

**FILED**

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

JAN 23 2018

BUREAU OF REAL ESTATE

By B. Nicholas

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In the Matter of the Accusation of	)	CalBRE No. H-6402 SAC
NORCAL VENTURE REAL ESTATE &	)	
INVESTMENTS, INC., and RAFAEL	)	OAH No. 2016061224
SIERRA	)	
Respondents.	)	
_____	)	

DECISION

The Proposed Decision dated December 20, 2017, 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.

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.


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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 Sections 11521 and 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 **FEB 13 2018**

IT IS SO ORDERED 1/22/18

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI  
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

NORCAL VENTURE REAL ESTATE &  
INVESTMENTS, INC. AND RAFAEL  
SIERRA,

Respondents.

Case No. H-6402 SAC

OAH No. 2016061224

**PROPOSED DECISION**

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 4, 2017, in Sacramento, California.

Richard Uno, Counsel III for the Bureau of Real Estate (Bureau), represented Tricia Parkhurst (complainant), a Supervising Special Investigator for the State of California.

Jesse Ortiz, Attorney, represented respondents Norcal Venture Real Estate & Investments, Inc. (Norcal) and Rafael Sierra (Mr. Sierra), who was present at the hearing.<sup>1</sup>

Evidence was received, the record was closed, and the matter was submitted for decision on December 4, 2017.

**FACTUAL FINDINGS**

1. On or about April 30, 2003, Mr. Sierra was licensed as a real estate salesperson by the Bureau, license number S/01379094. At all times relevant, Mr. Sierra was employed as a real estate salesperson for Norcal. Mr. Sierra's license will expire on August 24, 2019, unless renewed or revoked.

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<sup>1</sup> The Accusation was also filed against Francisco Macias, a real estate broker and designated officer for Norcal. The Bureau resolved the Accusation against Mr. Macias prior to hearing. As a result, there are no findings against Mr. Macias in this Proposed Decision and the allegations in the Second, Third and Fourth Causes of Action plead against Mr. Macias are not addressed.

2. On or about August 12, 2011, Norcal registered as a limited liability corporation with the California Secretary of State. Joly Gagni was listed as the Manager of Norcal. She owned 50 percent of Norcal. Mr. Sierra owned the other 50 percent.

3. On or about October 4, 2011, Norcal was issued a corporation license by the Bureau, license number C/01905408. Ms. Gagni was not licensed by the Bureau in any capacity. On May 18, 2012, Norcal's license was updated to reflect that Francisco Macias was the Designated Officer for Norcal. At hearing, Mr. Macias testified that he was not aware that he was listed as the designated officer for Norcal. Mr. Macias saw the documents filed with the Secretary of State listing him as the managing director for Norcal for the first time at hearing.

4. On or about October 1, 2013, the California Franchise Tax Board suspended Norcal's "powers, right and privileges...pursuant to the provisions of the California Revenue and Taxation Code." Norcal did not inform the Bureau of the suspension. Norcal's license expired on October 3, 2015, and was not renewed.

5. On June 6, 2016, complainant filed the Accusation in her official capacity. Complainant seeks to discipline the licenses issued to Norcal and Mr. Sierra for alleged violations of Real Estate Law as it relates to the representation of Mark and Joanne Marson in the sale of their property on Buhler Way, North Highlands, California (Buhler Property) and the attempted purchase of a property on South Lincoln, Roseville, California (Lincoln Property), by Rebecca Gonzales.

6. On or about June 23, 2016, Jeffrey Mason, Chief Deputy Commissioner with the Bureau filed an Order to Desist and Refrain (Order) against Norcal, Mr. Macias and Ms. Gagni. The Order stated that based upon an investigation conducted by the Bureau, it was determined that Ms. Gagni "has engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code...." The Order stated that Norcal employed Ms. Gagni to engage in real estate activities. Additionally, the Order stated that Ms. Gagni assisted in the attempted short sale of the Buehler Property and the attempted purchase of the Lincoln Property.

7. Respondents timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### *Background*

8. Mr. Macias obtained his broker license from the Bureau in 2012. Thereafter, he spoke to Mr. Sierra and Ms. Gagni about working in real estate together. Mr. Macias had known Mr. Sierra and Ms. Gagni for several years based on their interactions in the real estate business. Mr. Macias did not know that Ms. Gagni was not licensed by the Bureau. Mr. Sierra and Ms. Gagni helped Mr. Macias complete paperwork so that he could serve as

Mr. Sierra's broker. During the time that Mr. Macias served as Mr. Sierra's broker, he did directly supervise him. Mr. Sierra worked from home.

### *Buhler Property*

9. In approximately 2012, the Marson's met Mr. Sierra and Ms. Gagni after they were referred to Mr. Sierra to assist them with the short sale of a home they owned on Cranmore Court (Cranmore Property), in Citrus Heights, California. Ms. Marson testified at hearing that after Mr. Sierra assisted the Marson's with the short sale of the Cranmore Property, the Marson's moved into the Buehler Property, which they owned.

10. When the Marson's determined they could no longer afford the mortgage payments for the Buehler Property, they requested Mr. Sierra and Ms. Gagni's assistance with the short sale of the property. On or about June 8, 2012, Ms. Gagni's daughter Klarisse entered into a Residential Purchase Agreement, to purchase the Buehler Property as a short sale for \$60,000. Mr. Sierra, on behalf of Norcal, was listed as the listing agent and Mr. Macias, on behalf of Francisco Macias Realty, was listed as the selling agent. The same day, Mr. Sierra and Ms. Gagni signed a Bank of America Short Sale Third-Party Authorization Form, which identified them as designated representatives for Mr. Marson, authorizing them to discuss the short sale of the Buehler Property. Mr. Sierra testified that the purchase was not completed because Klarisse could not obtain adequate funding.

11. On or about October 1, 2012, Mr. Marson signed a Residential Listing Agreement for the short sale of the Buehler Property, with Norcal listed as the broker and Mr. Sierra listed as the real estate salesperson. The list price for the short sale was \$90,300. The agreement listed an ending date of December 31, 2013.

12. On or about October 2, 2012, Mr. Marson signed a short sale agreement with Bank of America, the owner of the mortgage for the Buehler Property, because of his participation in the federal government's Home Affordable Foreclosure Alternatives short sale program. Bank of America required Mr. Marson to agree to list the Buehler Property for \$90,300, and to work with a real estate sales person to market the property for 120 days. Mr. Marson was also required to agree that he would not to list or sell the property to anyone with whom he was related or had a close personal or business relationship.

Additionally, per terms of the agreement with Bank of America, the buyer of the property was required to agree not to sell the house within 90 calendar days of the date the property was sold by Mr. Marson, and there could be no expectation that the Marson's would be able to buy or rent the property back after the closing of the sale. Mr. Sierra, as Mr. Marson's real estate salesperson, was also required to sign the agreement. In doing so, Mr. Sierra acknowledged that he reviewed the terms of the agreement.

13. On November 7, 2012, Mr. Sierra signed another Bank of America Short Sale Third-Party Authorization Form related to the short-sale of the Buehler Property. The authorization allowed Mr. Sierra to speak to Bank of America on behalf of Mr. Marson. Ms. Gagni was not listed as a designated representative.
14. On or about December 20, 2012, Mr. Marson signed a second Residential Listing Agreement for the short sale of the Buehler Property, with Norcal listed as the broker and Mr. Sierra listed as the real estate salesperson. The list price for the short sale was \$90,300. The expiration date for the agreement was March 20, 2013.
15. On or about January 14, 2013, Ms. Gagni's son, Kenneth Gagni, signed a Residential Purchase Agreement to purchase the Buehler Property for \$82,000. Mr. Sierra, on behalf of Norcal, was listed as the listing agent. Mr. Macias, on behalf of Realty Solutions, was listed as the selling firm. Mr. Sierra and Ms. Gagni informed the Marson's that Kenneth Gagni was part of a group of four investors that purchased homes and that they would be allowed to stay in the Buehler Property after the short sale until they found another home or elected to purchase back the Buehler Property.
16. On January 15, 2013, Mr. Sierra and Mr. Macias signed a "Short Sale Real Estate Licensee Certification" in which they certified that they were not aware "any other agreements or understandings that call for the subsequent sale of the [Buehler] Property within 30 days of the current sale, the assignment of the property to the Seller, or the option for the Seller to purchase." They also acknowledged and agreed that there was "no existing business relationship with the Buyer and/or Seller other than the purchase of the Property," according to the terms and conditions of the purchase contract."
17. Between January and May 2013, the Marson's looked for another home to purchase. The sale of the Buehler Property to Kenneth Gagni closed on or about May 17, 2013. On May 18, 2013, Ms. Gagni, Kenneth Gagni, and the Marson's entered into a month-to-month Residential Lease Agreement (Lease Agreement), which provided that the Marson's would pay \$460 for rent to the end of May 2013, and a \$995 security deposit. The Marson's provided the rent and security deposit to Ms. Gagni. Mr. Sierra was present.
18. On June 9, 2013, the Marson's signed a Residential Purchase Agreement to purchase the Buehler Property for \$155,000. Mr. Sierra on behalf of Norcal was listed as a dual agent for the listing and sale. The agreement listed that the Marson's provided a \$5000 deposit to purchase the home. The Marson's gave Mr. Sierra \$2,500 in cash and a \$2,500 check for the deposit. Mr. Sierra failed to put the money in Norcal's trust account or an escrow account. The purchase attempt was rejected by the lender. The Marson's were told by Mr. Sierra that the attempted re-purchase of the Buehler Property did not go through because the lender believed that the Marson's and Ms. Gagni were related. The \$5,000 deposit for the purchase was not returned. Ms. Marson believed that the money would be put towards the purchase of another home.

19. In addition to the \$5,000 deposit for the Buehler Property, Mr. Sierra and Ms. Gagni recommended to the Marson's that they invest \$25,700 into a "COVE Financial" program to purchase a property. The Marson's were told that they would receive \$34,000 in return. The Marson's cashed out money from their retirement accounts to pay the \$25,700. On June 24, 2013, Ms. Gagni and her son Karl Gagni signed a promissory note they provided to the Marson's, which documented the agreement that the Gagni's would pay the Marson's \$34,000 by October 1, 2013. The promissory note was secured by a deed of trust for a property in Union City. On October 1, 2013, the Gagni's failed to pay the \$34,000 as required by the promissory note.

20. Between June and July 2013, Mr. Sierra was involved in the rehabilitation of the Buehler Property to get it ready to be sold. The Marson's moved out of the Buehler Property in approximately July 2013, when it was sold to a friend of Ms. Gagni.

#### *Lincoln Property*

21. In approximately November 2013, Mr. Sierra recommend that the Marson's purchase the Lincoln Property. Mr. Sierra and Ms. Gagni told the Marson's that Rebecca Gonzales was part of the investigate group that purchased homes. They explained that Ms. Gonzales agreed to purchase the Lincoln Property and allow the Marson's to live in the property for two years and then purchase the home. The rent the Marson's would pay for the two years would be put towards the purchase of the home. The Marson's agreed to the arrangement. The Marson's were required to provide Mr. Sierra \$3,000 as "proof of funds" and also paid \$400 for an appraisal of the property.

22. By letter dated November 12, 2013, Rod Wong, Senior Loan Officer for Midtown Reality and Mortgage, issued a "Pre-Approval Letter" that stated Ms. Gonzales was approved for a Federal Housing Act (FHA) loan. Ms. Gagni was listed on the letter as the "Loan Coordinator." The same day, Ms. Gonzales signed a Residential Purchase Agreement for the purchase of the Lincoln Property. Mr. Sierra, on behalf of Norcal, was listed on the real estate salesperson. Mr. Sierra testified that Ms. Gonzales provided him with a check for \$3,000 made out to "Title Company" as a deposit for the property. Mr. Sierra did not deposit the check into an escrow account with a title company. Ms. Gonzales did not testify at hearing.

23. On November 20, 2013, an appraisal of the property was conducted. Mr. Sierra testified that after the appraisal report was issued on November 21, 2013, the purchase by Ms. Gonzales fell through, because the property did not qualify for federal funding. Mr. Sierra did not return the \$3,000 to Ms. Gonzales.

#### *Events after November 2013*

24. On or about April 30, 2014, Mr. Sierra and Ms. Gagni prepared an "Agreement of Limited Partnership in Purchasing Investment Real Estate Property" (Partnership Agreement), to be entered into with the Marson's. The Partnership Agreement

provided that the \$27,500 the Marson's provided to the Gagni's in June 2013, would be put toward the purchase of a home in Carmichael, California. Mr. Sierra and Ms. Gagni signed the Partnership Agreement. The Marson's refused to sign the agreement because it did not reflect the agreement in the promissory note that they were to be paid \$34,000. The Marson's never received their money back.

25. On or about October 19, 2014, the Marson's filed a complaint with the Bureau regarding the conduct of Mr. Sierra and Ms. Gagni. At hearing, Heather Nishimura, a Supervising Special Investigator for the Bureau testified that the investigation of the complaint was assigned to Marcus Beltramo, a Special Investigator she supervised. Mr. Beltramo conducted interviews and gathered documents, which were presented at hearing.<sup>2</sup>

*Respondent's Evidence*

26. Mr. Sierra has worked as a real estate salesperson since 2003. He currently works for American International Realty. Mr. Sierra met Ms. Gagni through real estate transactions. She found clients for Mr. Sierra. In 2011, they formed Norcal as a real estate corporation. Mr. Sierra contended that Ms. Gagni was the "office manager" for Norcal. She answered phones, and maintained files. He denied that Ms. Gagni engaged in activities that required a real estate license.

27. Mr. Sierra contended that he was not aware of the agreement to allow the Marson's to stay in the Buhler Property after the short sale closed. He attempted to find a home for the Marson's to purchase before the close of the Buhler Property sale to Kenneth Gagni. He was not able to do so. He was aware that the Marson's entered into a Lease Agreement with Ms. Gagni the day after the sale closed and was present when the Marson's gave Gagni money for rent.

28. Mr. Sierra was also aware of the agreement prior to the sale of the Buhler Property that the Marson's would attempt to re-purchase the property. He represented the Marson's in their attempt to re-purchase the property. Mr. Sierra contended that he was not "thinking straight." He knew that the attempt to re-purchase the property was a violation of the short sale agreement with Bank of America. Mr. Sierra also contended that the \$5,000 the Marson's provided for the re-purchase of the Buehler Property was given to the COVE Financial program, not him.

29. Mr. Sierra testified he only met Ms. Gonzales one time when she signed the purchase agreement for the Lincoln Property. He was aware that there was an agreement that the Marson's would move into the Lincoln Property. Mr. Sierra obtained the Pre-Approval

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<sup>2</sup> Some of the investigation records the Bureau submitted at hearing included memorandums of interviews with Ms. Gonzales and Rodney Wong, an employee of Midtown Realty Mortgage. Neither testified at hearing. As result, the memorandums were admitted as administrative hearsay, and have been considered to the extent permitted under Government Code section 11513, subdivision (d).



letter for Ms. Gonzales, directly from Mr. Wong, who was Mr. Sierra's broker of record for three years starting in 2003. Mr. Sierra contended that he did not know why Ms. Gagni was listed as the "Loan Coordinator" on the letter. Mr. Sierra also contended that he did not deposit the \$3,000 check Ms. Gonzales provided to him as a deposit on the Lincoln Property, because the property never went into escrow. Mr. Sierra admitted that he was required to secure the funds and he failed to do so. He contended that the check was left in a file, and he did not return the check because he did not know how to reach Ms. Gonzales.

30. Mr. Sierra admitted that he and Ms. Gagni began speaking to the Marson's about entering into a limited partnership in June 2013, after the sale of the Buhler Property. However, he contended that he was not involved in the COVE Financial program, nor was he aware that Ms. Gagni was working with a group of investors to purchase properties.

### *Discussion*

31. The evidence established that Mr. Sierra violated Real Estate Law related to his representation of the Marson's. Specifically, the Bureau established that Mr. Sierra failed to disclose to Bank of America the relationship between Mr. Marson, Ms. Gagni, as a 50 percent owner of Norcal, the broker of record for the sale of the Buehler Property, and Kenneth Gagni, her son, who purchased the Buehler Property. The Marson's had a business relationship with Ms. Gagni related to her involvement in the sale of the Buehler Property and the agreement to allow the Marson's to stay in the property and to re-purchase the property from her son. As a result, Mr. Sierra as the real estate sales person working for Norcal was required to disclose the relationship and failed to do so. Mr. Sierra also violated the terms of the short sale agreement and made material misrepresentations when he failed to disclose to Bank of America, the agreements with the Marson's to stay in the Buehler Property after the sale and to re-purchase the property. Mr. Sierra admitted that he knew the attempted re-purchase was a violation of the short sale agreement with Bank of America.

Additionally, Mr. Sierra failed to deposit the \$5,000 the Marson's provided to re-purchase the Buehler Property in the Norcal trust account or an escrow account. Rather, he induced the Marson's to allow him and Ms. Gagni to keep the money to put towards the purchase of another home. The money was never returned. Mr. Sierra later induced the Marson's to provide \$3,000 as "proof of funds" and pay \$400 for an appraisal of the Lincoln Property, with the promise that they would be allowed to live in the property and purchase it from Ms. Gonzales after two years. The purchase did not go through and the Marson's money was not returned.

Mr. Sierra's contention that he was not involved in inducing the Marson's to deposit money into the COVE Financial Program, was not credible. Mr. Sierra was present during all discussions that Ms. Gagni had with the Marson's regarding investing in real estate. Additionally, in April 2014, he attempted to enter into a limited partnership with the Marson's related to the return of the \$27,500 they provided to the COVE Financial program. Mr. Sierra's attempt to portray himself as an unknowing participant in the fleecing of the

Marson's was inconsistent with credible testimony provided by Ms. Marson and the written evidence in the record.

32. The evidence also established that Mr. Sierra, acting on behalf of Norcal, represented Ms. Gonzales in the attempted purchase of the Lincoln Property. On November 12, 2013, Ms. Gonzales signed a Residential Purchase Agreement for the purchase of the Lincoln Property. At the time, Norcal's corporation powers were suspended. Ms. Gonzales provided a check for \$3,000 for the purchase of the property. Mr. Sierra failed to deposit the check in the Norcal trust account or an escrow account. The check was never returned to Ms. Gonzales.

33. The Accusation contains allegations that Ms. Gonzales did not want to purchase the Lincoln Property and that Mr. Wong denied arranging the financing for the purchase. Ms. Gonzales and Mr. Wong did not testify at hearing. As a result, insufficient evidence was presented to substantiate such allegations. Additionally, the Bureau failed to establish that Norcal hired Ms. Gagni to engage in activities which required a real estate license. While the evidence established that Ms. Gagni was present with Mr. Sierra during all of the interactions between himself and the Marson's and that her role was more significant than an "office manager," there was insufficient evidence presented that Ms. Gagni's conduct constituted the practice of real estate.

34. The Bureau established that the license issued to Norcal should be revoked. On October 1, 2013, Norcal's corporation powers were suspended by the Franchise Tax Board and not reinstated. Additionally, as a real estate salesperson, Mr. Sierra is entrusted to uphold the Real Estate Law and the Commissioner's Regulations. He knowingly and repeatedly failed to do so. Considering all of the evidence, Mr. Sierra's actions are very troubling and demonstrate willful violations of Real Estate Law and the Commissioner's Regulations. As a result, it would be against the public interest to allow Mr. Sierra to remain licensed as a real estate salesperson.

#### *Costs*

35. Pursuant to Business and Professions Code section 10106, the Bureau is authorized to seek reimbursement of investigation and prosecution costs at hearing. As of November 30, 2017, the Bureau incurred \$5,206.50 in attorney charges in connection with the prosecution of this case. Additionally, the Bureau incurred \$8,885.20 in investigation costs, for a total of \$14,091.70. At hearing, the Bureau submitted a statement of costs and supporting documentation of investigation and prosecution. As set forth in Legal Conclusion 10, the costs of investigation and prosecution in the total amount of \$14,091.70 are reasonable.

## LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline a professional license, the Bureau has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.)

2. Business and Professions Code section 10137 provides in pertinent part that:

It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her, or to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

No real estate salesperson shall be employed by or 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.

3. As set forth in Factual Finding 33, the Bureau failed to establish by clear and convincing evidence that Norcal hired an unlicensed person to engage in activities which required a real estate license. Therefore, the Bureau failed to establish cause for discipline based on a violation of Business and Professions Code section 10137.

4. Pursuant to Business and Professions Code section 10145, subdivision (c) provides that:

A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

5. As set forth in Factual Findings 18, 22, 23, 31, and 32, the Bureau established by clear and convincing evidence that Mr. Sierra accepted trust funds from the Marson's and Ms. Gonzales. He failed to deliver the funds to his broker or place the funds in the Norcal trust account or an escrow account. Therefore, cause exists to discipline Mr. Sierra's license pursuant to Business and Professions Code section 10145, subdivision (c).

6. Business and Professions Code section 10176, provides in pertinent part that:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade, or induce.

[ ¶ ] . . . [ ¶ ]

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

7. As set forth in Factual Findings 9 through 21, 31, and 32, the Bureau established by clear and convincing evidence that Mr. Sierra's conduct related to his representation of the Marson's in the sale and attempted re-purchase of the Buhler Property and attempted purchase of the Lincoln Property, involved acts of substantial misrepresentation, false promises made to induce the Marson's to invest money into the purchase of properties and conduct which consisted fraud and dishonest dealing. Therefore, cause exists to discipline Mr. Sierra's license pursuant to Business and Professions Code section 10176, subdivisions (a), (b), and (i).

8. Pursuant to California Code of Regulations, title 10, section 2742, subdivision (c), "a corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State."

9. As set forth in Factual Findings 2 through 4, 22, 32, and 34, on October 1, 2013, Norcal's corporation powers were suspended by the Franchise Tax Board. The powers were not reinstated. Therefore, cause exists to discipline Norcal's license pursuant to California Code of Regulations, title 10, section 2742, subdivision (c).

*Cost Recovery*

10. 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. (Bus. & Prof. Code, § 10106, subd. (a).) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. No basis to reduce or eliminate the costs in this matter was established. In the absence of evidence to the contrary, costs in the amount of \$14,091.70 are reasonable.

*Conclusion*

11. When considering the Factual Findings and Legal Conclusions as a whole, it would be contrary to the public interest to allow Norcal and Mr. Sierra to remain licensed.

ORDER

1. All licenses and licensing rights of respondent Norcal Venture Real Estate & Investments, Inc., under the Real Estate Law are REVOKED.

2. All licenses and licensing rights of Rafael Sierra under the Real Estate Law are REVOKED.

3. Pursuant to Business and Professions Code section 10106, Rafael Sierra shall pay the Commissioner's reasonable costs for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$14,091.70. These costs shall be paid in full or in accordance with a payment schedule as agreed to between Mr. Sierra and the Commissioner.

DATED: December 20, 2017

DocuSigned by:  
*Marcie Larson*  
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MARCIE LARSON  
Administrative Law Judge  
Office of Administrative Hearings