

FILED
AUG 31 2005

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-3142 SD
GREAT LAND HOME LOANS, INC.,)	
A California Corporation, and)	OAH NO. L-2005030511
EDGARDO MASANES,)	
)	
Respondents.)	

DECISION

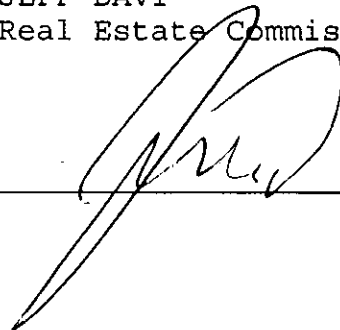
The Proposed Decision dated July 27, 2005, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on SEPTEMBER 21, 2005.

IT IS SO ORDERED

8-16-05

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GREAT LAND HOME LOANS, INC.,
a California Corporation, and
EDGARDO MASANES,

Respondents.

Case No. H-3142 SD

OAH No. L2005030511

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 15, 2005, in San Diego, California.

James L. Beaver, Counsel, represented complainant Charles W. Koenig, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

David D. Ribeiro, Attorney at Law, represented respondents Great Land Home Loans, Inc., a California Corporation, and Edgardo Masanes, who was present throughout the administrative hearing.

The matter was submitted on July 15, 2005.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 28, 2005, complainant Charles W. Koenig, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the Accusation in his official capacity.

The Accusation and other required jurisdictional documents were served on respondents Great Land Home Loans, Inc. (Great Land), a California corporation, and Edgardo Masanes (Masanes)

Masanes timely filed a Notice of Defense on Accusation.

On May 10, 2005, the administrative record was opened. Jurisdictional documents were presented. Official notice was taken, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed, and the matter was submitted.

License Histories

2. On October 19, 1999, the Department issued Corporation Broker License No. 01253567 to Great Land Home Loans, Inc. Edgardo Masanes has always been Great Land's designated officer. Since its licensure, Great Land's principal place of business has been 3130 Bonita Road, Suite 203, Chula Vista, CA 91910. In addition, Great Land has operated branch offices in Escondido and Montebello.

Great Land's corporate broker's license expires on October 18, 2007, unless renewed, suspended or revoked.

There is no history of any prior administrative discipline against Great Land's corporate broker's license.

3. The Department issued Broker License No. 01179313 to Edgardo Masanes. Masanes was doing business as Great Land Home Realty at 3150 Bonita Road, Chula Vista, CA 91910. Masanes briefly held a branch license at 8305 Vickers Street, San Diego, CA 92111, which was cancelled.

Masanes' individual broker's license expires on October 22, 2007, unless renewed, suspended or revoked.

Masanes is the designated officer of Great Land Home Loans, Inc. (as previously mentioned in Factual Finding 2).

Masanes is the designated officer of First Residential Home Loans & Realty, Inc., which has principal business offices at 3130 Bonita Road, Suite 203, Chula Vista, CA 91910. Masanes' officer's license for that corporate broker expires on April 8, 2008, unless renewed, suspended or revoked.

There is no history of any prior administrative discipline against Masanes' individual broker's license or against any corporate broker's license for which Masanes is the designated broker.

The Page Transaction

4. Deborah Page (Page) owned at a condominium located at 2051 Lakeridge Circle, #204, Chula Vista, CA 91910. Through her employment as a life insurance medical examiner, Page met Edgard Duarte (Duarte), a loan officer with Great Land in November

2001. At the conclusion of the examination, Page told Duarte she was interested in refinancing her home and wanted sufficient funds from the refinance to pay off several debts. Page told Duarte she thought her condominium had a fair market value of approximately \$245,000 and there were two mortgages on the property securing loans totaling approximately \$120,000.

Duarte told Page he would help her get a loan through Great Land, a mortgage loan brokerage, and Duarte told Page she would realize enough money from the refinance to pay off some of her debts.

In early December 2001, Page delivered information to Duarte at Great Land's offices. The information concerned the property, Page's earnings and her credit history. Within a few days, Duarte called Page and told her he had secured a loan for \$140,000 and she would realize about \$17,750 in cash when escrow on the refinance transaction closed. Several problems arose, however, including the discovery that the condominium had a fair market value of less than \$200,000 and Page's poor credit history.

It was a problem loan. Duarte discussed the loan with Masanes. After a brief review of the transaction, Masanes told Duarte no bank would refinance the property, but Masanes thought "New Century had a product." However, New Century Mortgage Company (New Century) declined to issue a loan in an amount sufficient to pay off the first and second trust deeds against the condominium and provide Page with \$17,750 in cash at the close of escrow; but, New Century agreed to loan \$128,100, an amount which would permit Page to pay off the first and second trust deeds and pay fees and costs related to the refinance. This information became known to Masanes, who specifically instructed Duarte to tell Page that she would not be receiving the amount of cash she expected at the close of escrow.

Duarte continued to arrange, negotiate and process the refinance transaction through New Century. At Duarte's request, Page signed all loan-related documents. Some documents indicated Page would receive just \$443 at the close of escrow. It was not established Page read these documents before signing them, nor was it established that these documents were brought to her attention. Duarte never told Page she would not receive \$17,750 at the close of escrow, and Page did not discover that until after escrow closed. Page consummated the refinance transaction based on her belief that she was personally going to receive \$17,750 at the close of escrow.

Masanes did not follow up to determine if Duarte had followed his instructions, either by speaking with Duarte or by speaking with Page.¹

¹ Business and Professions Code section 10159.2, subdivision (a) provides, "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."

The refinance transaction was consummated in early February 2002. Duarte telephoned Page and told her he had a "good faith check" but it was less than what she was expecting. When he delivered that \$443 check to her, Duarte told Page she would get the balance of her funds later. Nothing further was provided to Page.

5. Great Land and Duarte were compensated for mortgage loan broker services for the Page transaction, services requiring real estate licenses.

6. Great Land and Duarte failed to provide Page with a statement setting forth the estimated maximum costs and expenses involved in making the loan (including amounts which were to be paid by Page), failed to obtain Page's signature on such a written disclosure statement, failed to deliver a copy of that document to Page, and failed to maintain a copy of that document for three years.

The Page Litigation

7. On November 27, 2002, Page filed a Complaint for Damages for Fraudulent Deceit, Intentional Misrepresentation, Negligent Misrepresentation, Negligence, Breach of Fiduciary Duty and Conspiracy in the Superior Court of California, County of San Diego, South Bay Judicial District. The civil complaint named Great Land Home Loans, Inc., and Edgard Duarte as defendants. Edgardo Masanes was not named as a defendant in that civil action, which was assigned Superior Court No. GIS 11975.

8. On December 8, 2003, a jury was empanelled in *Deborah Page, Plaintiff, vs. Great Land Home Loans, Inc.*, bearing Superior Court Case No. GIS 11975. The Honorable Luis R. Vargas, Judge of the Superior Court, presided over the jury trial. Following the close of evidence and after argument of counsel, the jury deliberated.

On December 11, 2003, the jury returned with its verdict. On the fraud and negligence claims, the jury found in Page's favor and against Great Land and Duarte. The jury awarded Page \$310,000 in damages. Judgment on the verdict was entered on December 31, 2003. On February 4, 2004, Page was awarded \$3,381.34 in costs.

No part of the judgment, which is now final, has been satisfied.

9. Masanes testified he and his current attorney are attempting to resolve Page's outstanding civil judgment against Great Land.

Edgardo Masanes

10. Masanes is 37 years old. He has lived in San Diego County his entire life. He graduated from Sweetwater High School and attended Southwestern Community College and San Diego State University, majoring in Business Finance.

Masanes married in 1988. His marriage is intact. Masanes and his wife live in Chula Vista with their five children ages five to 17.

Masanes was employed by TransAmerica Financial from 1989-1994 as an Assistant Manager and by Home Savings of America as a Loan Officer from 1994-1997.

11. Masanes obtained a real estate salesperson's license and began his own business, Great Land Mortgage, in 1997. Since then, Masanes has been self-employed as a mortgage loan broker or as a corporate officer with licensed brokers.

Great Land, the respondent in this disciplinary action, was formed in 1999. Masanes owned 50% of the shares and Juan Carlos Kelly (Kelly) owned 50% of the shares. Kelly was originally the corporate President. Masanes was the corporate Vice President, Office Manager, and designated real estate licensee.

In winter 2002, about the same time the Page transaction was being processed, Masanes purchased Kelly's position in Great Land. At that time, Great Land was involved in about 40 loan transactions a month, 20-25 of which Masanes closely supervised.

12. Masanes first became aware of Page's complaint a couple of days after the close of escrow, when Kelly brought the matter to Masanes' attention. Evidently Masanes did not think too much about it. He did not investigate the matter himself.

A few months after the transaction, Great Land was served with process. Duarte was no longer associated with Great Land. Masanes hired counsel to represent Great Land and the matter proceeded to the trial, resulting in the judgment against Great Land.

13. Donna Beck (Deputy Beck), a Deputy Real Estate Commissioner, investigated the matter. Deputy Beck testified Masanes was always cooperative with her and it did not appear Masanes was personally involved in any fraud or misrepresentation, although his corporation was involved in such misconduct.

14. Daniel M. Hatt (Hatt), a former Deputy Real Estate Commissioner and a Risk Manager with New Century Mortgage, reviewed the paperwork associated with the Page refinance transaction. He was not aware of any false information in that paperwork. Based upon his review of the paperwork, Hatt believed Duarte was actively involved in the transaction and Masanes was not personally involved.

15. The first time Page ever saw Masanes was at a deposition in the civil action. They had no personal contact before that meeting.

16. Masanes testified in a candid manner.

Masanes acknowledged Duarte was a loan officer for Great Land, that he had some knowledge of the Page transaction while it was being processed, that he did not closely

supervise the transaction although he knew it was somewhat problematic, that he had specifically requested Duarte tell Page she would not be receiving much cash from escrow, that Great Land and Duarte profited from the Page transaction, and that he failed to appreciate the extent of his corporation's legal and financial exposure by not settling the claim and taking it to trial.

No other complaints have been filed against Great Land or Masanes.

Evaluation

17. Duarte's misrepresentations and fraud were clearly and convincingly established through Page's credible testimony, which was not significantly impeached on cross-examination. Masanes had no personal knowledge of the representations Duarte made to Page, and Duarte was not called to testify.

The undisputed evidence established the Page transaction resulted in a substantial civil judgment against Duarte and Great Land. Although Masanes was an officer, director and manager of Great Land, no judgment was entered against him personally.

The purpose of the real estate licensing laws is to protect the public. A holder of a professional license is obligated to see the license is not used in violation of the law. If a licensee operates his business through agents or employees, the licensee must be responsible to the licensing authority for their conduct in the exercise of the license. A licensee may not insulate himself from regulation by electing to function through employees or independent contractors.

A real estate broker cannot avoid supervisory responsibility through incorporation. The officer designated by a corporate broker licensee is statutorily responsible for the supervision and control of the activities conducted on behalf of the corporation by its employees and he or she must actively supervise salespersons licensed to the corporation in the conduct of corporate affairs.

Great Land and Masanes did not demonstrate any unusual circumstances negating the presumption of control over Duarte, nor did they establish any reason why it would be unfair to hold Great Land liable for Duarte's misrepresentations and fraud. Great Land, directly, and Masanes, indirectly, profited from Duarte's misconduct.

Masanes' lack of actual knowledge of Duarte's misrepresentations did not provide a complete defense to Duarte's misconduct since Masanes realized such misstatements and misunderstandings might occur. Indeed, it was for that specific reason Masanes told Duarte to make a full and complete disclosure to Page about the limited funds she would receive before escrow closed. While his lack of actual knowledge was, to some extent, a mitigating factor, Masanes' failure to exercise active supervision over Duarte during the Page transaction under the facts was an aggravating factor.

Once the misrepresentation/misunderstanding was brought to Masanes' attention after the transaction was consummated, Masanes did not personally investigate it. Masanes had an absolute duty to do so since some form of misrepresentation or fraud was alleged which involved a corporate agent. Masanes took no further action until litigation was filed, after which he continued to deny any corporate wrongdoing through the jury's adverse verdict.

The Contentions

18. The Department argued that Great Land's broker's license was subject to direct discipline as a result of suffering a civil judgment based on fraud, that Masanes' broker's license was subject to discipline because he was Great Land's designated officer and was vicariously liable in that capacity, and Masanes' license was subject to discipline "for allowing a fraud judgment to be entered against Great Land."² No specific discipline was recommended.

Respondent Great Land argued there was no fraud proven in the administrative action, but conceded its corporate broker's license was subject to discipline as a result of the civil judgment. Great Land argued its license should not be revoked because it is unable to pay the civil judgment.

Respondent Masanes argued he was not an active participant in Duarte's wrongdoing, he was not named as a defendant in the civil action, no civil judgment was entered against him, Duarte's wrongdoing was "beyond his control," Business and Professions Code section 10177.5 does not authorize the imposition of discipline against Masanes' individual broker's license, and the appellate authority cited by complainant does not stand for the proposition that a corporate officer's individual license is subject to discipline simply because the designated officer followed an attorney's advice in good faith and permitted a fraud action to go to trial which resulted in a civil judgment against the corporate broker. It was argued the disciplinary action against Masanes should be dismissed.

The Appropriate Measure of Discipline

19. *Great Land:* Great Land, through Duarte, its agent, engaged in fraud and misrepresentation with regard to the Page transaction. Required documentation was not provided to Page and, under the circumstances, it is concluded this was in willful disregard of disclosure laws. Virtually no direct supervision was provided to ensure Duarte did not engage in fraud in a problematic transaction. Great Land profited from Duarte's misconduct. A pattern of misconduct was not established. The fact Great Land was not insured for the loss and/or was so undercapitalized it cannot pay the civil judgment is not a mitigating factor.

The revocation of Great Land's license is in the public interest. The license should not be subject to reinstatement until the Page judgment is satisfied.

² To support this argument, complainant cited *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1994) 22 Cal.App.4th 1814.

20. *Edgardo Masanes*: It was not established Masanes' had actual knowledge of Duarte's misrepresentations when the Page transaction was being processed. Masanes knew there could be some problems, and for that reason Masanes told Duarte to make a full and complete disclosure to Page about the limited funds she would receive. Masanes did nothing before the transaction was consummated to ensure his direction was followed. After the transaction, Masanes became aware of Page's complaints but he did not investigate. With such a lack of diligence and active supervision, especially with problematic loans, the absence of similar complaints was fortuitous.

Masanes has no other disciplinary record. He has had a long and successful career in the mortgage broker field. Masanes supports himself and his family through his mortgage broker activities.

Masanes certainly learned a great deal about his responsibilities as a designated corporate officer as a result of the Page transaction. He should not be blamed for following what turned out to be poor legal advice, but his failure to supervise Duarte and to look into agent misconduct when notified of the fraud allegations cannot be overlooked.

Under the circumstances, it is in the public interest to revoke Masanes' broker's license, to stay the revocation, and to permit Masanes to hold a restricted license for three years on appropriate terms and conditions of probation, after the successful completion of which he may reapply for an unrestricted broker's license.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a license is to protect the public. *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.

Burden and Standard of Proof

2. In a disciplinary administrative proceeding, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.

3. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.

4. The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

Applicable Statutes

5. Business and Professions Code section 10240 provides in part:

“(a) Every real estate broker . . . who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower . . .”

6. Business and Professions Code section 10241 provides in part:

“The statement required by Section 10240, the form of which shall be approved by the commissioner, shall set forth separately the following items:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including but not limited to, the following:

- (1) Appraisal fees.
- (2) Escrow fees.
- (3) Title charges.
- (4) Notary fees.
- (5) Recording fees.
- (6) Credit investigation fees.

If a real estate licensee performs or is to perform any of the services for which costs and expenses are disclosed pursuant to this subdivision, the licensee shall be entitled to those costs and expenses in addition to the charges specified in subdivision (b).

(b) The total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or

arranging the loan or the total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he or she elects to act as a lender rather than agent in the transaction . . .

(c) Any liens against the real property, as disclosed by the borrower, the approximate amount thereof, and whether each lien will remain senior, or will be subordinate, to the lien that will secure the loan.

(d) The estimated amounts to be paid on the order of the borrower, as disclosed by the borrower, including, but not limited to:

(1) Fire insurance premiums.

(2) Amounts due on prior liens, including interest or other charges arising in connection with the payment, release, reconveyance, extinction, or other removal of record of the prior liens.

(3) Amounts due other creditors.

(4) Assumption, transfer, forwarding, and beneficiary statement fees.

(e) The estimated balance of the loan funds to be paid to the borrower after deducting the total of amounts disclosed pursuant to subdivisions (a), (b), and (d).

(f) The principal amount of the loan.

(g) The rate of interest . . . ” (Emphasis added.)

7. Business and Professions Code Section 10176 provides in part:

“The commissioner . . . may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

...

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

8. Business and Professions Code section 10177 provides:

"The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . . :

...

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

...

(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required."

9. Business and Professions Code section 10177.5 provides:

"When a final judgment is obtained in a civil action against any real estate licensee upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required under this division, the commissioner may, after hearing in accordance with the provisions of this part relating to hearings, suspend or revoke the license of such real estate licensee."

10. Business and Professions Code section 10179 provides:

"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."

California Real Estate Loans v. Wallace

11. When an accusation is based on Business and Professions Code section 10177.5, the express language of the statute makes the judgment itself the operative fact upon which the disciplinary action is imposed, not the acts or omissions of the licensee which led to that judgment. Thus, if the elements of fraud have been proved in the civil action, collateral estoppel principles bar the licensee from attempting to relitigate those facts at the administrative proceeding.

Business and Professions Code section 10177.5 is stated in absolute terms: "When a final judgment is obtained . . . against any real estate licensee . . . the commissioner may . . . suspend or revoke the license of such real estate licensee." The statute does not exempt judgments against a broker based on vicarious liability. Although statutes on similar subjects must be considered together, Business and Professions Code section 10179 cannot be read to limit or qualify Business and Professions Code section 10177.5. Business and Professions Code section 10179 requires guilty knowledge by a broker before a "violation of any of the provisions of this part" by the broker or salesperson can cause revocation or suspension of the broker's license. The ordinary commonsense meaning of the term "violation" is a failure to comply with rules or requirements. An accusation based on Business and Professions Code section 10177.5 is based on the existence of a judgment against a licensee, not on a "violation" of the charging statutes. *California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1582-1583.

Holly v. Crank

12. The conclusion that the designated officer/broker is personally responsible for supervising the salesperson's compliance with the law is supported by the legislative history of the Business and Professions Code section 10159.2. The statutory provisions regulating the real estate profession places a direct, personal responsibility on the designated officer/broker of a real estate corporation to supervise salespersons to assure compliance with the state and federal laws. This personal obligation is independent from that of the normal responsibilities of a corporate officer or of the corporation itself. This is a direct personal responsibility on the part of the officer/broker that is subject to disciplinary action affecting that officer/broker's personal broker's license. *Holley v. Crank* (United States Court of Appeals, Ninth Circuit (2004)) 400 F.3d 667, 672-673.

Norman v. Department of Real Estate

13. *Norman v. Department of Real Estate* (1979) 93 Cal.App.3d 768 involved licensed discipline imposed against Colistra, an attorney at law and a licensed real estate broker. Colistra was not a paid employee of Homeowners, the corporate real estate broker, nor was he actively involved in its management or in its loan negotiations. Colistra received free office space in return for providing Homeowners with occasional legal advice. Colistra was also designated by Homeowners as its "designated real estate broker."

Homeowners engaged in the business of brokering loans secured by trust deeds on real property. In the course of its operations, Homeowners released titles to two individuals upon their payment of their loans' prepaid interest. The releases were without the knowledge or consent of the affected investors and had the effect of substantially reducing the loans' security. The transactions involved "substantial misrepresentation" and "fraud or dishonest dealing" under Business and Professions Code section 10176, conclusions which were properly reached on the case's uncontroverted evidence.

Colistra's liability was based solely upon the theory that he was Homeowners' "designated real estate broker" during the period the misconduct was committed. The Commissioner made no claim that Colistra had anything to do with the subject matter of that violation. Nevertheless, on the basis that he was the "designated real estate broker," the Commissioner suspended Colistra's real estate broker's license for three months, staying the suspension.

In a writ of mandate filed in the superior court seeking to overturn the discipline imposed against his broker's license, Colistra claimed he was not factually or legally responsible for Homeowners' misconduct and the imposition of any discipline constituted an abuse of discretion. The writ was denied.

In affirming the judgment of the superior court, the appellate court held a designated real estate broker is reasonably charged with responsibility for corporate compliance with the Real Estate Law, for without such fixed responsibility, the statutory purpose of that law would be frustrated. The entire statutory scheme requires the broker actively to conduct his brokerage business and to supervise the activities of his salesmen. Although moral turpitude, dishonesty or corruption were patently absent, Colistra, the designated broker, was clearly remiss. The law and the substantial evidence supported Colistra's accountability for the corporation's violation of the Business and Professions Code. *Ibid.*, at pp. 776-777.

No merit was found in Colistra's contentions that since his acts were in good faith, were not willful and were in accordance with legal advice, he was improperly subjected to discipline. "Disciplinary procedures provided for in the Business and Professions Code . . . are to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman." Their purpose "is not to punish but to afford protection to the public . . ." *Ibid.*, at p. 778.

Norman I. Krug Real Estate Investments, Inc. v. Praszker

14. *Norman I. Krug Real Estate Investments v. Praszker* (1994) 22 Cal.App.4th 1814 involved a joint application by a real estate investor (plaintiff) and a real estate firm and broker (defendants) for a stipulated reversal of a superior court judgment against defendants based upon the broker's breach of a duty to disclose an unrecorded lien interest to the real estate investor. The application to reverse the judgment was part of a settlement agreement.

The appellate court concluded a reversal of the judgment against the real estate broker, stipulated or not, would effectively deprive the Real Estate Commissioner of the ability to act pursuant to Business and Professions Code section 10177.5. The appellate court determined it would be unconscionable to make it possible for a real estate broker who may have acted unethically to purchase disciplinary immunity from one of the consequences of his impropriety. The appellate court's conclusion was underscored by the fact that, unlike analogous statutes pertaining to other professional licensees, the Real Estate Law does not require licensed brokers or their insurers to notify the regulatory agency of the settlement of a claim for damages caused by the broker's fraud, deceit, negligence, incompetence or

recklessness. The appellate court refused to vacate the judgment as to the broker, concluding when a judgment in a civil action is against a state licensee and such judgment may provide the basis for disciplinary action against that licensee, an appellate court may deny an application for stipulated reversal based upon the "public interest" exception carved out in *Neary v. Regents of the University of California* (1992) 3 Cal.4th 273.

Norman I. Krug Real Estate Investments v. Praszker does not stand for the proposition that Business and Professions Code section 10177.5 was designed to discourage a designated real estate broker from gambling on taking a civil case based on fraud to a jury trial.

Cause Exists to Revoke Great Land's Broker's License

15. The clear and convincing evidence established Great Land, through its loan officer, Duarte, made substantial misrepresentations to Page and engaged in dishonest dealings in the Page refinance transaction, thereby subjecting Great Land's broker's license to discipline under Business and Professions Code section 10176, subdivisions (a) and (i). Great Land directly profited from that misconduct and ratified Duarte's misconduct.

Under the circumstances, revocation of Great Land's corporate broker's license is the appropriate measure of discipline.

This conclusion is based on Factual Findings 4-8, 17 and 19 and on Legal Conclusions 1 - 4 and 7.

16. The clear and convincing evidence established Great Land failed to provide Page with a statement setting forth the estimated maximum costs and expenses involved in making the loan, failed to obtain Page's signature on such a written disclosure statement, failed to deliver a copy of that document to Page, and failed to maintain a copy of that document for three years, in willful disregard of Business and Professions Code sections 10240 and 10241, thereby subjecting Great Land's broker's license to discipline under Business and Professions Code section 10177, subdivisions (d) and (g). This willful disregard was a part of the substantial misrepresentations and dishonest dealings of Duarte and Great Land.

Under the circumstances, revocation of Great Land's corporate broker's license is the appropriate measure of discipline.

This conclusion is based on Factual Findings 4-6, 17 and 19 and on Legal Conclusions 1-6 and 8.

17. The clear and convincing evidence established that on December 31, 2003, a civil judgment was entered against Great Land in that matter entitled *Deborah Page, Plaintiff, vs. Great Land Home Loans, Inc.*, bearing San Diego Superior Court Case No. GIS 11975, affirming a jury's verdict finding that Great Land engaged in fraud. The judgment is

final. No part of the judgment has been paid. By reason of this civil judgment, Great Land's corporate broker's license is subject to discipline under Business and Professions Code section 10177.5.

Under the circumstances, revocation of Great Land's corporate broker's license is the appropriate measure of discipline.

This conclusion is based on Factual Findings 7 and 8 and on Legal Conclusions 1-4 and 9.

Cause to Discipline Masanes' Broker's License

18. Great Land, through a loan officer made substantial misrepresentations to Page and engaged in dishonest dealings in the Page refinance transaction. It was not established Masanes had any guilty knowledge of such misrepresentations or such dishonest dealings, or that Masanes actively participated in such misconduct. Accordingly, under Business and Professions Code section 10179, cause does not exist to impose license discipline against Masanes' individual broker's license under Business and Professions Code section 10176, subdivisions (a) and (i).

This conclusion is based on Factual Findings 4, 12-15 and 17 and on Legal Conclusions 1-4, 7 and 10.

19. The clear and convincing evidence established Great Land failed to provide Page with a statement setting forth the estimated maximum costs and expenses involved in making the loan, failed to obtain Page's signature on such a written disclosure statement, failed to deliver a copy of that document to Page, and failed to maintain a copy of that document for three years, in willful disregard of Business and Professions Code sections 10240 and 10241. It was not established Masanes had any guilty knowledge of such willful violations. Accordingly, under Business and Professions Code section 10179, cause does not exist to impose license discipline against Masanes' individual broker's license under Business and Professions Code section 10177, subdivision (d).

This conclusion is based on Factual Findings 4, 12-15 and 17 and on Legal Conclusions 1-6 and 10.

20. The clear and convincing evidence established that throughout the Page refinance transaction, Masanes demonstrated negligence and incompetence by failing to actively supervise Duarte's conduct in the Page refinance transaction and by failing to investigate Duarte's conduct after the refinance transaction was consummated when Masanes became aware of Page's complaint. As a licensed broker, Masanes was under a positive legal duty to supervise and control the activities of the Great Land and to secure full compliance with the Real Estate Law, which included supervising Duarte and requiring written disclosure statements be provided to Page and other borrowers. Masanes did not exercise that level of supervision and control reasonably expected of a licensed real estate

broker.. Accordingly, cause exists under Business and Professions Code section 10177, subdivisions (g) and (h) to impose discipline against Masanes' individual broker's license.

Under the circumstances, revocation of Masanes' individual broker's license, stayed, and permitting Masanes to hold a restricted broker's license under appropriate terms and conditions, is the appropriate measure of discipline.

This conclusion is based on Factual Findings 4-6, 10-17 and 20 and on Legal Conclusions 1-4 and 8.

21. The clear and convincing evidence established that on December 31, 2003, a civil judgment was entered against Great Land which was based on fraud. The judgment is final. While Business and Professions Code section 10177.5 does not specifically provide that a designated corporate officer's individual broker's license is subject to discipline when the corporate broker suffers a fraud judgment in a civil action, several appellate cases support Masanes' accountability for the adverse corporate judgment. Relevant statutory provisions placed a direct, personal responsibility on Masanes, as Great Land's designated officer/broker, to supervise salespersons to assure compliance with the state and federal laws. This personal obligation was independent from that of a corporate officer or the corporation. It was a direct personal responsibility. It was no defense that Masanes' guilty knowledge was not established, nor was it a defense that Masanes conducted himself in good faith and in accordance with what ultimately proved to be unsound legal advice. Business and Professions Code section 10177.5 was designed to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman by requiring supervision by the designated corporate officer. Under these circumstances, cause exists under Business and Professions Code section 10177.5 to impose discipline against Masanes' individual broker's license. This conclusion does not in any way suggest Masanes' liability is based on his decision to take the civil action to trial on behalf of Great Land. It is based solely on the fact a judgment was rendered against Great Land involving fraud and Masanes was Great Land's designated broker.

Under the circumstances, revocation of Masanes' individual broker's license, stayed, and permitting Masanes to hold a restricted broker's license under appropriate terms and conditions, is the appropriate measure of discipline.

This conclusion is based on Factual Findings 4-17 and 20 and on Legal Conclusions 1-4, 9 and 11-14.

ORDERS

Great Land Home Loans, Inc.: All licenses and licensing rights of respondent Great Land Home Loans, Inc., a California Corporation, including Corporation Broker License No. 01253567, are revoked.

Respondent Great Land Home Loans, Inc. shall submit with any application for reinstatement of the revoked corporate broker's license and as a condition precedent to the issuance of any real estate license proof satisfactory to the Commissioner of the complete satisfaction of judgment in *Deborah Page, Plaintiff, vs. Great Land Home Loans, Inc.*, bearing San Diego Superior Court Case No. GIS 11975.

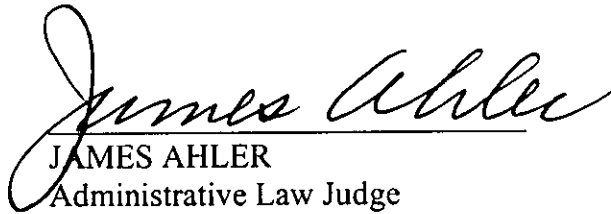
Edgardo Masanes: All licenses and licensing rights of respondent Edgardo Masanes, including Broker License No. 01179313, are revoked; provided, however, provided, however, a restricted real estate broker license shall be issued to respondent Edgardo Masanes under Business and Professions Code section 10156.5 if respondent makes application for such a restricted license 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 Edgardo Masanes shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent Edgardo Masanes may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent Edgardo Masanes may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent Edgardo Masanes shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.
4. Respondent Edgardo Masanes shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent Edgardo Masanes shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
6. Respondent Edgardo Masanes shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction or mortgage loan in which the respondent engaged or was required to provide supervision during the period covered by the report.

DATED: 7/27/05


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
JAN 31 2005

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
12 GREAT LAND HOME LOANS, INC.,)	No. H-3142 SD
13 a California Corporation, and)	<u>ACCUSATION</u>
14 EDGARDO MASANES,)	
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 GREAT LAND HOME LOANS, INC., a California
19 corporation (herein "GREAT LAND") and EDGARDO MASANES (herein
20 "MASANES"), is informed and alleges as follows:

21 I

22 The Complainant, Charles W. Koenig, a Deputy Real
23 Estate Commissioner of the State of California, makes this
24 Accusation in his official capacity.

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1 II

2 At all times herein mentioned, Respondents GREAT LAND
3 and MASANES (herein "Respondents") were and now are licensed
4 and/or have license rights under the Real Estate Law (Part 1 of
5 Division 4 of the Business and Professions Code) (herein "the
6 Code").

7 III

8 At all times herein mentioned, GREAT LAND was and now
9 is licensed by the Department of Real Estate of the State of
10 California (herein "the Department") as a corporate real estate
11 broker by and through MASANES as designated officer-broker of
12 GREAT LAND to qualify said corporation and to act for said
13 corporation as a real estate broker.

14 IV

15 At all times herein mentioned, MASANES was and now is
16 licensed by the Department as a real estate broker, individually
17 and as designated officer-broker of GREAT LAND. As said
18 designated officer-broker, MASANES was at all times mentioned
19 herein responsible pursuant to Section 10159.2 of the Code for
20 the supervision of the activities of the officers, agents, real
21 estate licensees and employees of GREAT LAND for which a license
22 is required.

23 V

24 Whenever reference is made in an allegation in this
25 Accusation to an act or omission of GREAT LAND, such allegation
26 shall be deemed to mean that the officers, directors, employees,
27 agents and/or real estate licensees employed by or associated

1 with GREAT LAND committed such act or omission while engaged in
2 the furtherance of the business or operations of such corporate
3 Respondent and while acting within the course and scope of their
4 authority and employment.

5 VI

6 At all times herein mentioned, Respondents GREAT LAND
7 and MASANES engaged in the business of, acted in the capacity
8 of, advertised, or assumed to act as real estate brokers within
9 the State of California within the meaning of Sections 10131(d)
10 of the Code, including the operation and conduct of a mortgage
11 loan brokerage with the public wherein, on behalf of others, for
12 compensation or in expectation of compensation, Respondents
13 solicited lenders and borrowers for loans secured directly or
14 collaterally by liens on real property, and wherein Respondents
15 arranged, negotiated, processed, and consummated such loans.

16 VII

17 Within the three year period next preceding the filing
18 of the original Accusation herein, in course of the real estate
19 brokerage activities described in Paragraph VI, above,
20 Respondents solicited and obtained an application from Deborah
21 Page (herein "Borrower") for a \$128,100 loan secured by real
22 property at 2051 Lakeridge Circle #204, Chula Vista, CA, 91913,
23 to refinance an existing loan encumbering said real property,
24 and thereafter Respondents arranged, negotiated, processed, and
25 consummated said loan.

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1 VIII

2 Within the three year period next preceding the filing
3 of the original Accusation herein, in order to induce Borrower
4 to apply for and consummate said mortgage loan, Respondents
5 represented to Borrower that Borrower would realize the sum of
6 \$17,750.00 from the net proceeds of the loan plus funds
7 sufficient to pay certain of the Borrower's unsecured
8 obligations (herein "the representations").

9 IX

10 Each and every representation described in Paragraph
11 VIII, above, was false when made, as Respondents well and truly
12 knew at the time such representations were made. In truth and
13 fact, as Respondents well and truly knew at the time, the amount
14 of the loan sufficed only to allow Borrower to realize the sum
15 of \$443.00 from the net proceeds of the loan without any funds
16 whatever, other than the \$443.00, to pay any of the Borrower's
17 unsecured obligations.

18 X

19 On or about February 1, 2002, the Borrower consummated
20 the loan in reasonable reliance on the representations described
21 in Paragraph VIII, above, and in ignorance of the facts
22 described in Paragraph IX, above.

23 XI

24 The acts and omissions of Respondents described above
25 constitute the substantial misrepresentation of material facts
26 and fraud and dishonest dealing.

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1 XII

2 Within the three year period next preceding the filing
3 of the original Accusation herein, in course of the mortgage
4 loan transaction described above, Respondents violated and
5 willfully disregarded the provisions of Section 10240 of the
6 Code, in that said Respondents failed to obtain the signature of
7 the Borrower on the statement required by Section 10240 (herein
8 "Written Disclosure Statement"), failed to deliver a copy of the
9 required Written Disclosure Statement to the Borrower, and/or
10 failed to retain on file for a period of three years a true and
11 correct copy of the required Written Disclosure Statement signed
12 by the Borrower.

13 XIII

14 On or about December 31, 2003, in the Superior Court
15 of the State of California, County of San Diego, Case No. GIS
16 11975, Borrower Deborah Page obtained a judgment, now final, in
17 a civil action against Respondents upon grounds of fraud,
18 misrepresentation, or deceit with reference to a transaction for
19 which a license is required under the provisions of the Real
20 Estate Law.

21 XIV

22 Respondent MASANES failed to exercise reasonable
23 supervision over the acts of Respondent GREAT LAND in such a
24 manner as to allow the acts and omissions on the part of
25 Respondent GREAT LAND, described above, to occur.

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XV

The facts alleged in Paragraphs VII through XI, above, above are grounds for the suspension or revocation of all licenses and license rights of Respondents GREAT LAND and MASANES under Sections 10176(a) and/or 10176(i) of the Code.

XVI

The facts alleged in Paragraph XII, above are grounds for the suspension or revocation of all licenses and license rights of Respondents GREAT LAND and MASANES under Section 10240 of the Code in conjunction with Section 10177(d) of the Code.

XVII

The facts alleged in Paragraph XIII, above are grounds for the suspension or revocation of all licenses and license rights of Respondents GREAT LAND and MASANES under Section 10177.5 of the Code in conjunction with Section 10177(d) of the Code.

XVIII

The facts alleged in Paragraph XXIII, above, are grounds for the suspension or revocation of all licenses and license rights of Respondent MASANES under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 under the Real Estate Law (Part 1 of Division 4 of the Business
6 and Professions Code) and for such other and further relief as
7 may be proper under other applicable provisions of law.

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9 
10 CHARLES W. KOENIG
11 Deputy Real Estate Commissioner

12 Dated at Sacramento, California,
13 this 25th day of January, 2005.
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