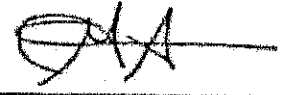


FILED

April 22, 2016

BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

NO. H-04734 SD
L-2015071203

ARMANDO LIWANG DEMESA,
doing business as IMS Executives,
and as Mesalvi Realty,

Respondent.

DECISION AFTER REJECTION

This matter was heard by Alan S. Meth, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on October 19, 2015.

The Complainant was represented by Cheryl D. Keily, Counsel for the Bureau of Real Estate.

Respondent ARMANDO LIWANG DEMESA ("Respondent") appeared personally and represented himself.

Evidence was received, the hearing was closed, and the matter stood submitted.

On November 13, 2015, ALJ Meth, signed a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination to not adopt the Proposed Decision of

1 the ALJ along with a copy of said Proposed Decision. Respondent was notified that the case
2 would be decided by me upon the record, the transcript of proceedings held on October 19, 2015,
3 and upon any written argument offered by Respondent and Complainant.

4 Respondent did not offer any written argument for my consideration in rendering
5 this Decision. On March 16, 2016, Argument was submitted on behalf of Complainant.

6 I have given careful consideration to the record in this case including the
7 transcript of proceedings of October 19, 2015. I have also considered the argument submitted on
8 behalf of Complainant.

9 The following shall constitute the Decision of the Real Estate Commissioner in
10 this proceeding:

11 FACTUAL FINDINGS

12 1. The Findings of Fact in the Proposed Decision of ALJ Meth, dated
13 November 13, 2015, are hereby adopted as a part of this Decision with the exception of
14 FACTUAL FINDING No. 4 which shall now read as follows:

15 4. On April 18, 2006, Respondent petitioned the Bureau for the
16 reinstatement of his plenary real estate broker license. In conjunction with that
17 petition, the Bureau conducted an audit of Respondent's real estate activities
18 conducted pursuant to Business and Professions Code ("Code") Section 10131(b)
19 (rental property management). At the time, Respondent conducted his property
20 management activities using the licensed fictitious business name, Mesalvi
21 Realty. The audit of Respondent's books and records for the period January 1,
22 2006, to August 31, 2007, revealed the following violations of the Code and the
23 Commissioner's Regulations, Title 10, Chapter 6, California Code of Regulations
24 ("Regulations"):

- 25 a. Trust fund shortage of \$3,568.20 (Code Section 10145 / Reg. 2832.1);
26 b. Commingling of \$4,884.20 of broker's funds with trust funds (Code
27 Section 10176(e));

- 1 c. Failure to maintain the control record and the separate record (Code
2 Section 10145 / Regs. 2831, 2831.1);
3 d. Failure to perform monthly reconciliation (Code Section 10145 / Reg.
4 2831);
5 e. Failure to deposit trust funds into account designated as a trust account
6 (Code Section 10145 / Reg. 2832(a));
7 f. Allowing his unlicensed and unbonded wife to make withdrawals from
8 the account containing trust funds (Code Section 10145 / Reg. 2834); and
9 g. Failure to retain records of expense disbursements (Code Section
10 10148).

11 On July 14, 2008, the Respondent's petition for reinstatement of his real estate
12 broker license was denied.

13 LEGAL CONCLUSIONS

14 The Legal Conclusions in ALJ Meth's Proposed Decision dated November 13,
15 2015 are hereby adopted as a part of this Decision with the exception of the last paragraph of
16 Legal Conclusion No. 10, and Legal Conclusion No. 11, which shall now read as follows:

17 Respondent has been audited by the Bureau three times and the audit
18 violations became increasingly more serious with each successive audit. At the
19 conclusion of each audit, the Respondent took counsel from the Bureau's auditor,
20 claimed to have made changes to his business practices to correct the audit violations,
21 and represented to the Bureau that he was, from that point forward, conducting his
22 real estate activities in full compliance with the Real Estate Law. On the contrary,
23 each audit of Respondent's real estate broker activity only indicated a greater number
24 of violations found and a higher shortage of trust funds. Based on Respondent's
25 apparent unwillingness or inability to comply with the Real Estate Law and the
26 Commissioner's Regulations, the public interest would not be served by allowing him
27 to remain licensed as a restricted real estate broker.

1 11. Cause to require Respondent to pay the Bureau's reasonable costs of
2 investigation and enforcement pursuant to Code Section 10106 and for the audit
3 pursuant to Code Section 10148 was established in the total sum of \$12,730.65.

4 The Real Estate Law and the disciplinary procedures provided for in the Real
5 Estate Law are designed to protect the public and to achieve the maximum protection for the
6 purchasers of real property and those dealing with real estate licensees. Business and
7 Professions Code Section 10050 and Handeland v. Bureau of Real Estate (1976) 58 Cal.App.3d
8 513. As a restricted real estate broker Respondent may conduct business independently
9 without any oversight or supervision. In light of the respondent's inability to properly handle
10 trust funds, the public should be adequately protected by allowing Respondent to work as a
11 restricted salesperson under the express supervision of an employing broker. The following
12 order is therefore consistent with the public interest.

13 ORDER

14 WHEREFORE, THE FOLLOWING ORDER is hereby made:

15 All real estate licenses and licensing rights of Respondent ARMANDO
16 LIWANG DEMESA are hereby revoked; provided, however, a restricted real estate
17 salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business
18 and Professions Code if Respondent makes application therefor and pays to the Bureau of Real
19 Estate the appropriate fee for the restricted license within 90 days from the effective date of this
20 Decision. The restricted license issued to Respondent shall be subject to all of the provisions of
21 Section 10156.7 of the Business and Professions Code and to the following limitations,
22 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

27 2. The restricted license issued to Respondent may be suspended prior to

1 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
2 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
3 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching
4 to the restricted license.

5 3. Respondent shall not be eligible to apply for or petition for the issuance of an
6 unrestricted real estate license nor for the removal of any of the conditions, limitations or
7 restrictions of a restricted license until two (2) years have elapsed from the effective date of this
8 Decision. Respondent shall not be eligible to apply for any unrestricted licenses until all
9 restrictions attaching to the license have been removed.

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

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

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

19 5. Respondent shall, prior to the issuance of the restricted license and as a
20 condition of the issuance of said restricted license, pay the sum of \$1,358.50 for the
21 Commissioner's reasonable cost of the investigation, and enforcement which led to this
22 disciplinary action. Said payment shall be in the form of a cashier's check made payable to the
23 Bureau of Real Estate. The investigative and enforcement costs must be delivered to the Bureau
24 of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the
25 effective date of this Decision. If Respondent fails to satisfy this condition, the Commissioner
26 shall order the suspension of the restricted license until the Respondent presents evidence of
27 payment. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to

1 the Administrative Procedure Act to present such evidence that payment was timely made. The
2 suspension shall remain in effect until payment is made in full or until a decision providing
3 otherwise is adopted following a hearing held pursuant to this condition.

4 6. Pursuant to Code Section 10148, Respondent shall pay the Commissioner's
5 reasonable cost for the audits which led to this disciplinary action in the amount of \$11,372.15.
6 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from
7 the Commissioner. Payment of the audit costs should not be made until Respondent receives
8 the invoice. If Respondent fails to satisfy this condition, the Commissioner shall order the
9 suspension of the restricted license until the Respondent presents evidence of payment. The
10 Commissioner shall afford Respondent the opportunity for a hearing pursuant to the
11 Administrative Procedure Act to present such evidence that payment was timely made. The
12 suspension shall remain in effect until payment is made in full or until a decision providing
13 otherwise is adopted following a hearing held pursuant to this condition.

14 7. Respondent shall, within six (6) months from the effective date of this
15 Decision, take and pass the Professional Responsibility Examination administered by the
16 Bureau including the payment of the appropriate examination fee. If Respondent fails to satisfy
17 this condition, Respondent's real estate license shall automatically be suspended until
18 Respondent passes the examination.

19 8. Respondent shall, within nine (9) months from the effective date of this
20 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the
21 most recent issuance of an original or renewal real estate license, taken and successfully
22 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
23 Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
24 Respondent's real estate license shall automatically be suspended until Respondent presents
25 evidence satisfactory to the Commissioner of having taken and successfully completed the
26 continuing education requirements. Proof of completion of the continuing education courses
27 must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento,

1 CA 95813-7013.

2 This Decision shall become effective at 12 o'clock noon on
3 MAY 12 2016

4 IT IS SO ORDERED April 22, 2016

5
6 WAYNE S. BELL
Real Estate Commissioner

7 
8
9

10 By: JEFFREY MASON
Chief Deputy Commissioner

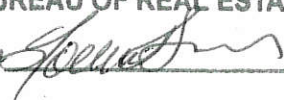
FLAG

FILED

DEC 24 2015

BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

) CalBRE No. H-4734 SD

ARMANDO LIWANAG DEMESA,
doing business as IMS Executives,
and as Mesalvi Realty,

) OAH No. 2015071203

Respondent.

NOTICE

TO: ARMANDO LIWANAG DEMESA, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 13, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 13, 2015, is attached hereto 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 October 19, 2015, 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 October 19, 2015, at the Los Angeles office

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

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 12/18/2015.

6 REAL ESTATE COMMISSIONER

7
8 
9 WAYNE S. BELL
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

FILED

DEC 24 2015

BUREAU OF REAL ESTATE

By 

In the Matter of the Accusation against:

ARMANDO LIWANAG DEMESA,
doing business as IMS Executives, and as
Mesalvi Realty

Respondent.

Case No. H-04734 SD

OAH No. 2015071203

PROPOSED DECISION

Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 19, 2015, in San Diego, California,

Cheryl D. Keily, Real Estate Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on November 2, 2015.

FACTUAL FINDINGS

1. Veronica Kilpatrick, Supervising Special Investigator of the Bureau of Real Estate of the State of California (Bureau) filed Accusation No. H-04734-SD in her official capacity on July 8, 2015. Respondent filed a timely Notice of Defense.

2. On March 24, 1992, the Bureau issued a real estate salesperson license to respondent.

On September 24, 1996, the Bureau issued real estate broker license number B/01132838 to respondent. On April 23, 2002, the Bureau revoked respondent's broker license and granted him a right to a restricted license on terms and conditions. A restricted broker license was issued that day.

3. On November 16, 2001, the Bureau filed a first amended accusation against Priority First Funding, Inc. (PFF), respondent, and Delisiah Anderson. Respondent was the

designated broker officer for PFF. The Bureau conducted an audit of the books and records of PFF during 1999. Among the causes of action in the first amended accusation were numerous alleged violations relating to the maintenance of trust accounts, failure to maintain and make available for inspection numerous financial records, and failure to deliver disclosure statements to borrowers.

In a Stipulation and Agreement executed between respondent and the Bureau, respondent agreed not to interpose a defense to the fourth cause of action in that accusation that alleged: respondent failed to exercise reasonable supervision over the activities of PFF and permitted, ratified and/or caused the conduct described in the other causes of action; he failed to reasonably or adequately review, oversee, inspect and manage the personnel and activities of PFF; and he failed to establish reasonable policies, rules, procedures and systems for review, oversight, inspection and management including the handling of trust funds, the maintenance of trust fund accounts and records, and disclosures and licensing records in compliance with the law.

The Stipulation provided that respondent's real estate broker's license was revoked and a restricted license was to be issued. Respondent was not permitted to apply for an unrestricted license or removal of any conditions for two years, he was required to show that he had completed continuing education requirements, and he was required to take and pass the Professional Responsibility Examination. The Stipulation and Agreement became effective on April 23, 2002.

4. On April 6, 2006, respondent petitioned for reinstatement of his real estate broker license. Between August 28 and November 9, 2007, the Bureau conducted an audit of respondent's property management and trust fund handling activities for the period of January 1, 2006, through August 31, 2007. The audit found a trust fund shortage, unreimbursed commissions commingled with trust funds, failure to maintain required control records, failure to perform monthly trust account reconciliations, failure to properly designate a trust account for the deposit of trust funds, an unlicensed and unbonded person (respondent's wife) was permitted to make withdrawals from a bank account, and failure to maintain copies of invoices supporting property management disbursements. Based upon the audit and other evidence, the Commissioner denied respondent's petition effective July 14, 2008.

5. Isabel Beltran is an auditor with the Bureau and performed audits of the real estate activities of respondent intermittently beginning on July 21, 2014. The audit period extended from July 1, 2011, to June 30, 2014. Mr. Beltran's intent was to determine whether respondent handled and accounted for trust funds and whether he complied with the Real Estate Law and the regulations. He specifically sought to determine whether respondent complied with the order denying his petition for reinstatement. Mr. Beltran performed the audits because respondent had petitioned for removal of the restrictions on his license, and it is Bureau practice to conduct an audit to determine if trust funds are handled properly.

Mr. Beltran obtained relevant documents from respondent and interviewed him on July 21, 2014. Mr. Beltran wanted to determine the extent of respondent's activities and how he handled trust funds.

6. One of the audits examined respondent's property management activity. Respondent managed 19 residential properties for 14 owners during the audit period. Respondent collected rents, paid expenses, and screened tenants for compensation. There was a total collection of approximately \$413,000 in the previous 12 months and rents and security deposits from tenants, and respondent charged a management fee of five to seven percent of the rents collected or a monthly flat fee of \$150. Respondent maintained one bank account for the handling of receipts and disbursements of rents. Respondent's wife, a non-licensee, was a signatory on the account.

The other audit examined respondent's real estate sales activities during the audit period. Respondent represented both buyers and seller and during the previous 12 months, he closed about five sales transactions and four listing transactions with a total aggregate value of \$4.4 million. There was a trust fund volume of approximately \$36,000 in earnest money deposits that he received and forwarded to escrow companies. Respondent did not maintain a trust account for his real estate sales activities.

In addition to his property management activities, respondent worked full-time under a contract with the Navy as a teacher.

7. Based upon Mr. Beltran's examination of the records maintained by respondent, and the information respondent provided to Mr. Beltran, it was established that respondent committed the following violations of the Real Estate Law and the regulations contained in the California Code of Regulations, title 10, in connection with his property management activities:

a. Respondent failed to deposit and maintain trust funds in his bank account in such a manner that as of June 30, 2014, there was a minimum trust fund shortage of \$<14,004.33> caused by a minimum negative property balance totaling \$<8,492.50> and bank charges of \$<46.26, with \$<5,465.57> as a minimum unidentified shortage.

Respondent provided no evidence that the owners of the trust funds had given their written consent to allow him to reduce the balance of the funds in the bank account to an amount less than the existing aggregate trust fund liabilities.

Respondent's conduct violated Business and Professions Code section 10145, subdivision (a), [Code] and California Code of Regulations, title 10, section 2832.1 [Regulations].

b. Respondent failed to maintain a record of all trust funds received, deposited and disbursed (control record) in the form of a columnar record in chronological order in violation of Code section 10145 and section 2831 of the Regulations.

c. Respondent did not maintain separate records for each beneficiary or property in the bank accounts in violation of Code section 10145 and section 2831.1 of the Regulations.

d. Respondent failed to maintain a monthly reconciliation comparing the balance of all the separate records to the balance of the record of all trust funds received and disbursed for the bank account in violation of Code section 10145 and section 2831.2 of the Regulations.

e. The bank account respondent used to hold trust funds was not designated as a trust account in violation of Code section 10145 and section 2832 of the Regulations.

f. Respondent allowed his wife, who was not licensed by the Bureau and not bonded, to make withdrawals from the bank account in violation of Code section 10145 and section 2834 of the Regulations.

g. Respondent failed to provide for examination all the books and records related to the bank account, including trust fund records, canceled checks, deposit tickets, deposit slips, invoices, and property management agreements in violation of Code section 10148.

h. Respondent failed to exercise reasonable control and supervision over the activities conducted by his employees and/or licensees under his individual broker license as necessary to secure full compliance with the real estate laws in violation of Code section 10177, subdivision (h), and section 2725 of the Regulations. Respondent further failed to establish policies, rules, procedures and systems to review, oversee and inspect the handling of trust funds by his licensees and employees.

8. Based upon Mr. Beltran's examination of the records maintained by respondent, and the information respondent provided to Mr. Beltran, it was established that respondent committed the following violations of the Real Estate Law and the regulations contained in the California Code of Regulations, title 10, in connection with his real estate sales activities:

a. Respondent failed to maintain a control record in the form of a columnar record of trust funds consisting of earnest money received from buyers in violation of Code section 10145 and section 2831 of the Regulations.

b. In one of the sampled sales transactions, respondent held the earnest money deposit beyond three business days following the acceptance of the offer without written authorization from the principal in violation of Code section 10145 and section 2832 of the Regulations.

c. In one sampled sales transaction, when respondent presented the offer to the seller, he falsely represented that the earnest money deposit was received from the buyer when it had not yet been received in violation of Code section 10176, subdivision (a).

d. Respondent did not exercise reasonable control and supervision over the activities conducted by his employees and/or licensees under his individual broker license as necessary to secure full compliance with the real estate laws in violation of Code section 10177, subdivision (h), and section 2725 of the Regulations. Respondent further failed to establish policies, rules, procedures and systems to review, oversee and inspect the handling of trust funds by his licensees and employees.

9. Respondent testified at the hearing as follows: He became a real estate salesperson in 1992 and a broker in 1996. Respondent and his wife, a teacher by profession, own the real estate business and he has authorized her to write checks as an owner. He has five part-time referring agents and he conducts his real estate business after hours and on weekends. He teaches full-time at San Diego City College under a contract with the Navy.

Respondent admitted that he made mistakes but he had no malicious intent. He delivered all the money that was due to the principals and there have never been any complaints. Since the audit, he started keeping individual records and opened a trust account at Wells Fargo Bank. The records are a form that has the name of the client, the amount of the check, the property, and other relevant information. He maintains a running balance for each property and is able to reconcile that with a bank statement. He now has the tenants deposit their rent payments directly into the trust account and he disburses the funds after deducting his fees. He spoke to Mr. Beltran after the audit and followed the auditor's recommendations. He does not accept any funds from buyers; he has the buyer write the check to Mesalvi Realty and he holds it until he delivers it to a nearby escrow.

10. Patrick O'Connor is an instructor at San Diego City College and works with respondent teaching electronics to Navy personnel under a contract with the Navy. He is retired from the military and is a reserve deputy sheriff. He has known respondent for about eight years and sees respondent every day. He serves as respondent's supervisor.

Mr. O'Connor testified at the hearing and vouched for respondent's character. He pointed out that respondent was fair and impartial toward his students and his records are well-maintained and up to date. Mr. O'Connor believed respondent to be very honest. In a letter Mr. O'Connor wrote to the Bureau, he added that respondent's demeanor with his associates and students is positive, pleasant, and a model of appropriate behavior. He described respondent as an excellent instructor and the students' critiques are always above average.

11. Wilfred Rocamora is a real estate broker and has known respondent since the early 1990s. He testified at the hearing that he often works with respondent on residential resale transactions and he has found respondent to be honest and conscientious. He testified he and his staff have never had a problem with respondent regarding earnest money or

downpayments. He noted respondent is responsive to requests and if a document is not in a file, he obtains it right away. He testified all his clients that have interacted with respondent speak highly of him.

12. Peter Gilboy, a judgment tracker, wrote a letter in support of respondent. He met respondent through his attempts to enforce a civil judgment and found him to be credible and trustworthy. He believed respondent got into trouble in the past because he was too trusting and unsuspecting of others.

13. Respondent submitted a Power of Attorney from one of the property owners for whom he works that gave respondent the power of attorney to handle the owner's real estate affairs for him. Respondent believed this showed that the property owner trusted him.

14. The Bureau incurred costs for the audit in the amount of \$11,372.15, for investigation in the amount of \$376.50, and for legal services in the amount of \$979. The total cost of investigation and enforcement is \$12,730.65. The amount is reasonable.

15. Following the conclusion of the hearing, respondent submitted a letter dated October 21, 2015. Attached to the letter were samples of his trust records and some emails. The documents are marked Exhibit D. Counsel for the Bureau submitted a letter dated November 2, 2015, which was marked Exhibit 9. Counsel objected to the introduction of the documents.

The documents submitted by respondent are in the nature of rehabilitation in that they are offered to show that he has changed his procedures and improved his process for handling trust records. The documents prove nothing without an explanation and an examination by an auditor who could evaluate them in light of the relevant regulations and indicate whether they were satisfactory. It is too late in the proceedings to consider these documents for rehabilitation purposes. Exhibit D is not admitted into evidence.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177 provides in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or 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, delay the renewal of a 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 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 an 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.

2. Business and Professions Code section 10145 provides in part:

(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

3. California Code of Regulations, title 10, section 2831, requires every broker to keep a record of all trust funds received in chronological order in columnar form.

4. California Code of Regulations, title 10, section 2831.1, requires a broker to keep a separate record for each beneficiary or transaction accounting for all funds deposited in the broker's trust account. The information must be in chronological sequence in columnar form.

5. California Code of Regulations, title 10, section 2832, provides in part:

(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or

into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

6. California Code of Regulations, title 10, section 2732.1, requires a broker to obtain the written consent of every principal who is an owner of funds in a trust account prior to each disbursement if such disbursement will reduce the balance of the funds to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

7. California Code of Regulations, title 10, section 2725, requires a broker to exercise reasonable supervision over the activities of the broker's salespersons.

8. California Code of Regulations, title 10, section 2834, limits the persons who may make withdrawals from a trust fund account.

9. Cause was established to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), was established.

10. The Bureau determined in 2002 and 2008 that respondent has not complied with record-keeping requirements imposed upon brokers by the Real Estate Law and the applicable regulations. The audit performed by Mr. Beltran in 2014 again found deficiencies in respondent's records. It appears respondent has done little to change his business practices to conform to the requirements imposed upon him.

Respondent testified that he has changed his business practice and made the changes suggested by Mr. Beltran. Respondent offered no evidence to support his testimony except for random documents he submitted after the hearing concluded, but which were not evaluated by an auditor or someone familiar with the requirements of the laws and regulations. Without corroboration, and in light of the previous violations found over the last 12 years, it cannot be concluded that respondent is now in compliance with broker requirements.

On the other hand, none of the violations found by Mr. Beltran showed that any property owner or client of respondent has suffered any loss. Mr. Beltran testified at the hearing that he believed respondent was honest and needed to work on his bookkeeping to avoid future violations. He indicated that the shortcomings would be easy to correct. He added that he did not see respondent's wife's name on any checks involving trust fund and he saw no suspicious activity. He found no complaints from any property owners. Mr. Beltran's testimony is consistent with the testimony of Mr. O'Connor and Mr. Rocamora that respondent was an honest person.

Respondent's license is presently a restricted one. The evidence did not establish that the restrictions should be removed. However, the evidence did not establish that revocation of respondent's license was warranted. Unquestionably, his license must remain restricted, yet he must be made to understand that he has to change his business practices to conform to the requirements imposed on real estate brokers. To achieve that goal, a suspension of respondent's restricted real estate broker license should be imposed. It is concluded that a suspension of 30 days is a reasonable length of time under the circumstances of this case.

11. Cause to require respondent to pay the Bureau's reasonable costs of investigation and enforcement pursuant to Business and Professions Code section 10106 and for the audit pursuant to section 10148, subdivision (b), in the amount of \$12,730.65, was established.


Respondent testified that he did not have the funds to pay the entire amount but offered no proof that he was unable to do so. His testimony is questionable since respondent has a full-time job as a teacher at San Diego City College and also derives income from his property management and residential sales activities. In light of respondent's testimony, however, respondent may be permitted to reimburse the Bureau for its costs over a period of a year. Accordingly, respondent may reimburse the Board at the rate of \$1,060.88 per month beginning 30 days after the effective date of this decision.

ORDER

1. All licenses and licensing rights of respondent Armando Liwanag Demesa under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision.

2. Respondent shall reimburse the Bureau for its costs of investigation and enforcement and for the audit in the amount of \$12,730.65. Respondent if he chooses may satisfy this order by making 12 monthly payments in the amount of \$1,060.88 beginning 30 days after the effective date of this decision or he may pay the entire amount within 60 days of this decision.

DATED: November 13, 2015


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings