

FILED

JAN 11 2011

DEPARTMENT OF REAL ESTATE

By K. Mat

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

FRANCISCO J. AVILEZ,

Respondent.

H-2529 FR

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on December 14, 2010, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits and (3) other evidence.

This Decision revokes a real estate license and/or license rights on grounds Respondent performed activity as a real estate broker without possessing a real estate broker license.

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

FINDINGS OF FACT

1

On September 3, 2010, Luke Martin made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondent's last known mailing address on file with the Department on September 15, 2010.

On December 14, 2010, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2

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

3

On or about March 9, 2009, Respondent solicited and collected an advance in the amount of \$1,500 from Marcelino Uribe for loan modification services related to property located at 516 Santa Gertrudis Way, Gonzales, California. In exchange for the advance fee, Respondent promised Marcelino Uribe that his existing mortgage interest rate and the principal amount owed on his property would be reduced. Respondent never obtained a loan modification for and has never refunded the advance fees paid to Marcelino Uribe.

At no time has Respondent been licensed as a real estate broker in the State of California.

DETERMINATION OF ISSUES

1

Cause of disciplinary action against Respondent exists with reference to actions set out in Paragraph 3, above, pursuant to Business and Professions Code Sections 10085 (Prior Approval of Advance Fee Agreement Materials), 10085.5 (Collection of Advance Fee by Someone Other Than Real Estate Broker), 10085.6 (Collection of Unauthorized Advance Fees), 10130, 10131(d), 10131.2 (Collection of Advance Fees), 10137 (Acceptance of Compensation from Someone Other Than Employing Broker), 10177(d) (Willful Violation of Real Estate Law) and 10177(j) (Other Conduct Which Constitutes Fraud or Dishonest Dealing) of the Code, and Section 2970 (Submission of Advance Fee Materials) of Title 10, Chapter 6, California Code of Regulations.

2

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

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ORDER

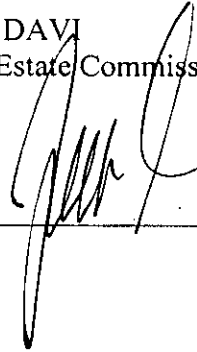
All licenses and licensing rights of Respondent FRANCISCO J. AVILEZ under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

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

FEB 1 2011

DATED: _____ 1-7-11

JEFF DAVI
Real Estate Commissioner



A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line.

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

DEC 14 2010

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 FRANCISCO J. AVILEZ,) H-2529 FR
13 Respondent.) DEFAULT ORDER
14)

15 Respondent, FRANCISCO J. AVILEZ, having failed to file a Notice of Defense
16 within the time required by Section 11506 of the Government Code, is now in default. It is,
17 therefore, ordered that a default be entered on the record in this matter.

18 IT IS SO ORDERED December 14, 2010.

19 JEFF DAVI
20 Real Estate Commissioner

21
22 By: Charles W. Koenig
23 CHARLES W. KOENIG
24 Northern Regional Manager
25
26
27

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-0792 (Direct)

FILED

SEP 15 2010

DEPARTMENT OF REAL ESTATE

By K. Max

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

11 In the Matter of the Accusation of)
12) No. H-2529 FR
13 FRANCISCO J. AVILEZ,)
14 Respondent.) ACCUSATION
15)

16 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against FRANCISCO J. AVILEZ, also known as
18 "Frank J. Avilez", (hereafter "Respondent"), is informed and alleges as follows:

19 1

20 The Complainant makes this Accusation in his official capacity.

21 2

22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Business and Professions Code (hereafter "the Code") as a real
24 estate salesperson. At no time mentioned herein was Respondent licensed by the Department of
25 Real Estate as a real estate broker.

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At all times mentioned herein, Respondent performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

4

On or about March 9, 2009, Respondent solicited and collected an advance in the amount of \$1,500 from Marcelino Uribe for loan modification services related to property located at 516 Santa Gertrudis Way, Gonzales, California. In exchange for the advance fee, Respondent promised Marcelino Uribe that his existing mortgage interest rate and the principal amount owed on his property would be reduced. Respondent never obtained a loan modification for and has never refunded the advance fees paid to Marcelino Uribe.

5

By the commission of the acts alleged in Paragraph 4, above, Respondent engaged in the business and acted in the capacity of a real estate broker within the State of California as defined by Sections 10130 (License Requirement to Act as Real Estate Broker) and 10131(d) (Performing Services for Borrowers and/or Lenders in Connection with Loans Secured by Real Property) of the Code.

6

The facts alleged in Paragraph 4, above, are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10085 (Prior Approval of Advance Fee Agreement Materials), 10085.5 (Collection of Advance Fee by Someone Other Than Real Estate Broker), 10085.6 (Collection of Unauthorized Advance Fees), 10130,

1 10131(d), 10131.2 (Collection of Advance Fees), 10137 (Acceptance of Compensation from
2 Someone Other Than Employing Broker), 10177(d) (Willful Violation of Real Estate Law) and
3 10177(j) (Other Conduct Which Constitutes Fraud or Dishonest Dealing) of the Code, and
4 Section 2970 (Submission of Advance Fee Materials) and 2972 (Content of Verified Accounting)
5 of Title 10, Chapter 6, California Code of Regulations.

6 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
7 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
8 action against all licenses and license rights of Respondent under the Code, and for such other
9 and further relief as may be proper under the provisions of law.

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11 

12 _____
13 LUKE MARTIN
Deputy Real Estate Commissioner

14 Dated at Fresno, California,
15 this 3rd day of September, 2010.
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