authorized to employ and compensate him.

6. Section 10179 provides that: "No violation of any of the provisions of this part relating to real estate or of Chapter 1 of Part 2 by any real estate salesman or employee of any licensed real estate broker shall cause the revocation or suspension of the license of the employer of the salesman or employee unless it appears upon a hearing by the commissioner that the employer had guilty knowledge of such violation." In this matter, Complainant has not demonstrated that Respondents knew about their agent's violations, but this lack of knowledge is immaterial to the causes that were established, i.e., Respondents failing to adequately supervise their agent.

7. Section 10159.2, subdivision (a), provides that: "The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required." Likewise, California Code of Regulations, title 10, section 2725, subdivision (a), provides, in part, as follows: "A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: (a) Transactions requiring a real estate license. [¶ . . . ¶] The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices. [¶] A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems."

8. A real estate broker is generally responsible for the acts of a salesperson if those acts would require the person to hold a real estate license. A broker must exercise good judgment in overseeing the activities of salespersons. A broker has a duty of reasonable supervision to protect customers and the public. A broker must develop policies, rules, and procedures, and a system for monitoring compliance with these requirements, which clearly did not happen with regard to Munoz's activities. Respondent Diaz's failed to maintain records of transactions that Munoz had performed. He was unaware of the Flores short sale transaction. Respondent Diaz failed to implement policies and procedures that would enable him to supervise Munoz in the performance of real estate activities within ANG's office.

9. Respondents and Munoz's business relationship is anomalous in several other aspects. Respondent Diaz had knowledge that Valdivia and ANG were performing loan modification services, but somehow, he did not know the legal requirements to engage in this activity. Respondent Diaz, nevertheless, designated ANG's office as a licensed branch office and employed Valdivia's cousin, Munoz, as his agent while working inside ANG's office. These acts enhanced ANG's interests by giving the appearances to customers that ANG was operating a legitimate real estate business at this location. Respondent Diaz's assertion that he did not know about the nature of ANG's activities is suspicious.

10. These circumstances raise questions about the parties' expectations, which have not been explained by the evidence. Complainant has not adequately refuted Respondent Diaz's assertion that he did not know about, participate in, or profit from the loan modification transactions performed by ANG and its employees, but Respondent Diaz likewise has failed to demonstrate that he employed any reasonable means for determining whether his agent was engaged in lawful real estate activities. A reasonable inference is that Respondent Diaz chose, as a business decision, not to find out what was going on at ANG so that he would be able to claim that he was not aware of nor connected with ANG's violations of the Real Estate Law. Respondent Diaz may argue that he simply relied on Munoz to initiate a discussion about Munoz's real estate activities, but that in no way satisfies Respondent Diaz's duty to supervise his employee.

11. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Respondent Diaz, whether by his intentional acts or through negligence, failed to exercise reasonable supervision over Munoz. Respondent Diaz maintains that he satisfied his responsibilities as Munoz's broker under the Real Estate Law. In fact, Respondent Diaz turned a blind eye and allowed Munoz to be his own boss. Respondent Diaz's failure to supervise Munoz demonstrates that he lacks an ability to perform the activities of a licensed real estate broker in a manner consistent with the public safety. Further, Respondent Diaz has not offered any strong evidence of rehabilitation.

12. Respondent Diaz's denial of any wrongdoing suggests that he is not amenable to correction at the present time. The public safety, welfare, and interest will not be adequately protected by the issuance of restricted brokers' licenses to Respondents, because this would allow them to continue to supervise the real estate activities of others. On the other hand, Complainant failed to establish that ANG's customers were enticed into fraudulent and worthless transactions because of Respondent Diaz's misconduct. His failure to supervise is far less egregious than if he actually were complicit in perpetrating a fraud upon the public. Complainant has not demonstrated that Respondent Diaz, because of a defect in his character, is unfit to conduct real estate transactions, fairly and competently, as a salesperson. It would not be against the public interest to allow Respondent Diaz to work as a real estate salesperson under a restricted license, as long as he is required to be carefully and properly supervised.

ORDER

A. All licenses and licensing rights of Respondent The Diaz Group, Inc., under the Real Estate Law are revoked.

B. All licenses and licensing rights of Respondent Hector N. Diaz under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent Diaz pursuant to section 10156.5 of the Business and Professions Code if Respondent Diaz makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent Diaz shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of that Code:

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

2. The restricted license issued to the Respondent Diaz may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent Diaz has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

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

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

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

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

5. Respondent Diaz shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent Diaz fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent Diaz presents such evidence. The Commissioner

shall afford Respondent Diaz the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent Diaz 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 Diaz fails to satisfy this condition, the Commissioner may order suspension of Respondent Diaz's license until he passes the examination.

DATED: February 24, 2012

MARK HARMAN
Administrative Law Judge
Office of Administrative Hearings

5AC.

LISSETE GARCIA, Counsel (SBN 211552)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6914

FILED
DEC - 9 2010
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of THE DIAZ GROUP, INC. and HECTOR N. DIAZ, individually, and as designated officer of THE DIAZ GROUP, INC., Respondents.	NO. H-36965 LA 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 THE DIAZ GROUP, INC. and HECTOR N. DIAZ, individually, and as designated officer of THE DIAZ GROUP, INC. is informed and alleges as follows:

1.

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

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Licenses

2.

From June 7, 2005 through the present, Respondent HECTOR N. DIAZ (Respondent "DIAZ") was licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) ("Code") as a real estate broker. From November 23, 2002 through June 6, 2005, Respondent DIAZ was licensed by the Department of Real Estate ("Department") as a real estate salesperson.

3.

From January 12, 2006 through the present, Respondent THE DIAZ GROUP, INC. (Respondent "DGI") was licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate corporation. At all times herein mentioned Respondent DGI was authorized to act by and through Respondent DIAZ as its broker and officer designated pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

DBAs

4.

From June 7, 2005 through the present, Respondent DIAZ has been licensed by the Department to do business as "Object Mortgage" and "Supremacy Realtors".

Branch Office

5.

From November 5, 2008, through April 19, 2010, Respondent DGI was licensed by the Department to maintain a branch office located at 1701 E. Lincoln Avenue, Anaheim,

California 92805.

6.

From March 10, 2009 through October 4, 2009, Respondent DIAZ was licensed by the Department to maintain a branch office at the address located at 1701 E. Lincoln Avenue, Anaheim, California 92805. Respondent DIAZ' dba, Supremacy Realtors, used the address of 1701 E. Lincoln Avenue, Anaheim, California 92805 for real estate transactions in 2008.

7.

At all times herein relevant, Respondents, for or in expectation of compensation, engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers for others in the State of California within the meaning of Code Section 10131. Respondents solicited prospective sellers or purchasers, negotiated the purchase, sale or exchange of real property, and solicited, performed services for or represented borrowers in negotiating and obtaining mortgage loans.

FIRST CAUSE OF ACCUSATION
(Unlicensed DBA/Unlicensed Activity)

8.

American National Group ("ANG") is not now, and has never been, licensed by the Department in any capacity. ANG is a fictitious business name registered to Cavaldi Management, Inc. in Orange County, California. Cesar A. Valdivia is the President and director of Cavaldi Management, Inc.

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9.

Cesar A. Valdivia ("Valdivia") was licensed by the Department as a real estate salesperson from December 30, 2005 to December 29, 2009. Valdivia voluntarily surrendered his real estate salesperson license effective November 15, 2010, in Department Case No. H-36333 LA.

10.

Marco Antonio Munoz ("Munoz") was licensed by the Department as a real estate salesperson from November 12, 2005 through November 15, 2010. Respondent DGI was listed as Munoz' employing broker from June 20, 2008 through June 29, 2009. Munoz engaged in activities requiring a real estate transaction for DIAZ' dba Supremacy Realtors in 2008 and 2009. Munoz voluntarily surrendered his real estate salesperson license effective November 15, 2010, in Department Case No. H-36333 LA.

11.

Eddy Faijo ("Faijo"), Jaime Amayo aka Jeymi Amayo ("Amayo") and Maria Delgado Nieto aka Mari Nieto ("Nieto") are not now and have never been licensed by the Department in any capacity.

12.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean the act or omission of each of the Respondents named in the caption hereof and ANG, Valdivia, Munoz, Faijo, Amayo and Nieto, acting individually, jointly, and severally.

13.

For an unknown period of time, beginning no later than April 2008, and continuing through May 18, 2009, Valdivia, Munoz, Faijo, Amayo, and Respondents DIAZ and DGI advertised short sale and loan modification services under one or more business names including, but not limited to, "ANG", in various print and electronic media, including a website located at http://www.anghelp.com. Those advertisements solicited borrowers offering short sale and loan modification services and listed ANG's location as 1701 E. Lincoln Avenue, Anaheim, California 92806, (714) 517-0425, the same as Respondents DIAZ and DGI's branch location.

14.

During the period of time described above, ANG and Respondents solicited borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate the purchase, sale or exchange of real property; negotiate one or more loans for, or perform services for, borrowers and/or lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charge, demand or collect an advance fee for any of the services offered. Said borrowers included, but were not limited to, the individuals listed below.

Patricia Cisneros

On November 13, 2008, Eddy Faijo and Jaime Amayo solicited ANG's services to Patricia Cisneros for loan modifications and negotiations. Patricia Cisneros entered into

a written agreement with ANG for said services. ANG charged Patricia Cisneros an advance fee of $1,795.

Rogelio Gomez

On November 13, 2008, Rogelio Gomez entered into a written agreement with ANG for loan modification and negotiation services. Rogelio Gomez paid an advance fee of $2,250 to ANG.

Jorge Montes

On November 20, 2008, Jorge Montes entered into a written agreement with ANG for loan modification and negotiation services. Jorge Montes paid an advance fee of $1,795 to ANG.

Pedro Perez

On December 1, 2008, Pedro Perez entered into a written agreement with ANG for loan modification and negotiation services. Pedro Perez paid an advance fee of $1,795 to ANG.

Gloria Cruz

On December 19, 2008, Maria Delgado Nieto solicited ANG's services to Gloria Cruz for loan modifications and negotiations. Gloria Cruz entered into a written agreement with ANG for loan modification and negotiation services. ANG collected an advance fee from Gloria Cruz for said services.

Fidel Moreno

On February 16, 2009, Fidel Moreno entered into a written agreement with ANG for loan modification and negotiation services. ANG charged an advance fee of $2,000 to Fidel Moreno for said services.

Maria Candelaria Muratalla

On February 24, 2009, Maria Candeleria Muratalla entered into a written agreement with ANG for loan modification

and negotiation services. ANG collected an advance fee of $2,500 from Maria Candeleria Muratalla for said services.

Luis Alarcon

On March 16, 2009, Luis Alarcon entered into a written agreement with ANG for loan modification and negotiation services. ANG collected an advance fee of $2,000 from Luis Alarcon for said services.

15.

Additional examples of borrowers who paid advance fees to ANG for the purpose of providing loan negotiations and modifications include, but are not limited to, the following:

Date Amount Received	**Borrower**	**Amount Charged or Collected**
7/24/08	Cecilio Lara	$1,795
8/04/08	Magaly Granados	$2,800
9/09/08	Hector Rocha	$1,795
9/17/08	Juan Carlos Luevano	$3,795
10/7/08	Leticia Medina	$3,400
10/25/08	Pedro Carillo	$1,800

16.

On or about April 6, 2009, Respondent DGI submitted an advance fee agreement and accounting format to the Department for approval. On April 20, 2009, the Department issued a "no objection" letter of approval of the advance fee agreement and accounting format submitted by Respondent DGI. Prior to

April 6, 2009, Respondents did not have an advance fee agreement approved by the Department to charge or collect advance fees within the meaning of Code Sections 10026 and 10085.

17.

Based on the conduct, acts, and/or omissions as set forth in Paragraphs 4 through 15 above, Respondents used the fictitious business name "ANG" for activities requiring the issuance of a real estate broker license within the meaning of Code Section 10131 without filing an application for the use of such name with the Department as required by the provisions of Code Section 10159.5 and Section 2731(a) of Title 10, Chapter 6, California Code of Regulations, which constitutes grounds to discipline the licenses and/or license rights of Respondents pursuant to Code Sections 10177(d) and/or 10177(g).

18.

Based on the conduct, acts, and/or omissions as set forth in Paragraphs 4 through 15 above, Respondents while using the fictitious business name "ANG" utilized employees and/or representatives in soliciting and negotiating loans who were not licensed by the Department as real estate brokers or salespersons. Among the unlicensed representatives performing activities requiring a real estate license were Eddy Faijo, Jeymi Amayo and Maria Delgado Nieto which constitutes grounds to discipline the licenses and/or license rights of Respondents pursuant to Code Sections 10177(d) and/or 10177(g).

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SECOND CAUSE OF ACCUSATION:
(Failure to Supervise)

19.

There is hereby incorporated in this second, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 though 18 above, with the same force and effect as if herein fully set forth.

20.

Respondent DIAZ' failure to supervise the activities of Respondent DGI to ensure compliance with the Real Estate Law, is in violation of Code Section 10159.2 and constitutes additional grounds to suspend or revoke Respondent DIAZ' license and license rights pursuant to Code Sections 10177(h), 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 licenses and/or license rights of Respondents THE DIAZ GROUP, INC. and HECTOR N. DIAZ, individually, and as designated officer of THE DIAZ GROUP, INC. under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 3 day of December, 2010.

ROBIN TRUJILLO
Deputy Real Estate Commissioner

cc: Hector N. Diaz
The Diaz Group, Inc.
Robin Trujillo
Sacto.