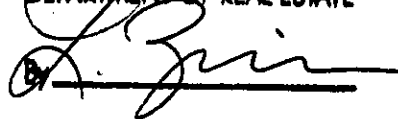


FILED

NOV - 9 2009

DEPARTMENT OF REAL ESTATE



BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )

ULISES VERA, )

Respondent. )

No. H-3964 SD

OAH No. 2009060277

STIPULATION AND AGREEMENTANDDECISION AFTER REJECTION

The California Department of Real Estate ("Department") filed an Accusation against ULISES VERA ("respondent") on May 13, 2009. On June 30, 2009, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On July 29, 2009, the Proposed Decision of the Administrative Law Judge was issued, and determined, among other things, that respondent's real estate salesperson license be revoked, provided that a restricted real estate salesperson license be issued to respondent.

The Commissioner rejected the Proposed Decision of July 29, 2009.

The parties wish to settle this matter without further proceedings.

IT IS HEREBY STIPULATED by and between Respondent ULISES VERA and the Department, acting by and through Truly Sughrue, Counsel for the Department of Real

1 Estate, as follows for the purpose of settling and disposing of the Accusation filed by the  
2 Department:

3 1. It is understood by the parties that the Real Estate Commissioner may adopt the  
4 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and  
5 sanctions on respondent's real estate license as set forth in the below "Decision and Order". In  
6 the event the Commissioner in his discretion does not adopt the Stipulation and Settlement, the  
7 Stipulation shall be void and of no effect; the Commissioner will review the transcript and the  
8 evidence in the case, and will issue his Decision After Rejection as his Decision in this matter.

9 2. By reason of the foregoing and solely for the purpose of settlement of the  
10 Statement of Issues without further administrative proceedings, it is stipulated and agreed the  
11 following shall be adopted as the Commissioner's Decision:

#### 12 FACTUAL FINDINGS

13 1. The Accusation against respondent was filed by Joseph Aiu (complainant),  
14 while acting in his official capacity as a Deputy Real Estate Commissioner, Department of  
15 Real Estate, State of California (department).

16 2. At all times relevant to the allegations contained in the Accusation,  
17 respondent was, and currently is, licensed by the department as a real estate salesperson.  
18 Respondent has never held a real estate broker license.

19 3. On August 8, 2008, respondent acted in the capacity of a real estate broker in  
20 the State of California by accepting \$975 from Felix Rodriguez in order to effect a loan  
21 modification. Respondent performed services for Rodriguez in connection with the  
22 modification of a loan secured by liens on real property for, or in, expectation of  
23 compensation.

24 4. In connection with respondent's activities on behalf of Rodriguez, respondent  
25 contracted for and collected advance fees within the meaning of Business and Professions  
26 Code section 10026. Furthermore, respondent failed to cause the advance fee contract and all  
27 materials used in obtaining the advance fee agreement to be submitted to the Department of  
Real Estate prior to use as required by Business and Professions Code section 10085 and  
Title 10, California Code of Regulations, section 2970.

1           5.       Respondent testified Rodriguez was a friend of a member of respondent's  
2 family and all he was trying to do was to help Rodriguez with a loan modification and save  
3 Rodriguez' home from foreclosure. At the time, it did not occur to respondent that he was  
4 doing something wrong. Respondent testified that this was an isolated occurrence/mistake  
that will not happen again.

5           6.       On March 30, 2009; the department notified respondent's employing broker,  
6 Bob Olivieri, of the Rodriguez incident. Olivieri immediately reacted to the letter by  
7 counseling respondent. In an April 16, 2009 letter to the department Olivieri stated:

8               "I have received your letter dated March 30, 2009 regarding us  
9 illegally collecting advance fees for loan modifications. I assure you, we  
10 do not provide any loan modification services for any type of  
11 compensation (advanced or otherwise). It is against company policy for  
our agents to offer such services. We have repeatedly informed our  
agents at our monthly meetings and other training that this practice is  
not allowed.

12           The incident you mentioned in your letter, [concerning respondent], was a  
13 case of an agent doing a loan modification on his own without our  
14 knowing. The money he was paid was not payable to us but to him  
15 directly. Immediately [after] learning of the situation, [respondent] was  
16 counseled that he needed to return the money to the client immediately  
and was to never do that again unless we go through the proper steps with  
the Department of Real Estate and he agreed....

17           Because of this incident ... we have made this restriction part of our  
18 policy manual with a violation resulting in immediate termination.  
(Exhibit 4.)"

19           Olivieri also took the time to appear at the hearing and testify on  
20 respondent's behalf. According to Olivieri respondent has worked for him for "several years"  
21 and there have been "no other problems with respondent's performance."

22           7.       When questioned about the Rodriguez incident by Deputy Real Estate  
23 Commissioner Hafen on April 16, 2009, respondent readily admitted his mistake. Hafen  
24 described his April 16, 2009 telephone conversation as follows: "On 04/16/2009, I  
25 telephoned [respondent]. [Respondent] told me that he only collected advance fees once,  
26 from Rodriguez, and at the time he collected the advance fee, he did not know that loan  
27 modifications were licensed activity, or that the collection of advance fees was a violation of real  
estate law." (Exh. 6.)

1 8. Respondent has acted in the capacity of a real estate salesperson for  
2 approximately five years and has worked for Olivieri for the last four years. Respondent has no  
3 other record of violations or complaints about his licensed activities.

4 9. At the time of the hearing the \$975 had not been repaid to Rodriguez,  
5 however, respondent was in the process of trying to work out a two-payment repayment  
6 schedule with Rodriguez.

#### 7 LEGAL CONCLUSIONS

8 1. Cause for discipline exists pursuant to Business and Professions Code sections  
9 10130 and 10177, subdivision (d) because, respondent's actions in the Rodriguez incident  
10 constituted acting as a real estate broker without being properly licensed.

11 2. Cause for discipline exists pursuant to Business and Professions Code section  
12 10177, subdivision (d) in conjunction with Business and Professions Code sections 10085,  
13 10130, and 10146, and Title 10, California Code of Regulations, section 2970 because,  
14 respondent's actions in the Rodriguez incident involved the collection of advance fees and no  
15 advance fee contract or other related materials had been submitted to the Department of Real  
16 Estate beforehand.

17 3. The Facts set forth in Findings 5, 6, 7, and 8 reveal that the Rodriguez incident  
18 was an isolated one, without likelihood of reoccurrence. Respondent readily admitted his mistake  
19 and was counseled by his employing broker. Respondent knows that any similar transgression in  
20 the future will result in his immediate termination from employment as well as providing the  
21 basis for administrative action against his license. Respondent has worked in the capacity of a  
22 licensed salesperson for the past five years, and has no history of any other violations or  
23 complaints against his license. In sum, it appears that it would not be adverse to the public  
24 interest to allow respondent to remain licensed under appropriate terms and conditions, including  
25 repayment of the \$975 to Rodriguez.

#### 26 ORDER

27 WHEREFORE. THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Ulises Vera, under the Real Estate  
Law are revoked; provided, however, a restricted real estate salesperson license shall be issued  
to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent

1 makes application therefore, and pays to the Department of Real Estate the appropriate fee for  
2 the restricted license within 90 days from the effective date of this Decision. The restricted  
3 license issued to Respondent shall be subject to all of the provisions of section 10156.7 of  
4 the Business and Professions Code and to the following limitations, conditions and  
5 restrictions imposed under authority of section 10156.6 of that Code:

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

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

15 3. Respondent shall not be eligible to apply for the issuance of an unrestricted  
16 real estate license nor for the removal of any of the conditions, limitations or restrictions of  
17 a restricted license until two years have elapsed from the effective date of this Decision.  
18 Before an unrestricted license is issued, respondent shall provide adequate proof to  
19 the department that he paid Felix Rodriguez \$975 as reimbursement for the advance  
20 fees collected by respondent.

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

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

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

5. Respondent 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.

9/23/09

DATED

TRULY SUGHRUE, Counsel  
DEPARTMENT OF REAL ESTATE

\*\*\*

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

9.23.09

DATED

ULISES VERA  
Respondent

\*\*\*

DECISION AND ORDER

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order.

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

NOV 30 2009

IT IS SO ORDERED 11-3-09

JEFF DAVI  
REAL ESTATE COMMISSIONER

By:   
Chief Deputy Commissioner

FILED

SEP - 2 2009

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of

ULISES VERA,

Respondent.

No. H-3964 SD

OAH No. 2009060277

NOTICE

TO: ULISES VERA, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 29, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 29, 2009, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 30, 2009, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of June 30, 2009, at the Sacramento

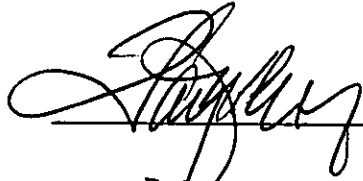
///

1 office of the Department of Real Estate unless an extension of the time is granted for good cause  
2 shown.

3 Written argument of Complainant to be considered by me must be submitted  
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the  
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 8/31/2009

7  
8 JEFF DAVI  
Real Estate Commissioner

9  
10   
11 \_\_\_\_\_  
12 By WAYNE S. BELL  
Chief Counsel



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ULISES VERA,

Respondent.

Case No. H-3964 SD

OAH No. 2009060277

**PROPOSED DECISION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, at San Diego, California on June 30, 2009.

Department of Real Estate Counsel Truly Sughrue represented complainant.

Ulises Vera (respondent) represented himself.

Oral and documentary evidence was received and the matter was submitted on June 30, 2009.

**FACTUAL FINDINGS**

1. The Accusation against respondent was filed by Joseph Aiu (complainant), while acting in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate, State of California (department).

2. At all times relevant to the allegations contained in the Accusation, respondent was, and currently is, licensed by the department as a real estate salesperson. Respondent has never held a real estate broker license.

3. On August 8, 2008, respondent acted in the capacity of a real estate broker in the State of California by accepting \$975 from Felix Rodriguez in order to effect a loan modification. Respondent performed services for Rodriguez in connection with the modification of a loan secured by liens on real property for, or in, expectation of compensation.

4. In connection with respondent's activities on behalf of Rodriguez, respondent contracted for and collected advance fees within the meaning of Business and Professions Code section 10026. Furthermore, respondent failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Business and Professions Code section 10085 and Title 10, California Code of Regulations, section 2970.

5. Respondent testified that Rodriguez was a friend of a member of respondent's family and all he was trying to do was to help Rodriguez with a loan modification and save Rodriguez' home from foreclosure. At the time, it did not occur to respondent that he was doing something wrong. Respondent testified that this was an isolated occurrence/mistake that will not happen again.

6. On March 30, 2009, the department notified respondent's employing broker, Bob Olivieri, of the Rodriguez incident. Olivieri immediately reacted to the letter by counseling respondent. In an April 16, 2009 letter to the department Olivieri stated:

"I have received your letter dated March 30, 2009 regarding us illegally collecting advance fees for loan modifications. I assure you, we do not provide any loan modification services for any type of compensation (advanced or otherwise). It is against company policy for our agents to offer such services. We have repeatedly informed our agents at our monthly meetings and other training that this practice is not allowed.

The incident you mentioned in your letter, [concerning respondent], was a case of an agent doing a loan modification on his own without our knowing. The money he was paid was not payable to us but to him directly. Immediately [after] learning of the situation, [respondent] was counseled that he needed to return the money to the client immediately and was to never do that again unless we go through the proper steps with the Department of Real Estate and he agreed. . . .

Because of this incident . . . we have made this restriction part of our policy manual with a violation resulting in immediate termination. (Exhibit 4.)"

Olivieri also took the time to appear at the hearing and testify on respondent's behalf. According to Olivieri respondent has worked for him for "several years" and there have been "no other problems with respondent's performance."

7. When questioned about the Rodriguez incident by Deputy Real Estate Commissioner Hafen on April 16, 2009, respondent readily admitted his mistake. Hafen described his April 16, 2009 telephone conversation as follows: "On 04/16/2009, I telephoned [respondent]. [Respondent] told me that he only collected advance fees once,

from Rodriguez, and at the time he collected the advance fee, he did not know that loan modifications were licensed activity, or that the collection of advance fees was a violation of real estate law." (Exh. 6.)

8. Respondent has acted in the capacity of a real estate salesperson for approximately five years and has worked for Olivieri for the last four years. Respondent has no other record of violations or complaints about his licensed activities.

9. At the time of the hearing the \$975 had not been repaid to Rodriguez, however, respondent was in the process of trying to work out a two-payment repayment schedule with Rodriguez.

### LEGAL CONCLUSIONS

1. Cause for discipline exists pursuant to Business and Professions Code sections 10130 and 10177, subdivision (d) because, respondent's actions in the Rodriguez incident constituted acting as a real estate broker without being properly licensed.

2. Cause for discipline exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code sections 10085, 10130, and 10146, and Title 10, California Code of Regulations, section 2970 because, respondent's actions in the Rodriguez incident involved the collection of advance fees and no advance fee contract or other related materials had been submitted to the Department of Real Estate beforehand.

3. The Facts set forth in Findings 5, 6, 7, and 8 reveal that the Rodriguez incident was an isolated one, without likelihood of reoccurrence. Respondent readily admitted his mistake and was counseled by his employing broker. Respondent knows that any similar transgression in the future will result in his immediate termination from employment as well as providing the basis for administrative action against his license. Respondent has worked in the capacity of a licensed salesperson for the past five years, and has no history of any other violations or complaints against his license. In sum, it appears that it would not be adverse to the public interest to allow respondent to remain licensed under appropriate terms and conditions, including repayment of the \$975 to Rodriguez.

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Ulises Vera, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore, 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 shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent 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 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 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 two years have elapsed from the effective date of this Decision. Before an unrestricted license is issued, respondent shall provide adequate proof to the department that he paid Felix Rodriguez \$975 as reimbursement for the advance fees collected by respondent.

4. Respondent 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.

DATED: July 29, 2009

*Roy W. Hewitt*

ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

1 TRULY SUGHRUE, Counsel  
2 State Bar No. 223266  
3 Department of Real Estate  
4 P. O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0781

FILED

MAY 13 2009

DEPARTMENT OF REAL ESTATE

By L. Zin

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

11 \* \* \*

12 In the Matter of the Accusation of  
13 ULISES VERA,  
14 Respondent.

No. H-3964 SD  
ACCUSATION

15  
16 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the  
17 State of California, for cause of Accusation against ULISES VERA (hereinafter "Respondent"),  
18 is informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the  
22 State of California, makes this Accusation in his official capacity.

23 2

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

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage and/or loan modification business with the public wherein each of them solicited lenders and borrowers for or negotiated loans or collected payments and/or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation.

#### FIRST CAUSE OF ACTION

Beginning on or about August 2008, Respondent, in course of the real estate activities described in Paragraph 3, solicited lenders and borrowers for or negotiated loans or collected payments and/or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation, including but not limited to the following:

#### PROPERTY OWNER

Felix Rodriguez

#### PROPERTY LOCATION

2157 Blue Haven Court  
San Diego, CA

By the commission of the acts alleged above, Respondent engaged in the business and acted in the capacity of a real estate broker within the State of California as defined by Section 10131(b) of the Business and Professions Code.

The facts alleged in above are grounds for the suspension or revocation of the licenses of Respondent under Section 10130 of the Code in conjunction with 10177(d) of the Code.

///

1 SECOND CAUSE OF ACTION

2 7

3 In connection with the operation and conduct of the real estate activities described  
4 in Paragraph 3, Respondent engaged in the business of claiming, demanding, charging, receiving,  
5 collecting or contracting for the collection of advance fees within the meaning of Sections 10026  
6 and 10131.2 (advance fees) of the Code including but not limited to the following:

7	8 <u>PROPERTY OWNER</u>	9 <u>DATE</u>	10 <u>ADVANCE FEE</u>
11	Felix Rodriguez	August 8, 2008	\$975.00

12 8

13 In connection with the collection and handling of said advance fee, Respondent  
14 failed to cause the advance fee contract and all materials used in obtaining the advance fee  
15 agreement to be submitted to the Department of Real Estate prior to use as required by Section  
16 10085 of the Code and Section 2970 of Title 10, California Code of Regulations (hereinafter  
17 "Regulations").

18 9

19 The acts and/or omissions of Respondents described above, constitute violation  
20 of Section 10177(d) of the Code in conjunction with Sections 10085, 10130, and 10146 of the  
21 Code and Section 2970 of the Regulations, and are cause for the suspension or revocation of  
22 Respondent's license and license rights.

23 ///

24 ///

25 ///


26 ///

27 ///

///

///

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

6  
7  
8   
JOSEPH AIU  
Deputy Real Estate Commissioner

9 Dated at San Diego, California,  
10 this 5 day of May, 2009  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27