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DEPT. OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H-05170 SD
)	OAH No. 2020090983
ERNEST EUGENE FREEMAN,)	
)	
Respondent.)	

STIPULATION AND AGREEMENT

&

DECISION AFTER REJECTION

The California Department of Real Estate ("Department") filed an Accusation against ERNEST EUGENE FREEMAN ("Respondent") on August 4, 2020. On July 22, 2021, a hearing was held before the Office of Administrative Hearings before Administrative Law Judge ("ALJ") Marion Vomhof, wherein Respondent was represented by Andre L. Clark, Esq., all evidence was received, and the case was deemed submitted on the same day.

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Stipulation and Agreement & Decision After Rejection – H-05170 SD

1 On September 3, 2021, ALJ Vomhof's Proposed Decision ("PD") issued August
2 23, 2021 was received by the Department. The PD determined, among other things, that
3 Respondent's real estate salesperson license and endorsements under the Real Estate Law should
4 be revoked; provided, however, that his real estate salesperson shall be revoked, the revocation
5 stayed, and Respondent shall be issued a restricted real estate salesperson license by the Real
6 Estate Commissioner pursuant to section 10156.5 of the Business and Professions Code.

7 On October 29, 2021, the Commissioner rejected ALJ Vomhof's Proposed
8 Decision of August 23, 2021.

9 The parties wish to settle this matter without further proceedings.

10 **IT IS HEREBY STIPULATED** by and between Respondent, ERNEST EUGENE
11 FREEMAN, represented by Andre L. Clark, Esq., and the Department, acting by and through
12 Julie To, Counsel for the Department of Real Estate, as follows for the purpose of settling and
13 disposing of the August 4, 2020 Accusation filed by the Department.

14 1. It is understood by the parties that the Real Estate Commissioner may adopt
15 the Stipulation and Agreement and Decision After Rejection as his decision in this matter,
16 thereby imposing the restrictions on Respondent's real estate salesperson license as set forth in
17 the below "Decision and Order". In the event the Commissioner in his discretion does not adopt
18 the Stipulation, the Stipulation shall be void and of no effect; the Commissioner will review the
19 transcript and the evidence in the case, and will issue his Decision After Rejection as his
20 Decision in this matter.

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24 Stipulation and Agreement & Decision After Rejection – H-05170 SD

1 2. By reason of the foregoing and solely for the purpose of settlement of the
2 Accusation without further administrative proceedings, it is stipulated and agreed that the
3 following shall be adopted as the Commissioner's Decision:

4 **FACTUAL FINDINGS**

5 1. The Real Estate Commissioner incorporates by reference ALJ
6 Vomhof's Proposed Decision of August 23, 2021 and adopts Factual Findings 1
7 through 10.

8 **LEGAL CONCLUSIONS**

9 1. The Real Estate Commissioner incorporates by reference ALJ Vomhof's
10 Proposed Decision of August 23, 2021 and adopts Legal Conclusions 1 through 23.

11 **ORDER**

12 **WHEREFORE, THE FOLLOWING ORDER is hereby made:**

13 **All real estate salesperson licenses and licensing rights of Respondent ERNEST
14 EUGENE FREEMAN under the Real Estate Law are revoked; provided, however, a restricted
15 real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the
16 Business and Professions Code if Respondent makes application therefor and pays to the
17 Department of Real Estate the appropriate fee for the restricted license within ninety (90) days
18 from the effective date of this Decision. The restricted license issued to Respondent shall be
19 subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to
20 the following limitations, conditions and restrictions imposed under authority of that Code:**

21 1. The restricted license issued to Respondent may be suspended prior to
22 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or

1 plea of *nolo contendere* to a crime which is substantially related to Respondent's fitness or
2 capacity as a real estate licensee.

3 2. The restricted license issued to Respondent may be suspended prior to hearing
4 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
5 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
6 Law, Regulations of the Real Estate Commissioner, or conditions attaching to this restricted
7 license.

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

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

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

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

20 5. Respondent shall, within nine (9) months from the effective date of this
21 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,
22 since the most recent issuance of an original or renewal real estate license, taken and
23 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the
24 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
condition, Respondent's real estate license shall automatically be suspended until Respondent

1 presents evidence satisfactory to the Commissioner of having taken and successfully completed
2 the continuing education requirements. Proof of completion of the continuing education
3 courses must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,
4 Sacramento, CA 95813-7013.

5 6. Pursuant to Section 10106 of the Business and Professions Code, Respondent
6 shall, prior to the issuance of the restricted license and as a condition of the issuance of said
7 restricted license, pay the sum of \$3,747.53 for the Respondent's one-half share of the
8 Commissioner's reasonable cost of the investigation and enforcement (\$7,495.05) which led to
9 this disciplinary action. Said payment shall be in the form of a cashier's check made payable to
10 the Department of Real Estate. The investigative and enforcement costs must be delivered to the
11 Department of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013, prior
12 to the effective date of this Order.

13 (a) If Respondent fails to satisfy this condition, the Commissioner shall
14 order the suspension of the restricted license until the Respondent presents
15 evidence of payment. The Commissioner shall afford Respondent the
16 opportunity for a hearing pursuant to the Administrative Procedure Act to
17 present such evidence that payment was timely made. The suspension
18 shall remain in effect until payment is made in full or until a decision
19 providing otherwise is adopted following a hearing held pursuant to this
20 condition.

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1 7. Respondent shall notify the Commissioner in writing within seventy-two (72)
2 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real
3 Estate, Post Office Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the date
4 of Respondent's arrest, the crime for which Respondent was arrested, and the name and address
5 of the arresting law enforcement agency. Respondent's failure to timely file written notice shall
6 constitute an independent violation of the terms of the restricted license and shall be grounds for
7 the suspension or revocation of that license.

8 11-18-21

DATED



Julie L. To, Counsel for Complainant
Department of Real Estate

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10 * * *

11 I have read the Stipulation and Agreement and Decision after Rejection, and its
12 terms are understood by me and are agreeable and acceptable to me. I willingly, intelligently,
13 and voluntarily agree to enter into this Stipulation and Agreement and Decision after Rejection.

14 Respondent can signify acceptance and approval of the terms and conditions of
15 this Stipulation and Agreement and Decision after Rejection by sending a hard copy of the
16 original signature page, as actually signed by Respondent, to the Department counsel assigned to
17 this matter.

18 In the event of time constraints, Respondent can signify acceptance and approval
19 of the terms and conditions of this Stipulation and Agreement by e-mailing a scanned copy of
20 the signature page, as actually signed by Respondent, to the Department counsel assigned to this
21 matter. Respondent agrees, acknowledges and understands that by electronically sending to the
22 Department a scan of Respondent's signature as it appears on the Stipulation and Agreement,
23 that receipt of the scan by the Department shall be binding on Respondent as if the Department

1 had received the original signed Stipulation and Agreement and Decision After Rejection.

2 DATED: 11/15/2021

Ernest Eugene Freeman
ERNEST EUGENE FREEMAN,
Respondent

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6 *I have reviewed the Stipulation and Agreement as to form and content and have
7 advised my client accordingly.*

8 DATED: November 15, 2021

AB
Andre L. Clark, Attorney for Respondent
ERNEST EUGENE FREEMAN

9 ***

10 The foregoing Stipulation and Agreement and Decision After Rejection is hereby
11 adopted as my Decision as to Respondent ERNEST EUGENE FREEMAN and shall become
12 effective at 12 o'clock noon on JAN 06 2022, 2021.

13 IT IS SO ORDERED 12.3.21, 2021.

14 REAL ESTATE COMMISSIONER

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17 Douglas R. McCauley
DOUGLAS R. McCAULEY

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DEPT. OF REAL ESTATE

By *[Signature]*

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

<p>In the Matter of the Accusation of</p> <p style="padding-left: 40px;">ERNEST EUGENE FREEMAN,</p> <p style="padding-left: 80px;">Respondent.</p>	}	<p>DRE No. H-05170 SD</p> <p>OAH No. 2020090983</p>
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NOTICE

TO: ERNEST EUGENE FREEMAN, Respondent, and ANDRE L. CLARK , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 23, 2021, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 23, 2021 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 Thursday, July 22, 2021, 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 Thursday, July 22, 2021, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good

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

5 DATED: 10 . 29 . 21 .

6 DOUGLAS R. McCAULEY
7 REAL ESTATE COMMISSIONER

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**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ERNEST EUGENE FREEMAN

and

SALAZAR CRANE & ASSOCIATES INC.

and

**LIVIA V. SALAZAR-CRANE, INDIVIDUALLY AND AS
DESIGNATED OFFICER OF SALAZAR CRANE & ASSOCIATES
INC.,**

Respondents

Agency Case No. H-05170 SD

OAH No. 2020090983

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephone and video on July 22, 2021, due to the ongoing COVID-19 pandemic.

Julie To, Staff Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate (department), State of California.

Andre Clark, Attorney at Law, represented Ernest Eugene Freeman, respondent.

Prior to the start of the hearing respondent Livia V. Salazar-Crane, individually, signed a Declaration dated July 15, 2021, in which she voluntarily surrendered the broker and salesperson real estate licenses the department issued to her.

Respondent Livia V. Salazar-Crane, as the designated officer of Salazar Crane & Associates Inc., signed a Declaration dated July 15, 2021, in which she voluntarily surrendered the real estate license and endorsements issued by the department to Salazar Crane & Associates Inc.

As a result of the surrender of these licenses and endorsements, paragraphs 10 through 25 of the Accusation which concern respondents Salazar-Crane and Salazar Crane & Associates Inc. are not addressed here. Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 22, 2021.

PROTECTIVE AND SEALING ORDER

Exhibits 5, 14, 15, and 16 were received and contained personal financial and identifying information. It is impractical to redact the information from these exhibits. To protect the privacy and the confidential personal information from inappropriate disclosure, those exhibits are ordered sealed. This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and

a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order, provided that the documents are protected from release to the public.

FACTUAL FINDINGS

Jurisdictional Matters

LICENSING HISTORY

1. Mr. Freeman currently holds license ID 01239861 and is licensed under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate salesperson (salesperson) for the department. He was first licensed with the department on June 4, 1998. Mr. Freeman also holds a Nationwide Multistate Licensing System (NMLS) mortgage loan originator (MLO) license endorsement, NMLS ID 821008, through the department and is authorized to conduct business. Mr. Freeman holds an MLO license through the California Department of Business Oversight, but is not authorized to conduct business. According to NMLS records as of May 6, 2020, Mr. Freeman's authorization to conduct business was as follows:

- a. 1/2/20 up to and including May 6, 2020: authorized to conduct business;
- b. 1/1/20 to 1/1/20: not authorized to conduct business;
- c. 1/4/19 to 12/31/19: authorized to conduct business;
- d. 1/1/19 to 1/3/19: not authorized to conduct business;
- e. 3/1/18 to 12/31/18: authorized to conduct business;

f. 1/5/18 to 2/28/18: not authorized to conduct business;

and

g. 5/11/16 to 1/4/18: authorized to conduct business.

2. According to DRE records, as of August 4, 2020, Mr. Freeman was licensed under responsible real estate broker (REB) Salazar Crane & Associates Inc., and had been since March 1, 2018.¹ Mr. Freeman was licensed under REB Livia V. Salazar-Crane, from January 20, 2018, to February 28, 2018, and under Salazar Crane & Associates Inc. from August 26, 2016, to October 11, 2017. Mr. Freeman's NMLS license endorsement was affiliated with REB Salazar Crane & Associates Inc., from August 22, 2016, through July 15, 2021; the license endorsement was inactive from October 12, 2017, through March 1, 2018. Mr. Freeman's DRE license will expire on June 3, 2022, unless revoked or renewed.

3. On December 18, 2018, in Southwest Riverside County Association of Realtors (SRCAR) Case DSI8-03, a decision was adopted by SRCAR's Board of Directors that ordered Mr. Freeman to pay a fine in the amount of \$10,000 and to complete California Association of Realtors (CAR) coursework. A Letter of Reprimand was placed in Mr. Freeman's file for a period of three years for his violation of Code of Ethics Articles: 1 (fiduciary duty to clients); 2 (must avoid concealment of pertinent facts); 6 (cannot accept profit on expenditures made for their client or recommendations to their client without disclosure); 9 (must ensure that all agreements are in writing and

¹ On July 15, 2021, respondent Livia V. Salazar-Crane, as the designated officer of Salazar Crane & Associates Inc., voluntarily surrendered the real estate license and endorsements issued by the department to Salazar-Crane & Associates Inc.

clear); and 11 (must provide competent service) and MLS Rules and Regulations, Section 8.2 (listing brokers filing listings with the MLS must have written listing agreement with necessary signatures in their possession.)

ACCUSATION

4. On July 27, 2020, complainant signed the accusation in her official capacity. Although not set out in any detail in the accusation, per a reading of the allegations: (1) per paragraph 49, when Salazar Crane's DRE license expired on October 11, 2017, Mr. Freeman's license was placed in a non-working status, after which he performed acts for which a real estate license was required, in violation of Business and Professions Code sections 10130 and 10177, subdivision (d); (2) per paragraph 50, Mr. Freeman conducted unauthorized endorsement activity during the period January 5, 2018, through February 28, 2018, in violation of Business and Professions Code sections 10166.02, subdivision (b)(1) and (2), and 10177, subdivision (d); (3) per paragraph 51, Mr. Freeman submitted a false form to lender New Penn Financial, in violation of sections 10176, subdivision (i) and 10177, subdivision (d); and (4) per paragraph 52, during the period from January 5, 2018, to February 28, 2018, while Mr. Freeman was not authorized to conduct mortgage loan activity, Mr. Freeman presented loan options to the Richard Barrow and Genevieve Barrow and listed himself as the loan originator, in violation of sections 10159.2 and 10177, subdivision (h), and California Code of Regulations 2725. Complainant requested imposition of disciplinary action against Mr. Freeman's license and Complainant requested the costs of investigation and enforcement against Mr. Freeman.

5. Mr. Freeman filed a notice of defense and this hearing followed.

Summary of Events

6. On October 10, 2017, the Barrows signed a Residential Listing Agreement (RLA) with Mr. Freeman for the sale of their home (Spinning Wheel) at a price of \$434,900. The term of the RSA was through April 10, 2018, but on December 19, 2017, the Barrows cancelled the RSA. On that same day, a "new" RSA was signed with Mr. Freeman for a revised sale price of \$439,000. In January 2018, the Barrows accepted an offer for the sale of Spinning Wheel and signed a purchase agreement to buy a property, Crooked Arrow, which was accepted by the sellers. Mr. Freeman assisted the Barrows in obtaining financing. Issues arose regarding the transactions, and on February 16, 2018, the Barrows cancelled the purchase of Crooked Arrow and cancelled the pending sale of Spinning Wheel. On February 27, 2018, the Barrows terminated their relationship with Mr. Freeman.

Richard Barrow, Homeowner

7. Richard Barrow testified at hearing and provided a declaration dated March 16, 2020, and the following information is taken from his testimony and declaration. Mr. Freeman was both a buying and selling agent for the Barrows in 2017 through 2018. Mr. Freeman was the step father-in-law of a coworker of Mr. Barrow's wife, Genevieve. Ms. Barrow initiated the contact with Mr. Freeman when she learned he was a real estate agent. Correspondence received from Mr. Freeman listed Salazar Crane & Associates, Inc. as his broker. However, the Barrows and Mr. Freeman did not discuss Mr. Freeman's real estate broker or the status of his license.

Mr. Barrow was shown an RLA dated October 12, 2017, with a sale price of \$434,900, between the Barrows and Mr. Freeman. He did not recall signing an RLA, but he confirmed that his signature and initials were on this document. Mr. Freeman

presented the Barrows with offers on their property and properties for purchase, but none resulted in a sale or purchase.

On December 19, 2017, the Barrows cancelled the RLA "for the holidays," but they continued to work with Mr. Freeman after the holidays because their property "was still on the market." Mr. Barrow reviewed a second RLA, also dated December 19, 2017, with a sale price of \$439,000. The agreement contained electronic signatures of the Barrows. Mr. Barrow said he "did not recall filling out a new agreement," but then said that the increased sale price was not the reason for the new RLA. He and his wife "were not actively looking" for a period of time, and "then came back in February or March of 2018." This statement conflicted with the evidence that on January 18, 2018, the Barrows made an offer to purchase the Crooked Arrow property and their offer was accepted by the sellers. Mr. Freeman helped the Barrows apply for mortgage financing. Mr. Barrow explained that "the numbers didn't work out" so they did not purchase this property.

At hearing, Mr. Barrow was shown a loan submission form from New Penn Financial (New Penn) dated January 10, 2018, which listed Mr. Barrow as borrower and Ms. Barrow as co-borrower. Mr. Barrow he said he had never seen this form before and he did not authorize it, and further, the form contained an incorrect phone number and email addresses for him and Ms. Barrow. Mr. Barrow reviewed a "Uniform Residential Loan Application" dated July 27, 2017, and said that this document was not presented to him. Mr. Barrow spoke with "Chris" at New Penn and Chris "was shocked" that Mr. Barrow had not completed the loan application. Chris said he received this form from Mr. Freeman. Mr. Barrow was again shown the loan application, and he confirmed that it did contain his signature. He did recall giving Mr. Freeman financial information "early in the process."

In January 2018, the Barrows made an offer to purchase Crooked Arrow and they received an offer to purchase Spinning Wheel. Mr. Barrow asserted that neither he nor his wife signed "financing documents," other than those they signed in 2017. Mr. Freeman represented them but they did not give him authority to complete any specific paperwork. When asked if he was familiar with the type of documents required to execute the sale of property, Mr. Barrow responded, "I don't know what I was familiar with or not, just know nothing was communicated to us. The only thing we received were estimations of cost and breakdowns of cost on an informal document."

In February, the Barrows terminated the purchase for Crooked Arrow. The termination had nothing to do with the seller. One of the reasons they backed out of the purchase was because "the final numbers weren't right," but they also "felt Mr. Freeman was dishonest and deceitful." Mr. Barrow said that even if the numbers would have "worked out," they probably would have terminated the purchase anyway "because we thought there was too much deceit going on." Mr. Barrow did not specify what "dishonest or deceitful" things he believed Mr. Freeman had done. Ms. Barrow gave Mr. Freeman an "ultimatum" that if he gave them part of his commission, they would go through with the deal, and if he did not, they would cancel.

Genevieve Barrow, Homeowner

8. Genevieve Barrow had known respondent for about eight years before the real estate transactions because she worked with respondent's son-in-law. In the spring of 2017, Ms. Barrow was looking at houses and was told that Mr. Freeman was a real estate agent. He became their real estate agent. He began showing them houses but they did not sign a listing agreement at that time.

In October 2017, the Barrows found a house that they wanted to buy and Mr. Freeman was going to show their current home. The Barrows signed a RLA on October 10, 2017, and cancelled the agreement on December 19, 2017. Ms. Barrow understood she was terminating the agreement but she said, "we only wanted to take a break" and we were "taking our house off the market until after Christmas." Ms. Barrow testified that no new listing agreement was ever signed. She was presented with a copy of a RLA dated December 19, 2017, with a sale price of \$439,000, a \$5,000 increase. The RLA was signed with electronic signatures of the Barrows. Ms. Barrow said that she did not know how this document came into existence. She later stated, "I don't know if I ever signed a new (listing) agreement."

In January 2018, Mr. Freeman continued representing the Barrows and he presented new homes for purchase. On January 18, 2018, they signed a Residential Purchase Agreement for Crooked Arrow. She said, "The purchase did not go through." Ms. Barrow knew Mr. Freeman would need to run their credit but she did not understand why it was run "multiple times." Per Equifax, credit inquiries were made on July 27, 2017, November 22, 2017, and February 16, 2018.

Mr. Freeman provided the Barrows with a property tax estimation in late January or early February 2018 after they entered into the agreement for Crooked Arrow. The Riverside County Tax Assessor said their tax payments would be \$600 per month more than Mr. Freeman estimated. Mr. Freeman provided the Barrows with quotes on different loans, but Ms. Barrow said he "never presented a loan application for us to sign," and "he sent no financing documents." She then said she possibly did receive loan documents but she did not recall.

Mr. Freeman never told the Barrows of any issues with his license or ability to help with financing. She found out by asking a real estate "person" who was able to

find information that Mr. Freeman should not have been doing financial deals at that time.

The sellers accepted the Barrows's offer on Crooked Arrow in January 2018. The Crooked Arrow agent was giving up commissions so Ms. Barrow asked Mr. Freeman to do so as well. Her understanding was that if both realtors gave up commissions, the Barrows could make a larger downpayment which would reduce their monthly payments. Mr. Freeman refused. The transaction was in escrow but was cancelled eight days before closing when the Barrows decided "we did not want to continue working with (Mr. Freeman)" The Barrows signed a cancellation agreement with the seller and their full deposit was returned.

Ernest Freeman, Respondent

9. Mr. Freeman became licensed as a real estate salesperson in 1996. He said that the lapse of his license and lack of broker affiliation in 2017 was "an isolated event" when he was "caught up in my broker's issues."

The original asking price for Spinning Wheel was \$434,900. In December 2017, Mr. Freeman suggested that they increase the asking price by \$5,000. On December 19, 2017, the original RLA was terminated and a new RLA was signed by the Barrows for a price of \$439,000.

During the period January 2017 through January 2018, Mr. Freeman was located in Santa Cruz, California, and Salazar Crane & Associates was located in the Murrieta, California. However, Mr. Freeman was in "constant contact" with Ms. Salazar-Crane daily, either by phone or email. Mr. Freeman was not aware that he had no broker affiliation until Chris from New Penn told him in January 2018. Nothing was said about his MLO endorsement, and he did not learn about the status of his salesperson license

until the next day. He called Ms. Salazar-Crane. She advised that the matter was being taken care of.

After learning that he had no broker affiliation, Mr. Freeman continued with the Barrows's transactions. He testified that it was his understanding that if his license was terminated or expired during a purchase or sale transaction, he could continue to process the paperwork as long as the "issue" was resolved by time of closing or, if at time of closing, he waived all commissions. Mr. Freeman was mistaken. In fact, Business and Professions Code section 10130 specifically states that an agent may not perform any licensed activities to complete a transaction when a real estate license expires.

Chris of New Penn told Mr. Freeman that the Barrows believed that he had forged their names on the loan submission form. Mr. Freeman stated, "At no time did I sign paperwork on behalf of the Barrows, nor did I ever instruct anyone to do so." In July 2017, Mr. Freeman "had to register a loan so I could process it while the Barrows were on vacation." He said, "I think what occurred without me knowing it was that the processor due to the lack of paperwork from the Barrows went ahead and made a submission to the financial institution that I had placed a loan." Mr. Freeman's loan processor admitted to creating the emails and using them to sign electronic documents without the Barrows's consent. Prior to cancellation of the transactions, Mr. Freeman was not aware that emails were used to facilitate e-signatures.

During the transaction, the Barrows never raised an issue of the estimates of taxes or insurance; after the transaction, they alleged that Mr. Freeman provided inaccurate information. Mr. Freeman told them that because they were paying much more for the property than the current owner had, they would receive a supplemental tax bill from the tax assessor. He said tax is "a moving target." He gives clients an

estimate only because even when they have all the loan documents, taxes and insurance are still estimates. He explained this to the Barrows in July 2017. The Barrows cancellation of the transactions had nothing to do with property taxes or insurance.

Crooked Arrow was listed at \$689,000. The Barrows offered \$609,999 and had been approved for \$600,000. He told the Barrows that the property was priced too high "so we weren't low balling it" with that offer. Mr. Freeman said, "We tried to make it work." He first learned the Barrows were upset when he received an email on February 21, 2018, with the "ultimatum": They would close if he gave up his commission. Prior to this there had been no problems. Mr. Barrow asked for \$13,500 from Mr. Freeman's commission in addition to what they were to get from the seller's agent, for a total of almost \$17,000. Mr. Freeman said no. All that was left with the Crooked Arrow purchase was to sign the loan documents. Mr. Freeman had scheduled a notary for closing. The next day he got the Barrows's email cancelling the transaction.

Costs of Investigation and Enforcement

10. Complainant submitted a Certified Statement of Investigation Costs of \$6,231.25, which included: Special investigator (SI) - 98.95 hours at \$62 per hour; Supervising SI - .95 hours at \$80 per hour; and program technician - .55 hours at \$37 per hour. Complainant presented a Certified Statement of Enforcement Costs, reflecting that the department incurred costs of \$1,263.80 for the services of real estate counsel. These costs totaling \$7,495.05 are reasonable pursuant to Business and Professions Code section 10106. Complainant's counsel stated at hearing that Mr. Freeman is responsible for one-half of these costs or a total of \$3,747.53, which was also reasonable.

LEGAL CONCLUSIONS

1. The purpose of administrative proceedings involving the discipline of a professional license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. 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. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

Applicable Code Sections

3. Business and Professions Code section 10130 provides:

It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement.

4. Business and Professions Code section 10131 provides:

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a

compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or buyers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property or a business opportunity.

[1] . . . [1]

(c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

Business and Professions Code section 10131.1 provides that in order to be licensed as a loan originator an

individual must hold a real estate license and obtain a license endorsement from a real estate broker.

5. Business and Professions Code section 10159.2 provides:

It is unlawful for any licensed real estate broker to compensate, directly or indirectly, any person for engaging in any activity for which a mortgage loan originator license endorsement is required, if that person does not hold a mortgage loan originator license endorsement.

No real estate salesperson shall accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed.

It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed. A licensee may enter into an agreement with another licensee to share that compensation provided that any compensation is paid through the responsible broker.

The commissioner may temporarily suspend or permanently revoke the license of the real estate licensee for violation of any provision of this section.

6. Business and Professions Code section 10177 states, in part, that 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.

[1] . . . [1]

(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.

[1] . . . [1]

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

7. California Code of Regulations section 2725, subdivision (a), provides:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures, and systems to review, oversee, inspect, and manage:

(a) Transactions requiring a real estate license.

Evaluation of Cause for Discipline

8. Cause exists to discipline Mr. Freeman's license because, after Salazar Crane's license expired on October 11, 2017, and Mr. Freeman's license was placed in a non-working status, Mr. Freeman performed acts for which a real estate license is required, in violation of Business and Professions Code sections 10130 and 10177, subdivision (d).

9. Cause exists to discipline Mr. Freeman's license because he conducted unauthorized MLO endorsement activity during the period January 5, 2018, through February 28, 2018, in violation of Business and Professions Code sections 10166.02, subdivision (b)(1) and (2), and 10177, subdivision (d).

10. Cause exists to discipline Mr. Freeman's license because he submitted a false form to lender New Penn Financial, in violation of sections 10176, subdivision (i) and 10177, subdivision (d).

11. Cause exists to discipline Mr. Freeman's license because, during the period from January 5, 2018, to February 28, 2018, while Mr. Freeman was not authorized to conduct mortgage loan activity, he presented loan options to the

Barrows and listed himself as the loan originator, in violation of sections 10159.2 and 10177, subdivision (h), and California Code of Regulations 2725.

Rehabilitation and Degree of Discipline to Impose

12. Now that causes for discipline have been found the issue is the degree of discipline to impose.

13. "Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time." (*In re Menna* (1995) 11 Cal.4th 975, 991.)

14. "The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) As Chief Justice Lucas observed, "The amount of evidence of rehabilitation required . . . varies according to the seriousness of the misconduct at issue." (*Id.* at p. 1070.)

15. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

16. Mr. Freeman has held a salesperson license with the department since 1996. After being licensed for more than 20 years, Mr. Freeman should be aware that he is ultimately responsible for his department issued licenses. He should have known that his MLO endorsement was connected to his broker affiliation and that he is required to be affiliated with a broker. While it is unfortunate that Ms. Salazar-Crane did not notify him of the status of SCI's license, Mr. Freeman is ultimately responsible

to ensure that his license and MLO endorsement are in good standing with the department.

17. Once Mr. Freeman became aware that he had no broker affiliation, he was required to discontinue any real estate transactions. Instead, he continued under the mistaken belief that he was able to do so if the matter was being resolved or that he could take no commissions at closing. While he may have had a good faith belief that he was correct, the fact is that this is contrary to California real estate law. As a licensed salesperson for 20 plus years, he should have been aware of the relevant real estate codes and regulations.

18. As a supervisor of his loan processor, Mr. Freeman is responsible to ensure that the loan processor is abiding by all real estate laws. His statements as to what he believed his loan processor did with respect to the Barrows's submission documents belied his other statements that he was totally unaware of her conduct. In the end, even if he was totally unaware of her conduct, as a supervisor he is responsible for that conduct.

19. As a licensed salesperson and holder of a MLO endorsement, Mr. Freeman has the duty to be aware of and to abide by the department's rules and regulations. The department has a responsibility to protect the public and to ensure that each licensed salesperson is following the department's rules and regulations. The public will be sufficiently protected by placing Mr. Freeman's license on probation with a restricted license per Business and Professions Code section 10156.5 for a period of two years.

Recovery of Reasonable Costs of Investigation and Enforcement

20. Business and Professions Code section 10106 authorizes the department to seek its investigation and enforcement costs.

21. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court dealt with the issue of cost recovery, and noted that because a licensee with limited financial resources might forego a hearing for fear that a board might erroneously sustain the charges and order the licensee to reimburse costs, discretion must be used to ensure that a licensee with a meritorious claim is not deterred from exercising his or her right to a hearing. (Id. at p. 44.) The Court determined that five factors should be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and Professions Code section 125.3: Whether the licensee has been successful at hearing in having charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (Ibid.)

22. Mr. Freeman engaged in the conduct that was the primary focus of the accusation. He appeared to have a subjective good faith belief in the merits of his position. He did not raise a colorable challenge to the allegations. This was not a case in which the department conducted a disproportionately large investigation and prosecution to prove relatively innocuous misconduct.

23. Based on the above, Mr. Freeman shall reimburse costs in the amount of \$1,873.77.

ORDER

All licenses and endorsements of Ernest Eugene Freeman under the Real Estate Law are revoked; provided, however, that his real estate salesperson license shall be revoked, the revocation stayed, and a restricted license issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the issuance of such a restricted license and \$1,873.77 in investigation and enforcement costs within 90 days from the effective date of this Decision, unless otherwise ordered by the department through a payment plan. The restricted license issued to respondent shall be subject to all the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. During the period of restriction, respondent shall report any arrest to the board within 72 hours of the occurrence of the arrest, or if incarcerated following arrest, within 72 hours of release from incarceration.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.
3. The restricted license issued to respondent may be suspended prior to hearing by order of the 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.

4. 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 and order.

5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the bureau certifying that:

(a) the employing broker has read the decision and order in this matter; and

(b) 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.

6. Respondent shall, within nine months from the effective date of this decision and order, 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.

7. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATE: August 23, 2021

Marion J. Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings