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AUG 25 2014

**BUREAU OF REAL ESTATE**

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of  
  
MIGUEL LARA,  
  
Respondent.

No. H-5980 SAC  
OAH No. 2013060856

ORDER DENYING RECONSIDERATION

On July 1, 2014, a Decision was rendered in the above-entitled matter. The Decision was to become effective July 23, 2014, and was stayed by separate Order to August 22, 2014.

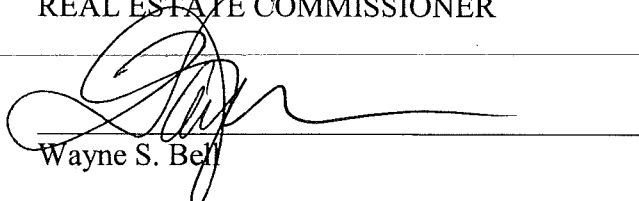
On July 10, 2014, Respondent petitioned for reconsideration of the Decision of July 1, 2014.

I have given due consideration to the petition of Respondent for reconsideration. I find no good cause to reconsider the Decision of July 1, 2014, and reconsideration is hereby denied. Therefore, the Decision of the Real Estate Commissioner of July 1, 2014, shall become effective at 12 o'clock noon on August 22, 2014.

IT IS HEREBY ORDERED

8/22/2014

REAL ESTATE COMMISSIONER

  
Wayne S. Bell

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BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-5980 SAC
MIGUEL LARA,	)	OAH No. 2013060856
Respondent.	)	

**ORDER STAYING EFFECTIVE DATE**

On July 1, 2014, a Decision was rendered in the above-entitled matter to become effective on July 23, 2014 ("the Decision").

On July 10, 2014, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days, with a new effective date of 12 o'clock noon on August 22, 2014.

DATED: 7/16/2014

REAL ESTATE COMMISSIONER

*Wayne S. Bell*  
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Wayne S. Bell

**FILED**

JUL 02 2014

BUREAU OF REAL ESTATE

By S. Bell

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation:	)	NO. H-5980 SAC
	)	
MIGUEL LARA	)	OAH No. 2013060856
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated June 4, 2014, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses.

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

This Decision shall become effective at 12 o'clock noon on JUL 23 2014

IT IS SO ORDERED 7/1/2014

REAL ESTATE COMMISSIONER




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Wayne S. Bell

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

In the Matter of the Accusation Against:

MIGUEL LARA,

Respondent.

Case No. H-5980 SAC

OAH No. 2013060856

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 15, 2014, in Sacramento, California.

Annette Ferrante, Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Bureau of Real Estate (Bureau),<sup>1</sup> Department of Consumer Affairs, State of California.

Miguel Lara (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on May 15, 2014.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in her official capacity.
2. On April 7, 2008, a real estate salesperson license was issued to respondent. Respondent's license was in full force and effect at all times relevant to the charges set forth in the Accusation, and will expire on April 6, 2016, unless renewed or revoked. Complainant seeks to revoke respondent's license based upon his conduct with regard to a short sale as described below.

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<sup>1</sup> On July 1, 2013, the Department of Real Estate became the Bureau of Real Estate within the Department of Consumer Affairs. The term "Bureau" as used herein includes the Department of Real Estate and all actions taken by the Department of Real Estate before it became the Bureau of Real Estate.

### *Short Sale*

3. In or about January 2010, Juan Carlos Mendoza (Seller) entered into an exclusive listing agreement with Ana Rosa Romo, a real estate salesperson, to sell his property at 1841 Bradford Street, Stockton, California (property). IndyMac Mortgage Services (IndyMac) held first and second mortgages on the property. At the time, Mr. Mendoza was in default on the loans secured by the mortgages, foreclosure proceedings had begun, and there was a Notice of Trustee's Sale recorded against the property.

4. On January 18, 2010, Mr. Mendoza accepted an offer from Eva Zamudio, respondent's mother, to purchase the property, for \$72,000, a price that was less than the total due on the loans secured by the first and second mortgages. The parties understood that the remaining amounts due on those loans would be forgiven by IndyMac (short sale). Respondent acted as Ms. Zamudio's real estate agent with regard to this short sale. Respondent disclosed to all parties that Ms. Zamudio was his mother.

5. On April 12, 2010, Mr. Mendoza, Ms. Zamudio, and Ms. Romo signed Affidavits of Arm's Length Transaction (Affidavits) under penalty of perjury for IndyMac. The Affidavits, in relevant part, stated:

No party to this contract is a family member, business associate, or share a business interest with the mortgagee. Further, there are no hidden terms or special understandings between the seller or buyer or their agents or Mortgagee.

The Buyers and Sellers nor their Agents have any agreements written or implied that will allow the Seller to remain in the property as renters or regain ownership of said property at anytime after the execution of this short sale transaction. None of the parties shall receive any proceeds from this transaction except the sales commission.

Although respondent acted as the buyer's agent and there is a blank signature line for the buyer's agent on the Affidavits, respondent's signature is not on any of the copies of the Affidavits submitted at hearing.

6. Contrary to the Affidavits, there were "hidden terms" and "special understandings" between Mr. Mendoza and Ms. Zamudio: they agreed that Mr. Mendoza would give Ms. Zamudio \$20,000 for the down payment to purchase the property. Upon completion of the short sale, Ms. Zamudio would allow Mr. Mendoza to continue to live on the property, and he would make all of Ms. Zamudio's mortgage payments. When Ms. Zamudio sold the property, Mr. Mendoza or one of his family members could purchase it. Mr. Mendoza would recoup the \$20,000 down payment given to Ms. Zamudio from the proceeds of that subsequent sale.

7. Mr. Mendoza deposited the \$20,000 into a joint bank account that was held in the names of Ms. Zamudio and respondent's wife. Ms. Zamudio used \$18,937.80 of this money to make the down payment on the property.

8. The short sale of the property to Ms. Zamudio closed on April 16, 2010. Respondent was paid a commission of \$2,160 upon the sale of the property, some of which was remitted to respondent's broker.

9. On December 10, 2012, Ms. Zamudio sold the property to third parties for \$79,700 (second sale). Respondent acted as the both the seller's and the buyers' agent on that sale. He received a commission of \$3,188 from the second sale, some of which was remitted to his broker. After all expenses were paid, Ms. Zamudio received \$16,566.21 from the second sale. Some of this amount was paid to Mr. Mendoza.

#### *Respondent's Declarations and Testimony*

10. Respondent handwrote a declaration dated January 4, 2013. In his declaration, respondent stated that he met Mr. Mendoza in August 2008, when he was showing Mr. Mendoza's home to a prospective buyer. Mr. Mendoza told respondent that he did not like his realtor because she did not speak Spanish. According to respondent, as set forth in his declaration, a "couple of days later," Mr. Mendoza called respondent and asked if respondent could help him. Respondent introduced Mr. Mendoza to Ms. Romo. The sale to respondent's prospective buyer did not go through. Respondent began referring Mr. Mendoza to clients and other realtors to perform work as a handyman. Respondent also introduced Mr. Mendoza to his family, including his mother, Ms. Zamudio. She agreed to help Mr. Mendoza by purchasing his home. Mr. Mendoza agreed to deposit \$20,000 into Ms. Zamudio's bank account for the deposit on the sale. As set forth in respondent's declaration:

The verbal agreement between [Mr. Mendoza] and Eva Zamudio was that he had a settlement coming soon and that he would pay-off the loan since it was only 56K or that he would have someone of his family buy it back. [Mr. Mendoza] has always been making the mortgage payment of \$465 all included.

In addition, respondent, in his declaration, stated that Mr. Mendoza and Ms. Zamudio "always understood that the proceeds of the sale would go back to" Mr. Mendoza. As set forth in respondent's declaration, when Ms. Zamudio decided to sell the house to the new buyers, Mr. Mendoza agreed to move. Respondent told Mr. Mendoza how much he would be receiving from the sale and Mr. Mendoza was not "happy but he understood and even said thank you for my mom's help." On December 16, 2012, Mr. Mendoza called respondent and asked for "8-10K so he had money to move and we agree[d]." Ms. Zamudio bought a cashier's check for \$8,000, which Mr. Mendoza picked up from respondent's mother's house, and "told her tha[t] he understood that out of the 16,000 she could keep 3,000 to help [with] her medical bills." Later, Mr. Mendoza called respondent and asked respondent for

“the rest of his money 5,000.” Respondent said if the “house was vacant,” Mr. Mendoza could have the money “right away.”

11. At hearing, respondent testified that his mother thought Mr. Mendoza was a “nice man” and she wanted to “help” him. Respondent also testified that Mr. Mendoza was a “good friend” of respondent’s family, and that he “thought” he was just “helping” Mr. Mendoza out. He admitted that, before his mother agreed to be the buyer of the property, his wife had tried to purchase the property, but she could not get a loan because her debt to income ratio was too high. He asserted that, at the urging of Rosalinda Arellano, the Special Investigator assigned to investigate this matter for the Bureau, he paid Mr. Mendoza \$4,000 to ensure that Mr. Mendoza received a full refund of the \$20,000 down payment he gave to respondent’s mother.

12. Although respondent stated in his January 4, 2013 declaration that his mother and Mr. Mendoza had a “verbal agreement,” at hearing, he refused to admit that the understanding between his mother and Mr. Mendoza amounted to an “agreement.” Respondent testified that he did not tell his broker, the escrow agent, or IndyMac about this agreement, asserting that he only had a duty of disclosure to his client in the short sale, which was the buyer, his mother. When asked whether he told Ms. Romo about the agreement between Mr. Mendoza and his mother, he responded that Ms. Romo “knew” about what was going on between his mother and Mr. Mendoza because she had been at family events where the transaction was discussed.

13. Respondent has been licensed as a real estate salesperson since 2008. Prior to that, he worked for Trader Joe’s from 1998 to 2007. He is married, and has two children.

14. No witnesses testified on behalf of respondent at the hearing. Respondent did not submit any character references.

### *Discussion*

15. The short sale between respondent’s mother and Mr. Mendoza constituted mortgage fraud. It allowed Mr. Mendoza to avoid repaying in full the mortgage loans he had received from IndyMac, while still remaining, for two and one-half years, in possession of the property. By allowing his mother to sign the Affidavit, which denied that any “hidden terms or special understandings” existed between the buyer and seller, and by failing to disclose the agreement between his mother and Mr. Mendoza to the escrow agent, his broker, and IndyMac, respondent engaged in fraudulent and dishonest conduct.

16. Although respondent testified that he took full responsibility for his actions and that he was cooperative and forthcoming with the Bureau during its investigation, his testimony was generally evasive, self-serving, and lacking in credibility. He sought to deflect blame from himself, and to place much of the responsibility for the transaction between his mother and Mr. Mendoza on his mother, Mr. Mendoza, and Ms. Romo. He asserted that there were very few short sales being approved at the time of the transaction in

question, that Ms. Romo told him that the Affidavit only applied to exclude buyers and sellers who had a "blood relationship," and that he did not read the Affidavit before his mother, who does not speak English, signed it. Respondent displayed little insight or remorse. He did not acknowledge that his mother was just a "straw buyer," that IndyMac was defrauded out of money that it had lent to Mr. Mendoza, and that he (respondent) was the one who benefitted most from the transactions. He did not appear to recognize the dishonest nature of the short sale transaction, the fraud that was perpetrated on IndyMac, or his responsibilities as a real estate salesperson for disclosure and honesty. When all the evidence is considered, it would be contrary to the public interest, safety and welfare to allow respondent to retain his license. Consequently, his license must be revoked.

### *Costs*

17. Complainant has requested that respondent be ordered to pay costs for the investigative work conducted by their Special Investigators in the amount of \$3,826.50, and for the enforcement work conducted by their counsel in the amount of \$2,959.25, for a total of \$6,785.75. Complainant submitted declarations explaining and supporting these costs. Respondent objected that the amount charged for Ms. Arellano's investigation was too high because he did not believe that her investigation was of "good quality." Respondent asserted that Ms. Arellano did not ask questions about some of the information he provided, including the close personal relationship that he and his mother had with Mr. Mendoza. Respondent's objections were not persuasive. Respondent's concerns about the scope of Ms. Arellano's investigation were not relevant to the allegations and legal violations at issue in this matter. From all the evidence, it appears that Ms. Arellano did a thorough investigation into the relevant issues, that the time she spent was appropriate in light of the allegations and legal issues in this matter, and that the amount she charged was reasonable. Similarly, the time spent and the amount charged by counsel for enforcement were reasonable in light of the legal issues and allegations made against respondent.

18. Respondent also testified that he could not fully pay all the costs given his current income. Complainant's request for costs and respondent's opposition are addressed in the Legal Conclusions below.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10176, subdivision (a), a real estate salesperson license may be revoked if the licensee has made "any substantial misrepresentation." By allowing his client, his mother, to sign the Affidavit of Arm's Length Transaction, which denied that any "hidden terms or special understandings" existed between the buyer and seller, and by failing to disclose the agreement between his mother and Mr. Mendoza to the escrow agent, his broker, and IndyMac, respondent made substantial misrepresentations. Consequently, complainant established cause to revoke respondent's license under Business and Professions Code section 10176, subdivision (a). (Findings 3 through 12, 15 and 16.)



2. Pursuant to Business and Professions Code section 10176, subdivision (b), a license of a real estate salesperson may be revoked if the licensee has made “any false promises of a character likely to influence, persuade or induce.” Complainant established cause to revoke respondent’s license under Business and Professions Code section 10176, subdivision (b). (Findings 3 through 12, 15 and 16.)

3. Pursuant to Business and Professions Code section 10176, subdivision (i), a license of a real estate salesperson may be revoked if the licensee has engaged in conduct that “constitutes fraud or dishonest dealing.” Complainant established cause to revoke respondent’s license under Business and Professions Code section 10176, subdivision (i). (Findings 3 through 12, 15 and 16.)

4. Pursuant to Business and Professions Code section 10177, subdivision (d), a license of a real estate salesperson may be revoked if the licensee has “[w]illfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)).” Complainant established cause to revoke respondent’s license under Business and Professions Code section 10177, subdivision (d). (Findings 3 through 12, 15 and 16.)

5. Pursuant to Business and Professions Code section 10177, subdivision (g), a license of a real estate salesperson may be revoked if the licensee has “[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.” Complainant established cause to revoke respondent’s license under Business and Professions Code section 10177, subdivision (g). (Findings 3 through 12, 15 and 16.)

6. Pursuant to Business and Professions Code section 10177, subdivision (j), the license of a real estate salesperson may be revoked if the licensee has engage in any conduct that “constitutes fraud or dishonest dealing.” Complainant established cause to revoke respondent’s license under Business and Professions Code section 10177, subdivision (j). (Findings 3 through 12, 15 and 16.)

7. As set forth in Finding 16, when all the evidence submitted in this matter is considered, complainant demonstrated that it would be contrary to the public interest, safety and welfare to allow respondent to retain his license. Consequently, his license must be revoked.

8. Business and Professions Code section 10106, which permits the award of costs, in relevant part, provides:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in ~~the merits of his or her position, whether the licensee has 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.


10. As set forth in Finding 17, complainant seeks \$6,785.75 in investigation and enforcement costs. Respondent was not successful at hearing in getting any of the charges dismissed or reduced. He did not raise a colorable challenge to the proposed discipline. The scope of the investigation was appropriate in light of the alleged misconduct. Although respondent appeared to believe that he was justified in engaging in his wrongful actions, his testimony was evasive, self-serving and lacking in credibility. While he asserted that he could not pay the full amount of the costs, he did not offer sufficient evidence to establish that the requested costs should be reduced. When all the *Zuckerman* factors are considered, the requested costs are reasonable. Consequently, respondent should be ordered to pay these costs in full to the Bureau. They may be paid over time according to a reasonable payment plan approved by the Bureau or its designee.

#### ORDER

1. All licenses and licensing rights of respondent Miguel Lara under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), including his salesperson license, are REVOKED, pursuant to Legal Conclusions 1 through 6, jointly and individually.

2. Respondent shall pay costs to the Bureau in the amount of \$6,785.75 within 30 days after the effective date of the decision. The Bureau may establish a reasonable plan for the payment of these costs over time.

DATED: June 4, 2014

  
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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings