

FILED

APR - 1 2008

DEPARTMENT OF REAL ESTATE

By H. Max

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
CARDENAS INVESTMENTS GROUP, INC.,)	NO. H-2093 FR
and JESUS CRUZ CARDENAS,)	
Respondents.)	OAH NO. 2007060164

DECISION

The Proposed Decision dated February 8, 2008, 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.

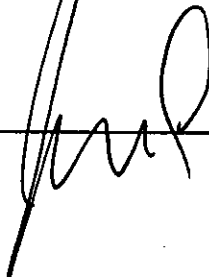
This Decision shall become effective at 12 o'clock noon on

APR 22 2008

IT IS SO ORDERED _____

3/28/08

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAR 28 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

In the Matter of the Second Amended
Accusation Against:

CARDENAS INVESTMENTS GROUP,
INC.,

and

JESUS CRUZ CARDENAS,

Respondents.

Case No. H-2093 FR

OAH No. 2007060164

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on September 14, October 19 and December 13, 2007.

Jeanine Clasen, Counsel, represented the Department of Real Estate.

Jesus Cárdenas appeared on all trial days with the exception of December 13, 2007, and was represented by Hugo Troncoso, Attorney at Law.

The matter was initially submitted on December 13, 2007. Counsel for the Department submitted a trial brief on December 13, 2007, as part of her closing statement. Counsel submitted an addendum to her trial brief on December 21, 2007, correcting certain errors and omissions in her trial brief. The addendum was made a part of the record. The record was closed and the matter was submitted on December 22, 2007.

FACTUAL FINDINGS

1. John Sweeney, Deputy Real Estate Commissioner, Department of Real Estate (the Department), made the charges and allegations contained in the Second Amended Accusation in his official capacity. The Accusation was filed and served on Cardenas Investments Group, Inc., and Jesus Cruz Cardenas on April 16, 2007. The Department has

jurisdiction to suspend or revoke any real estate license issued in the State of California by the Department upon satisfactory proof by clear and convincing evidence that cause exists for the action.¹

2. Jesus Cruz Cardenas, on behalf of himself and Cardenas Investments Group, Inc., timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings.

3. The Department issued Cárdenas Investments Group, Inc. a corporate real estate broker license on October 17, 2001. At all times relevant to this decision, the designated broker/responsible managing officer for Cárdenas Investments Group, Inc. was Jesus Cruz Cárdenas (collectively respondents). At the time the license was issued, Cárdenas Investments Group Inc. was doing business as Re/Max Metro Realty. Branch licenses were issued for 106 1/2 Sherwood Ave., McFarland, California, 11565 Laurel Canyon Boulevard, Suite 205, Mission Hills, California, and 321 McClay Ave, Suite C., San Fernando, California. At all times relevant to this decision, respondents were holding themselves out and conducting business as a corporate real estate broker, buying and selling real property in the State of California with the expectation of receiving commissions. In addition, at all times relevant to this decision, respondents were operating as an escrow company in the State of California, receiving funds in trust, and making disbursements according to instructions, again with the expectation of receiving a fee for those services. At all times relevant to this decision, respondents were receiving funds from clients in trust in furtherance of real estate activity for which a license under the Real Estate Law is required.

4. At all times relevant to this Decision, Mr. Cardenas operated simultaneously in three aspects of real estate sales and finance. He operated as a real estate brokerage, as ReMax/Metro Realty at 321 McClay Avenue, San Fernando, California, and as Cardenas and Associates Escrow, at the 11565 Laurel Canyon Boulevard address, and Progressive Home Loans, a mortgage broker, at the same address. On October 15, 2004, respondent's main office and mailing address was changed to 1426 Niles Street, Bakersfield, California. DBAs were added to the license, including Cárdenas and Associates Realty, Premier Home Loans, and Progressive Realtors, on October 15, 2004. The DBA of Re/Max Metro Realty was canceled on the same date.

5. Jesus Cruz Cárdenas was issued a real estate salesperson license by the Department on a date not proved, but before July 17, 2001. On July 17, 2001, the Department issued Mr. Cárdenas a real estate broker license. Mr. Cárdenas' individual broker license and the license history of Cárdenas Investments Group, Inc. parallel one another until October 16, 2005, when the Cárdenas Investments Group, Inc. license expired and was not renewed. Mr. Cárdenas' individual real estate broker license remains in full force and effect, and is renewed through July 17, 2009. There is no history of disciplinary action by the Department against respondents.

¹ Business and Professions Code section 10175.

6. Mr. Cárdenas appeared in person on the first two days of the evidentiary hearing in this matter. He was represented by counsel on both occasions. Following the second day of the evidentiary hearing, counsel for Mr. Cárdenas requested additional time to produce documents in response to a subpoena he had served on Comerica Bank for financial records allegedly relevant to a defense to the allegations. That leave was granted. An Order was issued by the undersigned requiring that copies of all such documents produced in response to this subpoena must be copied and produced to counsel for the Department by November 21, 2007. Counsel for Mr. Cárdenas represented on the record that the subpoena required Comerica to produce the documents by November 14, 2007, and that representatives of Comerica Bank had told him that the documents would be produced before that date. The additional date for further evidentiary hearing of December 13, 2007, was scheduled to provide an opportunity for the parties to review the documents produced in response to the subpoena and to prepare and respond accordingly.

7. The documents were not produced to counsel for the Department by counsel for respondents. Counsel for respondents stated Comerica Bank did not produce the records and had not responded to the subpoena by the reconvening of the evidentiary hearing on December 13, 2007. There was no evidence that counsel made any effort to assure the production of the sought documents by the time stated, or made any effort to enforce the subpoena.

8. Notice that further evidentiary hearing on the Accusation would be held on December 13, 2007, together with the time and location, was timely served on respondents' counsel by counsel for the Department. Mr. Cárdenas failed to appear at the December 13, 2007, continuation of the evidentiary hearing. Counsel for respondent Mr. Troncoso represented to the court that he had not been able to reach Mr. Cardenas and did not know his whereabouts. Mr. Troncoso indicated that Mr. Cárdenas had been living in Mexico near Ensenada, and was expected to return to Sacramento to continue the evidentiary hearing. He indicated he had spoken to Mr. Cárdenas' secretary the day before, but she did not provide any information about Mr. Cárdenas' whereabouts, or his intention to appear on December 13. Counsel requested a continuance, which was denied.

9. The continuation of the evidentiary hearing was convened as noticed on December 13, 2007. Mr. Cárdenas failed to appear. Good cause did not exist for his failure to appear. The case was concluded in the absence of Mr. Cárdenas. Counsel continued to represent Mr. Cárdenas through closing arguments and the closing of the record.

10. Respondents, doing business as Re/Max Metro Realty, represented José Lopez Ramos and Maria S. Ramos in the listing and sale of a single family residence located at 38747 Carolside Ave, Palmdale, California (the Carolside property), in October, 2003. Respondent Cárdenas personally represented Mr. and Mrs. Ramos at all times in this transaction and the Lehigh transaction set forth immediately below. A real estate purchase and sale agreement was entered into between Mr. and Mrs. Ramos and buyers, and Mr. Cardenas personally opened an escrow for the transaction at his captive escrow company subsidiary. Escrow on the Carolside purchase and sale agreement closed on October 2, 2003.

Disbursement of funds to pay demands in escrow, including funds to pay Mr. Cardenas' commission, were made on the same day. For the reasons set forth below, all net funds due the Ramoses as sellers from the transaction were retained in the escrow at respondent's escrow subsidiary. Total net cash due to Mr. and Mrs. Ramos following the payment of all costs and demands in full settlement of this escrow was \$32,131.55.

11. Respondent Cárdenas also personally represented Mr. and Mrs. Ramos in the sale of a single family residence located at 11546 Lehigh Ave, San Fernando, California (the Lehigh property). Escrow was again opened by respondent Cárdenas and maintained at respondents' subsidiary escrow company. Escrow closed on November 4, 2003, with disbursement and payment of costs, including Mr. Cardenas' real estate commission, the same day. The net amount due to Mr. and Mrs. Ramos as sellers, the sum of \$154,597.19, was again retained in Mr. Cardenas' captive escrow account at his subsidiary for the benefit and on behalf of Mr. and Mrs. Ramos. The total amount of money retained by respondent Cárdenas in his captive subsidiary escrow on behalf of Mr. and Mrs. Ramos was \$186,728.74.

12. At the time of the Carolside and Lehigh property sales, Mr. and Mrs. Ramos were engaged in an acrimonious divorce proceeding in the Los Angeles County Superior Court. Neither Mr. nor Mrs. Ramos wanted a distribution of the net sale proceeds from the two property sales at the time the escrows closed, saving and accepting a distribution to both to pay taxes. It was not disputed that Mr. Cardenas distributed \$25,000 each from the escrow to each of Mr. and Mrs. Ramos for this purpose. The disbursement occurred in May 2004.

13. The remainder of the funds due to Mr. and Mrs. Ramos from the closure of the two escrows, \$136,728.74, was not distributed. These funds were retained in Mr. Cardenas' subsidiary escrow upon Mr. Cardenas' repeated promises that the funds would be retained and would be available at any time to Mr. and Mrs. Ramos upon their request. Mr. Ramos asked Mr. Cardenas how long the funds could be retained in escrow. Mr. Cardenas told Mr. Ramos the funds could be retained in escrow for up to three years after the closing date.

14. Mrs. Ramos came to be in great need of her share of the funds from the property sales, a fact known to Mr. Cardenas. Mrs. Ramos told Mr. Cardenas of her need and her poor financial condition. Mr. Ramos confirmed this fact in conversation with Mr. Cardenas. Nevertheless, both wanted the remaining funds held in the escrow until the divorce matter was fully resolved, a fact also known to Mr. Cardenas. Both Mr. and Mrs. Ramos were mistrustful of one another and wanted to make certain that no funds were disbursed to either party without instructions from both. Mr. Cardenas repeatedly assured both Mr. and Mrs. Ramos that their funds would be available to them when their divorce was concluded.

15. It was not disputed that none of the remaining \$136,728.74 due to Mr. and Mrs. Ramos has been paid to date. At no time did Mr. Cardenas provide any accounting for these funds on deposit.

16. Mr. Ramos contacted Mr. Cardenas in March 2005 and advised him that the divorce proceeding was nearly concluded, and that he would be seeking distribution of the retained funds in escrow soon. Mr. Ramos told Mr. Cardenas that Mrs. Ramos was in dire straits financially and needed her share of the funds retained in escrow for basic living expenses. Mr. Cardenas assured Mr. Ramos the funds would be available when Mr. Ramos advised.

17. Mr. Ramos telephoned Mr. Cardenas again in June 2005. He advised Mr. Cardenas that the divorce proceeding was final and he asked to arrange distribution of the retained funds. He advised the retained money was to be split between himself and Mrs. Ramos. Mr. Cardenas told Mr. Ramos that the money was available but he would have to talk to Mr. and Mrs. Ramos in person. Mr. and Mrs. Ramos went to Mr. Cardenas' Re/Max office where they had done business with him. They found the office abandoned and the phone disconnected.

18. After many efforts, Mr. Ramos reached Mr. Cardenas by phone. Mr. Ramos demanded an explanation and a firm commitment on distribution of his money. Mr. Cardenas told Mr. Ramos that the money was no longer in the escrow account because it had been escheated to the State. Mr. Ramos objected and reminded Mr. Cardenas that the three years had not passed, and that Mr. Cardenas had told Mr. Ramos the funds could be held for that period of time without the State taking the funds. Mr. Ramos asked for a meeting. Mr. Cardenas told Mr. Ramos he could not meet in person and he would have to talk to his attorney before he did anything. Mr. Cardenas later told Mr. Ramos in a telephone conversation that he had to go to Mexico, and that he had to talk to his attorney before he could meet Mr. Ramos.

19. Mr. Ramos' efforts to contact Mr. Cardenas were unfruitful between June 2005 and January 2007, despite many efforts. In this interim period, Mr. Cardenas sold at least two of his own properties out of his Bakersfield office. Mr. Ramos had no idea Mr. Cardenas was operating out of his Bakersfield office during this period of time. Mr. Ramos filed complaints with the Los Angeles Police Department and the Department, resulting in this action.

20. The Department's investigators and an auditor contacted Mr. Cárdenas in late 2006. The Department demanded that Mr. Cárdenas produce books and relevant records both for his brokerage, and specifically for the Carolside and Lehigh transactions. Mr. Cárdenas told the Department several times that he would produce the records, but repeatedly failed to do so. In January 2007, Mr. Cárdenas signed an affidavit provided to the Department that claimed he was unable to obtain and produce any of his records because he had been forced out of his business by employees with connections to the Mexican Mafia. The Department, through its investigators and through counsel, continued to demand that Mr. Cárdenas produce books and records of his brokerage and for the Carolside and Lehigh transactions through and including the dates of the evidentiary hearing. Mr. Cárdenas has never produced any documents regarding his brokerage, his captive escrow company, or either of the Carolside and Lehigh transactions.

21. Mr. Cardenas called Mrs. Ramos on January 20, 2007 and again on March 28, 2007. In these conversations, Mrs. Ramos begged Mr. Cardenas to pay her the share of the retained funds to which she was entitled. On each occasion, Mr. Cardenas "swore on the lives of his children" that he would pay Mrs. Ramos the money she was due.

22. Mr. Cardenas testified on the second day of the evidentiary hearing. To characterize his testimony as fiction would be generous. His testimony was largely vague, often contradictory, mostly confusing, and appeared to be purposefully unclear. Although he provided several hours of testimony, he never really explained why he failed to pay any money to Mr. and Mrs. Ramos, despite the fact that he acknowledged he owed them. Despite a variety of excuses and explanations, he also never explained why he was unable to furnish the Department any records, documents, or accounts from his real estate brokerage business, despite repeated demands by the Department over a period of almost 2 years that he produce them.

23. Mr. Cárdenas testified that he went through a painful divorce beginning in 2003. He testified that during this period of time, he stayed home and took care of his children on an increasingly frequent basis, and did not go in to his office and manage his real estate brokerage business. He turned over the operation of the escrow to another employee, and hired an accountant to keep the books. He acknowledged that he paid little or no attention to the activities of any of up to 35 licensed sales people who had placed their licenses with his brokerage. He testified that two of his employees made efforts to force him out of his business during this period of time when he was seldom present. When he made efforts to come back into his business and exercise some supervision and check its accounts, these employees threatened him and forced him out. He claimed that these two employees were connected to the Mexican Mafia and threatened his life and the lives of his children if he made any effort to reclaim his business. When specifically asked why he did not remove these others from his business, and/or look at his bank records, business records and accounts, he answered quite vaguely that he made such efforts, but was unable to come up with any accurate information. He made vague claims that he sought help from the Los Angeles Police Department and the FBI in his efforts to prevent these employees from taking over his business and to protect him and his children from the death threats he was receiving from these employees, and that neither of these police agencies were interested in his complaints and concerns. He also testified that he called the department and reported the problems he was experiencing with control of his business, and requested an audit from the Department. He produced no corroboration for any of these claims.

24. Mr. Cárdenas testified that he moved his real estate brokerage business operations to Bakersfield in October, 2005. Mr. Cárdenas admitted that he sold at least two properties through his Bakersfield brokerage in 2005. He acknowledged that he received approximately \$40,000 from one sale, and \$80,000 from the other. He provided some very vague and oblique testimony regarding what happened to the \$40,000, and alleged that he could not find the money because the funds ran through his old brokerage account, and the criminals who took over his business allegedly stole it. He was more forthright about the

\$80,000. He acknowledged that money was used to remodel his office in Bakersfield and to pay business expenses. Despite the fact that he acknowledged that he owed Mr. and Mrs. Ramos the funds set forth above, he made no effort to pay any of this money to either of them. Mr. Cárdenas also acknowledged that he owns at least one property in Baja California, and that he is in the process of trying to sell that.

25. Mr. Cárdenas concluded his testimony with an impassioned plea to retain his license, and his promise "do whatever was necessary" to satisfy his financial obligation to Mr. and Mrs. Ramos. He ignored any explanation of why he paid none of the money from the Bakersfield sales transactions on account to Mr. or Mrs. Ramos, and made no promise that if he is successful in selling his Baja California property, that he intends to provide any of the proceeds to his former clients. Mr. Cárdenas testimony and the promises he made in it were disingenuous, insincere and hollow.

26. What was most disturbing about Mr. Cárdenas' testimony was its emptiness and lack of genuineness. He made no expression of remorse, genuine or otherwise, for his behavior toward Mr. and Mrs. Ramos, which is shocking in light of his knowledge of Mrs. Ramos's dire financial situation. His serial broken promises to Mr. and Mrs. Ramos appeared to be an accurate reflection of Mr. Cárdenas's business ethics. Although he acknowledged that he still owes the net proceeds of the Carolside and Lehigh property sales to Mr. and Mrs. Ramos, he offered no explanation regarding why he has made no effort to make any payment in any amount to either Mr. or Mrs. Ramos, especially after selling his two properties in Bakersfield. He offered no explanation why he was willing to pay an attorney to travel to Sacramento on three separate occasions to represent him, and authorized and paid him to make several disingenuous pretrial motions that were completely lacking in any factual or legal basis, in what appeared to be an effort to delay and obstruct these proceedings, and yet could not find a way to make even a token progress payment to Mr. and Mrs. Ramos on account toward reducing the amount of money he owes them. Mr. Cárdenas concluded his testimony by painting himself as a victim. He repeatedly claimed that he "did nothing wrong" with respect to his dealings with Mr. and Mrs. Ramos, other than his failure to take an active role in his business and supervise his employees. What made this testimony especially disturbing was that he presented this testimony with a tone of indignation.

27. Mr. Cárdenas' dealings with Mr. and Mrs. Ramos became dishonest in every sense of the word. There was no evidence Mr. Cardenas intended to convert the net proceeds from the two property sales due to Mr. and Mrs. Ramos at the outset. But it certainly turned out that way. Mr. Cardenas' repeated claims that he did not take the money earmarked for Mr. and Mrs. Ramos in his captive escrow account were wholly lacking in credibility. Despite numerous demands by the Department for an accounting from Mr. Cárdenas regarding funds retained in the Ramos escrow account, Mr. Cárdenas repeatedly failed to present any documentation in any form whatsoever. His histrionic claims that he was forced out of his business, that all of the money retained in the business vanished, as did all of the books and records of the brokerage, were overly dramatic and completely lacked credibility. There is not an iota of evidence in this record to corroborate any of the claims Mr. Cárdenas made regarding why there is no record of the Ramos escrow, no record of an accounting for

the Ramos funds on deposit in the escrow, or why not one cent of the retained money has ever been paid to Mr. or Mrs. Ramos. Mr. Cárdenas repeatedly lied to Mr. and Mrs. Ramos about the status of their money, and continues to make considerable effort to avoid any responsibility for accounting for or repaying any of the money. Mr. Cárdenas' behavior toward Mr. and Mrs. Ramos and the funds he held as a trustee and fiduciary on their behalf, was unconscionable; dishonest, reprehensible, and completely lacking in integrity. His behavior with respect to these two transactions at issue in this matter was completely inapposite to the duties and responsibilities expected of a licensed real estate broker.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10176, provides in pertinent part:

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

[¶]...[¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

[¶]...[¶]

2. A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.²

² Business and Professions Code section 10148, subdivision (a).

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

[§]...[§]

(d) Willfully disregarded or violated the real estate Law (part one commencing with section 10000) or Chapter 1 (commencing with section 11 just pennies a 000) of part two or the rules and regulations of the commissioner for the administration and enforcement of the real estate law and Chapter 1 (commencing with section 11000) of part two.

[§]...[§]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

[§]...[§]

4. Respondents violated Business and Professions Code section 10148. Respondents repeatedly failed to respond to the Department's statutorily authorized demands to account for the firm's business records and escrow accounts. Respondent Cardenas is the alter ego and responsible designated broker for the corporate licensee Cardenas Investments Group, Inc. Legal cause therefore exists to revoke or suspend respondents' individual and corporate real estate broker licenses within the meaning of Business and Professions Code section 10177, subdivision (d).

5. Business and Professions Code section 10145, subdivision (a), provides that when a real estate broker accepts funds from a client in connection with a real estate transaction, those funds become trust funds, and the broker undertakes a fiduciary relationship with respect to the clients' funds held in trust. In this instance, respondents undertook a fiduciary relationship toward Mr. and Mrs. Ramos when they accepted and received trust funds from the sale of the Carolside and Lehigh properties. This fiduciary duty placed upon respondents the duty to carry out all of the instructions given by the Ramoses, and the duty of making a full disclosure of all material facts and providing an accounting to Mr. and Mrs. Ramos regarding the transaction and the funds held in escrow.³ Business and Professions Code section 10148 sets forth the requirement that a licensed real estate broker

³ *St. Germain v. Watson* (1950) 95 Cal.App.2d 862, 867-8)

must maintain detailed records for each trust fund transaction, and for each beneficiary for the entire duration of the time that the real estate broker holds the trust funds. The section also requires that the licensed real estate broker must account for all trust funds retained on behalf of any client. Any withdrawal from escrow of such trust funds requires the written permission of all the beneficiaries, in this instance, both Mr. and Mrs. Ramos, and the signature of the licensed real estate broker or his previously designated and authorized employee.

6. Respondents breached their fiduciary duty toward Mr. and Mrs. Ramos with respect to the trust funds received and retained from the Carolside and Lehigh real estate sales transactions. The trust funds were disbursed without the permission of either Mr. or Mrs. Ramos, and respondent has been unable and unwilling to account for any of the trust funds retained or dispersed. A finding of dishonest dealing within the meaning of Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j), is warranted when the licensee breaches a fiduciary duty of loyalty and full disclosure to a client, or breaches any contractual promise made in good faith.⁴ Respondents' breached their fiduciary duty of loyalty and full disclosure to Mr. and Mrs. Ramos. Respondents' behavior constitutes dishonest dealing within the meaning of Business and Professions Code section 10176, subdivision (i), and section 10177, subdivision (j). Therefore, separate legal cause exists to suspend or revoke respondents' real estate broker licenses.

7. Respondents' violation of Business and Professions Code section 10148, and failure to account for trust funds toward which respondents bore a fiduciary duty, raises a presumption that respondents converted the trust funds.⁵ Respondents' failure, following repeated demands that respondents account for the funds, places the burden upon respondent Mr. Cárdenas to prove that he did not convert the funds to his own account. As set forth in detail in the Factual Findings, Mr. Cárdenas' evidentiary response to the presumption was to present nothing more than his own hollow and unpersuasive claims that he did not steal the money. Mr. Cárdenas' evidentiary response to the presumption was manifestly unpersuasive and unconvincing, and failed to rebut the presumption.

8. The disciplinary sanction to be imposed for the violations of the Real Estate Law found above is a matter of weighing the factors in aggravation against any mitigation and determining the extent of any evidence of rehabilitation. There was no evidence of rehabilitation, in that Mr. Cárdenas does not acknowledge that he has done anything wrong, other than merely failing to diligently supervise his employees, who are, in turn, evidently to blame for all that happened. The factors in aggravation are serious. Mr. Cárdenas' conduct in this matter is egregious, dishonest and reprehensible. He is remorseless and unconcerned about the devastating impact his breaches of fiduciary duty and his disregard of his obligations toward trust funds entrusted to him, have had, particularly upon Mrs. Ramos.

⁴ *Id.*, *Chodur v. Edmonds* (1985) 174 Cal.3d. 565, 572-3.

⁵ *Haigler v. Donnelly* (1941) 18 Cal.2d. 674, 681; *Fisher v. Machado* (1996) 50 Cal.App.4th 1069, 1072.

9. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee.⁶ If (the) offenses reflect unfavorably on his honesty, it may be said that he lacks the necessary qualifications to become a real estate salesperson.⁷ The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear.⁸

10. The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.⁹ The outcome of this action will fulfill this purpose.

11. In sum, the totality of the evidence adduced in this matter reveals that Mr. Cárdenas has demonstrated that he is entirely unfit for continued licensure in any capacity. Reinstatement should not be considered for licensure in any capacity until such time as Mr. Cárdenas fully repays his outstanding obligation to Mr. and Mrs. Ramos, together with accrued interest.

ORDER

All licenses and licensing rights of Cárdenas Investments Group, Inc., and Jesus Cruz Cárdenas under the Real Estate Law are REVOKED, separately and severally for each.

DATED: February 08, 2008


STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

⁶ *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.

⁷ *Harrington*, p. 402.

⁸ *Id.*, *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.

⁹ *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Borror v. Department of Investment* (1971) 15 Cal.App. 3d 531, 540.

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FILED
AUG 16 2007

DEPARTMENT OF REAL ESTATE

By *Anne Sharrin*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-2093 FR
13 CARDENAS INVESTMENTS GROUP,) SECOND AMENDED
14 INC. and JESUS CARDENAS,) ACCUSATION
15 Respondents)

16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against CARDENAS INVESTMENTS GROUP, INC. d.b.a. RE/MAX
19 Metro Realty Escrow Division, (herein "CIG") and JESUS CARDENAS,
20 also known as "Jesus Cruz Cardenas" (herein "CARDENAS"),
21 collectively herein "Respondents," is informed and alleges as
22 follows:

23 I

24 The Complainant, CHARLES W. KOENIG, a Deputy Real
25 Estate Commissioner of the State of California, makes this First
26 Amended Accusation in his official capacity.

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II

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

III

From on or about October 17, 2001 through on or about October 15, 2005, Respondent CIG was licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent CARDENAS as designated officer-broker of CIG to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, CARDENAS was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of CIG from on or about October 17, 2001 through on or about October 15, 2005. As said designated officer-broker, CARDENAS was and now is responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of CIG for which a license is required.

V

Whenever reference is made herein to an act or omission of CIG, such allegation shall be deemed to mean that officers, directors, employees, and/or agents of CIG committed

1 such act or omission while engaged in the furtherance of the
2 business or operations of CIG and/or CARDENAS while acting
3 within the course and scope of their authority and employment.

4 VI

5 At all times herein mentioned, Respondents engaged in
6 the business of, acted in the capacity of, advertised, or assumed
7 to act as real estate brokers within the State of California
8 within the meaning of Section 10131(a) of the Code, including the
9 operation and conduct of a real estate resale brokerage with the
10 public wherein, on behalf of others, for compensation or in
11 expectation of compensation, Respondents sold and/or offered to
12 sell, bought and/or offered to buy, solicited prospective sellers
13 and/or purchasers of, solicited and/or obtained listings of, and
14 negotiated the purchase and/or sale of real property.
15

16 VII

17 In the course of Respondents' activities as real estate
18 brokers, as described in Paragraph VI, above, Respondents
19 accepted and/or received funds in trust (herein "Trust Fund(s)")
20 from or on behalf of sellers and/or buyers in connection with the
21 resale of real property and/or improvements thereon, as alleged
22 herein, and thereafter from time to time made disbursements of
23 said funds.

24 VIII

25 Between in or about September 2003 and in or about
26 November 2003, Respondents were brokers for Jose Ramos and Maria
27

1 Socorro Ramos (herein, collectively, "the RAMOSES") in the sale
2 of two real properties owned by the RAMOSES and located at 38747
3 Carolside Avenue, Palmdale, CA (herein "Carolside property"), and
4 at 11546 LeHigh Avenue, San Fernando, CA (herein "LeHigh
5 property"), and Respondents received Trust Funds in connection
6 with those transactions.

7 IX

8 During the three-year period preceding the filing of
9 the original Accusation herein, in the course of Respondents'
10 real estate brokerage and the Trust Fund handling activities
11 described above, Respondents converted Trust Funds in the sum of
12 approximately \$136,728.74, belonging to Jose Ramos and/or Maria
13 Socorro Ramos, to Respondents' use and benefit and/or to uses not
14 authorized by the owners of such Trust Funds.

15 X

16 At all times herein, beginning on or about March 8,
17 2005, Respondents have failed and refused, and continue to fail
18 and refuse, despite demand therefore, to account to Jose Ramos or
19 Maria Socorro Ramos for said \$136,728.74 in Trust Funds and to
20 disburse the entirety of said \$136,728.74 to Jose Ramos and/or
21 Maria Socorro Ramos.
22

23 XI

24 On or about January 19, 2007, a designated
25 representative of the Real Estate Commissioner made demand,
26 pursuant to Section 10148 of the Code, that on or before February
27

1 7, 2007, Respondents make available for examination, inspection
2 and copying by the Department, all of Respondents' books and
3 records pertaining to Respondents' real estate brokerage
4 activities from January 1, 2004 through January 1, 2007,
5 including all records executed or obtained by Respondents in
6 connection with the sales of the RAMOSES' Carolside and LeHigh
7 properties.

8 XII

9 At all times mentioned herein, between on or about
10 January 19, 2007 and February 7, 2007, and continuing through the
11 present, Respondents failed after notice to make their books and
12 records concerning their brokerage activities from January 2004
13 through January 1, 2007, including records executed or obtained
14 by Respondents in connection with the sales of the Carolside and
15 LeHigh Properties, available for examination, inspection and
16 copying by the designated representative of the Real Estate
17 Commissioner.
18

19 XIII

20 The acts and omissions of Respondents described in
21 Paragraphs VII through X, inclusive, above, constitute fraud
22 and/or dishonest dealing.

23 XIV

24 The acts and omissions of Respondents described in
25 Paragraphs VII through X and XIII, inclusive, above, constitute
26 cause to suspend or revoke all licenses and license rights of
27

1 Respondents pursuant to the provisions of Section 10176(i) of the
2 Code.

3 XV

4 Respondents' acts and omissions, as alleged in
5 Paragraphs XI and XII, above, are grounds for the suspension or
6 revocation of all licenses and license rights of Respondents CIG
7 and CARDENAS under Section 10148 of the Code in conjunction with
8 Section 10177(d) of the Code.

9 WHEREFORE, Complainant prays that a hearing be
10 conducted on the allegations of this First Amended Accusation and
11 that upon proof thereof, a Decision be rendered imposing
12 disciplinary action against all licenses and license rights of
13 Respondents under the Code, and for such other and further relief
14 as may be proper under provisions of law.
15

16 
17 CHARLES W. KOENIG
18 Deputy Real Estate Commissioner

19 Dated at Sacramento, California
20 this 16th day of August, 2007.
21
22
23
24
25
26
27

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FILED
APR 16 2007
DEPARTMENT OF REAL ESTATE
By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-2093 FR
13 CARDENAS INVESTMENTS GROUP,)
14 INC. and JESUS CARDENAS,) ACCUSATION
15 Respondents)

16 The Complainant, JOHN SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against CARDENAS INVESTMENTS GROUP, INC. d.b.a. RE/MAX Metro
19 Realty Escrow Division, (herein "CIG") and JESUS CARDENAS, also
20 known as "Jesus Cruz Cardenas" (herein "CARDENAS"), collectively
21 herein "Respondents", is informed and alleges as follows:

22 I

23 The Complainant, JOHN SWEENEY, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation
25 in his official capacity.

26 ///
27 ///

1 II

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

5 III

6 From on or about October 17, 2001 through on or about
7 October 15, 2005, Respondent CIG was licensed by the Department
8 of Real Estate of the State of California (hereinafter "the
9 Department") as a corporate real estate broker by and through
10 Respondent CARDENAS as designated broker-officer of CIG to
11 qualify said corporation and to act for said corporation as a
12 real estate broker.

13 IV

14 At all times herein mentioned, CARDENAS was and now is
15 licensed by the Department as a real estate broker, individually
16 and as designated broker-officer of CIG from on or about October
17 17, 2001 through on or about October 15, 2005. As said
18 designated broker-officer, CARDENAS was and now is responsible
19 pursuant to Section 10159.2 of the Code for the supervision of
20 the activities of the officers, agents, real estate licensees
21 and employees of CIG for which a license is required.

22 V

23 Whenever reference is made herein to an act or
24 omission of CIG, such allegation shall be deemed to mean that
25 officers, directors, employees, and/or agents of CIG committed
26 such act or omission while engaged in the furtherance of the

27 ///

1 business or operations of CIG and/or CARDENAS while acting
2 within the course and scope of their authority and employment.

3 VI

4 At all times herein mentioned, Jose Ramos and his
5 former wife, Maria Socorro Ramos (herein collectively "the
6 RAMOSES"), were parties to a marital dissolution action before
7 the Los Angeles County Superior Court, Case Number MD025634
8 (herein "the Divorce Action").

9 VII

10 Between on or about September 2003 and on or about
11 November 2003, Respondents were brokers for the RAMOSES in the
12 sale of two real properties owned by the RAMOSES and located at
13 38747 Carolside Avenue, Palmdale, CA (herein "Carolside
14 Property"), and at 11546 LeHigh Avenue, San Fernando, CA (herein
15 "LeHigh Property").

16 VIII

17 Pursuant to the terms and conditions of the contract
18 for the sale of the Carolside Property and related escrow
19 instructions, (herein collectively "the Carolside Contract"),
20 Respondents deposited the proceeds from that sale in
21 Respondents' escrow account, from which the RAMOSES paid various
22 fees and costs associated with the sale, including Respondents'
23 commission in the amount of \$3,250. Escrow closed on October 2,
24 2003, and the Carolside Contract required Respondents to
25 disburse \$32,131.55 of said proceeds to RAMOSES.

26 ///

27 ///

IX

Pursuant to the terms and conditions of the September 30, 2003 "Real Estate Sale Contract and Escrow Instructions" (herein "the Lehigh Contract"), Respondents deposited the proceeds from that sale in Respondents' escrow account, from which the RAMOSES paid various fees and costs associated with the sale, including Respondents' commission in the amount of \$13,250. Escrow closed on November 4, 2003, and the Lehigh Contract and escrow instructions required Respondents to disburse \$154,597 of said proceeds to RAMOSES.

X

On or about April 2004, the RAMOSES each received a disbursement of \$25,000 from the total sales proceeds held in Respondents' escrow account, as described in Paragraphs VIII through X, above, for taxes due on those transactions. The remaining proceeds, in the amount of \$136,728.74, remained in Respondents' escrow account pending resolution of certain issues in the Divorce Action.

XI

On or about March 8, 2005, the court in the Divorce Action issued a Judgment (herein "the Judgment") requiring, in pertinent part, that remaining proceeds from the sales of the Carolside Property and LeHigh Property be distributed in equal portions to the RAMOSES, (or \$68,364.37 to each spouse). To date, the RAMOSES each assert that they have not received the disbursements required by the Judgment. In the Divorce Action, each spouse has asserted that the other spouse and/or

1 Respondents have improperly taken the remaining proceeds from
2 Respondents' escrow account, in violation of the Judgment.

3 XII

4 On or about June 27, 2006, Jose Ramos made a written
5 complaint to the Department, asserting that Respondents have
6 failed and refused to disburse any of the remaining proceeds
7 from the sales of the Carolside and LeHigh Properties from
8 Respondents' escrow account as required by the Judgment, and
9 that Respondents could not be reached at their last known
10 business address and telephone number.

11 XIII

12 On or about January 19, 2007, a designated
13 representative of the Real Estate Commissioner made demand
14 pursuant to Section 10148 of the Business and Professions Code
15 that, on or before February 7, 2007, Respondents make available
16 for examination, inspection and copying by the Department, all
17 of Respondents' books and records pertaining to Respondents'
18 real estate brokerage activities from January 1, 2004 through
19 January 1, 2007, including all records executed or obtained by
20 Respondents in connection with the sales of the Carolside and
21 LeHigh Properties, as described in Paragraphs VIII through XI,
22 above.

23 XIV

24 At all times mentioned herein between on or about
25 January 19, 2007 and February 7, 2007, and continuing through
26 the present, Respondents failed after notice to make their books
27 and records concerning their brokerage activities from January

1 2004 through January 1, 2007, including records executed or
2 obtained by Respondents in connection with the sales of the
3 Carolside and LeHigh Properties, available for examination,
4 inspection and copying by the designated representative of the
5 Real Estate Commissioner.

6 XV

7 Respondents' acts and omissions, as alleged in
8 Paragraphs XIII and XIV, above, are grounds for the suspension
9 or revocation of all licenses and license rights of Respondents
10 CIG and CARDENAS under Section 10148 of the Code in conjunction
11 with Section 10177(d) of the Code.

12 WHEREFORE, Complainant prays that a hearing be
13 conducted on the allegations of this Accusation and that upon
14 proof thereof, a Decision be rendered imposing disciplinary
15 action against all licenses and license rights of Respondents
16 under the Code, and for such other and further relief as may be
17 proper under provisions of law.

18
19
20 
21 JOHN SWEENEY
Deputy Real Estate Commissioner

22 Dated at Sacramento, California
23 this 13th day of April, 2007.